40 YEARS

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DISPUTE RESOLUTION

Panama

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LITIGATION

Court system

1 | What is the structure of the civil court system?

At the first level are the municipal courts, with jurisdiction on matters not exceeding US$5,000 and certain case-specific matters (eg, eviction proceedings). The municipal courts have jurisdiction over a municipality. Appeals against decisions of the municipal courts are heard by the circuit courts, where three circuit judges act as the appellate court, one of them serving as the main appellate judge.

Next are the circuit courts, with jurisdiction on matters exceeding US$5,001 and certain case-specific matters (eg, oral proceedings related to challenges against resolutions of corporations and claims involving land). The circuit courts have jurisdiction over a province, except for the province of Panama, where three groups of circuit courts hold jurisdiction over a series of municipalities.

The provinces are distributed in what is known as judicial districts. For civil matters, the Republic of Panama has four judicial districts headed by a Superior Court: the First Judicial District, formed by the provinces of Panama, Colon, Darien, San Blas and Panama Oeste; the Second Judicial District, formed by the provinces of Coclé and Veraguas; the Third Judicial District, formed by the provinces of Chiriquí and Bocas del Toro; and the Fourth Judicial District, formed by the provinces of Los Santos and Herrera. Appeals against decisions of the circuit courts are heard by the Superior Courts or courts of appeal of the relevant province's judicial district.

The Superior Courts or courts of appeal generally serve as appellate courts for appeals against decisions of the circuit courts, as well as first instance courts for constitutional challenges against actions of public officials with jurisdiction over a province, and other matters. The Superior Court is composed of five magistrates for the First Judicial District and three magistrates for the other judicial districts. The magistrates act as an appellate court consisting of three magistrates, each alternating as the main magistrate on different cases, pursuant to case distribution rules.

Challenges against decisions of the Superior Courts are heard before the Civil Chamber of the Supreme Court of Justice, in particular, the writ of cassation. Three Supreme Court justices form the Civil Chamber.

Matters related to constitutional challenges are heard by the Plenary Assembly of the Supreme Court of Justice. The Supreme Court comprises nine justices overseeing four chambers, each chamber composed of three justices, namely the First Civil Chamber, the Second Chamber for criminal matters, the Third Chamber for administrative matters and labour litigation, and the Fourth Chamber for general matters.

Other special courts exist, such as the courts of commerce, composed of three (two active) circuit-level commercial courts of the first judicial circuit of Panama, and a Superior Commercial Court, part of the First Judicial District. In addition, special insolvency courts are to be incorporated into the civil court system, to eventually operate at the circuit court level, overseen by a Superior Insolvency Court, part of the First Judicial District. There are also two maritime courts with nationwide jurisdiction and a maritime court of appeals.

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

In civil matters, the burden of proof is borne by the plaintiff. Therefore, the judge's role consists of verifying and analysing the evidence produced by the parties in the proceedings, and forming their own concept, based on personal knowledge and experience, the applicable law and principles, and the rules for admission of evidence. This process is known as critical analysis. When conducting this critical analysis, the judge can request the production of evidence, including the assistance of experts; however, this analysis cannot make up for or supplement deficiencies of the parties, in particular as it relates to the plaintiff's burden of proof duties. Juries are not involved in civil proceedings. Civil proceedings are mostly of a written nature.

Limitation issues

3 | What are the time limits for bringing civil claims?

Different time limits apply depending on the nature of the claim.

The general time limit provided by the Civil Code for the filing of a personal claim for actions that do not have a particular time limit is seven years.

The general time limit for the filing of a claim for tortious damages is one year.

Real estate claims have a 15-year time limit.

The time limit for claims to seek payment of overdue leases is five years.

Claims to seek payment of civil services rendered by lawyers, notaries, experts, custodians, interpreters, arbitrators and services provided by pharmacists, medical doctors, engineers, chemists, teachers and professors, as well as lodging and food, and the sale of provisions to non-merchants or those merchants practising in another activity, are limited to two years.

It is not permitted for the parties to agree to suspend time limits; however, individuals with the capacity to dispose of assets can waive the acquired time limit.

The above are Civil Code-governed claims.

Note that civil proceedings also include claims governed by the Code of Commerce, where the default time limitation is five years.

Claims governed by the Code of Commerce subject to civil procedure include: claims for retail sales, claims for agents' wages, claims

for transportation contracts, broker's liability claims and insurance claims where the time limitation is one year.

Claims related to corporations and the resulting relations and liabilities between shareholders or partners, as well as with regard to the company; liability of liquidators or managers of corporations; interest due on leases when charged yearly or for lesser periods; collection of negotiable instruments; wholesale activity; and financial leasing and banking facilities have a time limitation of three years.

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

Considering the formal nature of civil proceedings, the plaintiff must verify that documents serving as evidence comply with the requirements of the governing law as well as for their admissibility (eg, signatures have been acknowledged before a notary, documents granted abroad have been legalised, documents have been signed by individuals with authority and certificates have been obtained within the legal timeline for their validity).

The plaintiff can try to secure or produce evidence that may otherwise not be available during the proceedings through prejudicial petitions that may include witness statements, inspections of places, objects or documents with the assistance of experts, special disclosure of accounting or financial records, and reports from private or public institutions. A security deposit (in the range of US$100 to US$1,000) for damages is generally required for the order to be effected.

A plaintiff can try to secure the claim through the prejudgment attachment of assets, such as cash in banks, movable assets, property recorded with the Public Registry, credits and inventories. A security bond for damages that may be caused, representing an estimated 25–40 per cent of the attachment amount or claim amount (the attachment amount cannot exceed the claim amount) is required in the form of cash deposited with the National Bank in the relevant court's account, insurance or bank guarantees, mortgages or public debt instruments; the amount is set by the court at its discretion. The prejudgment attachment is an ex parte application; once the order has been effected, the plaintiff must file the complaint within the following six days and serve the defendant with proceedings within the following three months; otherwise, the complaint may be dismissed.

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

Proceedings commence through the filing of a complaint. Once the complaint is admitted, the court instructs service on the defendant. The defendant is personally served through the judiciary. If the defendant is a corporation, then its legal representative would have to take service. If the defendant or its representative is not within Panamanian jurisdiction, letters rogatory must be sent to the foreign jurisdiction through diplomatic channels. The defendant must be provided with a copy of the complaint and order of admission, and will be required to sign the order of admission. At such moment, the term for answering the complaint shall commence. If the defendant cannot be located, an absentee party defendant shall be appointed.

The Panamanian judiciary's caseload is significant and the allocated budget is restricted, and as a result the progression of proceedings is slow.

Timetable

6 | What is the typical procedure and timetable for a civil claim?

The timeline for an ordinary civil claim is as follows:

- filing the complaint;
- answer to complaint: to be filed within 10 days of service of the order of admission of complaint;
- filing of evidence: takes place 15 days after the term for responding to the complaint, and must be filed within the following five days;
- counter-evidence: must be filed within three days of the filing of evidence term;
- objections to evidence: must be filed within three days of the filing of counter-evidence term;
- taking of evidence: the court may set a calendar of up to 30 days. The order for taking of evidence may take an estimated one to two years or more;
- closing statements: filed within five days of the conclusion of the taking of evidence stage;
- decision: one to three years or more;
- appeal: to be taken three days after service, filed within the five following days; one to two years; and
- cassation: two to three years or more.

Case management

7 | Can the parties control the procedure and the timetable?

The duty to maintain the pace and progress of the proceeding falls on the judge. However, there are mechanisms that allow the parties to control certain aspects of the procedure and its timetable: the parties can agree to stay the terms of proceedings for periods of up to three months, and they can also ask the judge to eliminate, modify or have as effected certain parts of the procedure.

Evidence – documents

8 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Generally, no. Discovery is not available in civil proceedings.

Evidence – privilege

9 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

In principle, yes. The document would be protected by attorney–client privilege.

Evidence – pretrial

10 | Do parties exchange written evidence from witnesses and experts prior to trial?

No. A party can try to secure evidence prior to the commencement of proceedings.

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Evidence – trial

11 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Generally, evidence is submitted in the form of briefs together with evidentiary documents, either at the moment the complaint is filed or answered, or during the stage of filing of evidence, counter-evidence and objections (this applies to ordinary or standard civil proceedings), or when filing or answering a motion. The briefs must contain the list of fact witnesses, the appointment of expert witnesses and the questions to be addressed by the expert witnesses. Witnesses can be interrogated and counter-interrogated by the parties, and the judge may also interrogate; expert witnesses are also interrogated on their findings and conclusions in a similar manner. The judge may order witnesses to face each other if they give contradictory answers.

Interim remedies

12 | What interim remedies are available?

General injunctive remedies such as freezing injunctions are not available in civil proceedings.

Plaintiffs can seek prejudgment attachment of a defendant's assets.

Plaintiffs can also request the staying of negotiations or dealings whenever a real right (such as property) may be affected, subject to the consigning of security for damages with the court.

In connection with claims involving challenges against resolutions of a corporation, a staying order or freezing order is available provided the plaintiff files the complaint within 30 days of the document being recorded with the Public Registry or, if the document was not recorded, from the moment the plaintiff learned of its existence.

Interim remedies are available in connection with foreign proceedings when the relevant decision is presented for acknowledgment and enforcement before the Fourth Chamber of the Supreme Court of Justice.

Remedies

13 | What substantive remedies are available?

As a general rule, in addition to the proven claimed amount, the prevailing party is entitled to interest (at a default rate of 6 per cent per annum in civil matters and 10 per cent in commercial matters), litigation costs and expenses, as well as legal fees set in accordance to the Bar tariff, which considers the type of procedure and claim amount.

Moral damages (eg, emotional or reputational loss) are available in civil claims for damages.

Punitive damages are generally not available in civil proceedings. As exceptions, treble damages are available in consumer defence or action proceedings, as well as in the special procedure of international private law conflicts before the Panamanian courts, where the parties can request the application of foreign law indemnity rules.

Enforcement

14 | What means of enforcement are available?

If a defendant does not comply with the final order within six days of receiving service, the plaintiff can commence special enforcement proceedings and request the post-judgment attachment of the defendant's assets.

In certain cases, the plaintiff can request that the defendant or a third party who fails to comply with or breaches an order of the judge be held in contempt. This may result in arrest and fines.

Public access

15 | Are court hearings held in public? Are court documents available to the public?

Generally, yes. However, in oral proceedings, any of the parties may request that the hearing be held privately, for reasons of security, morality, decorum or public policy.

In addition to the parties, the case file documents are generally available to lawyers, paralegals and clerks, appointed experts and custodians, other court-appointed assistants, law students, and those individuals authorised by the judge for purposes of research or education, as well as other individuals specially authorised by the judge.

Costs

16 | Does the court have power to order costs?

Yes. As a general rule, the prevailing party is entitled to legal costs. Legal costs (or legal fees) are set by application of the Bar tariff, which generally considers the type of procedure and claim amount. In addition to legal costs, the prevailing party can seek payment of other expenses, such as expert fees, expenses for the reproduction of documents, certificates, fees charged by public institutions and other expenses related to the proceedings. The judge can adjust or eliminate the application of legal costs and only order payment of expenses if he or she considers that the losing party litigated in good faith. Good faith cannot be considered to exist, inter alia, when a defendant fails to appear before the court despite having been served with proceedings; enforcement proceedings are required to seek performance of the judgment; the defendant denies evident statements that should have been accepted as true; false documents or witnesses are submitted; no evidence is filed to substantiate the facts of the complaint or a motion; or a party abuses his or her litigation rights.

The plaintiff is not obligated to provide security for the defendant's costs.

Funding arrangements

17 | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

This is a matter of private agreement between counsel and client. The above arrangements, although not customary in our system, should in principle be available.

Insurance

18 | Is insurance available to cover all or part of a party's legal costs?

Not applicable.

Class action

19 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Yes. Class actions exist in connection with consumer protection claims. In addition, the Judicial Code has a special chapter on international private law conflict procedure, which allows the judge to group or consolidate actions whenever a great number of plaintiffs or defendants exist.

Appeal

20 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Appeal is generally available against decisions or orders of the first instance judge. Generally, the appellant has three days after receiving service of the decision or judgment (two days if dealing with an order) to appeal against the adverse judgment. The brief of appeal must be filed before the first instance judge within five days, and the opposing party has the following five days to lodge its brief opposition. The first instance judge shall review the brief to confirm that appeal is available against the decision and that the appeal has been timely filed; in that case, the case file is sent to the Superior Court. The appellant can also request the taking of evidence in special circumstances, as part of the appeals procedure.

The extraordinary writ of cassation before the Civil Chamber of the Supreme Court of Justice is available, in special circumstances, against appellate court decisions. The writ of cassation deals with special and specific matters of procedure, application of the law and evaluation of evidence.

Foreign judgments

21 | What procedures exist for recognition and enforcement of foreign judgments?

Generally, a final foreign judgment will be recognised and enforced in the courts of Panama without retrial of the originating action by instituting exequatur proceedings before the Fourth Chamber of the Supreme Court of Justice of Panama.

For a writ of exequatur to be obtained from the Fourth Chamber of the Supreme Court of Justice, the following are required:

- The existence of a treaty or, in its absence, reciprocity. The principle of reciprocity provides that the country that issued the judgment would, in similar circumstances, recognise a final and conclusive judgment of the courts of Panama. Reciprocity is presumed to exist; therefore, if the opposing party (and, exceptionally, the Prosecution Office of the Attorney General) considers reciprocity is lacking, then such party must provide evidence within the course of exequatur proceedings.
- A judgment issued because of an action in personam. Actions in personam are the opposite of 'real' actions (ie, real estate property situated in Panama).
- Demonstrating the judgment was rendered after personal service has been effected on the defendant. When analysing the exequatur petition, the Fourth Chamber of the Supreme Court of Justice will look for confirmation of proper personal service of process effected on the defendant. The purpose of this requirement is to verify that the defendant had the opportunity to submit a defence against the claim, and that, therefore, the principles of contradiction or bilateralism and due process were observed.
- That the cause of action upon which the judgment was based is lawful and does not contravene the public policy of Panama.
- Providing authentic copies of the documents evidencing the judgment, according to the law of the relevant foreign court and have been duly legalised by a Consul of Panama or pursuant to the 1961 Hague Convention on the legalisation of documents.
- Providing translations of the copy of the final judgment (and complementary evidence) by a licensed translator in Panama.
- The judgment must be final and definitive, meaning that no other remedies (ie, appeals or other challenges) are available against the judgment.

Once the writ of exequatur has been obtained from the Fourth Chamber of the Supreme Court of Justice, the plaintiff must commence special executory proceedings before the civil courts to seek collection of the owed amounts.

Foreign proceedings

22 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Foreign courts can request legal assistance from the Panamanian judiciary through letters rogatory, either through means of treaties or conventions, or following principles of international comity. The petitions are channelled through the Fourth Chamber of the Supreme Court of Justice, which will review the application and, if granted, shall instruct the competent courts to take or instruct the production of the required evidence.

ARBITRATION

UNCITRAL Model Law

23 | Is the arbitration law based on the UNCITRAL Model Law?

Generally, yes, with influence from the ICC Arbitration Rules, as well as the arbitration laws of other jurisdictions (Spain, France, Mexico and others).

Arbitration agreements

24 | What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement must be in writing. An arbitration agreement shall be considered to meet this requirement whenever evidence of its contents can be produced by any means. This includes electronic communications that can be accessed for eventual confirmation. The existence of a written form can also result from the exchange of briefs of complaint and answer to the complaint, whenever a party affirms its existence and the opposing party does not object, or by reference to an arbitration clause existing in a document that would apply to the relevant contract.

Choice of arbitrator

25 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Generally, the parties are free to appoint the number of arbitrators, provided the tribunal is composed of an odd number. If the parties cannot agree to the number of arbitrators, the dispute shall be decided by a sole arbitrator. If one of the parties is the state or a state entity, then the tribunal shall consist of three arbitrators.

It the arbitral tribunal is composed of three arbitrators, then each party appoints one arbitrator, and the appointed arbitrators then appoint

the chair. If a party fails to appoint an arbitrator within the following 30 days of the last appointment of an arbitrator, of if within such term the arbitrators do not appoint the chair, then the appointment can be requested by any of the parties, from a national or international institution, pursuant to their respective rules.

An arbitrator can only be challenged in those circumstances when justified doubt exists regarding the arbitrator's impartiality or independence, when the arbitrator does not meet the qualifications agreed by the parties, or when the arbitrator does not meet the requirements of law (such as individuals who have been found to have seriously breached the code of ethics of an arbitral institution, or individuals declared criminally liable for fraud).

Arbitrator options

26 | What are the options when choosing an arbitrator or arbitrators?

The parties generally agree that each shall appoint one arbitrator. The chair may be appointed by the institution or the party-appointed arbitrators, depending of the arbitration agreement and applicable rules. The most active arbitral institutions have lists of arbitrators, for both domestic and international arbitration, from which the chair of the tribunal is appointed following the relevant institution's rules. The candidates are generally experienced practitioners in their fields and have served as arbitrators, and include national as well as internationally renowned specialists.

Arbitral procedure

27 | Does the domestic law contain substantive requirements for the procedure to be followed?

The law on arbitration contains substantive provisions regulating matters such as the definition of domestic or international arbitration, matters that can be submitted to arbitration, the effects of the arbitration agreement, the default rule that arbitration shall be at law when the parties do not state the nature of the arbitration, and requirements for application for the annulment or enforcement of the award.

Court intervention

28 | On what grounds can the court intervene during an arbitration?

Generally, court intervention during an arbitration is not admissible. The parties can agree to arbitrate a court dispute, provided the matter can be submitted to arbitration. The courts can intervene prior to the formation of the arbitral tribunal by providing interim relief or precautionary measures at the request of the plaintiff, or they can intervene at the request of the arbitral tribunal, for purposes of assisting the tribunal with interim relief or with the production of evidence.

Interim relief

29 | Do arbitrators have powers to grant interim relief?

Yes.

Award

30 | When and in what form must the award be delivered?

In domestic arbitration, the general rule is that the award must be delivered within two months of the filing of closing statements, and may be extended for an additional two months depending on the degree of complexity. In international arbitration, the award must be delivered within the term provided by the relevant rules, or as agreed by the parties or the arbitral tribunal.

Generally, the arbitration award must be in written form signed by the majority of the arbitrators. If there is no majority consent, then the chair can sign the award. The award must include the analysis and motivations (except as otherwise agreed by the parties) and the date and the seat of the arbitration. The award is served by the arbitral institution or the tribunal, as applicable, to the parties through delivery of a signed copy of the award. Generally, a single award is issued; however, multiple awards can also be issued, as may be agreed with the parties.

Appeal

31 | On what grounds can an award be appealed to the court?

Appeal is not available against the arbitral award. The award can be challenged through an annulment application filed before the Fourth Chamber of the Supreme Court of Justice, on the following grounds:

- that one of the parties to the arbitration agreement was under some incapacity under the law applicable to it, or the agreement was not valid pursuant to the law to which the parties subjected it or, if no provision was made in this regard, pursuant to Panamanian law;
- that the party against was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable, for whatever reason, to present its defence;
- that the award deals with a dispute that was not contemplated by the arbitration agreement, or that did not fall within the terms of the submission to arbitration, or contains decisions that go beyond the scope of the arbitration clause or the submission to arbitration. However, if the provisions of the award that refer to the matters submitted to arbitration can be separated from those that have not been submitted to arbitration, the former may be recognised and enforced;
- that the formation of the arbitral tribunal or the arbitral proceedings did not conform to the parties' agreement – except when such agreement breaches the arbitration law – or, in absence of an agreement, it did not conform to the arbitration law;
- that the arbitration tribunal has ruled on a matter that could not be arbitrated; and
- that the international arbitral award breaches international public policy, or in the case of a domestic award, that such award breaches Panamanian public policy.

Enforcement

32 | What procedures exist for enforcement of foreign and domestic awards?

Foreign arbitral awards in Panama are recognised and enforced in accordance with:

- the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958);
- the Inter-American Convention of International Commercial Arbitration (Panama, 1975); or
- any other treaty ratified by the Republic of Panama on the recognition and enforcement of arbitral awards. The petition for recognition is filed before the Fourth Chamber of the Supreme Court of Justice of Panama.

In the case of foreign awards where Panama served as the seat of arbitration, enforcement can be directly requested before the civil circuit courts through judgment enforcement proceedings.

Domestic awards are enforced through judgment enforcement proceedings before the civil circuit courts.

Costs

33 | Can a successful party recover its costs?

Generally, yes. When filing closing statements, the parties are generally requested to submit a report on incurred costs, including legal expenses, expert fees, and arbitrator and services fees of the institution, as well as general expenses incurred during the arbitration, for evaluation by the arbitral tribunal and inclusion in the award.

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

34 | What types of ADR process are commonly used? Is a particular ADR process popular?

The most commonly used ADR processes are mediation and conciliation. ADR has still to gather momentum; it is generally conceived as a pre-arbitration or pre-litigation stage.

Requirements for ADR

35 | Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

In certain cases, the parties contractually agree to mandatory ADR prior to commencing arbitration. The arbitral tribunal may stay the arbitration and request the parties to submit to ADR in cases where the arbitration has commenced without the observance of this stage.

MISCELLANEOUS

Interesting features

36 | Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

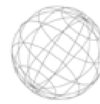
Not applicable.

UPDATE AND TRENDS

Recent developments

37 | Are there any proposals for dispute resolution reform? When will any reforms take effect?

The judiciary has been implementing the use of electronic court files, which can be reviewed remotely by users. It was initially implemented in mid-2021, in the first, second and third civil circuit courts of the First Judicial Circuit of Panama, and in the late 2021, it was implemented in the fourth, fifth and sixth civil circuit courts of the First Judicial Circuit of Panama. In December 2021, it was further expanded to the maritime and admiralty courts of Panama, and in early 2022 it was implemented in the twelfth, thirteenth and fourteenth civil circuit courts of the First Judicial Circuit of Panama.



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