Panama

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EQUITY CAPITAL MARKETS: GENERAL

1. Please give a brief overview of the equity market(s) in your jurisdiction and initial public offering (IPO) activity generally. What were the large deals over the past year? Have there been many listings of overseas companies on your market(s)?

Panama equity market issues reached US$171 million (about EUR134 million) at 31 October 2008, up approximately 33% from US$128 million (about EUR100 million) raised over the same period in 2007. Of this total:

- Common stock issues represented US$968,380 (about EUR760,179).
- Preferred stock issues represented US$108 million (about EUR84 million).
- Mutual fund shares represented US$61 million (about EUR48 million).

Grupo Bandelta Holding, the holding company of microfinance bank, Banco Delta, launched an IPO of its stock in 2008. Two other IPOs of Compañía Inmobiliaria San Felipe and Multifinancial Group are currently pending registration. Trading volume is limited though it has grown from US$302 million (about EUR237 million) at 31 October 2007 to US$500 million (about EUR393 million) at 31 October 2008, mainly due to mutual fund activity.

Although Panama is the largest dollar-based equity market in the Central America region, it has contracted over recent years due to the de-listing of companies acquired by international conglomerates. There were 28 companies listed in 2001, but only 23 in 2008, most of which are financial institutions. As of 31 October 2008, market capitalisation was US$3.654 billion (about EUR2.9 billion) or 21.4% of GDP.

2. Is there a distinction between admission to listing and admission to trading?

Under the Securities Act of Panama (*Decree-Law No. 1 of 8 July 1999*) and regulations issued under it (Securities Act), there is a distinction between registration of securities with the National Securities Commission (*Comisión Nacional de Valores*) (CNV) for public offering and listing of securities on an exchange for trading on the exchange.

Once a security is registered with the CNV under the Securities Act, it can be publicly offered in Panama. However, for a security to be listed and admitted to trading on an exchange, the security must not only be registered with the CNV for public offering, but must also be deposited with a licensed clearing agency and then admitted to listing for trading on a licensed stock exchange, under that clearing agency's and stock exchange's rules.

The only clearing agency in Panama authorised by the CNV is the Central Latinoamericana de Valores (LatinClear) and the only stock exchange currently authorised by the CNV is the Bolsa de Valores de Panamá (BVP).

3. Please describe the main equity capital market(s) and summarise the following in relation to each market (distinguishing where appropriate the requirements for overseas companies seeking a primary listing in your jurisdiction):

- **The regulator.**
- **Any minimum size requirement**
- **Any minimum trading record required.**
- **Any working capital requirements.**
- **Any minimum numbers of shares in public hands.**
- **Number of companies traded.**
- **Annual cost of being listed.**

The only stock exchange licensed to operate in Panama is the BVP.

- **Regulator.** The regulator of the equity capital markets is the CNV.
- **Size limits.** There is no minimum size limit requirement to register any securities with the CNV for public offering or trading on the BVP.
- **Trading record.** There is no minimum trading record requirement on the BVP.
- **Working capital.** There is no minimum working capital requirement on the BVP.

- **Shares in public hands.** There is no minimum free float requirement.

- **Number of companies traded.** As of 31 October 2008, there are 23 companies trading common shares, one company trading cumulative preferred shares and 29 companies trading preferred shares on the BVP.

- **Annual cost.** There are two sets of annual fees:

  - **CNV supervisory fees.** These are equal to 0.01% of the market value of the outstanding equity securities, subject to a US$500 (about EUR393) minimum and a US$15,000 (about EUR11,750) maximum;

  - **BVP supervisory fees.** These are equal to US$1,000 (about EUR785).

IPOs ON THE MAIN EQUITY CAPITAL MARKET(S)

4. What are the main ways of structuring an IPO?

The main ways of structuring issues of equity securities are:

- **Offer for sale by underwriter or intermediary.** An offer for sale is a public invitation by a sponsoring intermediary, such as an investment bank, to subscribe for new (primary offering) or existing securities (secondary offering). The sponsoring intermediary can underwrite the securities and re-sell them to the public or can simply agree to act as an agent of the issuer to place the securities with the public on a best effort basis.

- **Offer for subscription by the issuer.** Issuers can make a direct invitation to the public to subscribe for new securities.

- **Exempted offers.** Companies can issue securities on a non-registered basis, if the offer is exempted from registration under the Securities Act. The two most commonly used exemptions in connection with capital raising are the private placement exemption and the institutional investor exemption. Investors acquiring securities in non-registered offers are usually institutional investors such as large banks, mutual funds, insurance companies and pension funds. The issuing company's ability to raise capital on a non-registered offer is more limited than on a fully-registered public offering.

- **Mandatory registration.** Companies with a certain amount of capital and number of shareholders must register with the CNV and become public companies under the Securities Act. Although no new capital is raised by this mandatory registration, the company does become subject to the Securities Act. There is no requirement, however, that these companies list their stock for trading on the BVP, although most do.

In Panama, the IPO is typically an offer of new shares (primary offering); however, some offerings also include a component of existing shares (secondary offering). Most shares offered in IPOs are purchased by underwriters. Retail purchasers usually acquire shares from underwriters.

5. Outline the procedure for a company applying for a primary listing of its shares in your jurisdiction. Is the procedure different for an overseas company? Is an overseas company likely to seek a listing for shares or depositary receipts?

An application for a primary offering of securities entails a registration of the securities with the CNV and in most cases also their admission to listing and trading on the BVP. Although not required, before registration with the CNV, issuers commonly undergo a review process of their articles of incorporation, bye-laws and other organisational documents to implement changes to its corporate structure and governance, in preparation for operating as a public company.

To register a public offer of securities with the CNV, the issuer must file a registration statement with the CNV. The registration statement consists of two parts:

- The prospectus, including financial statements.

- All other information required by the CNV, including organisational documents, corporate authorisations and material contracts related to the offer (*see Question 7*).

Following the initial filing of its registration statement, the issuer may start marketing its public offer and building the book.

To file for admission to trading with the BVP, the issuer must file a listing application with the BVP during the registration process with the CNV. The listing application includes a copy of the prospectus and other material offering documents and information about the issuer. Any comments by the BVP to any of the documents presented should be addressed before the CNV approves the offer and the final version of all documents. The BVP does not usually impose additional substantive requirements to those of the CNV, but it does conduct a similar review to that of the CNV in regard to information requirements.

The approval of a registration statement by the CNV usually takes between 45 and 60 days from the date of the initial filing. The CNV often makes comments on the documents presented within three weeks from the initial filing. Once all comments are properly addressed, the CNV takes an additional week or two to approve the offer.

Following approval from the CNV, the issuer:

- Deposits the securities with LatinClear.

- Completes its application for admission to trading with the BVP, which must include the CNV's resolution approving the public offer of the securities.

Once the application is complete, admission to trading occurs followed by closing.

The procedure is the same for an overseas company, except that the CNV can order a due diligence investigation and require some additional supporting documentation (*see Question 10*).

6. Briefly outline the role of advisers commonly used for an IPO.

Investment bankers

The investment bank advising the issuer manages the IPO process and co-ordinates the company's other advisers. It may also assume any of the following roles on its own or with other investment banks:

- **Financial adviser.** Advises the issuer on its capital structure and strategic capital needs.
- **Underwriter.** If the investment bank gives a firm commitment to the issuer, it purchases the securities from the issuer and re-sells the securities as part of the IPO.
- **Placement agent.** If the investment bank does not commit to purchase the securities from the issuer, it can act as a placement agent for the issuer on a best effort basis.

Lawyers

The lawyers' role is to advise, among others, the issuer, underwriters and selling shareholders, if any:

- **Issuer's lawyers.** They advise the issuer on the legal aspects of preparing for registration and listing, including:
  - issues of corporate governance;
  - carrying out the legal aspects of due diligence;
  - assisting the company in preparing and verifying the prospectus and other ancillary documentation;
  - negotiating the underwriting documentation; and
  - complying with all applicable registration and regulatory requirements.

  The issuer's lawyers ordinarily file the registration statement with the CNV and the listing application with the BVP, and are primarily responsible for drafting the prospectus.
- **Underwriter's lawyers.** The underwriter's lawyers:
  - advise on any legal agreements to which the underwriter is a party in connection with the offering;
  - assist the underwriter in the due diligence;
  - advise the underwriter in relation to its obligations.

  They focus primarily on:
  - drafting the terms and conditions of the securities;
  - drafting the underwriting agreement; and
  - reviewing the prospectus to protect the underwriter against liability.
- **Selling shareholders' lawyers.** They advise the selling shareholders (if any) on underwriting documentation, disclosure requirements and liability, and any lock-up agreement restricting them from selling shares for a period post-offering.

Accountants

Accountants assist in the preparation of the audited and interim financial statements filed as part of the registration statement and review the financial numbers disclosed on the prospectus.

Technical advisers

Technical advisers may include civil engineers, project managers, consulting companies and other experts, whose advice is required to support financial information or other business statements or projections made by the issuer in the registration statement or the prospectus.

7. What are the principal documents produced in an IPO?

When a registration statement is filed with the CNV for the registration of securities to be offered in an IPO, the following documents must be submitted:

- **Registration statement.** A petition for registration, including CNV Form RV-1.
- **Prospectus.** A prospectus, which must comply with all disclosure requirements under the Securities Act (*see Question 8*).
- **Sample security.** A sample of the security to be offered, including its terms and conditions.
- **Material contracts.** All material contracts related to the offering, including, any underwriting agreement, placement agent agreement and paying agency agreement.
- **Financial statements.** Financial statements must include:
  - **Audited.** Audited financial statements for the past three fiscal years, issued by an independent public accountant, and prepared in compliance with US GAAP or International Financial Reporting Standards;
  - **Quarterly.** Non-audited interim financial statements issued by a public accountant for the quarter ending immediately before the date when the registration statement was filed with the CNV, if applicable;
  - **Comparison.** A comparison of the audited financial statements of the issuer for the past three fiscal years.
- **Corporate documents.** All material organisational and other corporate documents of the issuer material to the securities, including, articles of incorporation, bye-laws and corporate resolutions authorising the issuance of the securities.
- **Corporate governance.** CNV Form IN-A regarding disclosure on the corporate governance practices of the issuer.

- **Legal opinion.** A legal opinion issued by the issuer's counsel.
- **Other supporting documents.** Other supporting documents, such as a certificate of existence and good standing of the issuer, affidavits regarding the independence of auditors and lawyers and powers of attorney.

All documents issued or executed outside of Panama must be authenticated by a Panamanian consul or under the 1961 Hague Convention Abolishing the Requirement of Legalisation of Foreign Public Documents. In addition, documents drafted in a language other than Spanish must be translated by an authorised public translator in Panama.

If the IPO is to be traded on the BVP an application for listing must be filed with the BVP and a listing agreement must be signed between the issuer and the BVP. The documentation and information submitted with the listing application is similar to the one filed with the CNV.

An application for eligibility and deposit in custody of the securities must be filed with LatinClear, if the securities will be traded on the BVP. A custodian and clearing agreement must be signed between the issuer and LatinClear.

8. Please summarise the requirements for a prospectus (or other main offering document).

Securities can only be publicly offered in Panama if they have been registered with the CNV, unless the offer is exempted from registration under the Securities Act. The Securities Act defines an offer as any declaration, proposal or statement made with the purposes of selling, transferring or disposing of securities in exchange for the payment of a consideration, as well as any solicitation intended at inducing a person to make an offer to purchase securities in exchange for the payment of a consideration.

All public offers of registered securities must be made through an approved prospectus. However, a preliminary prospectus can be used to begin marketing the offering, after the registration statement has been filed with the CNV. An approved prospectus, however, must be re-circulated to investors before the sale of the securities becomes final.

Offers of securities made pursuant to registration exemptions do not require the use of a prospectus.

A prospectus must comply with all disclosure requirements under the Securities Act including:

- Sections on risk factors.
- Description of the terms and conditions of the offered securities.
- Information on the company.
- Management's discussion and analysis of financial and operational results.
- Regulatory framework.
- Key management and directors.
- Shareholders.
- Related parties.
- Tax treatment of the securities.

9. Are there any exemptions from the requirements for a prospectus (or other main offering document)?

Registration with the CNV is not required and therefore the use of a prospectus is not necessary if the securities are offered, among other instances, in a private placement, to institutional investors, or under the correspondent broker exemption under the Securities Act.

Private placement exemption

A private placement is any offer or series of offers of securities made to no more than 25 offerees, other than institutional investors (*see below, Institutional investor exemption*), domiciled in Panama, which result in sales to no more than ten of those offerees within a period of one year. It is irrelevant for purposes of the Securities Act whether the offer is made to existing clients or to new clients, whether the offer is made by telephone, fax, mail, courier, e-mail or personal visits or whether the offer is made by local broker-dealers or by foreign broker-dealers. As long as the issuer and its underwriters or agents limit the distribution efforts as described above, the securities are not required to be registered with the CNV. No mass mailings or public advertisement of the securities should be made in Panama, as this would be interpreted as an offer to more than 25 people.

Institutional investor exemption

The following persons qualify as institutional investors, and therefore any offer made there of is exempted from registration under the Securities Act:

- Sovereign states and any department, political subdivision or agency of them which is authorised to make investments in securities.
- The following entities:
  - licensed banks;
  - insurance and reinsurance companies;
  - investment companies registered with the CNV;
  - investment trusts managed by licensed trustees;
  - certain retirement and pension funds licensed to operate in Panama; and
  - broker-dealers when they act for their own account.
- Any legal entity (such as a corporation, trust or foundation) domiciled in Panama which meets the following three requirements:

- a net worth of at least US$1 million (about EUR785,000) according to its most recent audited financial statements;
- during the two years before the offer, dealt in securities on a regular basis; and
- its key executives or the majority of its officers and directors have at least two years of experience in dealing with securities.

Generally, offers made to institutional investors in Panama must be reported to the CNV by filing a report in a form prescribed by the CNV within 15 days of the offer. However, if the issuer of the securities is domiciled in a jurisdiction recognised by the CNV, such filing with the CNV is not required. If the issuer is domiciled in a recognised jurisdiction, it is sufficient that the issuer comply with the disclosure requirements applicable to exempted offers to institutional investors under the laws of that jurisdiction. To date, the CNV has recognised the following jurisdictions: US, France, Spain, UK, Japan, Switzerland, Germany, the Provinces of British Columbia, Quebec and Ontario in Canada, Hong Kong, the Netherlands, Mexico, Australia, Italy, El Salvador and Costa Rica.

Institutional investors domiciled in Panama that purchase non-registered securities under the institutional investor exemption must hold these securities for at least one year, and any resale of these securities within Panama during that period may be made only to other institutional investors. Therefore, for offers made in reliance on the institutional investor exemption, it is advisable to obtain from the institutional investor an acknowledgment that it:

- Is an institutional investor as defined in the regulations issued by the CNV under the Securities Act.
- Has purchased the securities for its own account and not with a view to resell or place the securities as part of the offering of the securities.
- Will agree not to sell the securities within a period of a year, except to other institutional investors.

Correspondent broker exemption

In addition to the private placement and institutional investor exemptions, broker-dealers licensed to operate in Panama can offer foreign securities to their clients domiciled in Panama without having to register these securities with the CNV, provided that:

- These securities are not offered by public means of communication (for example newspapers and mass mailings) in Panama.
- The local broker-dealer does not actively solicit purchase or sale orders with respect to these securities to clients domiciled in Panama.
- The client is informed that these securities are not registered with the CNV.
- The trade of these securities is executed outside of Panama by a broker-dealer licensed to operate in a jurisdiction recognised by the CNV.

The relationship between the foreign broker-dealer and the Panamanian broker-dealer must be notified to the CNV and a copy of any agreement between these parties must be filed with the CNV.

Other exemptions

Offers of the following securities are also exempted from registration with the CNV under the Securities Act:

- Securities issued or guaranteed by Panama.
- Securities issued by international organisations of which Panama is a member.
- Securities issued only to existing shareholders of an issuer in connection with certain corporate reorganisations and other corporate transactions.
- Securities issued only to employees and directors as part of compensation plans.

10. Please outline the contents of the prospectus (or other main offering document).

The prospectus must contain all of the following information:

- Description of all risk factors related to the:
  - offered security;
  - issuer;
  - countries where the issuer operates; and
  - industry.
- Description of the terms and conditions of the security and the offer; including:
  - the distribution plan;
  - the markets where the offer is being registered;
  - expenses related to the offer;
  - use of proceeds; and
  - the security package, if any.
- Description of the issuer; including:
  - its history;
  - authorised and paid-in capital;
  - organisational documents;
  - description of its business;
  - organisational structure; and
  - properties.

Country Q&A

- Management's discussion and analysis of financial and operational results.
- Information about the directors, officers, key managers and key employees of the issuer.
- Information about the shareholders of the issuer.
- Information about related parties and related-party transactions.
- Description of the tax treatment of the securities.

When the issuer is a foreign person or company, the following additional requirements apply:

- The issuer must appoint a legal representative with offices in Panama and with the capacity to represent the issuer with the CNV and to receive administrative and judicial notifications.
- Considering that some of the officers and directors of the issuer, as well as the assets of the issuer, may be located outside of Panama, the issuer must prepare a statement addressing how the rights of potential investors would be affected if they file claims for civil liability.
- If a security interest is created on assets of the issuer, a legal opinion must be issued by an attorney authorised to practice law in the jurisdiction where the security interest has been created. The opinion must address the procedure for foreclosing on the security interest and any preferences or priorities affecting the security interest.
- The issuer must describe any relevant treaties that exist between the two countries or issue a statement that none exists.
- The CNV may order a due diligence investigation of the issuer.
- Certification issued by the competent governmental authority stating that the foreign auditors who prepared the financial statements of the issuer are duly licensed in their jurisdiction.

11. How is the prospectus (or other main offering document) prepared and verified?

The prospectus is usually prepared by the issuer's lawyers, with the assistance of the issuer, and the co-operation of the investment bankers, their lawyers, the issuer's auditors and other technical advisers, as necessary.

After the prospectus is first filed with the CNV as part of the registration process, it is reviewed by the CNV. The CNV issues a formal letter with comments on the prospectus, which must be addressed by the issuer. Two rounds of comments from the CNV on the prospectus are not uncommon, as part of the review process.

The prospectus also undergoes a similar review process by the Technical Committee of the BVP.

A prospectus must be immediately updated through the filing of a new prospectus or a prospectus supplement if at any time during the registration period or offering period an event occurs that either:

- Makes a statement of a material fact contained in the prospectus false.
- Must be disclosed in order to make a statement of a material fact contained in the prospectus not false or misleading in light of the circumstances in which it was made.

A prospectus must also be updated by a new prospectus or the filing of a prospectus supplement within the 30 days following the filing of the issuer's annual report with the CNV, if the prospectus is still in use.

12. Who is responsible for the content of the prospectus (or other main offering document) and any liability arising from its contents?

The issuer, its affiliates, underwriters, placement agents and even investors who purchase securities on a non-registered basis and publicly re-sell those securities within a year may be liable for the content of the prospectus.

Issuers and affiliates

An issuer and its affiliates cannot offer to purchase or sell registered securities if the communication or prospectus either:

- Contains a false statement of a material fact.
- Omits to disclose a material fact required to make the statement not false or misleading.

The only defence against liability afforded to issuers and their affiliates is the actual knowledge of the investor of the false statement or omission.

Underwriters, placement agents and certain investors

An offeror cannot offer to purchase or sell registered securities if the communication or prospectus either:

- Contains a false statement of a material fact.
- Omits to disclose a material fact required to make the statement not false or misleading.

The only two defences against liability afforded to offerors are:

- The actual knowledge of the investor of the false statement or omission.
- That the offeror did not have knowledge of the false statement or omission, having used due diligence in the preparation of the communication or prospectus.

The Securities Act defines offeror to include:

- Underwriters.

- Placements agents acting on behalf of the issuer.
- Investors who purchase securities in a private placement or under the institutional investor exemption and re-sell those securities within one year, except when done in accordance with regulations issued by the CNV.

13. Briefly explain the ways used to market an IPO.

Marketing efforts vary depending on whether they are carried out before, during or after the registration process with the CNV, as indicated below:

- **Pre-filing.** Before a registration statement and a prospectus are filed with the CNV, the issuer can do very little marketing activity. Meetings can take place with, and information can be distributed to, underwriters or potential underwriters. However, during this period, the issuer cannot, without justification, carry out activities or disclose information in a manner that is not consistent with its past practices or with the ordinary course of its business, if carrying out these activities or disclosing this information may condition the market in anticipation of the public offering.
- **Registration period.** Once a registration statement and a prospectus are filed with, and during the review process by, the CNV, the securities can be offered to potential investors by the issuer, its placement agent or underwriters and non-binding purchase orders can be solicited from potential investors. However, each offer or solicitation must be made by delivering a copy of the preliminary prospectus filed with the CNV.
- **After registration statement becomes effective.** After the registration statement becomes effective, the issuer, its placement agent and underwriters can publicly offer and sell the registered securities. All types of public advertisement can be made, provided that the marketing materials meet CNV regulatory requirements. Before purchase orders become final, an approved prospectus must be delivered to the investors.

14. Describe any potential liability from publishing research reports by connected brokers and ways used to avoid such liability.

Connected brokers must be particularly careful to set up appropriate controls and independence to avoid liability. Connected brokers must not condition the market in anticipation of an IPO and must not have access to confidential information available to members of the investment bank advising the issuer.

To minimise potential liability in respect of publishing analysis or research reports, brokers must:

- Ensure equal access to any analysis and research reports to all its clients.
- Maintain copies of all information on which its analysis and reports are based.
- Disclose any relationship or connection with entities to which the analysis or reports relate.
- Exercise diligence and reasonable care in its drafting and publishing of analysis or reports.

Additionally, brokers should consider:

- Limiting the distribution of analysis and research reports to professional investors.
- Using appropriate and prominent disclaimers.
- Avoiding profit forecasts and projections in research sourced from the issuer.
- Separating the team working on the securities offering from the team compiling the research report.
- Properly disclosing any conflicts of interest.

Additionally, issuers should not be promised favourable research coverage, investment analysts should not participate in road shows and their reporting and remuneration arrangements should be structured to avoid conflicts.

15. Is the bookbuilding procedure used and if so, in what circumstances?

Bookbuilding is frequently used on securities offerings. The size and pricing of the offering are fixed once indications of demand have been received from potential investors following circulation of a preliminary prospectus.

16. Where bookbuilding is used, how is any related retail offer dealt with?

Retail offers are generally not taken into account in the bookbuilding process. However, if the securities are publicly offered through the BVP, retail offers can be introduced and can be accepted if they are for a better price.

17. How is the underwriting for an IPO typically structured? What are the typical terms of the underwriting agreement?

Underwriting of an IPO can be done on a firm commitment basis or on a best effort basis. Firm commitments can, in turn, be full or partial commitments.

The typical terms of IPO underwriting agreements include:

- Representations and warranties of the issuer.
- Representations and warranties of selling shareholders (in the case of secondary offerings).
- An agreement to sell and purchase.

- Terms of the public offering, including pricing.
- Payment and delivery of the securities.
- Conditions precedent to the underwriters' obligations.
- Covenants of the issuer.
- Fees and expenses.
- Indemnity and contribution provisions.
- Lock-up of significant shareholders.
- Arbitration or submission to jurisdiction provisions.
- Other miscellaneous provisions.

18. Please provide a summary of the timetable for a typical IPO.

Below please find a timetable for an offering in Panama, where "T" is the date of on which the securities are offered on the BVP. This timetable is indicative only:

- **T-4 months.** Advisers are engaged, a basic term sheet for the offer is prepared, lawyers and accountants are hired, the company begins preparation for listing and any necessary corporate reorganisation is carried out.
- **T-3 months.** Begin preparation of registrations statement, prospectus, terms and conditions of the security and material transaction agreements.
- **T-2 months.** File registration statement including preliminary prospectus with the CNV for review and comment.
- **Between T-8 weeks and T-4 weeks.** CNV issues comments on the preliminary prospectus. Continue negotiation and drafting of final transaction agreements. Listing application is filed with the BVP. Registration form is filed with LatinClear.
- **Between T-4 weeks and T-1 week.** Re-filing of the prospectus with the CNV. File all material agreements and other supporting documentation in final form with the CNV. Obtain listing approval from BVP and eligibility of the securities from LatinClear.
- **T-1 day.** Price the offer. Execute underwriting agreement. File final underwriting agreement with CNV. Registration statement becomes effective.
- **T.** Securities offered through the BVP.
- **T+2.** Sales made through the BVP settle.

19. Are there rules on price stabilisation in the period after trading starts?

A person cannot purchase or sell (or offer to purchase or sell) registered securities if these actions violate regulations issued by the CNV to avoid:

- A false or deceptive appearance of the existence of an active trading for such securities.
- A false or deceptive appearance of the existence of a market for such securities.
- The manipulation of the price of such securities.

In fact, this kind of market manipulation may even result in criminal liability.

It is generally accepted in Panama that some price stabilisation in the period after trading begins is acceptable. However, the CNV has not issued adequate regulations on price stabilisation, and issuers and underwriters must be careful not to enter into transactions that could be interpreted by the CNV as unlawful market manipulation.

20. What is the approximate cost of an IPO?

The CNV is paid a registration fee for a public offers of securities of 0.015% of the initial price of the offer (or the total amount of the offer), with a minimum of US$500 (about EUR393) and a maximum of US$50,000 (about EUR39,250. The BVP charges a US$1,000 (about EUR785) fee for admission to trading of each issuance of equity securities. In addition, the BVP charges a commission on IPOs and the brokers that make the trade on the BVP also charge a commission, which is subject to negotiation.

Other significant fees and expenses include:

- Registration fees with LatinClear.
- Printing costs for the prospectus and other marketing materials.
- Accountants' fees.
- Lawyers' fees.
- Due diligence costs.
- Road show expenses.
- Underwriters' fees and expenses.

21. What are the main tax issues that arise on an IPO?

Taxation of dividends

Dividends payable on equity securities issued by a Panamanian company with Panama source income are subject to a dividend tax of 10%, which must be withheld by the issuer.

Taxation of dispositions

If the equity securities are registered with the CNV, any capital gains realised by a holder of these securities on their sale or other disposition, other than in connection with a public tender offer, will be exempt from capital gains tax, provided that their sale or disposition is made through a securities exchange or other organised market. The only stock exchange currently authorised by the CNV is the BVP.

If equity securities are sold through a securities exchange or another organised market in connection with a tender offer, or the equity securities are not sold through a securities exchange or another organised market:

- The seller is subject to income tax in Panama on capital gains realised on the sale of the equity securities, calculated at a fixed rate of 10%.
- The buyer must withhold from the seller an amount equal to 5% of the purchase price, as an advance in respect of the capital gains income tax payable by the seller, and the buyer must send to the tax authorities the withheld amount within ten days following the date of withholding.
- The seller has the option of considering the amount withheld by the buyer as payment in full of the seller's obligation to pay income tax on capital gains.
- If the amount withheld by the buyer is greater than the amount of capital gains income tax payable by the seller, the seller can recover the excess amount as a tax credit by filing a special sworn income tax declaration with the tax authorities.

Stamp and other taxes

If equity securities are registered with the CNV, neither the securities nor the transaction agreements related to the offering of the securities are subject to stamp taxes. There are no sales, transfer or inheritance taxes applicable to the sale or disposition of equity securities in Panama.

Foreign investors

A person domiciled outside of Panama is not required to file a tax return in Panama, solely by reason of his investment in equity securities registered in Panama, provided that gains realised on the sale and disposition of those equity securities are, in effect, exempt from income tax as indicated above.

CONTINUING OBLIGATIONS

22. Please outline any continuing obligations to which listed companies are subject, in particular:

- **The key areas covered by the obligations.**
- **Whether the same rules apply to domestic and foreign companies and to issuers of shares and depositary receipts.**
- **How these obligations are regulated and any penalties for breach.**

Key areas

All issuers of registered securities must comply with the continuing obligations set out in the Securities Act as well as with applicable BVP rules.

Some of these continuing obligations include filing annual reports and quarterly reports which discuss the issuer's financial and operating results, accompanied by audited financial statements for the respective period. Annual reports must be filed within three months from the end of the fiscal year and quarterly reports must be filed within two months from the end of each fiscal quarter.

Issuers must also put out immediate press releases of certain material events identified in the Securities Act. Reports of material events should be filed with the CNV and disclosed to the market within one business day from the occurrence of the event (when the event is deemed irreversible).

Issuers of registered securities are also subject to other provisions of the Securities Act which prohibit:

- Entering into certain fraudulent or deceiving activities.
- The misuse of privileged information by insiders.
- The making of false or misleading statements of material facts.
- The manipulation of the price or the market of a security.
- The forging of any accounting or financial information.

Domestic and foreign companies

The same rules apply to domestic and foreign companies.

Regulation and penalties

Penalties for late filings of quarterly and/or annual reports accrue as follows:

- US$50 (about EUR39) a day, for the first ten business days the report is past-due.
- US$100 (about EUR79) a day, for the following ten business days the report is past-due.
- US$150 (about EUR118) a day, for the following business days the report is past-due, subject to a US$3,000 (about EUR2,355) maximum per late filing.

If an issuer is 60 or more days past-due on the filing of an annual or quarterly report, the CNV has the authority to suspend the public offering and trading of the securities. The suspension is automatically lifted when past-due reports are filed.

REFORM

23. Please summarise any proposals for reform and whether they are likely to come into force and, if so, when.

There are currently no proposals for reform.

DEBT CAPITAL MARKETS: GENERAL

24. Please give a brief overview of the debt securities market in your jurisdiction. Has it been active? What were the major deals over the past year?

The capital market in Panama is primarily a debt market. As of 31 October 2008 total debt issues on the BVP reached an aggregate principal amount of US$700 million (about EUR581 million), compared to US$702 million (about EUR551 million) for the same period in 2007. Of this total:

- Corporate bonds represented US$223 million (about EUR175 million).
- Mortgage-backed bonds represented US$17 million (about EUR13 million).
- Treasury notes represented US$205 million (about EUR161 million).
- Commercial paper instruments represented US$254 million (about EUR199 million).

As a result of the credit crisis, bond issue levels may be volatile for some time, but more attractive spreads for buyers of corporate and bank bonds may offset steep declines in the issue of mortgage backed and structured debt products.

Some of the largest deals of the last twelve months include:

- US$250 million (about EUR196 million) subordinated perpetual bonds issued by Banco General.
- US$548 million (about EUR430) global bonds exchange offer of the Republic of Panama.
- US$220 million (about EUR173 million) 9.5% senior secured notes offering due 2014 of Newland International Properties Corp to finance the construction of the Trump Ocean Club International Hotel & Tower in Panama.
- US$100 million (about EUR79 million) 7% senior secured notes due 2026 issued by the Panama Canal Railway Company, operator of a 47-mile railway running adjacent to the Panama Canal and linking the Pacific and Atlantic coasts of Panama.
- US$175 million (about EUR137 million) multi-series senior secured notes issued by Bahía Las Minas Corp, the largest thermal generation company in Panama and a subsidiary of Suez Energy, to finance a coal conversion project.

25. What are the different methods of raising finance through the issue of debt securities in your jurisdiction (for example, bonds and EMTNs)?

Debt securities are issued on the debt capital markets in a number of ways. The most common forms are:

- **Bonds.** Bonds are debt instruments issued typically with a maturity of one year or more. They can be issued in a number of forms including:
  - fixed rate;
  - floating rate and variable rate bonds;
  - zero coupon bonds;
  - equity linked bonds;
  - agro-industrial bonds; and
  - corporate notes.
- **Commercial paper.** Commercial paper is a debt instrument with a maturity of one year or less, which is registered with the CNV and subject to the registration, disclosure and ongoing requirements of the Securities Act.

26. For new issues to be cleared and settled through Euroclear or Clearstream, what percentage use the New Global Note (NGN) structure? What percentage retain the classic or traditional global note structure?

This is not relevant to the Panamanian market.

27. Is there a distinction between admission to listing and admission to trading for debt securities?

See *Question 2*.

28. Please describe the main market(s) (including any exchange-regulated market or multi-lateral trading facility (MTF)) for debt securities and summarise the following in relation to each market:

- **The regulator.**
- **Any minimum size requirement.**
- **Any minimum trading record required.**
- **Any working capital requirements.**
- **Number of issues traded.**
- **Annual cost of being listed.**

- **Regulator.** The regulator of the capital markets is the CNV.
- **Size limits.** There is no size limit requirement on the total market value of securities to be listed.
- **Trading record.** There is no minimum trading record requirement on the BVP.
- **Working capital.** There is no minimum working capital requirement on the BVP.
- **Number of issues traded**. As of 31 October 2008, there are 140 issues of commercial paper, one issue of corporate

notes, two issues of tourism bonds, 20 issues of mortgage bonds, one issue of agro-industrial bonds, and 129 bond issues traded on the BVP.

- **Annual cost.** There are two sets of annual fees:
  - **CNV Supervisory Fees.** These are equal to 0.01% of the outstanding number of debt securities, subject to a US$500 minimum (about EUR393 million) and a US$15,000 (about EUR11,775) maximum; and
  - **BVP Fees.** These are equal to US$100 (about EUR79) for the first series, and $25 (about EUR20) for each additional series.

LISTING ON THE MAIN DEBT CAPITAL MARKET(S)

29. What are the main ways of issuing debt securities on the debt capital market(s)?

The only formal debt capital market in Panama is the BVP. The Securities Act regulates all public offerings of securities, regardless of whether they are debt or equity offerings, therefore all registration, disclosure and ongoing obligations previously disclosed with regards to equity securities apply to debt securities.

30. Briefly outline the role of advisers commonly used when issuing and listing debt securities.

This is the same as for an IPO (*see Question 6*).

31. What are the principal documents produced when issuing and listing debt securities?

This is the same as for an IPO (*see Question 7*).

32. Please summarise the requirements for a prospectus (or other main offering document).

For debt securities, generally the same prospectus requirements apply as for equity securities (*see Question 8*).

33. Are there any exemptions from the requirements for a prospectus (or other main offering document)?

See *Question 9*.

34. Please outline the contents of the prospectus (or other main offering document).

See *Question 10*.

THE REGULATORY AUTHORITY

National Securities Commission (*Comisión Nacional de Valores*) (CNV)

Head. Juan Manuel Martans (Chairman)

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Main responsibilities. Among the main responsibilities of the CNV are:

- Promoting and strengthening the development of the securities market in Panama.
- Registration of public offerings of securities as well as other mandatory registrations.
- Issuing, suspending, revoking and cancelling all securities-related licences required by the Securities Act.
- Ordering the suspension of any activity in violation of the Securities Act or its regulations, including the suspension of operations and securities trading.
- Establishing the rules of commercial conduct and ethical norms which must be followed by all securities intermediaries and the enforcement of sanctions to any violations thereof.

35. How is the prospectus (or other main offering document) prepared and verified?

See *Question 11*.

36. Who is responsible for the content of the prospectus (or other main offering document) and any liability arising from its contents?

See *Question 12*.

37. Briefly explain the ways used to market debt securities.

For debt securities the same marketing methods apply as for equity securities (*see Question 13*).

38. Please provide a summary of the timetable for issuing and listing debt securities.

This is the same as for an IPO (*see Question 18*).

39. What is the approximate cost of issuing and listing debt securities?

The Securities Act establishes a registration fee for public offers of securities of 0.015% of the initial price of the offer (or the total amount of the offer), with a minimum of US$500 (about EUR393) and a maximum of US$50,000 (about EUR39,250), payable to the CNV.

The BVP charges a US$250 (about EUR196) fee for admission to trading of the first series of debt securities and a US$75 (about EUR59) fee for assigning that series a registration number. Each additional series pays a US$50 (about EUR39) admission-to-trading fee and a US$50 registration number fee. In addition there are other commissions for trades charged by the BVP and the brokers making the trade on the BVP.

40. What are the main tax issues that arise when issuing and listing debt securities?

Taxation of interest

Interest payable on debt securities is exempt from income tax or withholding requirements in Panama, provided that the debt securities are both:

- Registered with the CNV.
- Initially placed through a securities exchange or through an organised market in Panama. The only stock exchange currently authorised by the CNV is the BVP.

If the debt securities are registered with the CNV but they are not initially placed through the BVP, interest payments will be subject to a 5% income tax, which would have to be withheld by the issuer.

Taxation of dispositions

If the debt securities are registered with the CNV, any capital gains realised by a holder on the sale or other disposition is exempt from income tax in Panama, provided that the sale or disposition is made through a securities exchange or other organised market. The only stock exchange currently authorised by the CNV is the BVP.

If the debt securities are not sold through a securities exchange or other organised market:

- The seller is subject to income tax in Panama on capital gains realised on the sale of the debt securities, calculated at a fixed rate of 10%.
- The buyer must withhold from the seller an amount equal to 5% of the purchase price, as an advance in respect of the capital gains income tax payable by the seller, and it must pay it to the tax authorities within ten days of withholding.
- The seller can consider the amount withheld by the buyer as payment in full of the seller's obligation to pay income tax on capital gains.
- If the amount withheld by the buyer is greater than the amount of capital gains income tax payable by the seller, the seller can recover the excess amount as a tax credit by filing a special sworn income tax declaration with the tax authorities.

Stamp and other taxes

If debt securities are registered with the CNV, neither the securities nor any transaction agreements related to the offering of such securities are subject to stamp taxes. There are no sales, transfer or inheritance taxes applicable to the sale or disposition of debt securities.

Foreign investors

A person domiciled outside of Panama is not required to file a tax return in Panama, solely by reason of his investment in debt securities registered in Panama, provided that gains realised on the sale and disposition of those debt securities are, in effect, exempt from income tax as indicated above.

CONTINUING OBLIGATIONS

41. Please outline any continuing obligations to which companies with listed debt securities are subject, in particular:

- **The key areas covered by the obligations.**
- **Whether the same rules apply to domestic and foreign issuers.**
- **How these obligations are regulated and any penalties for breach.**

For debt securities the same continuing obligations requirements apply as for equity securities (*see Question 22*).

REFORM

42. Please summarise any proposals for reform and whether they are likely to come into force and, if so, when.

There are currently no proposals for reform.

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ARIFA

ARIAS, FABREGA & FABREGA

What we are… is what we've done

Established in 1911, Arias, Fabrega & Fabrega has been at the forefront of the legal profession, advising leading international financial institutions and multinational corporations, as well as some of the largest companies in Panama, for nearly 100 years. The firm has a distinguished reputation for consistently providing the highest quality legal advice and is highly recognized for its unparalleled expertise in structuring complex, innovative and sophisticated mergers and acquisitions, capital markets and financial transactions in Panama and the Central America region.

Counsel to	*In conection with…*
Morgan Stanley & Co.	US$100 million 7% senior secured notes due 2026 issued by the Panama Canal Railway Company
Morgan Stanley & Co.	US$549 million exchange offer by the Republic of Panama of Global Bonds due 2011 and 2012 for 9.375% US Dollar-denominated Global Bonds due 2029
Bear Stearns & Co.	US$220 million notes offering to finance the construction of the Trump Ocean Club International Hotel & Tower
Banco Latinoamericano de Exportaciones	US$300 million of unsecured corporate bonds offering of Banco Latinoamericano de Exportaciones in Perú
Citibank and Credit Suisse	US$255 million initial public offering of the shares of common stock of Intergroup Financial Services Corp.
La Hipotecaria	US$73 million securitization of residential mortgages for La Hipotecaria in the U.S. market
Citigroup Global Markets Inc. and Deutsche Bank Securities Inc.	US$160 million 7.170% subordinated notes due 2022 issued by the Panama branch of Banco de Crédito del Perú
Morgan Stanley & Co. and UBS Securities LLC	US$149,758,875 sale by Continental Airlines of 4,375,000 shares of common stock of Copa Holdings, S.A. in a SEC registered equity offering

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