
CHAMBERS GLOBAL PRACTICE GUIDES

Corporate Governance 2023

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Panama: Law & Practice

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PANAMA

Law and Practice

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corporations, regulatory work, government contracts, trade, competition and antitrust, real estate, environmental matters, employment relations, trust and estate planning, litigation, taxation and intellectual property. The firm has a distinguished reputation for consistently providing the highest quality legal advice, and for its unparalleled expertise in structuring complex, innovative and sophisticated transactions in Panama and the Latin America region.

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ARIAS, FABREGA & FABREGA

1. Introductory

1.1 Forms of Corporate/Business Organisations

Corporations *sociedades anónimas* are the principal form of organisation for conducting business in Panama. Foreign investors may elect to incorporate a Panamanian entity or register a branch of a foreign entity in Panama. From a corporate standpoint, a branch of a foreign corporation must abide by the laws of its jurisdiction of incorporation. A foreign branch is deemed an extension of the foreign juridical person but does not have distinct or separate legal existence from the overseas entity.

Besides corporations, limited liability companies *sociedades de responsabilidad limitada* have recently gained popularity as vehicles for doing business in Panama, especially for US taxpayers for check-the-box purposes.

Corporations, limited liability companies and branches of foreign entities are all subject to the same obligations and responsibilities in carrying out a business activity in Panama, and any and all corporate action taken by such entities

must be permitted under their own articles of incorporation.

Broadly speaking, shareholders of corporations and members of limited liability companies incorporated in Panama have the same rights, responsibilities and liabilities, with the following exceptions:

- the names of the shareholders of companies are confidential, while the names of the members of limited liability companies are public; and
- the minimum number of shareholders of a corporation is one, while the minimum number of members of a limited liability company is two.

Shareholders and members are not personally liable for the obligations of the corporation or the limited liability company, as applicable. Shareholders of corporations and members of limited liability companies are only liable for the unpaid portion, if any, of the subscription price of the shares that they owe to the corporation or limited liability company.

Similarly, directors of corporations and administrators of limited liability companies are not personally liable for the obligations of the corporation or limited liability company; however, as mentioned further in **4.6 Legal Duties of Directors/Officers**, directors and administrators have a general duty of care to the corporation or limited liability company, and may become personally liable for negligence in the discharge of these duties.

As for estate planning, the principal form of organisation in Panama is the private interest foundation *fundación de interés privado*, which is frequently used as an alternative to a trust, as it allows the founder of the foundation to maintain more direct control and direct it at its discretion. As a general rule, private interest foundations may be profit-oriented, and may engage in commercial activities in a non-habitual manner or exercise the rights deriving from the capital of business companies held as part of the foundation's assets, as long as the proceeds from such activities are used exclusively for the foundation's objective. Unlike corporations, foundations do not have shareholders or other "owners" per se; the founder of the foundation is roughly analogous to the shareholder only in the sense that it is the entity that contributes assets to the foundation (although other persons may also make contributions to the foundation).

For the purposes of this chapter, unless expressly stated otherwise, the responses shall refer to corporations that are not subject to any particular industry-specific regulation (eg, securities, banking and insurance).

1.2 Sources of Corporate Governance Requirements

Corporate governance matters for corporations are mainly regulated under Law 32 of 1927 (the

Corporate Law) and the Panamanian Code of Commerce. For entities regulated by the insurance, securities or banking regulators, there are additional corporate governance requirements and recommendations under the respective industry's regulations.

For example, with respect to regulated corporations, the banking regulations require the bank and its directors, officers and controlling shareholders to be persons with good moral character who have not been convicted of money laundering, terrorism and certain other crimes, nor declared bankrupt, and who have not been responsible for the failure of a bank or banned from engaging in commercial activities.

1.3 Corporate Governance Requirements for Companies With Publicly Traded Shares

Corporations that have registered their securities (Public Companies) with the Superintendence of Capital Markets are subject to certain non-binding corporate governance recommendations, including the following:

- designating the supervision and administration responsibilities of the board of directors;
- establishing "support committees" with specific responsibilities;
- implementing procedures to ensure access to Public Company information for shareholders, employees, clients, regulators and investors;
- developing and enforcing clear and public methods through which the minutes of meetings are elaborated;
- specifying the corporate structure of the Public Company and the business plan, along with all the risks and considerations in connection with such business plan; and

- implementing rules regarding the compensation of directors and staff of the Public Company.

In addition to these general recommendations, there are specific recommendations for the governing bodies of the Public Company. It is recommended that the majority of the board of directors shall be persons who do not participate in the daily administration of the Public Company, to reduce potential conflicts of interest. It is also recommended that one in every five directors is an independent director, and that none of the officers and directors of the Public Company demands or accepts payments or advantages for themselves at the expense of the corporation's interests, nor pursues their own interests with their decisions, nor uses their position to benefit themselves through business opportunities of the Public Company.

Regarding the aforementioned support committees, it is recommended that Public Companies have at least an audit committee and a risk management and compliance committee. For companies whose board of directors is composed of more than five members, a directors' assessment and nomination committee is also recommended.

The audit committee should be headed by the treasurer of the Public Company and comprised of members of the board of directors who do not participate in the daily administration of the Public Company. It is also recommended that at least 30% of the audit committee and the risk management and compliance committee shall be comprised of independent directors.

The majority of the corporate governance practices described in Accord 12 of 2003 are merely recommendations, and Public Companies are

not obliged to comply with such practices. Nevertheless, Public Companies are obliged to disclose the implementation or lack of implementation of such corporate governance practices.

2. Corporate Governance Context

2.1 Hot Topics in Corporate Governance

Panamanian law does not mandate significant corporate governance rules and requirements for corporations. However, it is common for shareholders to agree voluntarily to establish corporate governance rules that are set out in the constitutive document of the corporation, called the *Pacto Social* (the articles of incorporation). The board of directors may also agree to create corporate governance rules or requirements by way of *estatutos* (also known in English as by-laws).

One of the most relevant recent developments is Rule 2-2023, which was issued recently by the Superintendence of Banks and requires locally supervised banks and their shareholders to ensure that shareholders, directors, senior management and key personnel possess "recognised competency *idoneidad*, reputation, moral and economic solvency". Under Rule 2-2023, banks and shareholders are required to adopt policies to permit the identification, evaluation and monitoring of said criteria, and to "take measures" if there is a failure to meet the criteria. Although the banks have until the end of 2023 to adopt the required policies, it is unclear how those required policies should look in practice and how the banks should implement and enforce said policies. Furthermore, at the time of writing, the Rule is currently being challenged in local courts.

2.2 Environmental, Social and Governance (ESG) Considerations

There are no mandatory requirements for companies in relation to reporting on ESG issues. However, there are certain recent developments on ESG that might suggest a new trend in ESG-related initiatives, as follows.

- In 2018, the *Grupo de Trabajo de Finanzas Sostenibles* (GFTS) was formed by the relevant Panamanian government agencies (including the financial regulators) and the main private banking, financial and industry associations, for the purpose of working jointly towards positioning Panama as a centre for sustainable finance. In the same year, the Panamanian sovereign wealth fund *Fondo de Ahorro de Panamá* announced the exclusion of tobacco-related investments from its portfolio.
- Following the formation of the GFTS, the first social bond in Latin America for purposes of supporting women-led small and medium enterprises (SMEs) was issued in 2019, by Panamanian bank Banistmo. In the same year, *Corporación Interamericana para el Financiamiento de Infraestructuras* (CIFI) issued the first green bonds in Panama. The local stock exchange *Bolsa Latinoamericana de Valores – Latinex* emphasised that such green bonds are guided by ESG principles. This trend continued in 2020, as Panasolar Generation, S.A. issued the first green bonds certified under the Climate Bonds Standards V3.0, and InterEnergy Group, which has a relevant presence in Panama, also issued its first green bonds.
- In 2019, Latinex issued formal guidance on the issuance of green, social and sustainable bonds. In 2021, it published guidance for voluntary ESG reporting and disclosure for issuers, jointly with BID-Invest.

3. Management of the Company

3.1 Bodies or Functions Involved in Governance and Management

The principal bodies of corporations are the shareholders' assembly and the board of directors. The latter has the statutory power to control and direct the business of the corporation, except as otherwise agreed by the shareholders in the articles of incorporation and a few matters reserved to shareholders provided for in the Corporate Law.

In addition, the shareholders or the board of directors may issue special or general managing/administration powers of attorney in favour of agents (eg, chief executive officer, general manager), so that the regular business of the corporation may be managed by such agents.

The Corporate Law does not mandate the creation of any committees by corporations, but the board may appoint committees integrated by two or more of its members, which report to the board.

3.2 Decisions Made by Particular Bodies

Shareholders have the flexibility to determine the decision-making process in the corporation through the articles of incorporation. However, Panamanian law reserves certain powers and decisions to certain governing bodies within the corporation, as follows.

- The following decisions are specifically reserved by law for shareholders:
 - (a) any amendments to the articles of incorporation;
 - (b) the authorisation for the disposition of all or substantially all of the assets of the corporation;
 - (c) the authorisation for the dissolution or

merger of the corporation;

- (d) the election of directors, except for vacancies that may be appointed by the board of directors; and
- (e) the authorisation for the encumbrance of assets of the corporation to guarantee the obligations of third parties, unless otherwise provided in the articles of incorporation.

- As mentioned in **3.1 Bodies or Functions Involved in Governance and Management** and subject to the corporation's articles of incorporation, the board of directors shall have the statutory power to control and direct the business of the corporation. In addition, the board of directors may approve by-laws regulating certain corporate governance matters, unless such powers are reserved to the shareholders under the articles of incorporation.

3.3 Decision-Making Processes

Shareholders and the board of directors may make decisions through resolutions of their respective bodies. Resolutions may be adopted at meetings or by written resolutions in lieu of meetings, which may be signed in different locations on different dates.

Shareholder Meetings

Shareholder meetings can take place within the Republic of Panama or anywhere else in the world, if the articles of incorporation allow it. Shareholders owning at least 5% of the issued and outstanding voting shares have the statutory right to request that a shareholder meeting be called. The by-laws or articles of incorporation may also grant this kind of right to shareholders representing a smaller percentage than 5%.

A notice of the shareholder meeting must be given between ten and 60 days before the meet-

ing, unless the articles of incorporation provide otherwise. The shareholders may waive notice, and may appoint proxies to vote on their behalf.

Panamanian law does not strictly specify the number or percentage of shares required to constitute a quorum of a shareholder meeting; therefore, the articles of incorporation commonly state that a simple majority is required, but it is not uncommon for higher quorum requirements to be set forth in the articles of incorporation or by-laws. Generally, shareholder decisions are adopted by holders of a majority of the issued and outstanding shares entitled to vote on the matter under consideration, but a supermajority vote for specific matters may be required by way of the articles of incorporation.

Board of Director Meetings

Meetings of the board of directors can also be held within the Republic of Panama or anywhere in the world, unless restricted by the articles of incorporation or the by-laws of the corporation. Directors shall receive notice of all meetings, and may waive notice of the meetings. Directors may also vote by proxy, if the articles of incorporation do not determine otherwise. The default quorum to hold a meeting is a majority of the directors in office. Decisions of the board of directors are commonly adopted by the favourable vote of the majority of the directors present or duly represented at the meeting; nevertheless, the corporation's articles of incorporation may determine a special supermajority and quorum requirements for certain matters. Directors' resolutions may also be adopted by a written resolution in lieu of a meeting.

4. Directors and Officers

4.1 Board Structure

The boards of directors of corporations must be composed of at least three members, who can be individuals (the legal age required is over 18) or legal entities. There is no general nationality or residency requirement for directors, nor are the directors required to be shareholders of the corporation.

The only requirement under the law is that a person has the ability to carry out the commercial activities required due to the commercial nature of the corporation. This merely requires, pursuant to the Commercial Code, that the person must “have the ability to enter into contract and obligations” and not be “otherwise prohibited from acting as a merchant (*profesión del comercio*)”. Said differently, under law and practice, any person or entity (regardless of nationality or domicile) can act as a director of a Panama corporation.

However, note that regulated corporations (eg, banks) are subject to additional requirements set forth by the regulations of the respective industry.

4.2 Roles of Board Members

Panamanian law does not specifically provide roles for the individual members of the board of directors. Generally, Panamanian law grants the board of directors the power to control and direct the business of the corporation. Therefore, the board of directors shall exercise all the corporate powers that are not expressly reserved to shareholders by law and the articles of incorporation.

4.3 Board Composition Requirements/Recommendations

There are no further relevant requirements for the composition of the board of directors.

4.4 Appointment and Removal of Directors/Officers

The members of the board of directors are elected and removed by the shareholders of the corporation, although the directors may – by a resolution of the board of directors – fill the vacancies that occur in the board, unless doing so is prohibited by the articles of incorporation. Directors may be removed from office by the shareholders with or without cause.

If the articles of incorporation do not state otherwise, corporate officers are appointed and removed by the board of directors. Panamanian law requires corporations to have at least a president, a secretary and a treasurer, and they may have such other officers as determined by the board of directors or the articles of incorporation. The corporation officers may be the directors, but this is not strictly required. A single person may hold more than one office.

4.5 Rules/Requirements Concerning Independence of Directors

Panamanian law does not require the appointment of independent directors in non-regulated corporations, nor does it require corporate governance practices to ensure the independence of the directors or the prevention of a potential conflict of interest. These rules and requirements, if established by the shareholder(s) or directors, are documented by way of the articles of incorporation or the by-laws of the corporation. As for regulated corporations, by way of example, under the securities regulations, neither an investment manager nor any of its directors, managers or related parties can acquire

assets owned by the investment company it administers, nor shall the investment manager provide loans or guarantees to such investment companies, and vice versa.

The Superintendence of Capital Markets has issued non-binding guidelines that recommend that one out of every five directors of Public Companies is independent. The independent directors are described, by securities regulations, as individuals (or legal entities) who:

- do not directly or indirectly own 5% or more of the voting shares of the Public Company;
- do not participate directly or indirectly in the daily managing duties of the Public Company; and
- are not spouses of, or related by blood to, the individuals described before.

4.6 Legal Duties of Directors/Officers

Generally, the duties of directors and officers are determined by the corporation's articles of incorporation or by-laws.

Under Panamanian law, the relationship between directors, on the one hand, and the corporation and its shareholders, on the other hand, can better be characterised as that of agent and principal. Directors are generally considered to have received a “mandate” to manage the affairs and assets of the corporation. As such, directors are responsible for discharging their mandate with the duty of care owed by agents, and may become personally liable for negligence in the discharge of these duties. The standard of care to which directors are generally subject is that which “ordinarily prudent people would usually exercise in the discharge of their own affairs”.

There are a few statutory duties for certain officers under Panamanian law, as follows.

- **President** – generally, the president serves as chairman of the meetings of shareholders and the board of directors, issues certificates in connection with certain resolutions approved by a shareholder in connection with the amendment of the articles of incorporation, and is required to provide notice to shareholders for shareholder meetings and to directors for board meetings (in each case, unless the articles of incorporation specify otherwise).
- **Secretary** – generally, the secretary has custody of the corporate records and minutes, issues certificates in connection with the resolutions approved by the shareholders and directors, keeps the shareholder registry up to date, and is required to provide notice of shareholder and board meetings (in each case, unless the articles of incorporation specify otherwise). The secretary, along with the president, is also often responsible for signing share certificates (either pursuant to the articles of incorporation or by delegation of the board of directors).
- **Treasurer** – the Corporate Law only provides that the treasurer shall have the duty to provide certain certifications upon the dissolution of the corporation.

4.7 Responsibility/Accountability of Directors

As mentioned in 4.6 Legal Duties of Directors/Officers, directors are responsible for discharging the mandate conferred to them by the shareholders with the duty of care owed by agents, and may become personally liable for negligence in the discharge of these duties. The Panama Code of Commerce describes the general liabilities of the members of the board of directors of the corporation. Directors are not liable for the corporation's obligations, but they are person-

ally or jointly liable, as the case may be, for the following:

- the effectiveness of capitalisations that appear to have been made by the shareholders;
- the true existence of declared dividends;
- the proper management of the accounting; and
- the proper or improper execution or performance of their duties, or any violation of the laws, the articles of incorporation, the by-laws or resolutions of the general meeting.

Directors who were absent with cause or who protested in due time against a resolution adopted by the majority for any matter set forth above shall be exempted from liability. The aforementioned liability of directors may only be demanded by virtue of a resolution of the general shareholder meeting. In the absence of such resolution, only the corporation would be liable to third parties for damages resulting from the acts of its directors.

In addition to the above, the General Corporation Law provides three more personal causes of action against directors, who may become personally liable to creditors of the corporation in the following cases:

- unlawful dividends and distributions – if the board of directors knowingly declares or authorises the payment of dividends or the distribution of assets, if such payment or distribution results in the total assets of the corporation being less than the aggregate amount of its liabilities plus capital;
- unlawful capital reduction – if the board of directors knowingly authorises a reduction in the outstanding capital of the corporation (ie, a repurchase or redemption of shares), if

such reduction results in the total assets of the corporation being less than the aggregate amount of its liabilities plus capital; and

- false representations – if a director knowingly makes a false statement on a material fact, or consents that a false statement on a material fact be made in any report issued by the corporation.

In such cases, directors who assent to such actions fraudulently or with knowledge of the fact that they will impair the capital of the corporation or that the statement or report is false as to any material fact would become personally and jointly and severally liable to creditors of the corporation. As opposed to liability arising under the Commercial Code, liability under the General Corporation Law, as referred to above, would not require the prior approval of the shareholders.

Furthermore, the directors are criminally liable in the fraudulent insolvency of the corporation.

Unlike directors, officers of a corporation are not vested with such broad powers of management and responsibility, and Panama's General Corporation Law does not specifically refer to their personal liability. However, in general, officers of a corporation may become personally or jointly and severally liable to the corporation, its shareholders or creditors of the corporation for negligence or wilful misconduct that causes harm to the corporation, the shareholders or the corporation's creditors.

In addition, officers and directors of financial institutions (regulated corporations), such as banks or broker-dealers, may be subject to criminal liability under the Criminal Code of Panama if they commit any of the following crimes:

- embezzlement of financial resources belonging to the financial institution;
- tampering with accounting books, accounting reports or any of the financial institution's financial information;
- approving credits or other financings that exceed legal regulations and directly cause the forced dissolution or permanent insolvency of the financial institution;
- meddling with financial resources belonging to the general public in order to hide a state of insolvency;
- inappropriately using or disclosing confidential information related to securities registered with the Securities Commission or traded in an organised stock exchange in a way that causes harm to another or benefits itself or a third party; or
- manipulating the purchase and sale of registered securities or creating a false image or situation in order to benefit itself or a third party.

4.8 Consequences and Enforcement of Breach of Directors' Duties

A breach of the duties of directors may be enforced as follows:

- with respect to certain duties described in **4.7 Responsibility/Accountability of Directors**, if such enforcement of breach is approved by the shareholders of the corporation or without such approval under the circumstances described above;
- by creditors of the corporation as set forth above; and
- criminally for fraudulent insolvency of the corporation. Officers may also be liable for fraudulent insolvency.

4.9 Other Bases for Claims/Enforcement Against Directors/Officers

There are no statutory claims or enforcements against directors or officers of non-regulated corporations, other than as described in **4.8 Consequences and Enforcement of Breach of Directors' Duties**.

Directors who were absent with cause or who protested in due time against a resolution of the majority of directors in which a certain breach of duties was authorised shall be exempted from liability. Furthermore, such specific liability of directors may only be demanded by virtue of a resolution of the general shareholder meeting. In the absence of such resolution, only the corporation would be liable to third parties for damages resulting from the acts of its directors.

For regulated corporations, under the Banking Law, for example, the director, officer or employee of a bank that violates the Banking Law or its regulations is subject to private admonition, public admonition and monetary fines. These sanctions are determined and issued by the Superintendence of Banks with regard to the seriousness of the infringement, its recurrence and the damages caused to third parties.

4.10 Approvals and Restrictions Concerning Payments to Directors/Officers

There are no statutory required approvals under the Corporate Law for the remuneration, fees or benefits payable to directors and officers, except for those set forth in the corporation's articles of incorporation or by-laws. If there are provisions in the corporation's articles of incorporation or by-laws that require approvals in connection with payments to directors or officers, and any directors and/or officers act in breach of said provisions, they may be liable for their failure

to comply with the mandate received from the shareholders for the management of the corporation.

4.11 Disclosure of Payments to Directors/Officers

There are no disclosure requirements for a corporation in relation to the remuneration, fees or benefits payable to its directors and officers.

However, Public Companies are required to disclose the compensation and benefit plans of their directors, officers, managers and executives in their offering memorandums.

5. Shareholders

5.1 Relationship Between Companies and Shareholders

The shareholders' assembly of a corporation is the supreme governing body, and there are certain decisions that are solely reserved to it, as discussed in **3.1 Bodies or Functions Involved in Governance and Management**. There are no particular rules and requirements that govern the relationship between the shareholders and the corporation, other than as already described. There is no mandatory minimum frequency of meetings of shareholders.

Piercing the Corporate Veil

Shareholders are not personally liable for the obligations of the corporation and shall only be liable for the unpaid portion, if any, of the subscription price of the shares that they owe to the corporation; it is unusual for local courts to pierce the corporate veil without clear evidence of fraud. The doctrine of piercing the corporate veil or disregarding the legal personality of an entity under Panamanian law has been reviewed by Panama's Supreme Courts on a few occa-

sions. Generally speaking, courts uphold the limitations of liability imposed by a corporate law, and have allowed the application of the piercing of the corporate veil doctrine only in exceptional fraud and/or criminal cases.

Furthermore, courts have reiterated on several occasions that piercing the corporate veil is a very extreme remedy that must be applied only as a last resort (*ultima ratio*), under exceptional circumstances, and only in connection with the prosecution of criminal offences made within the territory of the Republic of Panama. Examples cited by the courts include the following:

- when the corporate entity is used to hide assets obtained from crimes committed within the territory of the Republic of Panama, or for liabilities against the State;
- when the corporation was used with the sole intention of defrauding third parties or hiding persons that act fraudulently; and
- for criminal investigations covering simulation, drug trafficking and money laundering.

In addition, the recently enacted Insolvency Law further confirms this principle by stating that the liquidation of an insolvent corporation shall not personally affect shareholders in such capacity. However, shareholders may be liable for any benefit received from an act (eg, fraudulent acts) that is subsequently declared null and void by the courts upon the liquidation of the corporation.

Shareholders' Rights

As a related point, shareholders of Panamanian companies have the following statutory rights vis-à-vis the corporation.

- The right to compel a meeting of shareholders – shareholders that hold 5% or more of a

corporation's total share capital may request a court to call a general shareholder meeting (the percentage requirement may be lower if the corporation's articles state otherwise).

- The right to appoint a reviewer – shareholders that hold 5% or more of a corporation's total share capital may ask a judge to appoint a reviewer of the corporation's books and records (at the petitioners' expense). However, this measure may only be sought by petition to a court once a general shareholder meeting has previously rejected a call to appoint a reviewer.
- Acquired rights – shareholders may also benefit from a provision under Panamanian corporate law that does not permit the vote of any majority of shareholders to deprive (*privar*) other shareholders of any already acquired rights, or otherwise impose upon them matters that would contradict the existing articles of incorporation/by-laws of the corporation; as such, any shareholder (including minority shareholders) might be able to challenge before a court any amendment to the articles of incorporation that deprives them of their acquired rights.
- Request for nullity of impermissible corporate action – shareholders also retain the right to seek an injunction against any resolution approved by the board of directors that violates the law or the articles of incorporation or by-laws of the corporation. Such an action must be brought within 30 days of the shareholder becoming aware of the resolution of the board of directors. If the judge considers the suit to be urgent, they may order an injunction barring the corporation from carrying out the board's resolution.

5.2 Role of Shareholders in Company Management

The board of directors has the power to control and direct the business of the corporation, except for the matters reserved to shareholders by law and the articles of incorporation. From a practical perspective, the shareholders of relatively small corporations may decide to take management roles in executive capacities in such corporation, but that is a matter of practice and not a statutory obligation.

5.3 Shareholder Meetings

Under Panamanian law, there is no requirement regarding the frequency of shareholder meetings, although the articles of incorporation may establish a particular frequency of shareholder meetings with particular rules governing such meetings. Please see 3.3 **Decision-Making Processes** regarding the general default rules on meetings of shareholders.

5.4 Shareholder Claims

Shareholders may authorise legal actions against the breach of certain duties by directors of the corporation, for the following matters:

- the effectiveness of capitalisations that appear to have been made by the shareholders;
- the true existence of agreed dividends;
- the proper management of the accounting; and
- the proper or improper execution or performance of the agency, or any violation of the laws, the articles of incorporation, the by-laws or resolutions of the general meeting.

Shareholders may pursue a claim against the corporation for any violation of their rights, as shareholders, established under the law or the

articles of incorporation or other constitutive documents.

5.5 Disclosure by Shareholders in Publicly Traded Companies

Public Companies are subject to the following disclosure requirements set forth under the securities regulations, among others:

- as a condition of the registration of the Public Company's shares, the identity, passport number or personal identification number, the nationality and certain other representations relating to the background of the ultimate beneficial owners of the corporation shall be provided on a confidential basis to the Superintendence of Capital Markets;
- any change of control in the corporation share ownership structure;
- any related party transactions entered into by the Public Company with any of its shareholders; and
- any voting agreements between its shareholders, in effect.

6. Corporate Reporting and Other Disclosures

6.1 Financial Reporting

There are no financial reporting requirements for unregulated corporations under the Corporate Law. However, companies with commercial operations must have their accounting registries in the Spanish language at all times.

Furthermore, corporations in Panama that are engaged in commercial activities are obliged to produce financial statements (and must be audited if they have capital above PAB100,000 or an annual sales volume of more than PAB50,000). Other industry-specific regulations (such as the

securities and banking regulations) require the supervised person to disclose audited financial statements annually and interim financial statements quarterly, depending on the regulated activities carried out.

Public Companies must publish interim financial statements on a quarterly basis no later than 60 days after the end of the relevant quarter, and annual audited financial statements no later than 90 days after the end of the first year.

6.2 Disclosure of Corporate Governance Arrangements

There are no requirements for corporations to disclose their corporate governance arrangements under the Corporate Law. Please refer to previous sections with respect to the disclosure of corporate governance arrangements by Public Companies. In addition, Public Companies must provide updates on changes in their corporate governance that constitute relevant facts, and must immediately publish press releases about certain other material events identified in the regulations issued under the securities regulations.

6.3 Companies Registry Filings

Companies shall register any amendments to their articles of incorporation, any changes to the board of directors, any dissolution, any continuation to another jurisdiction, and any mergers and spin-offs, as well as any board of directors and shareholders meeting that is binding on third parties. These filings are publicly available. Certain material filings, such as amendments to the articles of incorporations of the corporation, are required to be made as a condition to their effectiveness, while other filings, such as a change of board of directors, powers of attorney, board and shareholders' resolutions, are gener-

ally enforceable against the corporation but not against third parties until they are recorded.

7. Audit, Risk and Internal Controls

7.1 Appointment of External Auditors

In accordance with the Corporate Law, there are no requirements to appoint an external auditor in connection with financial statements, but please note the financial reporting requirements for operative corporations in Panama, as stated in **6.1 Financial Reporting**.

7.2 Requirements for Directors Concerning Management Risk and Internal Controls

There are no specific requirements for directors of corporations in connection with the management of risk and internal controls in a corporation under the Corporate Law. Please note that there are additional regulations on the management of risk and internal controls under industry-specific regulations (such as the banking, securities and insurance regulations).

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