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Panama

Litigation

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

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Panama: Litigation

1. What are the main methods of resolving disputes in your jurisdiction?

In Panama, the main methods of resolving civil and commercial disputes are litigation in courts and arbitration.

2. What are the main procedural rules governing litigation in your jurisdiction?

Up to 2024, the Judicial Code of 1984 is the main procedural rule that governs litigation. In October 2023, the National Assembly promulgated a new Civil Procedure Code which is expected to be in effect in October 2025. The newly enacted Civil Procedure Code replaces the Judicial Code of 1984.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

Courts that review civil and commercial matters are structured in circuit courts of first instance which deal mostly with trials and fact-finding stage and appealing courts which deal mostly appellate stage and explore strict legal discussions. However, under *Recurso de Casación*, the First Chamber of the Supreme Court may review appealing courts' rulings and decide whether to quash an appealing court ruling. Then, the First Chamber of the Supreme Court may decide the merits of the case. In practice, the First Chamber of the Supreme Court is considered the final court of appeal.

Panamanian courts that review civil and commercial matters are organized territorially in four main Judicial Districts based on the provinces' administrative divisions. Each Judicial District has several circuit courts of first instance and one appealing court. All Judicial Districts are hierarchically bound to the First Chamber of the Supreme Court.

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

In a regular civil or commercial litigation, it takes up to

one year and a half between the pleading stage that commences proceeding and the trial stage in which the parties take examinations and cross examination of evidence.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

Hearings are usually held closed doors with participation of the parties in litigation. Documents filed at court in a civil or commercial dispute are available only to the parties, their counsellors and any lawyer or law student. Exceptions include cases involving minors or family relations. Which are available only to the parties and their counsellors.

6. What, if any, are the relevant limitation periods in your jurisdiction?

Any action which is not regulated in a specific provision has a limitation period of seven years. Damages actions caused by extra contractual relations have limitation period of one year.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

In civil and commercial disputes context, there are pre-action conduct requirements, particularly in civil matters. These requirements typically involve attempts to resolve disputes through negotiation or mediation before initiating formal legal proceedings. While there isn't a strict statutory framework outlining pre-action conduct requirements in Panama, it is often considered a good practice for parties to engage in discussions or alternative dispute resolution methods before resorting to litigation.

Failure to comply with pre-action conduct requirements may not have direct legal consequences per se, as there isn't a specific law governing this aspect. However, the courts in Panama may take into consideration the parties' conduct during pre-action stages when assessing the case, including any attempts made to resolve the dispute

outside of court. Non-compliance with pre-action conduct expectations may influence the court's decision-making process, potentially affecting issues such as costs, timing, or the allocation of responsibilities during litigation.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Proceedings commence with pleading stage. In the pleading stage the claimant files a writ of claim to the court. The court is obliged to serve personally the defendant. If the court is not able to serve personally the defendant, the court appoints an absentee defender counsellor. Once the defendant replies the writ of claims the litigation is considered started.

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

To determine jurisdiction, the claimant party argues factors of territory, nature of the conflict, amount of the claim and nature of the parties in litigation in the pleading stage. Usually, the jurisdiction of the court is presumed proper unless a party requests to move for another jurisdiction. In this case, the competence-competence doctrine applies and the court may decide whether it has jurisdiction.

10. How does the court determine which law governs the claims in your jurisdiction?

To determine governing law, the claimant party argues that the obligations, rights, and/or assets are governed by Panamanian law. It is presumed Panamanian law governs claims brought to Panamanian courts. The International Private Law Code of 2015 allows claimant parties to argue that foreign law governs the litigation brought to Panamanian courts. According to the International Private Law Code, Panamanian courts may apply foreign law if there is any connection factor to Panamanian territory such as asset location, party domicile, rights and obligations execution in Panama or express designation to Panamanian courts in a relation governed by foreign law.

11. In what circumstances, if any, can claims be disposed of without a full trial in your

jurisdiction?

The Judicial Code provides several methods of claim disposition without a full trial. These methods include negotiation, conciliation, transaction, claim withdrawal, claim preclusion, issue preclusion, defendant's acceptance of the claim.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

The Judicial Code recognizes interim remedies such as seizures over assets and company management. It also recognizes measures of suspension of civil and commercial transactions. In addition, it recognizes generic interim remedies when it is necessary to prevent a party in litigation to take some action.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

In Panama, a court proceeding is carried out mostly on written documents. Normally the parties should file any petition during litigation on written documents. The claimant must file its writ of claims in written. The defendant must file its defending reply to the writ of claims. Any petition providing evidence should be written, as well. Preliminary questions for witnesses and expert witnesses should be filed before examination and cross-examination. Usual timetable of written documents submission is around 1.5 to 2 months in the pleading stage (claim, reply, party serving). Timetable for evidence proposition stage is up to 2 months.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

Private documents shall be disclosed in original to be valid in litigation. However private documents can be deemed authentic if it is recognized by Notary, judge or the counterparty. A party may request a pre disclosure of documents if it can evidence a substantial interest or relation with the documentation. The Judicial Code provides general grounds of privilege when it allows parties to refuse to disclose evidence in cases where the party have rights over the documents and the party argues that had the disclosure is ordered they could

suffer a disproportionate harm.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

The Judicial Code treats witness evidence broadly. It is admissible to promote any witness evidence in any case which it is not expressly prohibited. Any person can promote testimonies. However, relatives, workers, counsellors, partners, creditor or debtor, and any other person who might have interest in the litigation result are considered suspicious witnesses.

Witnesses can bring oral or written testimony. The counterparty may cross-examine the witness's testimony even if it is written. When the witnesses are examined and cross-examined the parties must be present in the hearing. The parties may object for suggestive, inconducive, and captious and cross-examine each question that the counterparty may ask.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

The Judicial Code allows the appointment of expert witnesses to render impartial and objective reports. The court and the parties usually appoint their own expert witness separately. Expert witnesses owe a duty of impartiality by delivering unbiased opinions. Expert witness reports are subject to examination and cross-examination.

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

Interim and final decisions may be appealed in the appealing courts. An appellate stage may last up to 1.5 years.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

The Judicial Code and the International Private Law Code provides that if there are no special treaty between Panama and the foreign State that pronounced the court

judgment, the court judgment may be enforced in Panama via exequatur if foreign law recognizes the enforcement of Panamanian courts' judgments. Exequatur is petitioned to the Fourth Chamber of the Panamanian Supreme Court. The exequatur petitioner party may request precautionary measures to the Fourth Chamber of the Supreme Court.

Basic rules of exequatur provides, first, that in order for a foreign judgment to be enforced in Panama, the judgment has to be rendered as a result of the exercise of a personal claim. Second, the judgment should have not been dictated in default of the losing party. Third, that the obligation for whose fulfillment is required to be enforced is lawful in Panama. Finally, that the copy of the judgment is authentic. A judgment is understood to be the final decision that decides the merits of the claim.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

Yes. The Judicial Code provides legal costs and expenses recovery from the losing party of litigation unless the court considers that the losing party have acted in good faith.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

The Consumer Protection Act (Law 45 of 2007) provides that one or more members of a group or class of persons who have suffered damages derived from a product or service may commence a class action.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

Third parties may join the ongoing litigation through joinder mechanism. A third party may file a joinder petition at any moment of litigation. If the third party has a claim in the ongoing litigation, it may file a joinder petition in before the first instance court ruling.

The Judicial Code provides that two or more court proceedings may be joined when the party request when the court proceedings are in the same court instance.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

It is possible for third parties to finance litigation in Panama. The legal figure is not regulated so it is allowed because it is not expressly prohibited. Regardless the lack of regulation, the figure of the "assignment of the litigious credit" is usually used in such cases. By means of this type of contract, the assignee acquires the claim that is the object of the judicial process. For the defense of his interests, he is allowed to participate in the respective litigation as a third party, as the assignee of the claim. In this way, the entire outcome of the litigation is binding on him.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

Courts have demonstrated more proficiency to avoid procedural delays. Courts have showed more flexible with evidence stage and trial stage practice to undertake remote hearings.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

The advantages are structural: hub, cutting-edge communications, a wide, complete hotel offering, and significant bilingualism. On the other hand, it is added that Panama is a jurisdiction with a vocation for the enforcement of foreign judgments, which favours those judgments issued in Panama are recurrently recognized

abroad. Finally, Panama has a modern and updated legislation in the field of Private International Law. This allows resolving disputes arising from international legal relationships through rules that recognize current realities.

Main disadvantages continue to be timespan to resolve commercial and civil disputes.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

For the next 5 years it is expected that the area of greatest growth for commercial disputes is in logistics activities and public infrastructure works. This is because both activities are the focus of state investments, which attract private companies either as co-contractors or as part of the legal relationships formed from the state contracts that materialize public investment. The new Public-Private Partnerships regime accounts for the above.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

Technology will be important for litigation. In the new Civil Procedure Code, which is expected to take effect in October 2025, the judicial process relies on technological platforms for the filing of actions, communication of decisions, submission of evidence, among others. This provides transparency to the development of litigation. AI in the collection of evidence is expected to take a major role in the next years of commercial and civil litigation.

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