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CHAMBERS GLOBAL PRACTICE GUIDES

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# Fintech 2024

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# PANAMA

## Law and Practice

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**Morgan & Morgan**



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**Morgan & Morgan** is one of the largest and most reputable full-service law firms in Panama, with roots dating back to 1923. The fintech department, comprised of over ten legal professionals, assists both traditional players in the banking and financial sectors which are embracing fintech developments, as well as new market players with innovative technology seeking to establish themselves, and clients in other niches such as e-commerce and crowdfunding schemes. The team helps clients navigate all types of B&F, regulatory, technology, cyber-

security and data protection work, taking into consideration Panama's underdeveloped legal framework. The firm has been there to support its clients in their digital transformation and in their response to this new era, especially in the post-COVID stages. Among others, the firm has assisted: PedidosYA (Delivery Hero), Oracle, Latam Digital Marketing (Google), MFTECH, S.A. (Mercantil Group), Wompi (Bancolombia Group), Nequi (Bancolombia Group), Guatt, Inc, Coinflip, Binance, and Elaniin – Mercandu.

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## 1. Fintech Market

### 1.1 Evolution of the Fintech Market

The evolution of the fintech market in Panama continues to be a point of interest for foreign investment and the local development of start-ups, although there is limited specific regulation in place, despite the clear interest on the part of the public and private sectors in the development of this market.

From a regulatory perspective, there has been limited development in the last year, as none of the several bills that have been submitted in the legislative branch of government have been successful. Nevertheless, fintech business has continued to grow, including tech business models developed by traditional players in the banking business.

In the next year, the most significant development would be if, finally, legislation could be put in place that allows for more legal certainty and security in these types of businesses, particularly in regard to their standing vis-à-vis the local regulators.

## 2. Fintech Business Models and Regulation in General

### 2.1 Predominant Business Models

Even though the fintech landscape is wide open, Panama's new and legacy players have currently concentrated on a few specific business models, as follows.

#### Payment Service Providers (PSPs)

These companies offer payment processing services by digital means, such as peer-to-peer, merchant services, or cross-border transactions. Generally, these companies offer techno-

logical integrations or standalone platforms that ultimately facilitate payments in a prompt and secure manner.

#### Cryptocurrency Exchanges

Due to the current lack of regulation, legacy players generally do not participate in this business model. However, despite the lack of formal regulation, new players are entering this space and offering this service. Some of these players offer most of the services provided by well-known cryptocurrency exchanges (custody of fiat and/or cryptocurrency, exchange, leverage, etc), while others are limited to the exchange of fiat and/or cryptocurrency.

#### Digital Wallets

Due to the lack of regulation regarding digital wallets, legacy players have been able to leverage on their banking licences to provide digital wallets within their respective ecosystem. New players have mostly avoided this business model due to the potential liabilities derived from infringing the current deposit-taking regulations.

### 2.2 Regulatory Regime

Panama has a unified regulatory regime, meaning that there is no distinction between state or federal regulation. Industry participants can be subject to one or more of the following three verticals that compose the regulatory regime.

#### Banking

The main legal source for this vertical is Executive Decree 52 of 2008 – the Single Text of the Banking Law (the “Banking Law”) – and the sector is supervised and regulated by the Superintendency of Banks (“SBP”). The SBP oversees banks, trust companies and exchange houses, thus any business model which carries out activities within the referred scope will be subject to

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either registration or licensing requirements from the SBP.

## Securities

The main legal source for this vertical is Decree Law 1 of 1999 on the Securities Market in the Republic of Panama and the Superintendence of the Securities Market (the “Securities Law”). The sector is supervised and regulated by the Superintendency of the Securities Market (the “SMV”), which oversees brokerage houses, investment advisers, stock exchanges, fund administrators, clearing houses, and credit rating agencies, among others. Thus, any business model that carries out activities within the referred scope will be subject to licensing requirements from the SMV. Additionally, the SMV supervises issuers and the registration of public offerings of securities.

## Financial Companies

There are various legal sources for this vertical, which encompasses lending companies, pawn shops, money remittance houses and movable goods leasing companies. This vertical is supervised and regulated by the Directorate of Financial Companies attached to the Ministry of Commerce and Industry (the “MICI”). Lending companies are entities that engage in lending activities without deposit-taking activities.

As stated above, depending on the scope of the business model, a company may be subject to one or more of the regulations detailed above.

## 2.3 Compensation Models

Companies normally charge their customers directly, having clearly communicated pricing and payment terms. However, depending on the specific business model and the regulatory vertical in which the company operates, there may be additional standards or specific informa-

tion that must be included in the disclosures. For example: (i) whenever a brokerage house has a conflict of interest, a separate and independent disclosure must be made to the customer; and (ii) lending companies must include specific information (interest, term, number of payments, etc) in their contracts. In general, local law requires companies to provide full disclosure to their clients with regards to the compensation models of their business.

## 2.4 Variations Between the Regulation of Fintech and Legacy Players

As of now, the regulations applicable to fintech industry participants do not differ from those applicable to legacy players. This is due to the lack of formal recognition of newer business models and more innovative enterprises in Panama’s regulatory framework. In other words, the regulatory landscape has not caught up with the emergence of fintech. Local laws and regulations have been made and implemented around traditional financial institutions, and these regulations do not yet include more flexible parameters or simplified licensing requirements for fintech companies.

## 2.5 Regulatory Sandbox

There is currently no regulatory sandbox available for fintech companies. Regulators are aware of the lack of specific regulations relating to fintech companies, and depending on the business model, they try to accommodate fintech within the existing legal framework. However, they are ultimately limited by the lack of regulations and, in many cases, they simply state that the fintech company is not subject to their supervision.

## 2.6 Jurisdiction of Regulators

As mentioned in 2.2 Regulatory Regime, the regulatory reach of each of the three main regulators of the financial sector is determined by

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the activities carried out by the company. For example, if a single company engages in public lending and issuing securities, said company will have to engage with the MICI and SMV. As a result, companies need to have clarity over the specific services to be provided and obtain the applicable registrations or licensing.

## 2.7 Outsourcing of Regulated Functions

Depending on the nature of the regulated function, it may or may not be allowed to be outsourced. Whenever local regulations allow for outsourcing, they generally state the requirements that the vendor must meet, or state whether said outsourcing is subject to notification or prior approval from the regulator. The vendor is generally responsible to the party contracting the outsourcing, but engaging in outsourcing does not exclude the contracting party from its obligations and responsibilities to the regulator. Outsourcing of regulated functions must be evaluated on a case-by-case basis.

## 2.8 Gatekeeper Liability

Panama has issued several laws and regulations relating to anti-money laundering (AML) matters. In this sense, financially obliged subjects have a responsibility to monitor and examine the activities carried out on their platforms or servers. However, this responsibility stems from being a regulated financial subject and not from being categorised as a “gatekeeper”. At present, there is no formal categorisation of a company as a “gatekeeper”.

## 2.9 Significant Enforcement Actions

The three main verticals and their respective regulators share similar enforcement actions. The applicable regulator has the faculty to impose penalties based on the evaluation criteria determined by the corresponding legal source. Generally, the legal source determines which actions

and/or omissions are defined as very serious infractions or lesser infractions. Depending on the extent of the infraction, sanctions can include monetary fines, loss of licences or registration to carry out the activities, suspension of activities, removal of personnel from the position of administration or control, or other measures as mandated by the applicable law.

## 2.10 Implications of Additional, Non-financial Services Regulations

As mentioned before, there are no distinctions between legacy players and fintech companies. In general terms, however, there are a few applicable non-financial service regulations.

### The Electronic Commerce Law

In Panama, electronic commerce is regulated by Law 51 of 22 July 2008, as amended to date (the “Electronic Commerce Law”), which applies to businesses that work through the internet and are offered in Panama. The Electronic Commerce Law relates mainly to electronic contracts and the conditions relating to the validity and effectiveness of said contracts and establishes the obligations and responsibilities of providers of commercial services through the internet, including those who act as intermediaries in the transmission of content by social media networks and the exchange of commercial information and documentation electronically, including offers, promotions and contests.

### The Data Protection Regulation

Law 81 of 2019 regulated by Executive Decree 285 of 2021 (the “Data Protection Regulation”) regulates the protection of personal data of natural persons, as well as its handling, storage, and treatment. The Data Protection Regulation applies to data processing that originates or is stored in Panama and data processing carried out within the framework of a commercial activ-



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ity on the internet, or any other means of electronic or digital communication in accordance with the Electronic Commerce Law, to guarantee data protection in activities aimed at the Panamanian market.

Whenever a person/entity obtains the personal data of its users, it is important that it implements a privacy policy that respects the “ARCO rights” enshrined in the Data Protection Regulation. Such person/entity must also obtain the necessary consents from its users for the collection, use and processing of their personal data, in addition to complying with the requirements in case of transfer of said personal data to third parties (local or cross border).

## Law 45

Law 45 of 2007 (“Law 45”), which dictates regulations on consumer protection and defence of competition is also applicable to financial service providers. In general, Law 45 implements standards for providing information in a clear, truthful manner and without inducing confusion. For example, credit products must expressly and visibly indicate the total amount of the debt, the effective interest rate applied and its calculation method, the commissions, as well as indicating the natural or legal person providing the credit.

## 2.11 Review of Industry Participants by Parties Other than Regulators

Assuming that industry participants have some kind of registration or licensing, they will generally be required to obtain audited financial statements from auditing firms and present them to the regulators, along with other information.

## 2.12 Conjunction of Unregulated and Regulated Products and Services

Industry participants generally do not offer unregulated products and services in conjunc-

tion with regulated products and services. In any case, this must be evaluated on a case-by-case basis to determine the possible interpretation of the regulator.

## 2.13 Impact of AML and Sanctions Rules

AML rules impact fintech companies, because the regulation does not distinguish between established legacy players and fintech companies. Thus, except for specific vertical regulations, the obligations and responsibilities will be the same across the board.

Law 23 of 2015 (“Law 23”) adopts measures to prevent money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, and dictates other provisions which are further regulated by Executive Decree 363 of 2015 (“Regulation of Law 23”). Article 22 of Law 23 lists the financially obliged subjects, which are supervised by the SBP in matters of compliance with Law 23, the Regulation of Law 23, and other corresponding agreements related to the prevention of money laundering, financing of terrorism and financing of the proliferation of weapons of mass destruction (the “Compliance Laws”). The Compliance Laws establish a series of measures that financially obliged subjects must implement to prevent the improper use of their services.

It is worth noting that it is possible for an entity to be subject to the Compliance Laws, but not subject to licensing requirements. For example, entities dedicated to payment processing services and issuers of electronic money are financially obliged subjects and must register with the SBP in order to comply with the Compliance Laws, but they are not required to obtain a licence for their activities. Thus, it is possible that a fintech company may not be required to have a licence from any of the regulators, but it could be sub-

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ject to registration requirements with the SBP, only for the purposes of the Compliance Laws.

Law 23 establishes a regime of administrative sanctions for those that violate its provisions. The supervisory bodies will apply sanctions considering the seriousness of the offence, the recurrence and the damage caused. Sanctions may include fines of between USD5,000 and USD5 million and these may be imposed on individuals and entities that fail to comply. In addition, progressive sanctions are provided for continuous violations, and corporate responsibility is established, attributing the acts of employees to the obliged entity.

## 3. Robo-advisers

### 3.1 Requirement for Different Business Models

As mentioned previously, Panama does not have a special regulatory framework for companies in the fintech industry, including robo-advisers. Therefore, there are no applicable regulations or requirements for robo-advisers, besides the applicable AML legislation (Law 23) and the Data Protection Regulation. However, SMV regulates “investment advisers”, which is any person who, in exchange for compensation, carries out the business of advising others regarding the determination of the price of securities or the convenience of investing, buying, or selling securities, or who prepares and publishes studies or reports related to securities, or advises in forex. However, these regulations for investment advisers apply to individuals and companies, through their employees, that offer investment advisory services to their clients, but there is presently no clarity as to whether these regulations apply to robo-advisers.

### 3.2 Legacy Players’ Implementation of Solutions Introduced by Robo-advisers

Presently, legacy players in Panama have not developed or are only beginning to develop robo-adviser services for their clients. However, it is only a matter of time before all legacy players will be offering these services to their clients, since there is a trend in Panama for legacy players to create and implement fintech products and services, based on modernisation and the current changing dynamic of services offered to a new wave of clients that want to leverage technology for their financial services.

### 3.3 Issues Relating to Best Execution of Customer Trades

There are no special regulations in Panama about best execution of customer trades. However, some securities laws applicable to brokers establish that the individuals that carry out broker services have an obligation to perform their duties with the diligence and care that a person uses in their business. In addition, brokers must perform their duties under strict observance of ethical principles, good conduct and transparency.

## 4. Online Lenders

### 4.1 Differences in the Business or Regulation of Loans Provided to Different Entities

There are no significant differences in the business or regulation of loans to individuals, small businesses and others, as the activity of extending loans to persons and/or legal entities is regulated based on the source of the funds that are used to extend the loans, and not on whom the funds are loaned to. Entities that extend loans are either licensed banks, whose activities are regulated by the Banking Law, or financial compa-

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nies (*empresas financieras*), whose activities are regulated by Law 42 of 2001 (as amended from time to time, the “Financial Companies’ Law”). An entity will be regulated under the Banking Law when it raises funds from the general public (through deposits or other means) and then uses those funds to, for example, extend loans to third parties. On the other hand, an entity will be regulated under the Financial Companies’ law when it uses its own funds to extend loans to third parties.

## 4.2 Underwriting Process

Both licensed banks and financial companies will look into the potential client’s creditworthiness in the *Asociación Panameña de Crédito* (APC), a tool used by such entities to assess a person’s credit rating, in order to correctly assess the risk attached to the loan. Moreover, licensed banks are required, by law, to have credit committees and risk committees, which assess and approve (or reject) loans, based on the potential borrower’s profile and the credit risk of the transaction.

## 4.3 Sources of Funds for Loans

There are a variety of sources from which funds can be raised by a company in Panama, such as loans or equity investments from peers or private equity firms, loans from banks and/or financial companies, as well as by private or public offerings of securities. Lending between peers or by private equity firms does not require licences or permits, as long as such activities do not fall within the definition of “banking business” (as defined and regulated under the Banking Law), and as long as it is not in the ordinary course of business. If the activity of lending to third parties is habitual and within the ordinary course of business, the entity would be considered a financial company, as regulated under the Financial Companies’ Law, and would require a

licence issued by the Ministry of Commerce and Industry to carry out such activity.

On the other hand, equity fund-raising may be regulated depending on the target of the equity fund-raising. In Panama, public offerings of securities are regulated by the Securities Law and Agreement No 2-2010 (as amended) issued by the SMV.

Under the Securities Law, public offerings of securities must be registered with the Superintendencia when such offer or sale is made by an issuer or an affiliate of the issuer, or by an offeror of said issuer or said affiliate in the Republic of Panama. A sale or offer for sale of securities will be deemed to have been made in the Republic of Panama when such offer or sale is made to people domiciled in the Republic of Panama, regardless of whether such offer or sale was made from the Republic of Panama or from abroad. All those securities that are the object of a public offering, except for those securities that are exempt from registration with the SMV, require authorisation from the SMV. To obtain such registration, a registration application, together with the prospectus regarding such offering, needs to be submitted for approval to the SMV.

## Exemptions From Registration

However, the Securities Law allows for certain exemptions from registration, such as (i) sales or offers for sales of securities that are made to persons domiciled outside the Republic of Panama; (ii) sales or offers for sales of securities made by an issuer or an affiliate of the issuer, or by an offeror of said issuer or said affiliate, to no more than 25 persons, and which result in the sale of said securities to no more than ten persons, within a period of one year; or (iii) sales or offers for sales of securities made by an issuer

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or an affiliate of the issuer, or by an offeror of said issuer or said affiliate, to institutional investors (as defined by Agreement 1-2001 issued by the SMV, as modified from time to time). Note, however, that while the last exemption in (iii), does not require registration, certain formalities need to be complied with pursuant to Agreement 1-2001 issued by the SMV, such as notifying (as opposed to registering) the SMV of such offering.

#### 4.4 Syndication of Loans

Syndication of loans frequently occurs in Panama, however, there are no specific laws or regulations regarding the syndication of loans.

### 5. Payment Processors

#### 5.1 Payment Processors' Use of Payment Rails

In Panama, even though there has been growing interest over the last few years and bills have been submitted to further regulate the Sistema Nacional de Pagos, to include regulations for none banks or financial companies involved in payment processes, regulation is currently focused on the clearing house side which is performed and supervised through and by the Banco Nacional de Panama, a state-owned bank.

There is no regulation which grants authority to monitor, supervise or authorise payment processors which are not banking entities, except for the limited authority granted to the SBP for the purposes of Law 23. Therefore, there is room for the creation or implementation of new regulations to the extent they work within the clearing house system and existing local regulations.

#### 5.2 Regulation of Cross-Border Payments and Remittances

Money transfers are regulated by Law No 48 of 2003 ("Law 48") and therefore the person habitually engaged in such an activity would need to be registered, in the Money Remittance Company Registry (the "Registry"), as a Money Remittance Company (*Casa de Remesas*) with the Directorate of Financial Enterprises (DFE) of the MICI. Law 48 applies to persons that are habitually engaged in the transfer of money within Panama or from Panama.

Cross-border payments performed by banks are regulated by the SBP and certain rules and regulations apply to state-owned, general and international licensed banks performing wire transfers as ordering banks, intermediary banks and beneficiary banks.

### 6. Fund Administrators

#### 6.1 Regulation of Fund Administrators

Fund administrators are regulated by means of SMV Agreement 5-2003. A fund administrator is someone delegated the authority to administer, manage, invest and dispose of the securities and assets of an investment company. Any person that will conduct the activities of a fund administrator in or from Panama will be required to obtain a licence from the SMV. Thus, a person becomes regulated if their activities fall within the scope of the fund administrator.

Persons that provide administrative services such as accounting, secretarial or other administrative tasks, are not considered fund administrators.

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## 6.2 Contractual Terms

The contractual terms between fund administrators and investment companies are determined by the model contract of the fund administrator, which is presented to the SMV when requesting the licence. The model contract is a reference, and it may be adjusted on a case-by-case basis as long as it does not contravene applicable law.

## 7. Marketplaces, Exchanges and Trading Platforms

### 7.1 Permissible Trading Platforms Securities Trading Platforms

The Securities Law specifies that trading platforms on which securities and other financial instruments are traded should be regulated by the SMV and require a licence issued by such entity. The Securities Law defines “securities” as “[a]ny bond, negotiable commercial instrument, or other debt security, stock (including treasury stock), recognized stock right in a custody account, share, participation unit, participation certificate, securitization certificate, trustee certificate, deposit certificate, mortgage certificate, option, and any other security, instrument, or right commonly recognized as a security or determined by the [SMV] to constitute a security”. On the other hand, “financial instruments” are defined by the Securities Law as “[a]ny contract that gives rise to the creation of a financial asset for one entity and the creation of a financial liability or equity instrument for another entity”. Financial instruments thus include all financial assets and financial liabilities, whether securitised or not, as well as all their derivatives, whose underlying assets can be currencies, precious metals, and others. The Securities Law classifies securities trading platforms as “self-regulated entities”. For such purposes, securities trading

platforms must have internal rules and regulations, based on the following principles:

- to protect the interests of investors;
- to promote co-operation and co-ordination among individuals responsible for processing information about securities, as well as for trading, safeguarding, clearing, and settling securities;
- to ensure the fair and representative participation of its members in governing bodies;
- to ensure that the fees and expenses to be paid by its members are reasonable and equitably shared among them;
- to report to the SMV any violations of the Securities Law by its members, directors, officials or employees;
- to monitor members, directors, officials and employees to ensure compliance with their internal rules, and to establish corresponding disciplinary procedures and sanctions;
- to ensure the confidentiality of transactions; and
- to prevent deceptive and manipulative practices or any other actions that may affect market transparency, in order to promote fair practices in securities trading and to foster the development of an efficient market.

### Commodities Trading Platforms

Panama also allows for commodities trading platforms pursuant to Law 23 of 1997 (as amended from time to time) and Executive Decree 11 of 1998 (as amended from time to time). Commodities trading platforms are regulated by the National Commission of Commodities Exchange and require a licence to operate. Brokers also require a special licence to trade commodities within such trading platforms. Panama has one commodity trading platform, known as the Bolsa Nacional de Productos, SA (“BAISA”). Products that can be negotiated on commodities

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exchanges are any goods, services and products, whether of domestic or foreign production, and contracts or commercial documents that, in any way, represent, establish or grant rights over said goods, services or products.

## 7.2 Regulation of Different Asset Classes

As explained above, securities and financial instruments are regulated by the Securities Law and the SMV, while commodities are regulated by Law 23 of 1997 (as amended from time to time) and Executive Decree 11 of 1998 (as amended from time to time).

## 7.3 Impact of the Emergence of Cryptocurrency Exchanges

There are presently no applicable laws or regulations with regard to the issuance or transaction of virtual assets in Panama. There was an attempt to legislate the matter by means of Bill 697 of 2022, which ultimately did not become law. Moreover, the SMV has issued public statements indicating that cryptocurrencies are not “securities” (thus not regulated by the SMV) and warning the general public of the risks associated with cryptocurrencies, due to the fact that, in their view cryptocurrencies:

- lack a legal framework and thus are not under any supervision or regulation by a financial regulatory authority in the Republic of Panama;
- have no inherent value, being intangible, and their circulation occurs through the internet;
- do not have the approval or regulation of a central authority;
- are vulnerable to money laundering;
- are highly volatile and speculative assets; and
- involve a high risk of fraud.

Moreover, the SMV has issued public opinions stating that it does not have the legal authority

to regulate or supervise crypto-exchange platforms, and has advised that any entities that create and operate these platforms, must, in order to secure their investment, rights and obligations, limit their liability by prioritising transparency and warning investors or “users” that cryptocurrencies are not regulated.

## 7.4 Listing Standards

There are no regulatory listing standards.

In the case of registered securities and financial instruments, based on industry practices, public offerings for a total amount of less than USD12 million are not very common. Particularly, in the case of bonds, Agreement 2-2010 does require that the duration of revolving bond programmes be for no more than ten years. This does not mean that the maturity of the bonds issued under a revolving programme cannot be more than ten years from the date of issuance, but merely that the programme under which the issuer can issue the bonds, cannot last more than ten years.

## 7.5 Order Handling Rules

With respect to securities trades in an organised exchange, Agreement 5-2003 issued by the SMV, which regulates order handling, establishes that brokerage firms need to require their clients to issue orders that are clear and precise in their scope and meaning, so that both the issuer and the recipient of the order are fully aware of its effects. Orders may also be recorded with prior authorisation from the client, if placed over the phone. Entities that receive orders are required to execute them or take the necessary measures to deliver them to the entity responsible for their execution on the same day of their receipt, or if this is not possible, on the next business day. The entity receiving an order will include it in its order register, in strict chronological order,

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assigning each one a consecutive number and identifying which broker received each order.

Note that these rules only apply to entities that handle orders with respect to securities and financial instruments that trade in organised exchanges in Panama or elsewhere in the world.

## 7.6 Rise of Peer-to-Peer Trading Platforms

Peer-to-peer trading platforms of registered securities are currently not permitted in Panama, as the Securities Law requires that all trades of registered securities must be carried out through a stock exchange and through the investors' brokers and their brokerage accounts.

With respect to trading securities not subject to registration and other assets (such as cryptocurrencies), these are not regulated in Panama.

For peer-to-peer trading to prosper in Panama, the Securities Law would need to be amended to specifically carve out these innovative platforms from the definition of stock exchanges and establish clear rules on the type of transactions that peer-to-peer trading platforms can handle. However, fraud, money laundering and cybersecurity threats are big concerns for Panama's regulators, so changes are unlikely to happen very quickly.

## 7.7 Issues Relating to Best Execution of Customer Trades

Brokers, who are regulated by the Securities Law and the SMV, may not recommend to a client to buy, sell, or hold an investment in a specific security unless they have reasonable grounds to believe that such recommendation is suitable for said client, based on information provided by the client in an investigation conducted by the securities firm or securities broker to determine the

investment objectives, financial situation, and needs of said client, as well as any other information about said client known to the securities firm or securities broker. It is prohibited for any securities firm or securities broker managing an investment account on a discretionary basis or determining the volume and frequency of transactions made based on the client's inclination to follow the suggestions of said securities firm or securities broker, to carry out transactions that are excessive considering the magnitude and nature of said investment account, the needs and investment objectives of the client, and the transaction pattern of the investment account, in light of the commissions earned by the securities firm or securities broker.

Moreover, brokers are required, by law, to provide fair treatment to all their clients, and when, in the same transaction, a securities firm, in addition to acting on behalf of a client, acts on its own behalf or on behalf of a third party, it must inform the client, particularly if there are any conflicts of interest.

## 7.8 Rules of Payment for Order Flow

Payment for order flow is not regulated in Panama.

## 7.9 Market Integrity Principles

Under the Securities Law, markets should be designed to prevent deceptive and manipulative practices or any other actions that affect market transparency, to promote fair practices in securities trading, and to encourage the development of an efficient market.

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## 8. High-Frequency and Algorithmic Trading

### 8.1 Creation and Usage Regulations

High-frequency and algorithmic trading are not regulated in Panama.

### 8.2 Requirement to Register as Market Makers When Functioning in a Principal Capacity

Market makers are regulated by Agreement 2-2011 of the SMV, which regulates securities brokers, and dictates that stock exchanges must establish the rules that will govern market makers. The Latin-American stock exchange has established a rulebook for market makers, which indicates that market makers are a “fundamental pillar in financial markets, providing the opportunity to expand market reach and even engage in international transactions, leading to the benefit of being more recognized in other countries”. Under said rulebook, any securities broker can apply to be a market maker, which application is subject to the consideration of the board of directors of the stock exchange.

### 8.3 Regulatory Distinction Between Funds and Dealers

In Panama, the regulations do not make a distinction between funds that engage in these activities and dealers that engage in these activities.

The Securities Law in Panama does make a distinction about a dealer and a fund. The Securities Law defines a “broker-dealer firm” as a legal entity engaging in the business of purchasing and selling securities or financial instruments for third parties or on its own account. The operation of a broker-dealer firm is regulated by Title III of the Securities Law and Agreement No 2-2011 of the SMV. On the other hand, the Securities

Law defines a “fund” (“investment company” in Panama as used in the Securities Law), as a legal entity, trust or contractual arrangement that, by issuing and selling its own participation quotas, engages in the business of obtaining money from the investing public through one payment or periodical payments for the purpose of investing and trading securities, foreign exchange, metals and supplies, chattel property or any other property determined by the SMV. The operation of a fund is regulated by Title VIII of the Securities Law and Agreement No 5-2004 of the SMV.

Both business models require authorisation from the SMV. In the case of a broker-dealer firm, the legal entity requires a licence issued by the SMV. In the case of a fund, the legal entity must be registered with the SMV.

### 8.4 Regulation of Programmers and Programming

There are no regulations in Panama for programmers and programming to develop and create trading algorithms and other electronic trading tools, provided the programmers are not performing trades.

### 8.5 Decentralised Finance (DeFi)

There are no regulations in Panama for decentralised finance.

## 9. Financial Research Platforms

### 9.1 Registration

In Panama, financial research platforms are not subject to registration.

### 9.2 Regulation of Unverified Information

There are certain rules applicable to the disclosure of information in public offerings, for exam-



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ple, in order to protect privileged information and the manipulation of the market. See **7.9 Market Integrity Principles**.

### 9.3 Conversation Curation

As mentioned before, there are no regulations in Panama regarding financial research platforms; therefore, there are no regulations applicable to conversation curation. However, it is expected that financial research platforms should have internal rules about the behaviour and use of the platform.

## 10. Insurtech

### 10.1 Underwriting Process

Insurance and reinsurance business is supervised and regulated by the Superintendence of Insurance and Reinsurance of Panama (*Superintendencia de Seguros y Reaseguros* or SSR). The underwriting process is a mix of market customs, regulations (depending on the type of insurance) and, in addition, each insurance company will follow its own internal policies and rules.

### 10.2 Treatment of Different Types of Insurance

There is only one insurance regulator, which is the SSR, and regulation is mainly focused on the following lines of business, each of which requires its own respective licence:

- personal – individual life in all its modalities, collective or group, personal accidents, health, industrial, annuities, income, disability, loss of income, assistance to travellers or any other insurance covering exposure to loss and risks of persons;
- general – fidelity, fire and similar, maritime, land and/or air transport, sea and air hull,

automobile, aviation, civil liability, theft, technical branches, property titles, various risks, extensions of manufacturer guarantee, or any other insurance not included in the field of people and/or guarantee/bonds; and

- guarantee and bond – compliance with contract, with payment and other related guarantees or bonds related to the construction of works or for the supply of materials or equipment or any other bonds/guarantees.

Each of these lines of business has different applicable regulations (eg, for purposes of reserves or obligations of the parties).

## 11. Regtech

### 11.1 Regulation of Regtech Providers

Regtech providers are not regulated in Panama. However, financial companies generally use their services in order to comply with AML laws, such as Law 23.

### 11.2 Contractual Terms to Assure Performance and Accuracy

In Panama, there are no regulations regarding the terms and conditions of contracts with regtech providers. Therefore, financial services companies have the flexibility to negotiate the contractual obligations of the parties with the regtech providers.

## 12. Blockchain

### 12.1 Use of Blockchain in the Financial Services Industry

Due to a lack of regulation, traditional players have been reluctant to implement blockchain technology in the provision of their financial services.

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## 12.2 Local Regulators' Approach to Blockchain

There have been some legislative initiatives in recent years, but none have made it into law.

The most recent one was Bill 697 of 2022 “that regulates the marketing and use of virtual assets, the providers of virtual asset services, and dictates other provisions” (“Bill 697-2022”). Bill 697-2022, sought to:

- provide legal, regulatory and fiscal certainty to the use and holding of crypto-assets, the providers of virtual asset services, commercial actors of virtual assets and issuers of virtual assets and electronic money and other goods in the Republic of Panama, including the mitigation of risks of illicit use of such technologies;
- promote financial inclusion, the emergence of a robust ecosystem of innovation in financial services, greater competition among financial service providers, and freedom of choice by the financial consumer; and
- allow the incursion of the Republic of Panama in the provision of state-of-the-art technology services that promote financial inclusion through a virtual assets exchange platform and an official digital wallet, where natural and legal persons carry out transactions of these new technologies in a secure manner.

The original bill was approved by the National Assembly and later partially vetoed by the President of the Republic and returned to the National Assembly to be debated and adjusted according to the president's veto. On 28 October 2022, the National Assembly approved an updated version of Bill 697-2022 after adjusting those articles that were vetoed. On 26 January 2023, the President of Panama presented an objection of unconstitutionality to the Supreme Court of

Justice to decide on the constitutionality of Bill 697-2022 as approved by the National Assembly on 28 October 2022 (the version partly vetoed by the Executive Branch). On 14 July 2023, the Supreme Court of Justice decided that Bill 697-2022 was not constitutional and thus put an end to the bill.

## 12.3 Classification of Blockchain Assets

Blockchain assets are not regulated in Panama.

## 12.4 Regulation of “Issuers” of Blockchain Assets

This is not regulated in Panama.

## 12.5 Regulation of Blockchain Asset Trading Platforms

This is not regulated in Panama.

## 12.6 Regulation of Funds

This is not regulated in Panama.

## 12.7 Virtual Currencies

Currently, there is no regulation applicable to digital assets, cryptocurrencies, or virtual currencies in Panama. However, both the Superintendence of Banks of Panama (the “SBP”) and SMV have issued public notices and opinions (respectively) stating that they do not monitor cryptocurrencies in general. Each entity has specifically established the following:

### The SMV

Through Opinion 07-2018, the SMV indicated that it does not consider cryptocurrencies (specifically, bitcoin) as currencies, given that to date “in the Republic of Panama, no inherent value has been given to bitcoin or another type of cryptocurrency”. The SMV also confirmed that the concept of “securities” under the Securities Law does not encompass virtual currencies and/or currencies, so bitcoin is not considered a

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security. Finally, the SMV established that there is no forex regulation applicable to cryptocurrencies, since it only applies to currencies which are an exclusive and incidental activity of the broker-dealer houses.

Through a statement issued on 25 April 2018, the SMV referred to cryptocurrencies as “digital assets that are intended to make purchases, sales or other financial transactions, are created by companies or individuals and are stored electronically in a blockchain, a database that maintains a permanent record of these digital transactions”.

Therefore, the SMV does not consider that digital assets, cryptocurrencies or virtual currencies are subject to its supervision, so no licence is required to operate the activity object of this memorandum: “activity of exchange of virtual currencies or cryptocurrencies, using bitcoin as currency and with a view to adding other cryptocurrencies...”

### The SBP

Unlike the SMV, the opinions of the SBP are not publicly confirmed. However, on 24 April 2018, the SBP issued a public notice where it warned the general public about the use of “bitcoin or any other instrument of the same category” indicating that these do not have specific regulation, and are not within the competence of the SBP. Additionally, establishing that “as usual, the regulated entity must maintain due diligence measures to prevent the improper use of their services and platform, in accordance with the provisions of the Banking Law, Law 23 of 2015 and Agreement 10 of 2015 and other applicable regulations”.

Although cryptocurrencies, digital assets and virtual currencies are not regulated in Panama,

there are platforms under which these assets are traded or stored. Those operating these platforms would be advised to implement certain compliance measures, such as due diligence and KYC based on local regulation, to prevent the misuse of their services before allowing any person to use their platforms.

### 12.8 Impact of Regulation on “DeFi” Platforms

DeFi is not regulated in Panama.

### 12.9 Non-fungible Tokens (NFTs)

NFTs are not regulated in Panama.

## 13. Open Banking

### 13.1 Regulation of Open Banking

There is no local specific regulation on open banking. The banking business continues to be regulated and supervised by the SBP. Control over a natural person’s information has been more clearly secured by the existing Data Protection Regulation (as defined in **13.2 Concerns Raised by Open Banking**), which grants authority to natural persons to request all their personal data held by third parties.

### 13.2 Concerns Raised by Open Banking

The Data Protection Regulation regulates the protection of the personal data of natural persons, as well as its handling, storage and treatment. The Data Protection Regulation applies to the processing of data that originates or is stored in Panama and data processing carried out within the framework of a commercial activity on the internet, or any other means of electronic or digital communication in accordance with the Electronic Commerce Law, to guarantee data protection in activities aimed at the Panamanian market. The Data Protection Regulation

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includes obligations for banks and technology providers related to data privacy and data security. Furthermore, the SBP issued Regulation 1-2022, which establishes special regulations in relation to personal data handled by banks.

Therefore, consent of the customer/client is the general rule, as well as having the appropriate privacy policies and security protocols in place.

## 14. Fraud

### 14.1 Elements of Fraud

Both the Banking Law and the Securities Law contain dispositions that prohibit and sanction fraudulent activity. Legislation does not provide a specific list of the elements of fraud, however, in a general sense, fraud requires a person to have intent to deceive for personal gain or to cause harm to others by making false statements, material omissions or misrepresentations. Panama's Criminal Code also contains dispositions relating to fraud and financial crimes.

### 14.2 Areas of Regulatory Focus

Regulators supervise their regulated entities to prevent and detect any kind of fraudulent or illicit activity. They focus on investment fraud, accounting fraud, payment fraud and others.

## Trends and Developments

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**Morgan & Morgan**

**Morgan & Morgan** is one of the largest and most reputable full-service law firms in Panama, with roots dating back to 1923. The fintech department, comprised of over ten legal professionals, assists both traditional players in the banking and financial sectors which are embracing fintech developments, as well as new market players with innovative technology seeking to establish themselves, and clients in other niches such as e-commerce and crowdfunding schemes. The team helps clients navigate all types of B&F, regulatory, technology, cyber-

security and data protection work, taking into consideration Panama's underdeveloped legal framework. The firm has been there to support its clients in their digital transformation and in their response to this new era, especially in the post-COVID stages. Among others, the firm has assisted: PedidosYA (Delivery Hero), Oracle, Latam Digital Marketing (Google), MFTECH, S.A. (Mercantil Group), Wompi (Bancolombia Group), Nequi (Bancolombia Group), Guatt, Inc, Coinflip, Binance, and Elaniin – Mercandu.

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# PANAMA TRENDS AND DEVELOPMENTS

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## Market Overview and Trends

Fintech has revolutionised the financial world. It has provided a viable alternative for sectors of the population that had been historically left out of the banking system, and which were not able to enjoy the variety of financial services and products offered by traditional financial companies. The COVID-19 pandemic created a demand for many services, which forced the rapid digitalisation of these services (particularly, financial services) through the use of technological tools, doing away with the traditional, in-person provision of financial services. This helped boost fintech entities, and incentivised entrepreneurs to find new ways to provide services through technology.

Panama has been slow to implement adequate and modern legislation to allow fintech companies to easily establish themselves, develop and operate within the country. Many business models are not expressly prohibited or expressly regulated by Panamanian law, which gives entrepreneurs some leeway to establish their businesses and operate in compliance with the laws; however, these businesses should expect a bumpy ride when it comes to determining which laws and regulations will apply.

Nevertheless, actors within the private sector in Panama have implemented fintech solutions, and have been very successful, despite the fact that navigating the legal landscape has been challenging. According to research by the *Cámara Panameña de Tecnología de Información, Innovación y Telecomunicaciones* (“CAPATEC”), as of August 2023, there were about 31 fintech companies in Panama offering a variety of services, from payment systems and lending platforms, to crowdfunding and financial software services. This indicates that there is both supply and demand for fintech companies in Panama,

and that many have managed to navigate the legal hurdles and achieve their goal of providing financial solutions through technology.

There has also been some interest in crypto-space despite the lack of regulation, particularly as a way to service sectors of the population that do not have access to regular banks. At this point, it is salient to mention Bill 697 of 2022 (“Bill 697-2022”), which attempted to provide a legal framework for a series of financial services. Among the specific objectives of Bill 697-2022, it sought:

- to provide legal, regulatory and fiscal certainty to the use and holding of crypto-assets, the providers of virtual asset services, commercial actors in virtual assets and issuers of virtual assets and electronic money and other goods in the Republic of Panama, including the mitigation of risks of illicit use of such technologies;
- to promote financial inclusion, the emergence of a robust ecosystem of innovation in financial services, greater competition among financial service providers, and freedom of choice by the financial consumer; and
- to allow the incursion of the Republic of Panama in the provision of state-of-the-art technology services that promote financial inclusion through a virtual assets exchange platform and an official digital wallet, where natural and legal persons carry out transactions in these new technologies in a secure manner.

Bill 697-2022 determined that the scope of application was to all persons located in Panama, branches registered in Panama and legal persons organised in Panama that use crypto-assets in or from Panama. Article 6 determined that use of virtual assets is an expression of con-

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tractual freedom and monetary freedom, so that people located in the Republic of Panama can freely agree on the use of virtual assets as a payment processing service for civil or commercial operations that are not prohibited in Panama. Providers of virtual asset services were designated as “Obligated Financial Subjects” (*Sujetos Obligados Financieros*) as per the compliance laws and would have been subject to supervision by the banking regulator (*Superintendencia de Bancos* or SBP). Providers of virtual asset services would also be subject to a licensing requirement from the SBP.

Bill 697-2022 contained general obligations and standards for providers of virtual asset services, such as obligations to keep funds safe by means of either local bank accounts or bank accounts in countries recognised by the regulation of Bill 697-2022, or investing the funds in low-risk, safe and liquid investments as per the regulation of Bill 697-2022, or obtaining an insurance policy or bonds issued by an entity authorised by the Superintendence of Insurance of Panama or an entity from the countries recognised by the regulation of Bill 697-2022. Providers of virtual asset services would have been required to have accounting separation of the funds received from clients and management of operational risks, as per the standards to be determined in the regulation of Bill 697-2022.

Moreover, the SBP would have been empowered to further regulate specific services of providers of virtual asset services, considering the applicable market risks, compliance risks and consumer protection standards, among others.

Unfortunately, the President of Panama presented an objection of unconstitutionality to the Supreme Court of Justice to decide on the constitutionality of Bill 697-2022 as approved by

the National Assembly on 28 October 2022, and ultimately, the Supreme Court of Justice decided that Bill 697-2022 was unconstitutional, and it did not become law.

## Overview of Regulatory Framework

As mentioned above, as of today, the regulatory framework situation of Panama for fintech companies is limited, to say the least, despite various attempts to discuss and approve laws related to the fintech industry. However, serious players have come into the Panama market and have done an in-depth analysis of existing traditional business models, based on regulations related to traditional banking and financial services, to understand grey areas in existing regulation where they may operate, as a way to mitigate risk and make an effort to comply with local laws and regulations that allow them to operate more easily in the local market.

The following laws are relevant in this regard.

### The Banking Law

Executive Decree 52 of 2008 (the “Banking Law”) establishes that: “Any person is prohibited from raising, in or from the Republic of Panama, directly or indirectly, resources from the public through the acceptance of money on deposit or any other modalities, unless: (a) he has a license or authorization for the activity issued by an authority or regulatory entity competent by law, or (b) engages in recruitment activities that are expressly exempted by law from the requirement for a license, regulation, or authorization.”

### The Securities Law

Decree Law 1 of 1999 (the “Securities Law”) defines securities as “Any bond, negotiable commercial title or debenture, share (including treasury shares), trading right recognized in a custody account, participation quota, certificate



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of title, trust certificate, deposit certificate, mortgage bond, warrant or any other instrument or right usually recognized as a security or a security determined as such by the Superintendence. Said meanings do not include the following instruments: 1. Non-negotiable certificates or titles that represent obligations, issued by banks to its customers as a part of its usually offered banking services, such as non-negotiable certificates of deposit. This exception does not include negotiable bank acceptances or negotiable commercial securities issued by banking institutions. 2. Insurance policies, certificates of capitalization and similar obligations issued by insurance companies. 3. Any other instruments, titles or rights, which have been determined by the Superintendence as not being securities.”

### *The Remittance Law*

Law 48 of 2003, which regulates Money Remittance Houses (the “Remittance Law”) establishes that it applies to the activity of remittance houses, referring to that which involves the “... money transfer, whether through systems of transfers or transmission of funds, clearing of funds or by any other means, inside and outside the country...”

### *Law 23*

Law 23 of 27 April 2015, as amended (“Law 23”) adopts measures to prevent money laundering, financing of terrorism and financing of weapons of mass destruction, and applies to:

- regulated financial entities (*sujetos financieros regulados*) including, but not limited to, banks, trust companies, financial companies, leasing companies, factoring companies, issuers of credit cards, debit cards and pre-paid cards, and entities that issue payments or electronic money, among others (all of

which, for the purposes of this law, are supervised by the SBP); and

- regulated non-financial entities (*sujetos financieros no regulados*), which includes companies doing business in the Colón Free Trade Zone, foreign exchange companies, casinos, real estate companies or brokers, companies in construction, and lawyers and certified public accountants and notaries which perform certain specific activities including incorporating, operating, and managing legal persons, managing bank accounts (savings or investments), and acting as a resident agent, among others. The regulated non-financial entities are supervised by the *Intendencia de Supervision y Regulación de Sujetos No Financieros*.

Under Article 22 of Law 23, the regulated financial entities supervised by the SBP include money remittance companies and companies that issue payment services and electronic money. These entities must be registered before the SBP as such and comply with the applicable AML/KYC requirements under Law 23 and its regulations and rules issued by the SBP, which include compliance with certain reporting. These entities, which are regulated financial entities, are also supervised by *Unidad de Analisis Financiero* (UAF) which requires certain reporting as well.

### *Law 42*

According to Law 42 of 23 July 2001, as amended, and its regulation Executive Decree 213 of 26 October 2010 (“Law 42”), a financial company is “the natural or legal persons that will be committed to offering to the general public loans or finance facilities in monies”. Engaging in a finance business (as opposed to a banking business) in Panama, that is, the offering and granting of commercial and personal loans in or from Panama, is a regulated activity for which

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a licence to act as a finance company must be obtained from the Ministry of Commerce and Industry (the “MICI”).

## Law 51

Law 51 of 22 July 2008, as amended (“Law 51”), regulates e-commerce which it defines as any transaction or exchange of information for commercial purposes in which the parties interact using the internet. Law 51 includes obligations to have terms and conditions of service published that must be accepted by customers, as well as a privacy policy and security protocols for protection of information.

## The Data Protection Regulation

Law 81 of 2019 regulated by Executive Decree 285 of 2021 (the “Data Protection Regulation”) regulates the protection of personal data of natural persons, as well as its handling, storage and treatment. The Data Protection Regulation in general terms applies to the processing of data that originates or is stored in Panama and data processing carried out within the framework of a commercial activity on the internet or any other means of electronic or digital communication in accordance with Law 51, to guarantee data protection in activities aimed at the Panamanian market.

## Cryptocurrencies or Virtual Assets

Currently, there is no law or regulation applicable to virtual assets, cryptocurrencies or virtual currencies in Panama. In this context, both the SBP and the securities regulator (the *Superintendencia del Mercado de Valores* or SMV) have issued public notices and opinions (respectively) stating that they do not supervise cryptocurrencies in general. The securities regulator does not consider cryptocurrencies as “securities” because these are not encompassed within such definition in the Securities Law. Similarly, the banking

regulator does not consider cryptocurrencies and other digital assets as “legal tender” or any other monetary instrument subject to its jurisdiction, as the definition of “monetary instrument” in Agreement 5-2018 issued by the banking regulator indicates that monetary instruments are “[b]anknotes and metallic coins of legal tender in Panama or in any other country, traveler’s checks, precious metals, local and foreign checks, and any other type of resources, rights, goods or merchandise”. As a result of the above, crypto-exchanges and crypto-wallets have no clear regulator or regulation in Panama.

Specifically, each entity established the following:

## The SMV

Through Opinion 07-2018, the SMV indicated that it does not consider cryptocurrencies (specifically, bitcoin) as currencies given that, to date, “in the Republic of Panama, no inherent value has been given to bitcoin or another type of cryptocurrency”. The SMV also confirmed that the concept of “securities” under the Securities Law does not encompass virtual currencies and/or currencies, so bitcoin is not considered a security. Finally, the SMV established that there is no forex regulation applicable to cryptocurrencies, since this regulation only applies to currencies which are an exclusive and incidental activity of the broker-dealer houses.

In the Statement of 25 April 2018, it referred to cryptocurrencies as “digital assets that are intended to make purchases, sales or other financial transactions, are created by companies or individuals and are stored electronically in a blockchain, a database that maintains a permanent record of these digital transactions”.

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Therefore, the SMV does not consider digital assets, cryptocurrencies or virtual currencies to be subject to its supervision.

## *The SBP*

On 24 April 2018, the SBP issued a public notice where it advised the general public about the use of “bitcoin or any other instrument of the same category” indicating that such instruments do not have specific regulation and are not within the jurisdiction of the SBP.

At the date of said public notice, the SBP also indicated that no subject regulated by the SBP had requested authorisation to have “custody, invest, intermediate or operate with these instruments”. Furthermore, the SBP established that “as usual, the Regulated Subjects must maintain due diligence measures to prevent the improper use of their services and platform, in accordance with the provisions of the Banking Law, Law 23 of 2015 and Agreement 10 of 2015 and other applicable regulations”.

Based on the foregoing, it is clear that there is no regulatory framework for cryptocurrencies and virtual assets in Panama. However, clients have enquired about the legal situation of cryptocurrencies and virtual assets in Panama, because of their interest in creating and operating (from Panama) cryptocurrency and virtual asset exchanges, as well as e-wallets in which to store cryptocurrency and virtual assets. Nevertheless, as mentioned by the SBP, in the event that cryptocurrency or virtual asset platforms receive fiat money, they should comply with the AML laws, including Law 23 of 2015, which is subject to registration with the SBP, which oversees compliance with AML laws in Panama.

## **Other Trends**

### *Collaboration between traditional financial institutions and fintech companies*

Collaboration between traditional financial institutions and fintech companies has become increasingly common and beneficial in the financial sector. This collaboration allows both parties to leverage each other’s strengths and expertise to create innovative solutions and improve customer experiences. Many major banks understand that fintechs complement their services and they have opened innovation programmes and sought to engage with fintech start-ups through partnerships that help them adapt to this new way of operating. On the other hand, many have become fintechs themselves.

In Panama, many traditional banks have added technological tools to their portfolio of services, which has boosted their penetration of the market. For example, in 2023, Fintech Americas, a community of financial innovators, recognised Towerbank International Inc (which has a crypto-friendly bank account) and Banistmo (which operates Nequi, a digital wallet and payment platform), among others, for their excellence and innovation in the fintech ecosystem.

These developments are important because fintech companies and fintech solutions often help traditional financial institutions stay competitive. They also help traditional banks offer new products and services that they might not have developed internally. Fintech companies often improve the customer experience through digital solutions and user-friendly interfaces, which can help traditional institutions to attract and retain clients. Lastly, as is the case in Panama, fintech companies may lack the regulatory framework, expertise, and infrastructure of traditional banks, and collaborating and integrating with estab-

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lished financial institutions can help them navigate regulatory requirements.

## Cybersecurity

Cybersecurity is a key factor to consider in all fintech businesses. As developments in technology grow and expand, so does the cybersecurity risk, which can affect the integrity and financial and legal security of a business.

In Panama, cybersecurity has become one of the key issues in the government's agenda, even though implementation is still in progress. Resolution No 17 of 10 September 2021, of the *Consejo Nacional para la Innovación Gubernamental* approved a National Strategic Plan for Cybersecurity and the protection of critical infrastructure for the period 2021–2024.

Furthermore, Panama approved the Budapest Convention or Convention on Cybercrime, which is the international treaty addressing the need for “a criminal policy aimed at the protection of society against cybercrime, inter alia, by adopting appropriate legislation and fostering international co-operation”, through Law 79 of 22 October 2013, and formally adhered to it in March 2014. Specifically, Panama's Criminal Code includes as punishable crimes those transgressing “legal security of electronic means”.

The existing Data Protection Regulation specifically establishes obligations for the party responsible for the data treatment to adopt the necessary technical and organisational measures to ensure the safety of the data. There is an obligation to inform the local regulator and data subjects of any breach in security that may affect personal data.

## Outlook for the Future

It is clear that Panama's financial legal framework needs modernisation to keep pace with the rapid advancements in fintech and other disruptive business models. The failure of previous attempts to update legislation underscores the urgency of the situation. With general elections approaching in May 2024, there is hope for renewed political capital to address this critical task.

The forthcoming legislation could potentially encompass a wide range of areas, including digital wallets, cryptocurrencies, exchanges, crowdfunding, crowdlending, interoperability between existing stakeholders, and more. Also, to foster innovation, the new legislation might establish a regulatory sandbox where fintech firms can test new products and services under relaxed regulatory conditions.

Overall, the modernisation of Panama's financial legal framework presents an opportunity to promote financial inclusion, strengthen the country's competitiveness in the global digital economy, and solidify its position as a regional financial hub.

## Conclusions

To facilitate the operation of fintechs in Panama, it is necessary for banking regulations to be flexible enough to allow them to contribute to the financial inclusion that is so desired. Currently, Panamanian banking regulations are based on the traditional models and are therefore quite rigid, making it difficult to establish and operate fintechs that, for example, provide electronic wallet financial services, thereby discouraging investment in Panama and its financial system. Support and flexibility from the state are extremely important factors to promote the development of the technological sector in the

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country. Facilitating the entry of new players promotes competition, expands the range of services, and reduces costs. Fintech companies facilitate access to credit, the opening of bank accounts or other types of accounts, and money exchange between users, and they open the door to a whole sector of the population that may not have access to traditional banking or more sophisticated financial products (eg, access to investments in foreign stock exchanges). Additionally, they generate employment and investment. For example, in Colombia, the fintech industry, which comprises about 260 fintechs (offering services such as digital payments, SME loans, and crowdfunding) and generates 5,000 direct jobs, received investments worth USD360 million in 2020, positioning itself as the country with the third-highest fintech investment in the region, after Brazil and Mexico.

Given all of the above, it is extremely important for Panama to seek ways to facilitate the creation of business for these companies, and the establishment of clear legislation would be a great step in that direction. Although the absence of regulation is not necessarily negative for business and investment, it adds a level of uncertainty that investors – particularly foreign investors – are not comfortable with.

Although Panama currently lacks a regulatory framework for fintechs, there is no shortage of bills being proposed in the National Assembly to regulate these services, and it appears that, in time, one or more should be approved.