

PANAMA

Law and Practice

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Arias, Fábrega & Fábrega (ARIFA) has been at the forefront of the legal profession in Panama, advising leading international financial institutions, multinational corporations, and some of the largest domestic companies for over 110 years. The firm's constant deal flow of domestic and cross-border M&A transactions is second to none in Panama, with its lawyers having assisted a varied list of top-tier clients in complex and high-value deals across a wide range of industries, including banking and finance, technology and media, food, retail, health and

consumer products, transportation and logistics, and energy. The firm's success is built on the expert knowledge and experience of its 15-plus team of lawyers, which comprises seven M&A attorneys admitted to practise in New York or Florida, and with training experience in firms such as Skadden, Arps, Slate, Meagher & Flom; Allen & Overy; Greenberg Traurig; Milbank; Tweed, Hadley & McCloy; Simpson Thacher & Bartlett; Sullivan & Cromwell; and Baker McKenzie.

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1. Trends

1.1 M&A Market

Over the past year, Panama's M&A market has gained momentum, supported by its strategic location, dollarised economy, and strong financial services industry. Foreign direct investment has seen a notable increase, with 2024 marking a 69.7% rise compared to the previous year. This growth is largely driven by reinvested profits in the banking and corporate sectors, as well as significant capital inflows from North America, Europe, Asia, and Latin America.

Panama has long capitalised on its geographic and policy advantages to attract international companies and investors. As the region rebounds from recent global disruptions – such as supply chain issues and shifting investment trends – the country continues to offer a compelling environment for cross-border deals. Its legal system is regarded as transparent and predictable, and its arbitration framework, which aligns with international standards, adds an extra layer of reassurance for foreign parties looking to resolve disputes efficiently.

While challenges remain – such as the social security reform and the closure of a key copper mine – the government is pushing ahead with

fiscal reforms and infrastructure investments to boost growth, generate employment, and tackle long-standing structural issues.

Lastly, the political volatility in neighbouring countries has also contributed to Panama's appeal, with many investors and companies looking to reduce their exposure by turning to more stable jurisdictions like Panama.

1.2 Key Trends

Panama's M&A market has grown significantly over the past year, driven by increased foreign direct investment, particularly in the financial services, logistics, pharmaceuticals, hospitality, and quick-service restaurant sectors. The financial services sector has experienced considerable consolidation, enhancing market positions and diversifying financial products.

A change in foreign policy from the United States – historically Panama's closest ally and largest trading partner – coupled with higher interest rates have led to longer lead times for transactions as buyers further assess geopolitical turmoil. At the same time, they take time to conduct more thorough due diligence to mitigate financing risks. The complexity of deals has necessitated more sophisticated legal counsel, ensuring compliance with local and international

standards. Additionally, there has been a trend towards shorter escrow periods to expedite deal closures and reduce uncertainties. The demand for representations and warranties insurance has grown, providing buyers protection against potential losses due to breaches of seller representations and warranties. Adopting digital tools, such as virtual data rooms and electronic signatures, has streamlined the transaction process, making it more efficient. Panama also emerges as a regional arbitration hub, attracting international investors seeking neutral and efficient dispute resolution mechanisms.

Panama's stable economic outlook, supportive business leadership, and commitment to structural reforms are anticipated to maintain investment and deal-making activities moving forward. The increasing sophistication of Panama's mergers and acquisitions (M&A) market, driven by a more standardised regulatory environment and a growing preference for arbitration, continues to attract both regional and international investors. This reinforces Panama's status as a leading investment destination in Latin America.

1.3 Key Industries

In the past 12 months, several industries in Panama have experienced significant M&A activity, reflecting the country's dynamic economic landscape and strategic appeal to investors. Key sectors that have seen notable mergers and acquisitions include:

- **Financial Services:** The financial services sector has been particularly active, with consolidation efforts to enhance market positions and diversify financial products. Notable transactions include Banco Davivienda Panamá's integration of Scotiabank Panamá and Grupo Imperia's acquisition of Banco La Hipotecaria. These moves underscore the

sector's resilience and critical role in Panama's economy.

- **Logistics and Transportation:** Given Panama's strategic location and the presence of the Panama Canal, the logistics and transportation sector continues to attract substantial investment. The country's role as a regional logistics hub makes it a focal point for M&A activity, with companies seeking to optimise supply chain operations and expand their reach in Central and South America.
- **Pharmaceuticals:** The pharmaceutical sector has also seen significant M&A activity driven by the need for expansion and market penetration in Latin America. A notable transaction in this sector is Swixx Biopharma's acquisition of Pharma Consulting Group S.A., which marks Swixx Biopharma's entry into the Latin American market and highlights the sector's growth potential.
- **Hospitality and Tourism:** The hospitality sector has been buoyant, reflecting Panama's growing appeal as a tourist destination. Key transactions include Hotel La Compañía's acquisition of Hotel Los Mandarinos and La Casa de Lourdes, which enhance its luxury offerings and regional expansion strategies. This sector's growth indicates Panama's increasing attractiveness to international tourists and investors.
- **Quick-Service Restaurants:** The quick-service restaurant sector has been dynamic, with significant acquisitions aimed at expanding market presence and brand portfolios. Platinum Brands, S.A.'s acquisition of KFC and Dairy Queen assets, along with Grupo Vieri securing the Popeyes franchise, exemplify the sector's robust activity and growth prospects.
- **Automotive:** The automotive sector has seen notable M&A activity driven by the entry of international players and the evolving competitive landscape. Sojitz Corporation's acqui-

sition of Grupo Sílabá, a leading automobile distributor in Panama, positions the company for growth in the consumer goods sector and underscores the sector's attractiveness to foreign investors.

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;
- undertaken to control costs and exploit synergies; or
- 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.

2. Overview of Regulatory Field

2.1 Acquiring a Company

The primary techniques for acquiring a company in Panama include mergers, stock purchases, and asset purchases.

Mergers can be either by absorption, where one company absorbs another and assumes all its assets and liabilities or by consolidation, where two companies merge to form a new entity. These mergers require approval from most directors and shareholders and must be registered with the Public Registry.

Stock purchases involve acquiring the target company's shares and typically require approval from the majority of the directors and shareholders,

especially if it involves all or substantially all of the company's assets.

Asset purchases involve acquiring specific assets and liabilities of the target company, requiring similar approvals.

For public companies, control is often obtained through a public offer or a legal merger, usually involving a tender offer followed by a merger. Due diligence and regulatory approvals are crucial in these transactions to ensure compliance with local laws and regulations.

2.2 Primary Regulators

The primary regulators for M&A activity in Panama vary depending on the industry involved. Most transactions in Panama do not require regulatory approval, but when they do, the relevant regulatory bodies usually include the following.

- Superintendency of Banks of Panama (*Superintendencia de Bancos de Panamá*): This body regulates and supervises the banking sector, ensuring the stability and integrity of the financial system and overseeing transactions involving financial institutions.
- Superintendency of Capital Markets (*Superintendencia del Mercado de Valores – SCM*): This body enforces the Securities Laws, including public tender offers, proxy statements, and rules of disclosure for publicly traded companies.
- Authority of Consumer Protection and Defense of Competition (*Autoridad de Protección al Consumidor y Defensa de la Competencia – ACODECO*): This authority enforces antitrust and competition laws, ensuring fair competition and preventing monopolistic practices.
- National Public Services Authority (*Autoridad Nacional de los Servicios Públicos – ASEP*):

ASEP regulates the energy and telecommunications sectors, overseeing activities and transactions within these industries to ensure compliance with relevant laws and regulations.

2.3 Restrictions on Foreign Investments

Generally, there are no foreign ownership restrictions in Panama. However, due to national security and national interest concerns, foreign governments or nationals are restricted from owning local companies in certain industries, including aviation, radio and TV, and retail trade. Foreign participation is generally prohibited in the retail services market, with very few exceptions.

There are no restrictions on the repatriation of profits or exchange control rules for foreign companies.

2.4 Antitrust Regulations

In Panama, antitrust regulations for business combinations are governed by Law 45 of 2007, establishing the competition and antitrust enforcement framework. While no mandatory merger control approval process exists, the law prohibits economic concentrations that may unreasonably restrict or harm free competition. An economic concentration is defined as the merger, acquisition of control, or any other act that combines corporations, associations, shares, trusts, establishments, or other assets between competing or potentially competing economic agents.

The law applies to any acts or practices that may restrict competition and have effects in Panama, regardless of where they are carried out. However, not all economic concentrations are prohibited. Exemptions include joint ventures for specific projects, concentrations that do not

harm competition, and those involving insolvent companies under certain conditions.

Economic concentrations with restrictive effects on competition can obtain clearance from the competition authority if they contribute to efficiencies such as improved production systems, technical progress, industry competitiveness, or consumer interests. If advance verification is sought and approved, the concentration cannot be subsequently challenged. Without advance verification, the competition authority may challenge the concentration within three years, seeking conditions to ensure market competitiveness or a partial or complete divestiture.

2.5 Labour Law Regulations

In Panama, acquirers must be mindful of several key labour law regulations during mergers and acquisitions. In a merger, the surviving company inherits all labour relations and liabilities of the absorbed company. Similarly, the target company remains responsible for its labour relations and liabilities in stock acquisitions.

Asset acquisitions, however, present unique considerations. If the transaction involves all or nearly all of the assets, resulting in the transfer of business operations, both the buyer (new employer) and the seller are jointly and severally liable for all labour liabilities that arose before the acquisition for one year following the transaction. Employees retain all their rights and benefits, and no adverse changes can be made to their terms of employment. Consequently, in many asset acquisitions, buyers often require sellers to terminate certain labour relations before closing the deal, allowing the buyer to rehire employees under more favourable terms. The employment relationship may also be terminated by mutual consent provided it is expressed in writing and does not involve waiver of acquired rights.

Labour unions and employees must be notified of employer substitution, although they cannot prevent it from occurring.

Additionally, Panamanian law mandates that all companies with five or more employees establish and maintain a severance fund. This fund must cover 100% of the accrued seniority premium (equivalent to one week of salary per year of service, prorated) and 5% of the severance pay (equivalent to 3.4 weeks of salary per year of service for the first ten years, and one week of salary per year of service thereafter, prorated) for each employee. This ensures that severance payments can be made upon the termination of employment.

2.6 National Security Review

Please see 2.3 Restrictions on Foreign Investments.

3. Recent Legal Developments

3.1 Significant Court Decisions or Legal Developments

In November 2023, the Supreme Court of Justice of Panama issued a landmark ruling declaring Law 406 – which ratified a new mining concession contract between the Panamanian government and Minera Panamá, S.A. (a subsidiary of Canada's First Quantum Minerals Ltd.) – unconstitutional. That concession-law contract granted rights for the continued operation of Cobre Panamá, the largest open-pit copper mine in Central America. In the wake of the ruling, Minera Panamá initiated arbitration proceedings to defend its rights under the concession agreement.

The decision has significantly impacted the legal framework governing mining concessions and

the future of the mining industry in Panama. However, it is important to note that this impact is limited to the specific facts and circumstances at the time; it has not had a wider effect on overall mergers and acquisitions (M&A) activity in Panama.

Given the copper mine's economic significance, the government is expected to pursue a constructive dialogue with all stakeholders to reach a resolution that aligns with national priorities and investor expectations. With mining previously contributing approximately 3.5% to 5% of Panama's GDP and accounting for 7.5% of its exports, a balanced solution that safeguards legal certainty, environmental responsibility, and economic stability remains a critical objective.

3.2 Significant Changes to Takeover Law

There have been no changes to the takeover law, and no future changes are expected.

4. Stakebuilding

4.1 Principal Stakebuilding Strategies

In Panama, it is not customary for a bidder to build a stake in the target prior to launching an offer. However, public companies' main means of obtaining control are a public offer or a legal merger. Most combinations 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.

If a bidder offers to purchase more than 25% of the shares of a public company or offers to purchase any number of shares which, as a result of said purchase, would result in the bidder owning more than 50% of the issued and outstanding shares of the public company, the offer must be subject to the public tender offer

rules under Panama Securities Law. If the bidder does not fall into either of these two scenarios, it may build a stake in the target without restrictions or timetables.

4.2 Material Shareholding Disclosure Threshold

At the time the public tender offer is launched, the bidder must disclose its direct and indirect shareholding (beneficial ownership) in the target, as well as any shares held by its directors, officers, executives, and its controlling parent, with an indication of those shares acquired in the previous 180 days, stating the date of purchase, price, quantity and the percentage said shares represent of the total issued and outstanding shares of said class.

4.3 Hurdles to Stakebuilding

A company can introduce different rules in its articles of incorporation or by-laws that make processes more stringent than those required by law, but it cannot circumvent legal requirements by introducing less stringent requirements than those dictated by law in its organisational documents.

4.4 Dealings in Derivatives

Dealings in derivatives are allowed and disclosable.

4.5 Filing/Reporting Obligations

There are no specific reporting obligations for derivatives under Panama securities or competition laws. The filing and reporting obligations for derivatives dealings, under Panama securities and competition law, are the same as those applicable to the acquisition of shares in publicly listed companies, as described throughout this chapter.

4.6 Transparency

The public tender offer rules under Panama Securities Law require that the purpose of the acquisition and intention regarding control of the company be disclosed.

5. Negotiation Phase

5.1 Requirement to Disclose a Deal

For a public company, similar to the US norms, the Superintendence of Capital Markets in Panama requires that certain events that are expected to have an impact on the stock's value or that could influence the public's decision-making process (*hechos de importancia*) be communicated to the public. Similarly, from a Panama Securities Law perspective, the public company would likely need to disclose the existence of the transaction and agreements reached between seller and buyer as a material fact (*hechos de importancia*) to the market.

5.2 Market Practice on Timing

Disclosure must take place immediately after a material fact (*hechos de importancia*) has occurred. Panama Securities Law has some exemptions to this requirement.

5.3 Scope of Due Diligence

A bidder generally makes a due diligence review of publicly available information on the target. This includes a review of the corporate structure of the target, including the articles of incorporation and by-laws (in the public record), which set forth, among others, the corporate purposes, share capital, rights of the various classes of shares, and limitations on the transferability of shares. Bidders also try to obtain copies of regulatory paperwork such as commercial licenses, permits, concession contracts, regulatory reporting, and a history of sanctions and fines

with regulatory authorities. Any public material agreements are reviewed, and litigation, environmental, intellectual property, and real property searches are also carried out.

For public companies, a variety of information will be in the public domain. A public company will have filed an offering document with the SCM, which includes an in-depth description of its business and assets as well as management's discussion and analysis of its operations and financial statements. Public companies must also file annual and quarterly reports (which include audited annual financial statements and unaudited quarterly statements, respectively) with the securities regulator and notify investors of any material event.

5.4 Standstills or Exclusivity

Standstills and exclusivity are business terms to be negotiated by the parties. Standstills are very unusual; exclusivity is often demanded. However, it is not usually granted as sale processes are often run in an auction style, with the seller seeking various competing bids. Regarding public companies, under Panama Securities Law, the SCM orders and notifies the suspension of the trading of the tendered shares to the offeror and the target company immediately after being notified of the tender offer notification. The suspension of the trading will be automatically lifted five business days after the second publication of the tender offer request. The SCM can reduce the trading suspension period by issuing a formal resolution to that effect. Directors and others privy to confidential information may not trade during the negotiation period.

5.5 Definitive Agreements

Panama Securities Law requires a public tender offer to be documented in a definitive agreement.

6. Structuring

6.1 Length of Process for Acquisition/Sale

The process of acquiring/selling a private company usually takes four to six months, but the timeline varies depending on the parties' needs and preferences. For tender offers over the shares of public companies, the timeframe must also include a period for acceptance of the tender offer, which can be no less than 30 days.

6.2 Mandatory Offer Threshold

Panama does not have a mandatory offer threshold for private companies.

A takeover offer of a public company must be made:

- to the totality of the shareholders;
- the equality of terms and conditions; and
- the bidder must pay the same purchase price to all shareholders who accept the offer.

A takeover offer can be subject to the satisfaction of conditions or pre-conditions so long as they are disclosed in the tender offer documentation. Tender offers are usually conditioned on obtaining a minimum number of acceptances. If a bidder offers to purchase more than 25% of the shares of a public company or offers to purchase any number of shares which, as a result of said purchase, would result in the bidder owning more than 50% of the issued and outstanding shares of the public company, the offer must be subject to the public tender offer rules under Panama Securities Law. If the tender offer will result in the bidder owning more than 75% of the issued and outstanding shares of the public company, the offer must be made for all shares of the target that the bidder does not own.

6.3 Consideration

In Panama, cash is more commonly used as consideration for acquisitions due to its straightforward nature, providing immediate liquidity and certainty to sellers. However, shares are often used in mergers because of the tax incentives associated with stock-for-stock mergers. These mergers are tax-free transactions, provided no cash is paid out (except up to 1% of the transaction value for fractional share adjustments), and certain accounting parameters are followed. Shareholders of the merged company retain a tax basis on the shares of the surviving company equal to their average pre-merger tax basis of the surrendered shares. Conversely, stock-for-cash mergers are not tax-free.

Several mechanisms are commonly employed to bridge value gaps in deals with high valuation uncertainty, as outlined below.

- Earnouts involve additional payments to the seller based on the future performance of the acquired business, aligning interests and mitigating overpayment risks.
- Equity rollovers in private equity deals allow sellers to retain a stake in the business, ensuring their continued investment in its success.
- Contingent Value Rights provide additional compensation if predefined milestones or performance targets are met post-acquisition.
- Seller financing spreads the payment over time, reducing the immediate financial burden on the buyer.
- Price adjustment clauses allow for adjustments to the purchase price based on actual performance or conditions post-closing, ensuring the final price reflects the true value of the business.
- Escrow arrangements hold part of the purchase price to cover potential liabilities or

ensure conditions are met, providing security to the buyer while addressing the seller's valuation expectations.

6.4 Common Conditions for a Takeover Offer

A takeover offer can be subject to the satisfaction of conditions or pre-conditions, so long as they are disclosed in the tender offer documentation and the conditions do not violate Panama Securities Law (eg, conditioning a public tender offer to obtain financing).

6.5 Minimum Acceptance Conditions

Tender offers are usually conditioned on obtaining a minimum number of acceptances. If a bidder fails to obtain control of the target, there are no restrictions on it launching a new offer or buying shares in the target. However, if in the new bid, the bidder offers to purchase more than 25% of the shares of the target or offers to purchase any number of shares, which, as a result of said purchase, would result in the bidder owning more than 50% of the issued and outstanding shares of the target, the new offer must also be subject to the public tender offer rules under the Panama Securities Law.

6.6 Requirement to Obtain Financing

Business combinations involving private companies can be conditional on the bidder obtaining financing.

In public tender offers, committed funding is required before an offer is announced. Panama Securities Law requires that the bidder deposit a payment guarantee covering 100% of the tender offer, either in cash, a bank guarantee, or a bond. If the bidder will obtain financing for payment of the tender offer, it must file a copy of the financing documentation with the tender offer documents.

6.7 Types of Deal Security Measures

A bidder can seek any deal security measures in a business combination involving private companies. It is not common to seek deal security measures in public company tender offers, as tender offers can be conditioned.

6.8 Additional Governance Rights

A bidder may seek to implement a supermajority shareholder vote on certain key company decisions, rights of first refusal, drag-along and/or tag-along rights on share sales, and shareholder change-of-control limitations, among other things. Preemptive rights are granted to all shareholders as a matter of Panamanian law.

6.9 Voting by Proxy

Shareholders can vote by proxy in Panama.

6.10 Squeeze-Out Mechanisms

The laws of Panama allow traditional mechanisms commonly employed to buy out minority shareholders, so long as the processes do not infringe upon the shareholders' acquired rights.

6.11 Irrevocable Commitments

A memorandum of understanding or undertaking from key shareholders to tender their shares is often a critical component and is often negotiated privately among key or controlling shareholders. However, the existence and terms of the memorandum must be disclosed as part of the tender offer process. Otherwise, the tender offer documents must expressly state that the bidder has not made nor agreed to make any payments, retributions, donations, or give any other type of consideration, for any reason, in favour of any of the target's shareholders.

7. Disclosure

7.1 Making a Bid Public

For a tender offer of a public company, the bidder must publish notices which contain the terms of the tender offer in two newspapers of national circulation for two days prior to the launch of the tender offer. Additionally, the bidder must notify the SCM, the Bolsa Lationamericana de Valores (Latinex) and the Central Lationamericana de Valores, S.A. (Latinclear) (the local depository and clearinghouse) on or before the date of launch of the public tender offer.

7.2 Type of Disclosure Required

The notice to the SCM must be accompanied by, among other things, a copy of the prospectus, a copy of the guaranty of payment for 100% of the tender offer, copies of the notices filed with the newspapers, copies of all transaction documents (including any applicable financing documents), corporate authorisations, and the bidder's financial statements for the previous three fiscal years, as well as the most recent interim financial statements. The period for acceptance of the tender offer can be no less than 30 days.

Any competing bids must be for no less than the number of shares which are the object of the original tender offer. The regulator must be notified of them prior to the expiration of the period for acceptance of the original tender offer, and the period for acceptance of the competing bid may not exceed 30 days. Launching a competing bid will automatically extend the acceptance period of the original tender offer for an additional 30 days. If a competing bid is launched, the original bidder may present a writ with observations or challenges to said competing bid.

A takeover offer must be extended to all shareholders on equal terms and conditions. The bid-

der is required to pay the same purchase price to every shareholder who accepts the offer. A takeover offer may be contingent upon certain conditions or pre-conditions as long as these are clearly stated in the tender offer documentation. Typically, tender offers are conditioned on receiving a minimum number of acceptances.

If a bidder offers to purchase more than 25% of the shares of a public company or offers to purchase any number of shares which, as a result of said purchase, would result in the bidder owning more than 50% of the issued and outstanding shares of the public company, the offer must be subject to the public tender offer rules under Panama Securities Law.

If the tender offer will result in the bidder owning more than 75% of the issued and outstanding shares of the public company, the offer must be made for all shares of the target that the bidder does not own.

7.3 Producing Financial Statements

When a public tender offer is involved, the SCM mandates that financial statements be produced in accordance with International Financial Reporting Standards (IFRS).

7.4 Transaction Documents

Panama Securities Law indicates the documents the target's shareholders receive on a tender offer. The bidder will file with the SCM, Latinex and Latinclear the following documents:

- a prospectus which contains the terms of the tender offer;
- copies of the organisational documents and a good standing certificate of the bidder;
- documentation which evidences the creation of a guaranty to secure payment of 100% of

the shares, which are the object of the tender offer;

- copies of the notices that will be published (or that were published) with the newspapers;
- copies of the principal transaction documents of the tender offer;
- corporate authorisations of the bidder for the tender offer; and
- audited financial statements of the bidder for the previous three fiscal years, as well as the bidder's unaudited financial statements for the previous fiscal quarter.

If there is a competing offer, the competing bidder must file all documents listed above. The bidder in the original tender offer may file a writ with the SCM with observations or challenges to the competing bid.

8. Duties of Directors

8.1 Principal Directors' Duties

In a public tender offer, Panama Securities Law requires that the target's board of directors issue a detailed report with its opinion regarding the offer and that it make reference to the existence of any agreements between the bidder, the target or its directors, officers or executives, which arose as a result of the tender offer. If there is a competing offer, the board of the target must also issue a detailed report with its opinion regarding the competing offer and disclose whether there are any agreements between the competing bidder, the target or its directors, officers or executives, which arose as a result of the competing offer.

Since the board of directors must issue an opinion, it is not common for the board to issue a recommendation without a formal agreement between the bidder and the target. A board

could agree not to solicit or recommend other offers as long as it discloses this agreement in its report.

Director duties are owed only to company shareholders.

8.2 Special or Ad Hoc Committees

It is common for boards of directors to establish special or ad hoc committees to evaluate bids or negotiate deals.

8.3 Business Judgement Rule

Litigation in connection with takeover situations in Panama is not common.

8.4 Independent Outside Advice

Independent outside advice is generally retained by the company for the business combination. It is unusual for the directors to retain separate independent outside counsel.

8.5 Conflicts of Interest

The courts in Panama have not established many significant precedents concerning conflicts of interest involving directors, managers, shareholders, or advisers. Generally, directors are not personally liable for the corporation's obligations. However, they do have a general duty of care to the corporation and may be held personally liable for negligence in fulfilling these duties. Additionally, directors can be held jointly and severally liable for specific actions as outlined in the Code of Commerce.

9. Defensive Measures

9.1 Hostile Tender Offers

Hostile bids are uncommon but are allowed as long as they conform to the SCM's requirements.

9.2 Directors' Use of Defensive Measures

Directors are allowed under Panama law to use defensive measures.

9.3 Common Defensive Measures

Statutory or practical defensive measures are not common in Panama. To defend a hostile bid, a target's board of directors may convene a meeting of the shareholders (pre- or post-bid) to explain the terms of the hostile bid and recommend that the shareholders reject the offer. The board may lobby the shareholders to reject the tender offer, and when it issues its detailed report with its opinion regarding the offer, it may also recommend that it be rejected.

9.4 Directors' Duties

Directors owe duties of loyalty and care to the shareholders.

9.5 Directors' Ability to "Just Say No"

For a public company, the offer is made publicly, and the directors are not allowed to "*just say no*." Instead, they are required to present their opinion/position regarding the public tender offer.

10. Litigation

10.1 Frequency of Litigation

Not many claims result in litigation in Panama.

10.2 Stage of Deal

Litigation is not common in connection with M&A deals in Panama. However, it is more common at the corporate approval stage.

10.3 "Broken-Deal" Disputes

Litigation related to M&A deals is relatively uncommon in Panama, and no significant "*broken-deal*" disputes have established relevant

precedent. However, some lessons learned include the importance of ensuring that exit or walk-away rights are properly drafted and negotiated and carefully negotiating interim covenants between the signing and closing of a deal.

11. Activism

11.1 Shareholder Activism

Shareholder activism is not a prominent trend in Panama.

11.2 Aims of Activists

Shareholder activism is not a prominent trend in Panama.

11.3 Interference With Completion

Shareholder activism is not a prominent trend in Panama.

Trends and Developments

Contributed by:

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Arias, Fábrega & Fábrega (ARIFA) has been at the forefront of the legal profession in Panama, advising leading international financial institutions, multinational corporations, and some of the largest domestic companies for over 110 years. The firm's constant deal flow of domestic and cross-border M&A transactions is second to none in Panama, with its lawyers having assisted a varied list of top-tier clients in complex and high-value deals across a wide range of industries, including banking and finance, technology and media, food, retail, health and

consumer products, transportation and logistics, and energy. The firm's success is built on the expert knowledge and experience of its 15-plus team of lawyers, which comprises seven M&A attorneys admitted to practise in New York or Florida, and with training experience in firms such as Skadden, Arps, Slate, Meagher & Flom; Allen & Overy; Greenberg Traurig; Milbank; Tweed, Hadley & McCloy; Simpson Thacher & Bartlett; Sullivan & Cromwell; and Baker McKenzie.

Authors



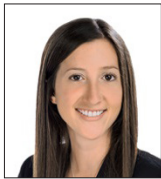
Andrés N Rubinoff has led some of the most important and relevant M&A transactions, both national and international, that have been carried out recently in Panama. He has solid and

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Introduction

Strategically positioned as the bridge between continents, Panama has long been a focal point for international trade and investment. The nation's dollarised economy, investor-friendly legal framework, and robust financial services sector have consistently attracted foreign direct investment (FDI).

In July 2024, Panama ushered in a new administration led by President José Raúl Mulino, committed to maintaining economic openness and stability while addressing social and environmental challenges. The outlook for 2025 is optimistic, with expectations of continued investment inflows, particularly in logistics, energy, and financial services. In line with this vision, the government recently announced a USD350 million infrastructure investment plan aimed at stimulating economic recovery and job creation. This initiative includes 14 projects focused on water, healthcare, education, and government, potentially generating over 10,000 jobs. The plan marks the first phase of a broader program of 33 projects, with larger-scale developments anticipated in the coming months. However, the government must navigate key economic and social challenges to retain investor confidence and sustain long-term economic growth.

Panama's position as a global logistics and financial hub is underscored by the presence of the Panama Canal, the world's second-largest free trade zone, and highly sophisticated maritime, logistics, and finance operations. These factors contribute to billions of dollars in FDI annually. In 2024, Panama experienced a notable increase in FDI, reaching approximately USD2.337 billion between January and September, marking a 69.7% rise compared to the same period in 2023. The surge was largely driven by reinvested earnings in the banking and corpo-

rate sectors, as well as FDI inflows from North America, Europe, Asia, and Latin America. This reflects renewed investor confidence and highlights Panama's resilience amid global economic fluctuations.

Historically, Panama has leveraged its unique geographic location and business-friendly policies to attract multinational corporations and institutional investors. As regional economies recover from external pressures, including supply chain disruptions and shifts in global investment patterns, Panama continuously positions itself as an attractive market for cross-border transactions. The country's legal framework offers predictability and transparency to foreign investors. Additionally, Panama's arbitration regime, which is aligned with international standards, provides an effective and efficient mechanism for dispute resolution in the jurisdiction and the region.

Notable Acquisitions and Transactions

Panama remains a focal point for cross-border M&A activity, driven by its investor-friendly corporate regulations, strategic geographic location, and dollarised economy. As a regional hub for multinational and Latin American companies, it remains strong, attracting diverse investment across key industries.

In the hospitality sector, Hotel La Compañía expanded its luxury offerings by acquiring Hotel Los Mandarinos and La Casa de Lourdes in August 2024. This move enhances its presence in Panama's growing high-end tourism market and aligns with broader regional expansion strategies.

The financial services industry saw significant consolidation, notably with Banco Davivienda Panamá integrating Scotiabank Panamá (The Bank of Nova Scotia) into its operations, rein-

forcing its market position. Additionally, Grupo Imperia, a Honduran capital diversified financial services group, announced its entry into the acquisition of Banco La Hipotecaria in December 2024, expanding its portfolio and strengthening its footprint in mortgage lending. This transaction, expected to be finalised by year-end, highlights the ongoing restructuring in Panama's financial sector as established players scale their operations and diversify their financial products for businesses and consumers.

The quick-service restaurant sector also experienced notable activity. Platinum Brands, S.A. acquired KFC and Dairy Queen assets in Panama, reinforcing its leadership in the fast-food segment. Grupo Vierci, continuing its expansion across Latin America, secured the Popeyes franchise in Panama, enhancing its brand portfolio in the region.

In the pharmaceutical sector, Swixx Biopharma acquired Pharma Consulting Group S.A., the holding company of Laboratorios Biopas S.A. and its affiliates across Latin America. This strategic acquisition marks Swixx Biopharma's entry into the Latin American market, expanding its reach to Argentina, Brazil, Chile, and Colombia while solidifying its position as a leading inter-continental commercial platform in the biopharmaceutical industry.

Meanwhile, the Japanese conglomerate Sojitz Corporation marked a strategic entry into Panama by acquiring Grupo Sílabas, a leading automobile distributor in Panama, representing brands like KIA, Mazda, and OMODA. The acquisition not only positions Sojitz for growth in the consumer goods sector but also underscores Panama's role as a regional logistics hub, attracting international firms looking to expand operations across Central and South America.

At the same time, the competitive landscape of Panama's automotive sector is evolving rapidly, driven by the increasing presence of Chinese automakers. In 2024, brands such as Geely, Changan, and Dong Feng gained substantial market share, securing spots among the country's top ten best-selling vehicles. This shift reflects a growing consumer preference for fuel-efficient, competitively priced options, with Geely surpassing legacy brands like Mitsubishi while Changan and Dong Feng continue their ascent. The rising prominence of Chinese brands is reshaping industry dynamics, intensifying competition, and pressuring established Japanese, Korean, and American manufacturers to adjust pricing and offerings. In response, the M&A landscape in the sector is poised for further activity as market players explore consolidations and strategic alliances to reinforce their foothold against this emerging competition.

As the global supply chain adjusts to post-pandemic shifts, Panama is expected to remain an attractive destination for logistics investments and supply chain optimisation. The country's free trade agreements and logistical advantages make it a preferred entry point for businesses expanding their distribution networks in Latin America.

These transactions reflect sustained investor confidence in Panama's business environment and its attractiveness as a corporate expansion and regional integration gateway.

Navigating Political and Economic Challenges

Despite its strong economic performance and potential, Panama faces significant challenges, particularly regarding recently enacted reforms to its social security system, the Caja de Seguro Social (CSS), and the closure of First Quantum's

(FQ) copper mine. The Panamanian government is implementing decisive measures to address these issues, reinforcing its commitment to fiscal stability and investor confidence.

Recent policy initiatives emphasise structural reforms, particularly in the pension funds program, a focus area that credit rating agencies and international investors closely monitor.

Credit rating downgrade and government response

In 2024, Panama experienced a shift in its economic outlook following a downgrade of its sovereign credit rating by major credit agencies. The downgrade was primarily driven by concerns over the country's growing fiscal deficit, unresolved structural issues within the CSS, and the impact of the closure of key economic drivers such as the First Quantum copper mine. Rating agencies cited the increasing debt-to-GDP ratio and the government's delayed fiscal consolidation efforts as factors that could affect Panama's long-term economic stability.

While the downgrade has raised concerns about borrowing costs, the administration has committed to implementing fiscal reforms to improve government revenue collection, reduce expenditures, and restore confidence in the country's economic trajectory. To counter these concerns, the administration is actively addressing the structural challenges that led to the downgrade. The government's ongoing reform efforts, particularly in social security, are expected to create a more sustainable fiscal framework, while anticipated negotiations on the mining sector may provide a viable path forward to recover lost economic contributions. These actions signal Panama's commitment to implementing responsible fiscal policies, which should positively influ-

ence investor perception and help mitigate risks of future downgrades.

Social security reforms

Panama's Caja de Seguro Social (CSS) serves over two million beneficiaries and has recently undergone a significant reform. This reform was, according to the government, designed to address structural issues such as demographic shifts and inefficiencies in fiscal management. To ensure the long-term sustainability of the CSS, the government has enacted measures, which aims at increasing contributions by employers, enhancing oversight and transparency, and strengthened governance mechanisms within the institution, among other reforms. With the reforms now in place, Panama anticipates improvements in the long-term fiscal health of the CSS and enhanced economic stability for the country.

Closure of copper mine

Recognising the economic implications of FQ's copper mine closure in June 2024, the government is expected to engage in constructive dialogue with all relevant stakeholders to find a resolution that aligns with national interests and investor expectations. With mining previously contributing to approximately 3.5 to 5% of Panama's GDP and 7.5% of exports, finding a solution that balances economic stability, environmental responsibility, and legal certainty remains a top priority for the government.

International Landscape

As of early 2025, US-Panama relations have entered a heightened engagement phase driven by shared strategic interests. While the United States has taken a more assertive stance in Latin America, this approach presents opportunities for Panama and the region to strengthen their

position as key partners in trade, security, and infrastructure.

The Panama Canal is a focal point of discussions, with Washington expressing concerns over foreign influences on this critical global trade route. While mostly unfounded, the critiques and theories have nonetheless led Panama to openly embrace the Trump administration's larger policy initiatives for the region. President Mulino has reaffirmed its commitment to maintaining an open, neutral, and efficiently managed canal. The United States has acknowledged this position while emphasising the importance of keeping the waterway free from geopolitical tensions.

Meanwhile, the Panama Canal Authority's (ACP) Board of Directors of the Panama Canal recently approved funding for constructing a reservoir in the Río Indio basin, with an estimated investment of USD1.2 billion. This project is crucial for ensuring a reliable water supply to sustain both Canal operations and the needs of over 50% of Panama's population as the country grapples with water challenges exacerbated by climate change. The project, which is expected to take approximately six years to complete, will become one of the most significant public investments of the decade, with a notable impact on job creation nationwide, contributing to economic growth and prosperity in our country. Additionally, the resettlement and livelihood restoration plan will be developed with an approach that:

- respects the affected families' rights, culture, and traditions; and
- promotes their sustainable well-being.

Panama and the U.S. have been in constant communication, including a recent visit from Secretary of State Marco Rubio and Secretary of Defense Pete Hegsteth, to explore further oppor-

tunities for collaboration and reinforce Panama's role as a key bridge between the Americas.

Evolving Trends in Panama's M&A Practice

Panama's mergers and acquisitions landscape continues to evolve in response to shifting market conditions and client demands. Several emerging trends shape the practice, reflecting a growing sophistication and alignment with international standards.

One significant development is the rising demand for representations and warranties (R&W) insurance. This type of policy protects buyers from potential losses due to breaches of representations and warranties made by sellers in M&A transactions. R&W insurance can facilitate deals by reducing the seller's post-closing liability and providing greater confidence to buyers. Currently, Panama lacks local insurers offering these policies, forcing parties to depend on foreign providers. However, as demand continues to grow, the emergence of local insurers specialising in these offerings is increasingly likely in the coming years. Despite these challenges, interest in R&W insurance is steadily growing as more parties recognise its benefits, especially with respect to tripartite agreements.

After decades of foreign direct investment, the legal and transactional environment has matured, leading to greater standardisation in deal structures. The commercial terms in Latin America are becoming more aligned with those found in small to mid-sized US transactions. However, adjustments are still needed for specific pricing and risk factors that are unique to the region. Additionally, the adoption of digital tools such as virtual data rooms, electronic signatures, and online platforms has improved efficiency in due diligence, negotiations, and closings.

Panama is also emerging as a preferred regional arbitration hub, even for disputes involving non-Panamanian targets. This trend is driven by factors such as political stability, the use of the US dollar, a growing presence of international players, and a modern arbitration law based on the UNCITRAL Model Law. Additionally, it has become increasingly common for regional transactions to be governed by Panamanian law, rather than traditional foreign governing laws, due to the jurisdiction's competitive legal costs and the confidence international investors place in its legal framework and arbitration hub. These elements make Panama an attractive dispute-resolution jurisdiction, offering neutrality, efficiency, and enforceability. Leading firms are well-positioned to capitalise on this development, leveraging their expertise in international arbitration and their extensive local and foreign counsel network.

As these trends continue to shape the M&A landscape, Panama is solidifying its role as a dynamic and increasingly sophisticated market for corporate transactions.

Outlook for 2025 and Beyond

In July 2024, Panama inaugurated a new government led by President José Raúl Mulino, a centre-right and pro-business candidate. His administration has pledged to uphold economic openness and stability while addressing pressing social and environmental challenges. This continuity in policy is expected to sustain a favourable investment climate, ensuring steady FDI flows and fostering confidence among international stakeholders.

At the same time, the new government faces the challenge of balancing economic growth with social demands, particularly in key areas such as fiscal policy, infrastructure development, and

social security reform. According to the International Monetary Fund (IMF), Panama's GDP is projected to grow by 3% in 2025, reflecting a stable macroeconomic environment supported by resilient FDI and structural reforms. While this growth rate is more moderate than pre-pandemic highs, it underscores the country's capacity to navigate external pressures and internal adjustments.

A key priority for the administration has been the much-needed reform of the pension fund of the CSS, which was recently enacted in March 2025. If implemented successfully, this reform could significantly enhance long-term fiscal health, ensuring the sustainability of public finances while bolstering investor confidence. Another pressing issue on the economic agenda is the closure of First Quantum's copper mine, which has significantly impacted the country's fiscal outlook and employment landscape. The new administration is expected to explore alternative solutions, including potential renegotiations or identifying new avenues for resource development. While the long-term resolution remains uncertain, domestic and international investors will closely watch policy decisions in this area, given the mine's importance to Panama's export revenues and overall economic performance.

Infrastructure investment will remain a critical driver of economic growth and competitiveness as Panama moves forward under the new administration. The government's recent USD350 million investment in key projects, including water systems, healthcare facilities, and schools, underscores its commitment to strengthening essential services and job creation. At the same time, the continued expansion of public-private partnerships (PPPs) will be instrumental in advancing large-scale developments, particularly in logistics and transportation, without plac-

ing excessive strain on public finances. These combined efforts aim to modernise the country's infrastructure and reinforce Panama's position as a regional trade hub. However, ensuring long-term economic stability will require a strategic balance between public investment, private sector collaboration, and fiscal responsibility. As new projects unfold, maintaining investor confidence and addressing social and economic challenges will be key to sustaining growth momentum in the years ahead.

From an M&A perspective, Panama is expected to remain a focal point for cross-border deals, particularly within Central and Latin America. Key sectors expected to drive deal activity include financial services, logistics, and pharmaceuticals, where ongoing consolidation trends signal increased interest from international investors. Similarly, the fast-food and hospitality industries have demonstrated strong M&A momentum. Given the sector's resilience and the increasing role of international franchise operators, further deal activity in this space can be anticipated. The pharmaceutical industry is another sector to watch, particularly as regional market integration continues.

With its well-established legal and financial framework, the country is increasingly being utilised as an arbitration seat for regional transactions. Additionally, the inclusion of more insurance representations in deal structures is becoming a notable trend as companies seek to incorporate enhanced risk management opportunities into their agreements. These developments reflect Panama's growing role as a sophisticated financial and commercial hub, attracting

investors seeking stability and efficiency in their regional operations.

Looking ahead, Panama's stable economic outlook, pro-business leadership, and commitment to structural reforms position the country for sustained investment and deal-making activity in 2025 and beyond. While challenges remain, including fiscal pressures and policy uncertainties, the government's approach to economic governance, infrastructure development, and investor-friendly reforms will be crucial in shaping Panama's trajectory. Moreover, the increasing sophistication of Panama's M&A market – driven by a more standardised regulatory environment and the growing adoption of arbitration – continues to attract regional and international investors. The legal framework governing corporate transactions is becoming more aligned with global best practices, reducing execution risk and increasing deal-making efficiency.

However, continued investor confidence will depend on the government's ability to navigate structural reforms, particularly regarding fiscal consolidation and the long-term viability of the social security system. If these challenges are not addressed promptly, they could pose macroeconomic risks that impact the deal-making landscape. If executed effectively, these initiatives have the potential to enhance the country's economic resilience, drive long-term growth, and solidify Panama's status as a leading investment destination in Latin America. Panama's established role as a financial and logistical hub, along with its stable regulatory environment, indicates that M&A activity will remain strong despite external pressures.