Banking Regulatory Capital in Panama: Legal Implications, Risks, and Transparency from a Comparative Perspective

Regulatory capital has become a cornerstone of modern banking law, serving as the legal safeguard of financial institutions' solvency. Beyond its accounting dimension, it constitutes the minimum capital backing required to absorb losses without compromising the stability of the financial system or affecting depositors. Its importance became particularly evident following the 2008 financial crisis, which exposed significant shortcomings in previous prudential frameworks and ultimately led to the adoption of Basel III by the Basel Committee on Banking Supervision (BCBS).

In Panama, banking regulation has progressively evolved toward convergence with these international standards. Article 70 of the Banking Law establishes the obligation for banks to maintain a minimum capital adequacy ratio equivalent to 8% of risk-weighted assets and off-balance sheet operations representing contingencies, as well as a minimum primary capital ratio of 4%. This framework is further developed through Agreement No. 1-2015 issued by the Superintendency of Banks of Panama (SBP), which adopts the Basel III structure: a Common Equity Tier 1 (CET1) ratio of 4.5%, a Tier 1 capital ratio of 6%, and a total capital adequacy ratio of 8% (Article 11).

Additionally, Agreement No. 5-2023 introduced the capital conservation buffer, effective as of July 1, 2024, requiring an additional 2.5% of risk-weighted assets composed exclusively of CET1 capital, on top of all existing minimum regulatory capital requirements. This requirement (Article 6) effectively raises the total capital threshold to 10.5% and carries significant legal implications, including restrictions on profit distributions and the obligation to submit capitalization plans in the event of non-compliance, under the direct responsibility of the Board of Directors (Article 8). More recently, Agreement No. 7-2025 entered into force, incorporating an additional capital buffer applicable to domestic systemically important banks, thereby further strengthening Panama's prudential framework and the resilience of its banking system.

Panama's regulatory framework broadly reflects the adoption of the three pillars of Basel III. Pillar 1, relating to minimum capital requirements, is incorporated through Agreement No. 1-2015 and complemented by regulations such as Agreement No. 11-2018 on operational risk and Agreement No. 3-2018 on trading portfolios. Pillar 2 is reflected in the authority granted to the SBP to require, through a reasoned resolution, higher capital levels based on the specific risk profile of each institution. Pillar 3, focused on market discipline, remains less developed, particularly with respect to standardized public disclosure requirements.

From a comparative standpoint, Panama shares a common foundation with the European Union in its core quantitative standards, as both frameworks derive from Basel III principles. However, the European regime—structured through Directive 2013/36/EU (CRD IV), Regulation (EU) No. 575/2013 (CRR), and its subsequent evolution under CRR3/CRD VI—includes additional mechanisms such as countercyclical buffers, requirements applicable to systemic institutions, and bank resolution mechanisms with loss-absorbing capacity (MREL). These mechanisms have not yet been developed in Panama to a comparable extent or level of sophistication. Likewise, the European Union has made significant progress in integrating ESG risks into prudential regulation, potentially signaling future areas of development for Panama's banking system.

These trends point toward the continued evolution of Panama's regulatory framework in a context where non-compliance with capital requirements may trigger the sanctions regime set forth in Title IV of the Banking Law, including measures such as the revocation of banking licenses, administrative and operational intervention, and eventual reorganization or forced liquidation. Among the principal regulatory risks are deficiencies in capital quality—particularly regarding CET1 and AT1 instruments—and the improper classification of instruments under Agreement No. 1-2015. Furthermore, in the context of international banking groups, Agreements No. 7-2014 and No. 5-2023 reinforce requirements related to consistency, transparency, and accuracy in the calculation of consolidated capital.

Nevertheless, while the European Union has implemented broader and more sophisticated disclosure standards under Pillar 3, Panama's regulatory framework has progressively strengthened its transparency and supervisory mechanisms, primarily through the monthly submission of information to the SBP and the publication of audited financial statements.

Overall, Panama's regulatory capital regime reflects significant progress and a clear alignment with Basel III standards. The introduction of more stringent requirements, such as the capital conservation buffer, reinforces the solvency of the banking system. For financial institutions, investors, and legal advisors, understanding this framework is essential to ensuring compliance, managing risks, and anticipating future regulatory developments.

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