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Recent reforms to banking law

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The Panamanian banking system was formalised in 1970, with a legal framework which promoted and favoured the creation of an International Banking Center with the presence of many of the largest and most prestigious banks of the world. In 1998, by means of Decree Law 9 (Banking Law), Panama significantly reformed its banking legislation, gathering concepts and principles of international application typical of integrated, sophisticated and effectively regulated and supervised markets.

Decree Law 9 created the Superintendence of Banks as an autonomous body, with the principal responsibility of supervising the banking system. This was followed by regulations issued by the Superintendence itself, thus creating a legal environment in accord with the main recommendations of the Basel Committee.

Taking into consideration the fact that the banking business being carried out in and from Panama has substantially increased and become more sophisticated, the Banking Law has been reformed by Decree Law 2 of February 22 2008, effective as of August 25 2008. These reforms seek to fit the legal framework for the new challenges and competition faced by the Panamanian banking system and, in particular, the International Banking Center.

Among the principal issues contemplated by the reforms to the Banking Law, the following stand out:

- The regulatory and supervisory capacity of the Superintendence of Banks is strengthened by extending its powers to regulate not only banks but also corporations that, together with banks, form a Bank Group which includes the holding companies of banks. The supervisory capacity of the Superintendence has also been extended to reach the activities of non-banking corporations affiliated to a Bank Group, which may represent a risk for the Bank Group.
- The autonomous and independent nature of the Superintendence of Banks is strengthened, in order to provide for the better administrative management and handling of its budget, with due controls and supervision. Moreover, a career framework for bank supervisors is created in order to optimise the administration of human resources. This is achieved through the creation of a specialised administrative career path and conditions under which the human resources of the Superintendence will have the incentives and compensations which will enable it to widen its technical capacity to supervise a market that is becoming more complex and sophisticated. This is done in the name of strengthening and maintaining the stability of the banking system.
- A procedure allowing foreign banks to request a preliminary authorisation for an international banking licence from the Superintendence is being contemplated as a way of anticipating any interruption which may occur in the continuity of business for reasons of *force majeure* or natural disasters. This authorisation would eventually enable transactions to be perfected, carried out or effected abroad direct from an office established in Panama. This preliminary authorisation would be renewed annually and it would not be deemed, by itself, a licence to carry out banking business from Panama.
- Although the minimum capital adequacy remains at 8% of total assets and out of balance operations representing contingencies weighted according to risk, the primary capital (or Tier I capital) must be equal to or not less than 4% of the assets and out of balance operations, representing contingencies weighted according to risk.
- Express legal authority is granted to the Superintendence to take into consideration other risks (such as market risk, operational risk and country risk) in connection with the valuation of capital requirements).
- The regulation applicable to banks with an international banking licence over which the Superintendence acts as home supervisor is considerably extended, and the Superintendence is granted power to call for capital *vis-à-vis* the risk-weighted assets to maintain a suitable liquidity and also to establish limits to the concentration of risks, both in the exposure on related parties and exposures on credits to a single person or those who may conform a particular business group with it.
- Although the historic principles on confidentiality established in the Banking Law are confirmed, some exceptions which were evident from a practical point of view are now legally recognised. For instance, banks do not require consent from their clients to disclose information to rating agencies for risk analysis purposes, or to data processing agencies or offices for accounting and operating purposes, provided that such agencies or offices maintain the confidentiality established in the Banking Law.
- The procedures to deal with cases of banks with problems or financial distress are modified by seeking to make them more expeditious and enhancing the possibility of particular depositors of small amounts recovering their savings.
- The sanctioning capacity of the Superintendence is extended, particularly on issues related to the undertaking of banking business without a licence: (i) non-compliance with the provisions on prevention of money laundering, funding of terrorism and related crimes; (ii) legal

requirements on capital; (iii) banking liquidity; (iv) submission of documents and reports to the Superintendence; and (v) prohibitions and limitations which the Banking Law imposes upon banks and Banking Groups, as well as the obligations on banking confidentiality.

- The enhancement of principles that attempt to provide a balance in the relationship between banks and clients who qualify as bank consumers, as per the applicable norms. Furthermore, this extends the powers of the Superintendence to hear and decide, at an administrative level, certain claims from consumers.
- The ability to designate beneficiaries in bank accounts is being contemplated.

It is expected that the Superintendence of Banks will issue further regulations in the near future in order to implement and develop the reforms introduced to the Banking Law.

Financial and corporate

Recommended firms
Tier 1
Aleman Cordero Galindo & Lee
Arias Fábrega & Fábrega
Tier 2
Icaza González-Ruiz & Alemán
Morgan & Morgan
Tier 3
Alfaro Ferrer & Ramírez
Galindo Arias & López
Patton Moreno & Asvat
Tier 4
Arosemena Noriega & Contreras
Fabrega Molino & Mulino
Sucre Arias & Reyes

Inflation in Panama is running rampant due to a steady increase in the amount of people and money entering the country. Foreigners, many American or European retirees, are flocking to the island and purchasing real estate, as the cost of living is still quite low compared to their home countries. Naturally, immigration and real-estate law are quite active due to the influx of new expatriates. There is also a spill-over of tourists from Costa Rica, which adds to the inflationary pressure.

Meanwhile companies like Procter & Gamble are moving out of Venezuela because they are nervous about the safety of their assets. These companies are setting up headquarters in Panama, bringing with them even more new people: Procter & Gamble alone is introducing 25,000 more workers to the island. The government has passed laws to encourage these moves; they also face fewer regulations than in they would in the US. Visa requirements for entry into the US are so rigid that many companies choose to train employees in Panama. In addition, the expansion of the Panama Canal has contributed to the influx of foreign companies, and consequently their employees.

The local capital markets are going along with the general economy. The lack of liquidity in the international markets has certainly had an impact on local borrowers, but the Panamanian banking system has managed to fill in the gap.

There are a number of infrastructure projects running parallel to the expansion of the Canal. There is a shortage of electricity in Panama at the moment, and there are at least two power purchase agreements for facilities of 200MW or more being offered for public option. The winning bidders will need to go to lenders or to the capital markets to obtain financing. Local banks are expected to be feature in these transactions, but they do not have the resources to be the primary source of financing.

In order to strengthen the banking system, lawmakers have passed an amendment to the banking law which will grant more discretion to the banking superintendents to oversee banks' liquidity. Among the provisions is increased protection for small depositors, like Panamanian workers. With its steadily growing economy, Panama is eager to compete with other international banking centres.

Aleman Cordero Galindo & Lee

Aleman Cordero Galindo & Lee has rapidly grown from the wave of privatisation in the nineties to become one of Panama's most prestigious firms. The practice now represents a wide range of international clients.

In 2008, the firm advised the lenders, including ABN Amro, BNP Paribas, Citibank, JP Morgan and Banco de Crédito e Inversiones, on a $100 million credit and guarantee agreement with companies of the Caravajal Group, the Colombian printing and packaging company. This transaction involved legal counsel from five different jurisdictions and companies from four different countries.

The firm again showcased its ability to work on multi-jurisdictional transactions when in July 2008 it was one of eight firms that represented a bank syndicate led by Citibank and the Dutch development agency FMO with respect to granting a $100 million loan to Costa Rica's Grupo M, a consumer electronics chain, to spur the company's growth across the region.

The firm has also been involved in capital markets transactions in the last year. Led by Arturo Gerbaud and Carlos Cordero, the firm advised the Panama Canal Railway Company in relation to the issuance of $100 million notes on the international markets.

Leading lawyers

Jaime Alemán
Carlos Cordero
Alejandro Ferrer
Arturo Gerbaud
Jorge Lee

Arias Fábrega & Fábrega

One of the oldest firms in Panama, Arias Fábrega & Fábrega is also one of the most respected. Says one competitor: "Arifa is one of the best firms in the country. Ricardo Arango is a very good attorney, and may be the best securities lawyer in Panama."

The firm also gains extensive praise from clients. "Arifa is a top firm in Panama, particularly with respect to complex structured financing," says one. "They are second to none in terms of experience, credibility, efficiency and capability."

Arifa has been involved in the recent boom in project finance in Panama. For example, the firm represented the Panamanian branch of BNP Paribas regarding the $184 million financing of the Cinta Costera coastal road project. The beneficiary of the funding was Constructora Norberto Odebrecht, the project's Brazilian concessionaire.

The firm also advised Citibank Japan on a $165 million syndicated credit facility for the financing of the Madden-Colón Highway. The road will link Panama City with Colón, to facilitate the transport of goods across the Panama Canal.

The firm has a proven track record for handling complex multi-jurisdictional transactions. In June 2008, Arifa represented Eurasian Natural Resources, a Kazakh mining company, on the exercise of its option to acquire a 50% interest in Bahia Mineração, a Brazilian iron ore developer, for $300 million. The deal required simultaneous closings in the UK, Brazil, Panama, and the Netherlands.

Leading lawyers

Ricardo Arango
Fernando Cardoze
Eduardo de Alba
Rogelio de la Guardia
LW Watson

Icaza González-Ruiz & Alemán

Icaza González-Ruiz & Alemán has a strong local presence, and a roster of prominent institutional clients.

The firm counselled Goldman Sachs on a $116 million acquisition financing in September 2007. The financing was for US private-equity group CPG's purchase of an 85% stake in a Panamanian beach resort from Colombian hotel group Decameron. This was considered large for a transaction that involved real estate outside of Panama City, which suggests that the country's tourism industry is healthy and growing.

In November 2007, Icaza, led by Gabriel González-Ruiz, represented Colombian business group Carvajal in its purchase of two plastic-products manufacturers in El Salvador. To execute this acquisition, Carvajal purchased an 80% share of the target companies' Panamanian holding company.

In February 2008, the firm again acted as counsel to Carvajal when the company secured a $200 million syndicated loan from a group of international lenders including ABN Amro and Banco Davivienda. The loan will fund the company's continued expansion in Central America.

Leading lawyers
Gabriel González-Ruiz

Morgan & Morgan

Morgan & Morgan, the largest and oldest firm in Panama, is able to use its size to its advantage. "Their practice is growing more comprehensive, and they have probably more departments and specialisations than other firms," comments a rival. The firm has always had a particularly strong offshore practice, but has recently made a concerted effort to penetrate the local market, which seems to be paying dividends.

In January 2008, Morgan & Morgan represented a Panamanian insurance brokerage firm on a joint venture with a private-equity fund and another insurance brokerage firm from El Salvador. This cross-border transaction was especially complex because the joint venture agreement contemplated the continuing operations of each insurance businesses in each jurisdiction. This added a layer of complexity to the corporate governance documentation required for the transaction.

The firm has also been involved in cross-border M&A deals. Led by Francisco Arias, Morgan & Morgan advised the shareholders of Ernesto Berard, a meat producer, on its sale to Grupo Nacional de Chocolates, a Colombian chocolate producer.

The firm has also been active in government procurement bids, including its representation of Grupo Wisa in a successful $115 million bid for the duty-free shopping areas of Tocumen International Airport.

Leading lawyers
Francisco Arias