

LATIN LAWYER REGULATORS 2020

Superintendency of Banks in Panama

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Useful pages on the regulator website

- Main site
- List of licensed banks
- Published list of current regulation
- Panama's banking statistics
- Published sanctions

Key individuals

- Amauri A Castillo, Superintendent of Banks in Panama
- Yanela Yanisselly, Legal Director
- Javier Motta, Director of Financial Studies
- René Menéndez, Director for the Prevention and Control of Illegal Activity
- Nahila Melgar, Director for Risk Oversight
- Kathy de Guardia, Director for International Projects and Affairs

Regulatory oversight

The SBP is the regulatory body responsible for the implementation and enforcement of Decree Law No. 9 of 26 February 1998 and Decree Law No. 2 of 22 February 2008, consolidated into a single text by means of Executive Decree No. 52 of 30 April 2008 (Banking Law), and the supervision and regulation of all banks domiciled in Panama. No entity may engage in banking business in or from Panama without having been properly licensed and authorised by the SBP.

Under the Banking Law, there are three types of licences that may be issued:

- a general banking licence that allows an entity to engage in banking activities in Panama, as well as carry out transactions that are executed, performed or take effect outside Panama and perform any other activity authorised by the SBP;
- an international banking licence that allows a bank to engage from an office established within Panama in transactions that are perfected, consummated or have their desired effect outside the territory of Panama, and perform any other activity authorised by the SBP. The SBP may or may not act as the home supervisor for a bank with an international banking licence depending on whether or not the bank is subject to the regulation of its home supervisor (in which case it would be required to maintain and report certain capital adequacy other than initial paid-in capital and liquidity requirements applicable to a general banking licence holder); and
- a correspondent bank licence that allows licensed foreign banks to establish representative offices in Panama and perform certain activities as authorised by the SBP.

Each listed banking licence is issued at the discretion of the SBP. The approval process entails a review of applications and their accompanying documentation, interviews with the representatives of applicant banks and research about applicant banks by the SBP.

In addition to the issuance of banking licences, the SBP has the authority to:

- set capital and liquidity ratio requirements, lending limits, mandatory reserves and mandatory accounting standards;
- authorise the opening and closing of branches and material changes in the ownership of banks;
- authorise the merger, sale or consolidation of banks or the sale of all or substantially all of their assets;
- decide on the liquidation, intervention in, merger or reorganisation of any licensed bank;
- demand the removal of executive officers of any bank;
- impose sanctions on banks for non-compliance with the Banking Law and its regulations;
- issue secondary rules and regulations in accordance with the Banking Law; and
- interpret the Banking Law and its regulations.

Banks and other financial institutions wishing to offer trust services consistent with Panama's trust laws must also obtain accreditation as a fiduciary. A fiduciary licence creates additional reporting obligations for licensees.

Reporting and disclosure obligations

Banks in Panama are required, on a weekly, monthly, quarterly and annual basis, to supply information to the SBP that includes:

- financial statements;
- corporate governance information;
- reports of suspicious transactions;
- credit exposure information;
- special reports on liquidity and capital adequacy consistent with the Basel III guidelines; and
- for general licence banks, other specific reporting obligations.

In addition, banks are required to make any additional reports or submit documents that are necessary for the SBP to ensure compliance with Panamanian banking laws and regulations. These requirements are principally summarised in SBP Accord No. SBP-RG-0001-2015.

The information required by the SBP is comprehensive, and banks must maintain a robust internal compliance structure to both adequately provide periodic financial reporting and also ensure that all governance, suspicious transaction and financial compliance reports are accurate and submitted on a timely basis.

The reporting requirements are applicable to both general licence banks and those banks with an international banking licence that treat Panama as their home jurisdiction. The sharing of information and delivery of reports by, and other compliance functions of, such banks are vested directly with a legally required compliance office.

Financial information

The financial information reporting delivered by banks takes the form of either átomos (micro-reports or bulletins about specific financial items), financial tables, pre-agreed forms for specific transactions or periodic financial information (monthly, quarterly and annually). átomos cover a variety of critical financial figures and topics including current banking officials, current shareholders, registered investments (with information covering risks and provisions), derivative and FX holdings, existing guarantees, weekly cashflow, interest rates and liquidity measures. Similarly, financial tables must be presented to show compliance with certain critical measures such as capital adequacy, assets and liabilities, off-balance sheet transactions and other things. Reporting obligations may also be triggered by specific events such as auditor disputes, or accounting, fraud or other operational risks.

In addition, the SBP requires that audited and interim financial statements must also be delivered on an annual and quarterly basis, respectively.

Banks with fiduciary licences are also subject to additional periodic reporting to the SBP that must include information relating to their trust activities.

Corporate governance

The SBP requires annual certifications relating to both corporate governance and audit committees, and information on the annual compliance of the management with measures regarding operative risks. Reports are detailed and often involve direct participation by members of a bank's board of directors.

Suspicious transaction reporting

Banking entities are required to provide transaction reports relating to cash withdrawals and other suspicious transactions to the Unidad de Análisis Financiero (UAF) (Financial Analysis Unit of Panama), which is responsible for the analysis of all information relating to money laundering and the financing of terrorism or the financing of weapons of mass destruction. These reports include details of:

- deposits or withdrawals of cash or near cash in excess of US\$10,000;
- exchanges of low denominations for high denominations or exchanges in currency in cash or near cash for amounts in excess of US\$10,000;
- collections in cash or quasi-cash for an amount of US\$10,000 or more; and
- the cashing of cashier's or travellers cheques made out to the bearer or with blank endorsements and issued on recent dates.

Credit exposure analysis

Compliance reports on the consolidated exposure limits of a banking group must be made as established by the SBP. The information must be reported by banks subject to the SBP's supervision and control. Banks shall be responsible for communications between the regulator and the banking group, and for the timely submittal of required information.

Liquidity and capital adequacy

Banking regulations on capital adequacy in Panama take into account the recommendations of the Basel Committee. The SBP has adopted and implemented various guidelines under Basel III through the Banking Law and various regulations. The SBP requires general licence banks and international licence banks for which it acts as the home supervisor to provide reports with a calculation of the liquidity coverage ratio as determined by the Basel Committee on Banking Supervision in accordance with Basel III standards.

The subsidiaries of Panamanian banks established in foreign jurisdictions are also required to observe the legal and regulatory provisions applicable in Panama regarding the sufficiency of capital, as prescribed under the Banking Law.

Specific reporting by general licence banks

General licence banks are specifically required to obtain a notice or consent from the SBP for certain matters. In particular, a general licence bank must:

- notify the SBP before opening or closing a branch or office in Panama and obtain approval from the SBP before opening or closing a branch or subsidiary outside Panama;
- obtain approval from the SBP before liquidating its operations, merging or consolidating with another bank, or selling all or substantially all of its assets;
- notify the SBP, within the first three months of each fiscal year, of the name of the certified public accounting firm that it wishes to appoint as its independent auditor for the new fiscal term;
- obtain the prior approval of the SBP of the credit rating entity it wishes to hire to perform the credit rating assessment;
- publish the credit rating issued by any rating agency and any credit rating update in a local newspaper; and
- provide the written affirmation of its audited financial statements signed by the bank's board chair, chief executive officer and chief financial officer.

In addition to active reporting obligations, the SBP is authorised to request from any bank, or any company that belongs to the economic group of which a bank in Panama is a member, the documents and reports pertaining to a bank's operations and activities.

Monetary sanctions and recent behaviour

The SBP's monetary sanctioning regime extends to improper operations without a licence, failure to submit reports or permit inspections, failure to satisfy rules relating to capitalisation and liquidity, and violations of confidentiality laws. Operating without a proper banking licence may result in fines of up to US\$1 million. The following may result in fines of up to US\$500,000:

- failure to submit to inspection;
- insufficiency of a bank's capital or liquidity requirements;
- any failure in a bank's reporting obligations under the Banking Law;
- any insufficiency in a bank's capital or liquidity requirements;
- the pledging of bank shares;
- exceeding loan portfolio concentration risks with related parties;
- the acquisition of real estate for any purpose other than for its operations, in connection with the execution of a guarantee or for the purpose of immediate resale;
- the merger or sale of a bank without prior authorisation;
- the acceptance of any deposits or receipt of any funds when a bank is insolvent; and
- non-compliance with the confidentiality laws.

The SBP also imposes monetary sanctions for cases of non-compliance with anti-money laundering laws, including failure to provide transaction reports for specific kinds of suspicious transactions or for a failure to maintain and manage the adequate risk management policies and procedures relating to such laws. In connection with these requirements, the SBP routinely examines banks to assess compliance with anti-money laundering laws, regulations and procedural standards and may provide comments

or findings of deficiencies. The sanctions associated with any violations relating to anti-money laundering regulations may range from US\$1,000 to US\$1 million.

Any general non-compliance with the Banking Law may, in addition to the non-monetary sanctions described below, also include fines of up to US\$250,000. A bank will be jointly and severally liable for any fines imposed on directors or bank employees.

Since 2015, the SBP has been actively publishing sanction amounts and the banks involved in such sanctioning. The SBP has also more actively pursued banks for failures to engage in adequate reporting or to maintain adequate risk management systems. While the specific details of violations are kept private, the applicable provisions of the Banking Law and the value of fines are made public.

Many of the monetary sanctions levied in the past couple of years have related primarily to failures to maintain adequate control systems relating to anti-money laundering requirements or failures to report suspicious transactions. Since 2018, the costs associated with these fines has increased dramatically, with banking institutions being fined up to US\$500,000 for deficiencies in anti-money laundering compliance.

In addition, during 2018 there were numerous fines imposed on banks associated with violations of the capital adequacy rules (in part due to the changing standards associated with the implementation of Basel III). Fines relating to inspections or capital adequacy appear to range between US\$10,000 and US\$50,000. The SBP has also routinely levied fines in connection with general audits or special inspections carried out on all banks' compliance obligations.

Non-monetary sanctioning powers and behaviour

Aside from monetary fines, the SBP may use non-monetary fines in connection with the general enforcement of a bank's obligations under the Banking Law. The tools available to the SBP include both private and public reprimands and, in extreme cases, the right to suspend licences. To the extent that violations continue or persist, the SBP is entitled to impose progressively more stringent measures, and may ultimately opt to impose monetary fines of up to US\$250,000.

The right of the SBP to continue to impose more severe sanctions for continued non-complying conduct and its broad oversight power may serve to deter continued breaches of regulatory obligations. In the extreme case of operating without the appropriate banking licence, the SBP may forcibly intervene in a non-licensed bank and, if such allegations prove true, forcibly close down its operations.

In rare cases, the SBP may also suspend banking and other licences. If the SBP considers that a violation of anti-money laundering laws is sufficient to justify the suspension of any licence, permit or certification of a sanctioned party, it may do so by issuing a resolution. This policy has been in effect since April 2017.

Anecdotally, the SBP is sensitive to some of the publicity consequences associated with the use of public sanction measures. As a result, they have in the past been willing to deliver only private admonishments to regulated entities that cooperate with investigations (although the SBP's determinations are discretionary).

Recent and upcoming developments

In January 2020, a new Superintendent, Amauri Ariel Castillo Chang, was appointed. In interviews, the Superintendent has committed to promoting local public trust in the banking sector and international cooperation on the sector. In particular, in public statements the new Superintendent has reiterated a focus on improving the image of Panama's banking sector to counteract the banking sector's recent identification as a tax haven in the EU list of non-cooperative tax havens.

In addition, making necessary legal adjustments and coordinating meetings with the Financial Action Task Force to address Panama's placement on the organisations' anti-money laundering grey list have been given high priority.

During 2019, the SBP adopted a number of regulatory changes, including a reduction in the total percentage of assets that a bank with a general licence in Panama must maintain in the Republic of Panama (from 85% to 60%).

The SBP has also announced that it is working on financial technology-related regulation and reforms. Following the 2019 presidential election in Panama, an entrepreneur in the financial technology sector was appointed to the board of directors of the SBP in a bid to ensure that its regulatory oversight keeps pace with technological development.

Other important recent developments include the National Bank of Panama's adoption of a real time gross settlement system designed to settle interbank payments on an individual order basis. It is expected that the system will enter into effect in 2020 and contribute to improved liquidity. The Superintendent has recently expressed a strong view that developing the

necessary regulatory framework to allow for an electronic and instantaneous payment mechanism for the local settlement system is a top priority.

Following recent interventions in internationally licensed banks in Panama, the SPB has announced that it is also reviewing and revising the process for intervening in and undertaking the liquidation of banks. Under the Banking Law, banks facing insolvency and other issues are subject to a special SBP-led intervention regime. A draft reform regulation for this regime is currently under the review of the Asociación Bancaria de Panama (Panamanian Banking Association). The reforms are aimed at improving the flexibility of interventions in non-performing banks. The measures are intended to improve the speed with which a bank intervention can be carried out. It is possible that the response may also address the treatment of set-off and netting obligations in the context of derivatives and hedging transactions.

Challenges

The regulator is currently facing critical challenges in connection with local economic activities and a changing international regulatory landscape.

Domestically, the SBP will likely see a trend of increased consolidation in the banking sector as a result of increasingly demanding compliance requirements and more stringent capital and liquidity requirements. Such heightened regulatory requirements, when combined with reduced domestic growth forecasts in Panama, will continue to contribute to bank mergers. Bank mergers and consolidations are overseen by the SBP, and increased consolidation will likely place growing demand on the SBP's oversight resources.

Internationally Panama will face continued pressure from the Financial Actions Task Force and the European Union, which recently placed the country on its non-cooperative jurisdiction list. This listing may lead to increased regulatory obligations for licensed banks and may also increase reporting requirements and cooperation with other regulators.

Interacting with the regulator

The SBP is a professionalised regulator that has experienced career officials and a board of directors that includes various private sector participants with industry experience.

The regulator is known for being fairly accessible and willing to coordinate calls and other informal communication in addition to more formal channels. Nevertheless, in the context of an investigation or similar procedure, officials are, as might be expected, more reserved in their involvement.

Many SBP officials can speak and work in English, but all formal communication with the regulator must be in Spanish. The regulators maintain strong working relationships with local banking institutions and the local banking association, the Asociación Bancaria de Panama, which typically have more ready access to the regulator. Local banking institutions generally have healthy working relationships with regulators and cover many matters directly with them. Pursuant to the Banking Law, each bank's compliance officer is charged with serving as the primary liaison between the bank and the SBP or UAF.

Notes for foreign investors

While the SBP does not have specific restrictions relating to foreign entities or participants, it does maintain different licence levels, which may involve different levels of oversight and additional restrictions. In particular, banks operating under a general licence will have specific limits in place in connection with their portfolio of assets. Banks must exercise caution in ensuring that their banking activities are confined to the type of licence awarded to the banking institution.

Additionally, interbank relationships are specifically regulated, and banks are prohibited from maintaining any interbank relationship with banking institutions that do not have a physical presence in their home jurisdiction or are otherwise not affiliated with a regulated financial group.

Other regulators it works closely with

Domestic

- Superintendencia de Mercados de Valores (SMV): Capital Markets;
- Superintendencia de Seguros y Reaseguros: Superintendency of Insurance and Reinsurance of Panama; and
- Unidad de Análisis Financiero (UAF): Financial Analysis Unit of Panama.

International

- Foreign supervisory authorities for the sharing of supervisory information under the principles of reciprocity, appropriateness, national agreement and confidentiality, including the US Federal Reserve Board, the Office of the Comptroller of Currency of the Treasury Department, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision and the Office for Savings Supervision.



Estif Aparicio
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Estif Aparicio is an accomplished partner at Arias, Fábrega & Fábrega and as of 2020, he heads the firm's capital markets and banking group. Mr Aparicio has worked on many of the most complex cross-border financial transactions that have taken place in Panama in recent years. He has extensive experience in the areas of securities regulation; banking and finance; mergers, acquisitions and joint ventures; antitrust, trade and competition; and taxation. From 2004 to 2006, Mr Aparicio worked for the government as chief trade negotiator of all bilateral and multilateral free trade agreements. In this role, Mr Aparicio coordinated Panama's participation in the Doha Round of the World Trade Organisation, successfully negotiating free trade agreements with the US, Singapore and Chile. Mr Aparicio also worked for Sullivan & Cromwell LLP in New York, participating in capital markets, M&A and project finance transactions. Mr Aparicio has a Master of Law from the University of Houston Law Center and a Bachelor of Law from the University of Panama. He is a Fulbright scholar. Mr Aparicio is currently senior vice-chair of the International Bar Association's Latin American Regional Forum. He is admitted to the Panama and New York Bars.



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Donald Patrick Canavaggio joined the firm in 2018, working with clients and advising them on complex M&A transactions as well as cross-border financial transactions. Mr Canavaggio has proven experience in advising foreign private issuers in Latin American markets such as Argentina, Chile, Costa Rica, Mexico and Peru. From 2013 to 2018, Mr Canavaggio worked as an associate for Milbank, Tweed, Hadley & McCloy LLP in New York, focusing on private and public capital markets and secured transactions, including high-yield offerings. Mr Canavaggio has a JD from the University of Pennsylvania Law School and a Master of Arts in international studies from the Joseph H Lauder Institute for Management & International Studies at the University of Pennsylvania. He is admitted to the New York Bar. Mr Canavaggio is fluent in Spanish, English and Portuguese.



Established in 1914, Arias, Fábrega & Fábrega 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 over 100 years. Our legal teams, organised into 30 practice areas led by truly specialised lawyers, offer our clients comprehensive and integrated legal services with a multidisciplinary approach. Our legal practice covers capital markets, banking and finance, mergers and acquisitions, corporations, regulatory work, government contracts, trade, competition and antitrust, real estate, environmental matters, employment relations, trust and estate planning, litigation, taxation and intellectual property. We are proud of our distinguished reputation for consistently providing the highest quality legal advice and for our unparalleled expertise in structuring complex, innovative and sophisticated transactions in Panama and the Latin American region.

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