

GAR INVESTMENT TREATY ARBITRATION

Panama

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Overview of investment treaty programme

1 What are the key features of the investment treaties to which this country is a party?

(a) BITs/MITs

BIT contracting party or MIT ^[JA1]	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period ^[JA2]	Local courts	Arbitration
Argentina [22 June 1998]	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Belgium/Luxembourg Economic Union (not in force)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Canada [13 February 1998]	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Chile [21 December 1999]	Yes	Yes	Yes	Yes	No	3 months	Yes	Yes
Cuba [26 July 1999]	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Czech Republic [20 October 2000]	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Dominican Republic [17 September 2006]	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Finland [11 November 2010]	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
France [3 October 1985]	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Germany [12 March 1989; Amended 25 January 2011]	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Italy [12 October 2010]	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Korea, Republic of [8 February 2002; terminated on 1 March 2021 with 10-year sunset clause]	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Mexico [14 December 2006; terminated on 1 July 2015 with 10-year sunset clause]	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Netherlands [1 September 2001]	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Qatar (not in force)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Spain [31 July 1998]	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Sweden [1 September 2008]	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Switzerland [22 August 1985]	Yes	Yes	Yes	Yes	No	6 months	No	Yes
United Kingdom [7 November 1985]	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
United States [30 May 1991; amended 10 May 2001] ¹	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Ukraine [13 June 2007]	Yes	Yes	Yes	Yes	Yes	6 months	No	Yes
Uruguay [22 February 2001]	Yes	Yes	No	Yes	No	6 months	Yes	Yes

FTAs	Substantive protections					Procedural rights		
	Fair and Equitable Treatment (FET)	Expropriation	Protection and Security	Most-favoured-nation (MFN)	Umbrella clause	Cooling-off period	Local courts	Arbitration
Canada FTA (1 April 2013)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Central America: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama (21 November 2009)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Chile FTA (7 March 2008)	No	No	No	No	No	None	No	No
Colombia (signed 20 September 2013; not in force)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
EFTA (signed 24 June 2013)	No	No	No	No	No	None	No	No
Israel FTA (1 January 2020)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Korea-Central America FTA (signed 21 February 2019)	Yes	Yes	Yes	Yes	No	8 months	No	Yes
Mexico FTA (1 July 2015)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Peru FTA (1 May 2012)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Singapore FTA (24 July 2006)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Taiwan FTA (1 January 2004)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
United States FTA (31 October 2012)	Yes	Yes	Yes	Yes	No	3 months	No	Yes

Qualifying criteria - any unique or distinguishing features?

2 What are the distinguishing features of the definition of “investor” in this country’s investment treaties?

Issue	Distinguishing features in relation to the definition of “investor”
Definition generally	An ‘investor’ is generally defined as (i) a natural person or juridical entity that makes an investment in the contracting state of which it is not a national, and (ii) a natural person who is a national of a contracting state in accordance with that state’s internal laws or any juridical entity incorporated or duly constituted in accordance with the contracting state’s internal laws. The France, Germany, Mexico, Switzerland, United Kingdom and United States BITs provide definitions of the terms ‘national’ and ‘company’ (or juridical persons), instead of a definition of ‘investor’.
Natural persons	
Nationality	All Panama’s investment agreements require that a natural person be a ‘national’ or ‘having the nationality’ of either contracting party in accordance with that contracting party’s laws. The Canada BIT provides that nationality can be established either through citizenship or permanent residence.
Dual nationals	The Mexico, Peru, US and Korea–Central America FTAs provide that if a natural person is a dual national, they shall be deemed to be a national exclusively of the state of his or her dominant and effective nationality. There is no definition of what is considered ‘dominant’ or ‘effective’ nationality. The Uruguay BIT provides that the treaty is not applicable to dual nationals of both contracting parties.

Issue	Distinguishing features in relation to the definition of "investor"
Legal Persons	
Seat of the Investor/Place of Business	<p>Most of Panama's BITs provide that a juridical person must be incorporated or duly organised in accordance with applicable internal laws.</p> <p>In addition to this requirement, some Panama BITs require that such entities have a 'permanent seat' (Czech Republic BIT); or 'seat in the territory' (Argentina, Chile, Dominican Republic, France, Italy BITs); or its 'domicile in the territory' (Germany, UK BITs); or a 'registered office or principal place of business in the jurisdiction of the Contracting Party' (Finland BIT); a seat together with its 'effective economic activities' (Dominican Republic, Chile BIT).</p>
State-owned enterprises	<p>Some Panama BITs encompass state-owned enterprises while others exclude such enterprises. For example, the Germany, UK, and Switzerland BITs specifically except Panama's state-owned enterprises from protections provided in the treaties. The Qatar BIT protects state-owned enterprises.</p>
Direct or indirect control	<p>The Netherlands BIT provides that a juridical person not constituted under the law of a contracting party, but controlled by natural or juridical persons having the nationality of or constituted under the laws of the contracting party will be considered to be an investor. Certain BITs (eg, Canada) and FTAs (eg, Mexico, Peru, Korea–Central America and US) provide that an investor may bring a claim against a respondent-contracting party on behalf of an enterprise of the respondent-contracting party, if the investor directly or indirectly owns or controls the enterprise. The Switzerland BIT provides that to be considered a Swiss juridical person, the enterprise must be majority owned, directly or indirectly, by a Swiss national. The Switzerland BIT does not require the same of Panamanian juridical persons.</p>

3 What are the distinguishing features of the definition of "investment" in this country's investment treaties?

Issue	Distinguishing features in relation to the concept of "investment"
Defined generally	Panama BITs provide a broad definition of assets, often with a non-exhaustive list of examples of the type of assets that are included.
In accordance with local laws	Many Panama BITs require that assets be invested in accordance with the laws of the contracting state in whose territory the investment is made and/or that the investment is duly approved in accordance with the laws (eg, Argentina, Canada, Cuba, Czech Republic, Dominican Republic, Korea, Finland, France, Germany, Spain, Uruguay).
Direct and indirect control of assets by investors	Several Panama BITs and FTAs require that an investor of another contracting party have 'direct or indirect' control over the asset (eg, Canada, Finland, Spain, US BITs; Mexico, Peru and Singapore FTAs).
Characteristics of investment	Certain Panama's FTAs require certain characteristics of an investment, such as commitment of capital or other resources, expectation of gain or profit and risk assumption (eg, Mexico and Peru FTAs).
Exclusion of certain assets	The Canada BIT excludes real estate or property, tangible or intangible, that was not acquired in the expectation of or used for the purpose of economic benefit or other business purposes.
Changes in the manner assets are invested or reinvested	<p>Some Panama IAs provide that any change in the form in which assets have been invested will not affect the nature of an investment (eg, Canada, Czech Republic, Finland, France, Germany, Dominican Republic, Spain, Uruguay BITs; Mexico and Peru FTAs).</p> <p>The Cuba and Spain BITs provide for treaty protections for the reinvestment of profits from the investment.</p>

Substantive protections - any unique or distinguishing features?

4 What are the distinguishing features of the fair and equitable treatment standard in this country's investment treaties?

Issue	Distinguishing features of the fair and equitable treatment standard
Fair and Equitable Standard	All Panama BITs and FTAs, with the exception of the Chile and EFTA FTAs, generally provide for the fair and equitable treatment of investments. Investors may rely on the pre-existing BITs between Panama and Chile and the EFTA countries to claim for a violation of the obligation to provide fair and equitable treatment.

Issue	Distinguishing features of the fair and equitable treatment standard
Customary International Law/ Minimum Standard of Treatment	<p>Some Panama BITs (eg, Finland, France, Netherlands, Sweden, Switzerland) and FTAs (eg, Central America, Taiwan) state that the fair and equitable treatment is in accordance with the principles of international law.</p> <p>The Mexico, Singapore, Peru, Korea–Central America, and US FTAs specify that fair and equitable treatment does not require treatment in addition to or beyond what is required by the minimum standard of treatment and does not create additional substantive rights. Each of these FTAs provides that fair and equitable treatment does include the obligation not to deny justice in accordance with the principle of due process, and that a breach of another provision of the agreement does not establish a breach of the fair and equitable treatment standard.</p>

5 What are the distinguishing features of the protection against expropriation standard in this country's investment treaties?

Issue	Distinguishing features of the "expropriation" standard
Scope	Panama BITs and FTAs provide protection against nationalisation or expropriation of investments, directly or indirectly, or measures having the equivalent effect of nationalisation or expropriation.
Criteria for lawful expropriation	Panama BITs and FTAs provide that investments may be expropriated for public utility or social interest. Panamanian BITs also require that such expropriations be non-discriminatory and conducted under due process of law.
Compensation	<p>Panama BITs and FTAs call for compensation in the case of expropriation, and most, but not all, state that such compensation must be 'prompt, adequate and effective'.</p> <p>The compensation must be made 'immediately' (Cuba BIT) or 'without delay', and in free convertible currency, and/or freely transferable (eg, Argentina, Canada, Czech Republic, Finland, Germany, Netherlands, Spain, Sweden, UK, Ukraine, Uruguay BITs). The Italy BIT specifies that the compensation has to be paid within six months from the date that the proceeding to determine the value of the assets has been concluded.</p>
Valuation	<p>Most Panamanian BITs and FTAs state that the value of the investment shall be considered its value immediately before expropriation, or before the expropriation measures became public. One exception is the Switzerland BIT, which provides that the value will be set at the moment of expropriation.</p> <p>Some Panama BITs and FTAs specify that the value of the asset will be the 'market value' (eg, Cuba, Dominican Republic, Germany, Italy, Spain, Ukraine, and Uruguay BITs), 'fair market value' (eg, UK and Sweden BITs; Central America and US FTAs), 'genuine value' (eg, Netherlands BIT), or 'full value' (eg, US BIT). Others refer to a specific valuation criteria to consider in determining the value, inter alia, the invested capital, the current value, the replacement value, the increase value, the declared tax value and goodwill (eg, Finland BIT; Canada and Taiwan FTAs).</p>
Interest	<p>Most Panamanian BITs provide that interest must be paid at the normal commercial rate, although there is some variation on this requirement.</p> <p>The Italy BIT provides that the interest rate should be that of the London Interbank Offered Rate (LIBOR). The Czech Republic BIT, the Central America FTA and the Taiwan FTA provide that the interest rate must be based on the prevailing rate of the national banking system of the host party.</p>
Judicial review	Most Panama BITs and FTAs provide the investor affected by expropriation the right to review by a judicial authority or other competent authority (eg, Cuba, Chile, Czech Republic, Dominican Republic, Finland, France, Germany, Italy, Korea, Spain, Ukraine, Uruguay).
Special regime	Some Panama BITs provide that when a contracting party expropriates assets of a local company in which a foreign investor is a shareholder, the expropriating contracting party must compensate the foreign investor according to the terms of the corresponding investment treaty and not local laws (eg, Finland, Italy, Korea, Spain, Sweden, Ukraine and UK BITs).
Right to regulate	<p>The right to regulate is included in Panama FTAs (eg, Canada, Central America, Mexico, Peru and US FTAs). For instance, the text of the Canada FTA provides:</p> <p>'[E]xcept in rare circumstances, such as when a measure or a series of measures is so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith, a non-discriminatory measure of a Party that is designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, does not constitute indirect expropriation.'</p>

6 What are the distinguishing features of the national treatment/most-favoured-nation treatment standard in this country's investment treaties?

Issue	Distinguishing features of the "national treatment" and/or "most favoured nation" standard
Extent of obligation	While Panama BITs and FTAs provide national or most-favoured-nation treatment protection for 'investments', some agreements delineate national or most-favoured-nation treatment for the operation, management, use, enjoyment and disposal of such investment (eg, Argentina, Canada, Cuba, Czech Republic, Finland, Sweden, Switzerland, UK and Ukraine BITs; Korea-Central America, Mexico and US FTAs).
National treatment	Some Panama BITs and FTAs provide for national treatment in addition to most favoured nation treatment (eg, Canada, Italy, Spain, Sweden, and UK BITs; Korea–Central America, Mexico and US FTAs).
Like circumstances	Certain BITs and FTAs provide investors and investments with most-favoured-nation and national treatment protection in like circumstances it grants to investments and investors of any third state. Some Panama IIAs also have 'like circumstances' provided for national treatment purposes with respect to the investor as well as the investment (eg, Canada BIT; Canada, Central America, US and Taiwan FTAs).
Taxation	The Netherlands BIT extends most favoured nation treatment to taxation.
Common exceptions to MFN treatment	The most common exceptions to most favoured nation treatment are those for customs unions, monetary unions, taxation agreements, regional economic agreements, free trade areas and other international agreements. The Korea–Central America and Mexico FTAs exclude dispute settlement procedures set forth in international agreements from most favoured nation treatment. The US BIT and the Canada BIT allow the parties to create exceptions to the national treatment standard for certain sectors. Most Panama FTAs exclude subsidies, grants, and public procurement from the national treatment standard (eg, Canada, Peru, US, Singapore and Mexico FTAs).

7 What are the distinguishing features of the obligation to provide protection and security to qualifying investments in this country's investment treaties?

Issue	Distinguishing features of the "protection and security" standard
Extent of obligation	Panama BITs and FTAs generally provide full protection and security for all investments. Full protection and security protections have limitations and exceptions similar to those associated with fair and equitable treatment.
International law	Some Panama BITs and FTAs provide that full protection and security is accorded to investors and investments in accordance with international law (eg, Finland, Sweden, Switzerland BITs and Central America, Taiwan FTAs). Several FTAs limit the scope of full protection and security to that which is required by customary international law (eg, Mexico, Peru, Singapore, Taiwan and US FTAs).

8 What are the distinguishing features of the umbrella clauses contained within this country's investment treaties?

Issue	Distinguishing features of any "umbrella clause"
Scope	Several Panama BITs (eg, Finland, Germany, Spain, Sweden, Belgium/Luxembourg) contain umbrella clauses. These umbrella clauses provide that each contracting party shall fulfil any obligation it may have entered into with regard to investments by investors of the other contracting party.

9 What are the other most important substantive rights provided to qualifying investors in this country?

Issue	Other substantive protections
Armed conflict or civil unrest	<p>Panama BITs (eg, Cuba, Argentina, Canada, Czech Republic, Korea, France, Germany, Mexico, Spain, Sweden, UK, Ukraine and Uruguay) provide compensation for investors in the event of armed conflict or civil unrest. A contracting party shall provide the affected investor with restitution, indemnification or other settlement with treatment no less favourable than that provided to its own investors or investors of a third state.</p> <p>Certain Panama BITs and FTAs only provide for compensation if the loss is the result of actions by the host state's armed forces or authorities (eg, Czech Republic, Cuba). Otherwise, such BITs and FTAs provide that the investors of contracting parties will be accorded non-discriminatory treatment with respect to whatever measures a contracting party adopts relating to losses suffered by covered investments due to armed conflict or civil strife (eg, Spain, UK, Ukraine BITs and Peru, Canada, Singapore and US FTAs).</p>
Free transfer of payments	<p>Panama BITs and FTAs require parties to permit free transfers of payment related to investment in a freely convertible currency without undue restriction and delay.</p> <p>Some Panama BITs and FTAs recognise that notwithstanding this guarantee, parties can maintain certain laws and regulations regarding transfers provided these are applied in a non-discriminatory fashion (eg, Canada, Dominican Republic, Finland, Mexico, BITs and Canada, Mexico, Peru, Singapore, Taiwan, US FTAs).</p> <p>The Mexico BIT allows for parties to establish a temporary restriction of transfers if there is a fundamental imbalance of payments if the restriction is compatible with the articles of agreement of the IMF, the other party receives prompt notice, and the restriction is reasonable, equitable, non-discriminatory and in good faith.</p>
Interplay with other treaties	<p>Certain FTAs provide that the parties confirm the rights and obligations currently in force under pre-existing BITs (eg, Chile FTA), or that the FTA is without prejudice to the interpretation or application of other international agreements relating to investment or taxation to which one or several states are a co-parties (eg, EFTA).</p>
Non-Impairment	<p>Some BITs provide the obligation not to impose unreasonable or arbitrary measures on the operation of the investment by the investor (eg, Finland, Korea, Dominican Republic, Spain, Sweden, UK, Ukraine BITs).</p>
Prohibition regarding performance requirements	<p>Several FTAs contain a prohibition for performance requirements (eg, Mexico, Colombia and Canada FTAs).</p>

10 Do this country's investment treaties exclude liability through carve-outs, non-precluded measures clauses, or denial of benefits clauses?

Issue	Other substantive protections
Subject-matter exclusions	<p>Certain Panama FTAs include annexes through which a party may exclude certain sectors or industries from treaty protections (eg, Canada, EFTA, Korea–Central America, Singapore and the United States). Several Panama FTAs include provisions stating that the investment provisions of the treaty do not apply to measures taken by a party to preserve public order or protect national security (eg, Mexico, Central America, Peru and Taiwan). The Canada FTA provides that a decision by a party to prohibit or restrict the acquisition of an investment in its territory for national security reasons shall not be subject to arbitration. Other sectors exempted from treaty protection include financial services (eg, Central America, Mexico, Peru, Singapore, Taiwan) and social services (eg, Central America, Singapore, Taiwan).</p> <p>The Canada BIT excludes investment treaty protections from:</p> <ul style="list-style-type: none"> • government procurement; • government-supported subsidies or grants; • measures denying investors rights or preferences provided to aboriginal peoples; • foreign aid programmes to promote economic development; • investments in cultural industries; and • taxation measures. <p>With respect to taxation, an investor may only bring a claim in relation to a taxation measure following a review by the Canadian and Panamanian tax authorities.</p>
Preservation of rights to adopt measures	<p>Several Panama BITs and FTAs include provisions explicitly reaffirming the rights of the parties to establish measures aimed at protecting the environment (eg, Belgium/Luxembourg BIT, Central America FTA, Mexico FTA, Peru FTA, Taiwan FTA and United States FTA).</p> <p>Certain Panama FTAs include provisions stating that the agreement does not impede the parties' ability to adopt measures necessary to maintain public order, international peace and security, or protect essential security interests (eg, Chile FTA, Israel FTA).</p>

Denial of benefits	<p>Certain Panama FTAs contain denial of benefits provisions. There are three primary reasons why a party may deny benefits to an investor where the investor is an enterprise that is owned or controlled by a non-party and:</p> <ul style="list-style-type: none"> • The enterprise does not have substantial business activities in the territory of the party under whose domestic laws it is organised (eg, Canada, Korea-Central America, Central America, Colombia, Mexico, Singapore, Peru, Taiwan and the United States); • Providing treaty benefits to the non-party would violate or circumvent measures of the denying party prohibiting transactions with the non-party (eg, Canada, Korea-Central America, Israel, United States); or • The denying party does not have diplomatic relations with the non-party (eg, Israel and the United States).
Interpretation	<p>Panama FTAs that include a provision allowing the parties to exempt certain sectors or industries from treaty protections through an annex to the agreement often contain a provision regarding the interpretation of such annexes (eg, Korea-Central America, Mexico, Peru, Taiwan, Singapore and the United States). These FTAs require that, where a respondent asserts as a defence that a measure alleged to be a breach of the agreement is within the scope of such an exemption, a party may request the interpretation of this issue by a joint committee or commission. Such interpretations are binding on the arbitral tribunal.</p>

Procedural rights in this country's investment treaties

11 Are there any relevant issues related to procedural rights in this country's investment treaties?

Issue	Procedural rights
Fork in the road	<p>Many Panama BITs and FTAs contain 'fork in the road' provisions, stating that an investor may choose to go to either international arbitration or domestic courts, but the selection of either is final (eg, Chile, Cuba, Czech Republic, Finland, Italy, Netherlands and Uruguay BITs).</p>
ICSID or ad hoc arbitration	<p>Most Panama BITs and FTAs allow the investor to choose to pursue arbitration before ICSID or ad hoc arbitration under the UNCITRAL rules.</p> <p>The Chile BIT only allows the investor to go to ICSID.</p> <p>The France BIT only allows the investor to pursue ad hoc arbitration under the UNCITRAL rules.</p> <p>The Cuba and Belgium-Luxembourg BIT also allow investors to choose to pursue arbitration before the International Chamber of Commerce in Paris.</p> <p>In addition to ICSID and UNCITRAL, the Finland BIT and the Mexico and Peru FTAs allow the parties to agree on another arbitration forum.</p>
Governing Law	<p>Certain Panama BITs contain provisions regarding the law that will govern an arbitration proceeding, including questions of law and the conflict of laws that will be decided by the arbitral tribunal (Argentina, Spain BITs).</p> <p>The Spain BIT, for example, provides that the domestic law of the party where the investment was made will govern an arbitration proceeding.</p>
Cooling off period	<p>All Panama BITs and FTAs require the parties to first attempt to resolve any dispute amicably. Most treaties provide for a period of six months during which the parties should attempt to settle the dispute before an investor may bring the dispute to the courts or to international arbitration.</p>
Exceptions	<p>Some FTAs (Central America, Mexico, Peru, US, Singapore, Taiwan FTAs) have exceptions regarding the application of the treaty. Usually, the exceptions cover measures related to the financial system, measures taken for public order or national security, areas reserved to the contracting state such as social security, public education, health, etc, and any disputes or claims arising before the entry into force of the Treaty. Not all FTAs contain all of these exceptions.</p>
Interplay with other treaties	<p>Certain FTAs provide that their protections are not applicable to acts or facts that have taken place before the agreement's entry into force, and that all acts or facts prior to the entry into force are governed by the preceding BIT (eg, Canada and US FTAs).</p> <p>The Mexico FTA indicates that it is not applicable to any controversies, claims, requests or disputes that happen prior to the entry into force of the FTA, even if the effects of these continue after the FTA's entry into force. The Mexico BIT is applicable to those claims prior to the FTA's entry into force.</p>
Statute of limitations	<p>Under certain BITs and FTAs, a claim cannot be brought after more than three years from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage (eg, Canada BIT and Colombia FTA).</p>

12 What is the approach taken in this country’s investment treaties to standing dispute resolution bodies, bilateral or multilateral?

Panama’s BITs and FTAs do not include provisions on standing or permanent dispute resolution bodies. However, the FTA between the United States and Panama considers the possibility of establishing a bilateral appellate body or similar mechanism to review awards.

13 What is the status of this country’s investment treaties?

Panama is a party to 22 BITs (19 in force) and 12 FTAs with investment chapters (11 in force). Panama’s BITs with Mexico and Korea were terminated and replaced by FTAs. Panama has also negotiated FTAs with countries that already had BITs, keeping both texts in force. That is the case of treaties with Canada and the United States, where the FTAs provide for a sunset provision, after which time no investor will be able to bring a claim under the BIT (10 years with respect to the treaty with the United States, and 15 years for the treaty with Canada).

Practicalities of commencing an investment treaty claim against this country

14 To which governmental entity should notice of a dispute against this country under an investment treaty be sent? Is there a particular person or office to whom a dispute notice against this country should be addressed?

Government entity to which claim notices are sent	<p>With respect to the FTAs, which are negotiated by the Ministry of Trade and Industry (MICI), the National Division for the Administration of Trade Agreements and Trade Defense (DINATRADEC). BITs were negotiated by the Ministry of Foreign Affairs and do not contain an express provision regarding the delivery of notice.</p> <p>In practice, the notice of a dispute is delivered to the Ministry of Economy and Finance.</p>
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15 Which government department or departments manage investment treaty arbitrations on behalf of this country?

Government department that manages investment treaty arbitrations	<p>The Ministry of Economy and Finance (MEF) through the Compliance and Liabilities Department manage investment treaty arbitrations on behalf of Panama.</p>
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16 Are internal or external counsel used, or expected to be used, by the state in investment treaty arbitrations? If external counsel are used, does the state normally go through a formal public procurement process when hiring them?

Internal/External counsel	<p>External counsel is generally used by Panama in investment treaty arbitrations, following a procurement process.</p> <p>The Ministry of Economy and Finance has internal counsel that handles some of the cases directly, with or without the support of external co-counsel.</p> <p>In any event, internal counsel participates in the defence strategy, document production, the appointment of experts and preparation of witnesses. Internal counsel is also in charge of coordinating with the state agencies involved in the dispute.</p>
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Practicalities of enforcing an investment treaty claim against this country

17 Has the country signed and ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965)? Please identify any legislation implementing the Washington Convention.

Washington Convention implementing legislation

Yes. Panama implemented the Washington Convention by Law No 13 dated 3 January 1996, published in the Official Gazette No 22.947. The Convention entered into force on 8 May 1996.

18 Has the country signed and ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (the New York Convention)? Please identify any legislation implementing the New York Convention.

New York Convention implementing legislation

Yes. Panama implemented the New York Convention by Law No. 5 of October 25 of 1983, published in Official Gazette No. 20.079. The New York Convention entered into force on 15 June 1984. Previously, Panama implemented the Panama Convention on International Commercial Arbitration by Law No. 11 dated 23 October 1975, published in the Official Gazette No. 18.056 on 30 March 1976.

19 Does the country have legislation governing non-ICSID investment arbitrations seated within its territory?

Legislation governing non-ICSID arbitrations

The Unique Text of the Law on Public Procurement (Law 22 of 2006, as restated by Law 153 of 2020, published in the Official Gazette No 29107-A on 7 September 2020) and the Public-Private Partnership (PPP) Law (Law 93 of 2019, published in the Official Gazette No 28864-B on 19 September 2019), provide that arbitrations under a procurement contract or a PPP contract, as the case may be, shall be governed by Panamanian law, and the seat of arbitration shall be the Republic of Panama. National and international arbitrations in Panama are governed by Law 131 of 2013, published in the Official Gazette No. 27449-C on 8 January 2014.

20 Does the state have a history of voluntary compliance with adverse investment treaty awards; or have additional proceedings been necessary to enforce these against the state?

Compliance with adverse awards

Panama recognises awards rendered pursuant to article 54(1) of the Washington Convention. Panama has been successful in four arbitrations: *Nations Energy* (ICSID Case No. ARB/06/19), *Transglobal* (ICSID Case No. ARB/13/28), *Álvarez et al* (ICSID Case No. ARB/15/14), *Bridgestone* (ICSID Case No. ARB/16/34). Three cases were terminated following the agreement of the Parties, under ICSID Rule 43: *IBT Group* (ICSID Case No. ARB/14/33), *Enel Fortuna* (ICSID Case No. ARB/19/5), *IBT Group* (ICSID Case No. ARB/20/31). Panama has been ordered to pay damages in one case (*Dominion* – ICSID Case No. ARB/16/13); however, *Dominion* is currently under a partial annulment proceeding and the ad hoc Committee granted the stay of enforcement of the award on 21 July 2022.

21 Describe the national government's attitude towards investment treaty arbitration

Attitude of government towards investment treaty arbitration

Panama has had a favourable attitude towards investment treaty arbitration. Nonetheless, Panama is no longer negotiating BITs, and it has been negotiating FTAs instead. FTAs include an investment chapter providing for Investor-State Dispute Settlement (ISDS), except for those with the European Free Trade Association (EFTA) and with the European Union do not include ISDS provisions. In the FTA with EFTA, it was not considered appropriate, as Panama has a BIT with Switzerland in force. The agreement with the European Union includes a provision pertaining to 'Cooperation on Establishment, Trade in Services and Electronic Commerce,' instead of an ISDS mechanism, due to the lack of mandate of the EU Commission to negotiate investment provisions in trade agreements at the time of the negotiation.

22 To what extent have local courts been supportive and respectful of investment treaty arbitration, including the enforcement of awards?

Attitude of local courts towards investment treaty arbitration

Panama's local courts are supportive when it comes to any request for production of documents related to an ongoing investment treaty arbitration. To date, there have been no investment treaty awards sought to be enforced against Panama in local courts.

National legislation protecting inward investments

23 Is there any national legislation that protects inward foreign investment enacted in this country? Describe the content.

Panama has a wide array of laws directed to protect foreign investment. These laws cover several sectors of the economy, such as energy and petroleum, agriculture, tourism, real estate, mining and financial sectors. In addition, Panama has different laws governing incentives depending on the activity and the economic zone, including the Multinational Headquarters Law, the Colon Free zone, the Panama Pacific Special Economic Area, and the City of Knowledge. Generally, free zones offer manufacturers tax-free status, immigration privileges, and customs exemptions. On the other hand, industrial promotion certificates (IPCs) are provided to incentivize industrial development in high value-added sectors.

Panama enacted the 'Investment Stability Law' (Law 54 of 1998, published in Official Gazette No. 23593 on 24 July 1998), providing for national treatment to foreign investors. Beyond national treatment, investors covered by the law enjoy several benefits of tax and labour regime stability for 10 years after the time of the investment. Law 54 includes a provision regarding expropriation, allowing Panama to proceed with an expropriation so long as it is for a public purpose, non-discriminatory, and affords adequate compensation, except if the asset in question has been insured for country risk purposes (under the MIGA Convention). The law further establishes an investor-state dispute settlement mechanism before the Centre of Conciliation and Arbitration of Panama of the Panama Chamber of Commerce. However, disputes relating to taxation are excluded from the conciliation and arbitration proceedings. In order to be protected, investors shall fulfil the requirements provided by the Law.

In 2021, Panama established the Attraction of Investments and Promotion of Exports (PROPANAMA) as an independent authority for developing and implementing strategies to attract investment and promote exports (Law 207 of 2021, published in the Official Gazette No. 29.256 on 6 April 2021). PROPANAMA may coordinate with the Ministry of Foreign Affairs to effectively use the Panamanian foreign services to foster foreign investments and exports; and with the Ministry of Trade and Industry, the participation in international trade missions to promote the export of products.

National legislation	Substantive protections			Procedural rights	
	FET	Expropriation	Other	Local courts	Arbitration
Law 54 of 1998	N/A	Yes	National Treatment	Yes	Yes

National legislation protecting outgoing foreign investment

24 Does the country have an investment guarantee scheme or offer political risk insurance that protects local investors when investing abroad? If so, what are the qualifying criteria, substantive protections provided and the means by which an investor can invoke the protections?

Relevant guarantee scheme	Qualifying criteria, substantive protections provided and practical considerations
Multilateral Investment Guarantee Agency	Panama is a party to the Convention establishing the Multilateral Investment Guarantee Agency (MIGA), as approved by Law 19 of 8 January 1996, published in Official Gazette No. 29950 on 12 January 1996. Under the terms of MIGA, Panamanian nationals may acquire political risk insurance in exchange for the payment of a premium, as long as the investments are financially viable, support Panamanian developing goals, and meet MIGA's Policy on Social and Environmental Sustainability and anti-corruption and fraud standards. During the covid-19 crisis, MIGA guaranteed loans have played an important role to support Panama against the risk of non-honouring of financial obligations by a state-owned enterprise (NHFO-SOE).

Awards

25 Please provide a list of any available arbitration awards or cases initiated involving this country's investment treaties.

Awards

Nations Energy, Inc and others, ICSID Case No ARB/06/19, Award of 24 November 2010.

Transglobal Green Energy, LLC and Transglobal Green Panama, SA, ICSID Case No ARB/13/28, Award of 2 June 2016.

Álvarez y Marín Corporación S.A. and others, ICSID Case No ARB/15/4, Award of 12 October 2018.

Bridgestone Licensing Services, Inc and Bridgestone Americas, Inc, ICSID Case No ARB/16/34, Award of 14 August 2020.

Dominion Minerals Corp, ICSID Case No ARB/16/13, Award of 5 November 2020.

Enel Fortuna SA, ICSID Case No ARB/19/5, Award of 18 August 2021 rendered pursuant to ICSID Arbitration Rule 43(2).

Pending proceedings

Dominion Minerals Corp, ICSID Case No ARB/16/13, Partial annulment proceeding.

Omega Engineering LLC and Oscar Rivera, ICSID Case No ARB/16/42.

Jochem Bernard Buse, ICSID Case No ARB/17/12.

Sacyr SA, ICSID Case No. UNCT/18/6.

Leopoldo Castillo Bozo, PCA Case No 2019-40.

Webuild SpA (formerly Salini Impregilo SpA), ICSID Case No ARB/20/10.

Campos de Pesé SA, ICSID Case No ARB/20/19.

IBT Group LLC, IBT LLC and Eurofinsa Concesiones e Inversiones SL, ICSID Case No ARB/21/34.

Samson Wu, ICSID Case No. ARB/22/5.

Reading List

26 Please provide a list of any articles or books that discuss this country's investment treaties.

Article/Book

Juan Carlos Araúz, *Constitucionalización y Justicia Constitucional en el Arbitraje Comercial Panameño* (Mizrachi & Pujol 2015).

Juan Pablo Fábrega, 'El Régimen Constitucional de la Jurisdicción Arbitral en Panamá y el Marco Legal del Arbitraje' (2017) *Spain Arbitration Review* 121.

Margie-Lys Jaime, *Arbitraje en Materia de Inversiones y Defensa del Estado Panameño* (Cultural Portobelo 2013).

Alfredo Ramírez, 'Panama' in Jonathan Hamilton et al (eds), *Latin American Investment Protections* (Brill 2012) 433.

J.F. Hornbeck, The U.S.-Panama Free Trade Agreement in CRS Report for Congress, 8 November 2012.



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Margie-Lys Jaime, PhD., FCI Arb, is of counsel at Infante & Pérez Almillano (Panama) and professor law at the University of Panama. Her practice includes international litigation, maritime disputes, commercial arbitration, investor-state dispute settlement and international trade. Currently, she is a legal adviser at the Minister of Finance and Economy of the Republic of Panama, where she manages ISDS on behalf of the Republic of Panama before the International Centre for Settlement of Investment Disputes (ICSID), and under the UNCITRAL Arbitration Rules.

She received her PhD in law and LLM in International Economic Affairs Law from the University of Paris II (Pantheon-Assas), an LLM in arbitration and international business law from the University of Versailles (France), and

an LLM in international business and economic law with a Certificate in WTO Studies from Georgetown University Law Center, Washington, DC.

She is admitted to practise law in Panama, the State of New York, US, and holds the Certificate of Aptitude for the legal profession (CAPA) in Paris, France. She is a Fellow of the Chartered Institute of Arbitration (FCI Arb), and the President of the Mediation and Arbitration Committee of the National Bar Association of Panama (2019–2023).



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Gaela Gehring Flores is a partner at Allen & Overy LLP's international arbitration practice. Gaela draws on decades of experience representing both multinational corporations and sovereign states in international commercial and investment arbitrations. Gaela's experience includes over 50 high-stakes international disputes, many of them before the International Centre for Settlement of Investment Disputes (ICSID), the International Chamber of Commerce (ICC) International Court of Arbitration, the London Court of International Arbitration (LCIA), the International Centre for Dispute Resolution (ICDR/AAA), as well as litigation and appellate proceedings before US federal courts.

She advises clients in a broad range of disputes, including energy, natural resources, construction, hospitality, government contracts, and intellectual property. Gaela also provides legal services to private sector and sovereign clients on enforcement of arbitral awards, effective contractual dispute resolution clauses, and a variety of public international law issues, including foreign sovereign immunity and discovery in international proceedings.

Gaela has been recognised as a leading practitioner of international arbitration in publications such as *Chambers USA*, *Chambers Global*, *Chambers Latin America*, *The Legal 500*, *Global Arbitration Review*, the *Am Law 200*, *Latin Lawyer 250* and *Euromoney*, among others.



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Brian A Vaca is an associate in the international arbitration group of Allen & Overy LLP. Based in Washington, DC, Brian's practice focuses on advising foreign sovereigns and corporate clients in investment and commercial disputes. Brian's experience includes investment arbitrations before the International Centre for Settlement of Investment Disputes (ICSID) and under the UNCITRAL Rules, as well as in commercial arbitrations before the International Chamber of Commerce (ICC). These cases have spanned various substantive areas, including energy, infrastructure, sovereign debt, telecommunications, banking and trademark disputes, among others.

A native of the US and Ecuador, Brian is fluent in English and Spanish. Brian has been recognised as a "Future Leader" in arbitration for 2022 in the peer ranked *Who's Who Legal*, and has made the "Ones to Watch" list by *Best Lawyers* in 2021 and 2022.



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Michael Rodríguez Martínez is an associate at Allen & Overy LLP's international arbitration group. Michael's practice centers on advising sovereigns in investment arbitration disputes and corporate clients in commercial disputes. Michael's experience includes investment arbitrations at ICSID and the PCA, and commercial arbitrations at the ICC. His cases have encompassed transportation, employment, energy, infrastructure, banking and trademark disputes, and have involved interpretation of international, foreign and domestic law. Michael is natively fluent in English and Spanish. Most of his practice has involved reading and drafting in Spanish, interpreting Latin American law, and working with Latin American experts and witnesses in Spanish.

Michael also maintains a domestic litigation practice and clerked for the Honourable Adalberto Jordan at United States Court of Appeals for the Eleventh Circuit. He is admitted to the practice of law in the District of Columbia and Florida.

In law school, he participated in the Moot Madrid Spanish-language international commercial arbitration moot. He recently coached the University of Miami in the Foreign Direct Investment Moot, which focuses on investment arbitration. His team reached the final hearing of the global rounds and won second place.

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