

Legal 500

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Panama

Capital Markets

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This country-specific Q&A provides an overview of capital markets laws and regulations applicable in Panama.

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Panama: Capital Markets

1. Please briefly describe the regulatory framework and landscape of both equity and debt capital market in your jurisdiction, including the major regimes, regulators and authorities.

The securities market is regulated in the Republic of Panama ("Panama") by Law Decree N° 1 of July 8, 1999, as amended and restated from time to time ("Panamanian Securities Law") which also created the Superintendence of the Securities Market as an autonomous entity with exclusive power to regulate, supervise and inspect the securities market related activities, securities issuers, intermediaries, investment funds and other participants of the securities market, within and from Panama.

In addition to the Panamanian Securities Law, the Board of Directors of the Superintendence of the Securities Market has the power to issue regulations in development of the Panamanian Securities Law, and the Superintendent has the power to issue opinions which are binding.

Since, under Panamanian Securities Law, stock exchanges and clearing houses are self-regulated entities, issuers of publicly offered securities are also regulated by the regulations of said entities where securities are listed, and transactions are cleared.

2. Please briefly describe the common exemptions for securities offerings without prospectus and/or regulatory registration in your market.

The Panamanian Securities Law requires "securities" to be registered with the Superintendence of the Securities Market in three cases: (i) If they are publicly offered in Panama and/or to persons domiciled in Panama (the latter because there is a legal presumption that all transactions performed with persons domiciled in Panama are performed within Panamanian territory); (ii) if such securities are stocks issued by a company domiciled in Panama, with fifty or more shareholders who joined own not less than ten per cent (10%) of the issuer's paid-in capital at the last day of any fiscal year, unless holders representing at least 75% of the issued and circulating stocks of the issuer decide not to get

registered; (iii) securities listed in a stock exchange in Panama.

The Panamanian Securities Law exempts from registration before the Superintendence of the Securities Market, the following: (i) The offering and selling of securities either issued by or guaranteed by the State; (ii) the offering and selling of securities issued by international organisms in which the State participates; (iii) private offerings or placements, considering as such the offer made to no more than twenty five (25) persons that jointly will not result in the selling to more than ten (10) persons, within a period of one (1) year; (iv) offers made to qualified institutional investors; (v) offers, sales, distributions, assignments or exchanges of shares between the issuer and its stockholders, by reasons of an increase in capital, declaration of dividends, reorganization, dissolution, liquidation, merge, or the exercise of previous granted option rights; (vi) offers and sales of securities made by an issuer exclusively to its or an affiliated company employees, directors or officers.

Regulation 1-2001, issued by the Board of Directors of the Superintendence of the Securities Market determined that the following will be considered as qualified institutional investors, for the purposes of registration exemption: banks, insurance and reinsurance companies, registered investment funds, investment trusts, pension funds, broker-dealer houses acting for its own account, companies domiciled in Panama whose majority directors and officers have not less than two years' experience and having not less than US\$1 million equity according to its latest financial statements.

3. Please describe the insider trading regulations and describe what a public company would generally do to prevent any violation of such regulations.

Panamanian Securities Law expressly prohibits (i) to every person who becomes aware of facts of importance which are not of public character and which had been obtained through a privileged relationship, to use, knowingly, said information to unjustly take advantage of another person in the purchase or sale of registered securities; (ii) to furnish to another privileged information, when the one furnishing the information intends to make possible (or ought to have known that his action would

make possible) that the one receiving it will purchase or sell registered securities making improper use of said data. The person furnishing the information and the one that uses it shall be jointly and severally liable for the damages sustained by the persons which are unjustly affected by the improper use of such privileged information.

The Panamanian Securities Law considers the infringement of any above mentioned prohibitions as a very severe offense and the sanctions that may be imposed include: (i) fines equivalent to not less than the gross income earned and not greater than twice such gross income earned and if such criteria may not be used a fine of US\$1 million; (ii) suspension or limitation of the volume of transactions of the offender for up to two years; (iii) cancellation of licenses granted by the Superintendence of the Securities Market; (iv) separation from office and disqualification for up to two years.

The Panamanian Securities Law does not recognize any juridical effect to any offer, sale or any other kind of agreement or obligation related to securities that will be publicly offered, before the formal registration request has been filed, and authorizes to file a preliminary prospectus omitting the amount of securities offered, the price, the interest rate, commissions and expenses related to the sale of the securities. In addition, companies having securities registered or preparing to get securities registered with the Superintendence of the Securities Market may adopt internal policies and regulations to prevent the risk of insider trading violations by their employees and other company-related personnel.

4. What are the key remedies available to shareholders of public companies / debt securities holders in your market?

Any person that violates the Panamanian Securities Law or its regulations, shall be civilly liable for the damages caused by said violation up to an amount equal to three times the profit earned, or the loss avoided, as consequence of said violation. If two or more persons are charged for any violation, they shall be jointly and severally liable for the damages caused. Among said persons, upon petition of any of them, the court may allot the liability proportionately in relation to the fault of each one of them. In any case the rescission of the contract shall not be permitted.

Instead of initiating an action for damages, the affected party shall have the following options: (i) The purchaser of a registered security may opt to request the rescission of the purchase contract, and demand the refund of the

price paid for said security (plus interests on said price) less any distributions that he had received as holder of said security (including earned interests on said distributed sums), and deliver to the seller securities of the same class bought; (ii) the seller of a registered security may opt to request the rescission of the sales contract, and demand the refund of securities of the same class sold by refunding the price received for said security (plus interests on said price) less any distributions which the purchaser received as holder of said security (including earned interests on said distributed sums).

For the purpose of calculating the interests referred herein, the applicable interest rate shall be the prevailing interest rate in the local market for bank financing for amounts, tenors and terms similar to those of the amounts on which said interest must be calculated.

If the persons sustaining the damages cannot be easily identified, or are numerous, and the amount of the damages, when treated individually, would be so small that the action would result illusory, the Superintendence of the Securities Market may initiate an action in its own name to recover said damages. Every sum recovered by the Superintendence of the Securities Market due to said claim shall be sent, after having deducted the expenses of the Superintendence of the Securities Market and its advisors, to a trust created by the Superintendence of the Securities Market in the National Bank of Panama where it shall be kept with interests for the benefit of those who are entitled thereto. The Superintendence of the Securities Market shall make a good-faith-efforts to distribute said sum in a just and fair manner among the persons that are entitled to it and said efforts shall include the publication of notices in newspapers of national circulation related to the recovery of monies belonging to a class of investors. Should there be an unclaimed sum after three years from the date of the recovery, said sum shall become property of the State, free from further claim.

The voting powers, the authorizations and the consents granted with regard to registered securities are subject to revocation by any affected stockholder if they were obtained in violation of the provisions of the Panamanian Securities Law or its regulations, or if it were obtained by means of a communication which contained misrepresentations on facts of importance or that omit to divulge facts of importance that ought to be divulged so that the statements made therein were misleading or deceitful in light of the circumstances under which they were made.

In addition to the remedies provided by the Panamanian

Securities Law, there may be some contractual remedies such as penalty interests, acceleration of the due date and payment obligation, and the exercise of rights against collateral. If the issuer is not solvent enough to meet payment obligations, the creditors may initiate bankruptcy proceedings.

5. Please describe the expected outlook in fund raising activities (equity and debt) in your market in 2024.

While issuers and investors keep trusting the capital market for fund raising activities, this year 2024 started with great degree of caution due to several factors such as: the ruling passed on November 2023 by the Supreme Court declaring unconstitutional the concession agreement granted to Minera Panama, S.A. to exploit the copper mine, which will prevent Panama from receiving an income of approximately US\$700 million; the reduction, on March 2024, of the credit rating granted to Panama by Fitch Ratings, losing the investment grade, despite the fact that other rating agencies such as Moody's and Standard & Poor maintain its investment grade; the general environment of high level interest rates; and the elections programmed for May 2024.

After elections and with the appointment of the new Minister of Economy and Finance, Bloomberg reported on May 15, 2024, an increase in sovereign bonds' price. In addition, the new Minister of Economy and Finance announced discipline to keep under control the fiscal deficit and the newly elected President announced several important projects that will be executed such as a 200/240 miles long railroad to connect Panama City with Chiriquí, close to the border with Costa Rica; water reservoirs for the Panama Canal function and for drinking water; and the solution of the Social Security Pension Fund Program deficit.

The Superintendence of the Securities Market has been working together with the Panamanian stock exchange and other participants of the securities market to introduce new technology to increase their efficiency; to modernize the Panamanian Securities Law; to execute the necessary agreements with other countries to integrate securities market and make of Panama a hub to attract international securities issues from Latin America; and to regulate and attract environmentally sustainable investors, including a development of local market for carbon bonds.

It is too early to see statistical figures but based on the above we expect a very positive outlook for this year, 2024.

6. What are the essential requirements for listing a company in the main stock exchange(s) in your market? Please describe the simplified regime (if any) for company seeking a dual-listing in your market.

There is a Virtual Registration Window shared by the Superintendence of the Securities Market and the Panamanian stock exchange, where all documents submitted to the former (see our answer to question 24 below) may be viewed to run both registration and listing procedures simultaneously. The issuer must complete and deliver to the Panamanian stock exchange an application form, execute a listing agreement, execute a clearing agreement with the clearing house (which is an affiliate of the Panamanian stock exchange), deliver a copy of the executed paying, registration and transfer agent agreement, pay the corresponding listing and clearing services tariffs, deliver copy of the registration resolution issued by the Superintendence of the Securities Market, deliver copy of the informative prospectus.

There are two abbreviated registration proceedings applicable to recurring issuers (i.e., those having registered, issued and outstanding securities during the five years previous to registration request) and to those issuers previously registered in a well-known jurisdiction (as recognized by the Superintendence of the Securities Market). In the first case, the Informative Prospectus will be an abbreviated one (including risk factors, details of the offered securities and risk rating report as annex) and the documents include (i) the corporate resolution authorizing the issue of securities, draft contracts to be used. The Superintendence of the Securities Market must decide within five business days.

The Superintendence of the Securities Market may recognize the validity of registrations of securities made in recognized jurisdictions and may allow the public offer of said securities or their listing in securities exchanges established in the Republic of Panama.

7. Are weighted voting rights in listed companies allowed in your market? What special rights are allowed to be reserved (if any) to certain shareholders after a company goes public?

The Panamanian Securities Law does not specifically regulate weighted voting rights in companies having securities registered before the Superintendence of the Securities Market. Therefore, since there is no express prohibition, it must be understood that they are allowed.

In fact, regulations related to such registration of securities to be publicly offered require that the informative prospectus reveals what the company's corporate documents establish in regard to voting rights.

Panamanian Corporations' Law authorizes the issuance of one or more classes of shares which may suppress or restrict voting rights; said law also authorizes the creation of voting trusts and allow that articles of incorporation contemplate cumulative voting for directors' election.

8. Is listing of SPAC allowed in your market? If so, please briefly describe the relevant regulations for SPAC listing.

Notwithstanding the above, any legal vehicle willing to raise funds to be invested in securities is considered as an investment fund and therefore required to be registered as such with the Superintendence of the Securities Market. In addition, any person (including legal vehicles) willing to purchase more than 50% of issued and outstanding share capital of a registered company must comply with takeover/tender offer rules.

9. Please describe the potential prospectus liabilities in your market.

Panamanian Securities Law prohibits offerors to make offers for sale of registered securities, or to sell said securities, by means of a written or oral communication, including prospectuses, if said communication contains misrepresentations on facts of importance or omits to divulge facts of importance which must be divulged so that the statements made therein are not misleading or deceitful in light of the circumstances under which they were made.

If at any time, in the judgment of the Superintendence of the Securities Market, a prospectus sets forth false information or statements on a fact of importance or omits to divulge information or statements on facts of importance which must be divulged by virtue of the Panamanian Securities Law and its regulations, or that must be divulged in order that the statements set forth therein are not misleading or deceitful in light of the circumstances under which they were made, the Superintendence of the Securities Market may reject an application for registration, order that the use of said prospectus be suspended, or the public offering, or both, until it be amended or supplemented as it determines.

Even more, every final prospectus must be immediately

updated by means of a new prospectus or by means of a supplement, if during the period of an offering, an act occurs which (i) makes false any declaration on a fact of importance contained in the prospectus or (ii) requires that the act be divulged in order that a statement made on a fact of importance set forth in the prospectus, be not deceitful or misleading, in light of the circumstances under which it was made.

The person that violates any provision contained in the Panamanian Securities Law or its regulations, shall be civilly liable for the damages caused by said violation, up to an amount equal to three times the profit earned, or the loss avoided, as consequence of said violation, and fines up to US\$1 million may be imposed.

10. Please describe the key minority shareholder protection mechanisms in your market.

Minority shareholder protection mechanisms are not specifically addressed in the Panamanian Securities Law, but there are several legal provisions contained in the Panamanian Corporations Law and the Code of Commerce.

Those protection mechanisms are: (i) preemptive rights, (ii) constitution of voting trusts, (iii) cumulative vote, (iv) respect of shareholders' acquired rights, (v) right to challenge shareholders assembly resolutions, (vi) request a court order to call for shareholders meeting, and (vii) request the appointment of auditors.

Shareholders may not deprive, by a majority resolution, rights acquired by minority shareholders.

Every shareholder has the right to challenge before competent court and ask for suspension of execution, within 30 days, any resolutions approved by the majority shareholders in a meeting, if said resolutions contravene the law, the articles of incorporation or the bylaws.

Shareholders having 20% of issued and outstanding share capital may request a competent court to order the calling of a shareholders' meeting, and likewise, the appointment of external auditors to examine the company balance and social management.

11. What are the common types of transactions involving public companies that would require regulatory scrutiny and/or disclosure?

The most common types of transactions involving public companies that would require regulatory scrutiny and/or

disclosure are: (i) the request for voting proxies, and (ii) tender offers.

Panamanian Securities Law Panamanian Securities Law requires to every person or group of persons that acting in concert requests to more than twenty-five beneficial owners of registered securities, voting proxies, authorization or consent in relation to any matter or meeting, must comply with certain rules related to the procedure for distribution and use that must be given to said request, the information which must be divulged in it for the benefit of the stockholders and on the form of said request.

Likewise, every person, including the issuer, that in the Republic of Panama publicly makes an offer to purchase registered stocks of an issuer for twenty-five percent or more of the issued and outstanding capital of said issuer or for an amount of stocks which causes that, as result of the purchase of said stocks, said person acquires more than fifty percent of the issued and outstanding capital of said issuer, must notify the Superintendence of the Securities Market and comply with certain rules on the distribution procedure which shall be given to the documents containing the offer, on the information which must be divulged in said documents and on the form that same must have, in order to establish a fair process for all the parties.

12. Please describe the scope of related parties and introduce any special regulatory approval and disclosure mechanism in place for related parties' transactions.

"Related Parties" is defined in the Panamanian Securities Law as every person who (i) directly or indirectly controls, is controlled or under a common control with another, (ii) is associated with another, (iii) has a joint business with another. For registration purposes, the following are considered as Related Party to the Issuer (i) its directors, officers, and manager, (ii) share owner of 5% or more of issued and outstanding capital, (iii) spouse and relatives up to fourth degree of consanguinity.

If the persons designated as Placing Agent, Paying and Transfer Registry Agent, Financial Structurer and/or Marketer is a Related Party with the Issuer of securities, it must be revealed within the risk factors of the securities issue detailed in the Prospectus.

If the designated trustee (in regard to the guarantee and/or management trust associated with the securities issue) is a Related Party with the Issuer it must also be revealed in the Prospectus.

The same information or any amendment thereof must be revealed in the annual update report that every Issuer must deliver to the Superintendence of the Securities Market.

13. What are the key continuing obligations of a substantial shareholder and controlling shareholder of a listed company?

Share ownership of an Issuer must be disclosed in the Prospectus, same as any further changes and must update every previously provided information through quarterly and annual reports.

14. What corporate actions or transactions require shareholders' approval?

According to Panamanian Corporations Law, the business of the corporation shall be managed and directed by the board of directors, having full power subject to few limitations contemplated in the same law (e.g. sale, lease, exchange or otherwise dispose of all or part of its assets; merger; dissolution; amendments to the articles of incorporation; spin-off) and those established in the articles of incorporation.

15. Under what circumstances a mandatory tender offer would be triggered? Is there any exemption commonly relied upon?

According to Panamanian Securities Law, any person (including legal vehicles), who makes public offer to purchase registered shares of an Issuer, in an amount of 25% or more which result in the purchase of more than 50% of issued and outstanding share capital of said Issuer, must notify the Superintendence of the Securities Market simultaneously to the launching of the offer. If the offer results in the direct or indirect control of 75% issued and outstanding share capital of the Issuer, the offer must extend to 100%, in the same terms and conditions.

The Superintendence of the Securities Market may exempt certain tender offers provided it does not harm investors.

16. Are public companies required to engage any independent directors? What are the specific requirements for a director to be considered as "independent"?

The Superintendence of the Securities Market has

approved and recommended to Issuers the adoption of corporate governance guides and principles, however the same are not mandatory.

Issuers are obligated to disclose whether they have or not corporate governance principles and rules in their Prospectus and in their annual reports.

Current regulation that approved the recommended guides and principles, requires that one out of every five directors of an Issuer be an independent one. Under the same, to be an "Independent Director" the director may not (i) be directly or indirectly owner of 5% or more of voting shares, (ii) participate in the daily management of the Issuer, (iii) be the spouse or relative up to second consanguinity degree of a person engaged in the daily management of the Issuer.

17. What financial statements are required for a public equity offering? When do financial statements go stale? Under what accounting standards do the financial statements have to be prepared?

Issuers applying for securities public offering registration before the Superintendence of the Securities Market must provide audited financial statements for the last fiscal year and interim financial statements for the last quarter. After registration, issuers must deliver to the Superintendence of the Securities Market and make publicly available their quarterly financial statements, within two months following the closing of the quarter, and annual audited financial statements within three months following the closing of the fiscal year.

Financial statements must be prepared according to International Financial Reporting Standards (IFRS).

18. Please describe the key environmental, social, and governance (ESG) and sustainability requirements in your market. What are they key recent changes or potential changes?

Presently, the Republic of Panama has no specific regulation concerning ESG's requirements applicable generally to all companies. However, our country is signatory of the most important international treaties related to environment protection and has a several laws covering the matter, such as the law which created the National Environment Authority that is responsible of regulating the matter and oversee its compliance. The Labor Code contains several social rights that must be

respect by all companies operating in Panama. The Consumer Protection Law covers matters related to products' liability.

In addition, the Panamanian stock exchange has approved a reporting guide for those Issuers willing to attract investors concerned with ESGs issues.

19. What are the typical offering structures for issuing debt securities in your jurisdiction? Does the holding company issue debt securities directly or indirectly (by setting up a SPV)? What are the main purposes for issuing debt securities indirectly?

The most typical offering structure is that the operating company is the one that issues the debt securities. Holding companies issue debt securities (directly) when there are several operating subsidiaries.

It is not common to see SPVs issuing debt securities.

20. Are trust structures adopted for issuing debt securities in your jurisdiction? What are the typical trustee's duties and obligations under the trust structure after the offering?

Yes, trust structures are used for issuing debt securities in Panama. Trusts have been used as a special purpose vehicle, a guarantee and as a real estate investment fund.

The typical trustee's duties and obligations are (i) keeping by itself or through a certified accountant, of accounting, (ii) rendering of accounts, (iii) keeping or disposing of trust assets, (iv) paying of fees required to maintain the securities issue updated, (v) make filings required by law, (vi) defend trust assets, (vii) appoint paying agent same as registration agent.

21. What are the typical credit enhancement measure (guarantee, letter of credit or keep-well deed) for issuing debt securities? Please describe the factors when considering which credit enhancement structure to adopt.

The most common credit enhancement measures for issuing debt securities are guarantee trusts, mortgages, pledges, and risk ratings. The issuer may also agree on some affirmative and restrictive covenants. It is usual to establish a combination of the above-mentioned.

22. What are the typical restrictive covenants in the debt securities' terms and conditions, if any, and the purposes of such restrictive covenants? What are the future development trends of such restrictive covenants in your jurisdiction?

The most typical restrictive covenants in the debt securities terms and conditions are incurring indebtedness and liens, making restricted payments such as dividends and subordinated debt, transactions with related parties, limitations on sales and leasebacks.

23. In general, who is responsible for any profit/income/withholding taxes related to the payment of debt securities' interests in your jurisdiction?

Securities registered with the Superintendence of the Securities Market and traded in the Panamanian stock exchange are exempted from taxes (i.e., income tax, capital gains tax, stamp tax).

In general terms, the issuer is responsible for paying taxes and paying agents are withholding agents.

24. What are the main listing requirements for listing debt securities in your jurisdiction? What are the continuing obligations of the issuer after the listing?

The application for registration of securities before the Superintendence of the Securities Market, must be submitted by the Issuer through a local attorney at law and shall consist of two parts: (i) The Informative Prospectus (containing information related to the Issuer, its businesses, shareholders, directors, officers,

managers, related parties and financial and operational results; risk factors and assessment; the terms and conditions of the securities issued, including financial terms; collateral, if any; tax treatment); and (ii) the additional information and documents that must be provided according to current legal provisions.

Documents, include, among others: (i) Power of attorney; (ii) identification documents; (iii) Shareholders Form; (iv) certificate issued by the secretary regarding the issued and outstanding capital; (v) resolution of the Board of Directors authorizing the public offer of securities; (vi) sample of securities to be offered; (vii) audited financial statements corresponding to the last fiscal year and interim financial statements corresponding to the quarter prior to the application date; (viii) draft contracts that will be used; (ix) sworn statement by the Legal Representative related to Corporate Governance; (x) risk assessment report issued by a duly authorized entity; (xi) Informative Prospectus; and (xii) payment receipt of registration fee.

The Superintendence of the Securities Market share the request and documents with the Panamanian stock exchange for their simultaneous review and observations or registration.

The Superintendence of the Securities Market must decide whether to admit or deny any registration request within 30 days counted from the date of presentation unless any additional information or documentation is required.

Further to registration, the issuer must deliver to the Superintendence of the Securities Market and the Panamanian stock exchange its quarterly financial statements, annual audited financial statements, reports of any important events that may affect the securities and/or the issuer, and any amendments to the informative prospectus.

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