

GAR INVESTMENT TREATY ARBITRATION

Panama

Natalia Giraldo-Carrillo and Caroline D Kelly
Arnold & Porter Kaye Scholer LLP

Gaela K Gehring Flores
Allen & Overy

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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	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
Argentina (22 June 1998)	Yes	Yes	Yes	Yes	No	6 months	Yes	Yes
Belgium/Luxembourg Economic Union (signed 26 March 2009; not in force)	Yes	Yes	Yes	Yes	No	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	None	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
Haiti (not in force; text not publicly available)								
Italy (12 October 2010)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Korea, Republic of (8 February 2002)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Mexico (14 December 2006)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Netherlands (1 September 2001)	Yes	Yes	Yes	Yes	Yes	6 months	Yes	Yes
Qatar (7 February 2011)	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

BIT contracting party or MIT	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, not in force)	No	No	No	Yes	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, not in force)	Yes	Yes	Yes	Yes	No	8 months	No	Yes
Mexico (1 July 2015)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
Peru (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 (1 January 2004)	Yes	Yes	Yes	Yes	No	6 months	No	Yes
United Arab Emirates (28 February 2018) (not in force; text not publicly available)								
United States FTA (31 October 2012)	Yes	Yes	Yes	Yes	No	6 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.

Issue	Distinguishing features in relation to the definition of 'investor'
Natural persons	
Dual nationals	The Mexico, Peru and US 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 Canada, Czech and Uruguay BITs provide that the treaty is not applicable to dual nationals of both contracting parties.
Judicial persons	
Seat of the Investor/Place of Business	Most of Panama's BITs provide that a juridical person must be incorporated or duly organised in accordance with applicable internal laws. In addition to this requirement, some Panama BITs require that such entities have a 'permanent establishment' (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). The Switzerland and UK BITs provide that Panamanian juridical persons must have its 'seat' in the territory of Panama, except for state enterprises.
State-owned enterprises	The Germany BIT specifically excepts Panama's state-owned enterprises from the protections provided in the treaty. The Qatar BIT protects state-owned enterprises. The Switzerland BIT excludes Panamanian state owned enterprises from the definition of a juridical person.
Direct or indirect control	The Netherlands BIT and US FTA provide that a juridical person not constituted under the law of a contracting party, but controlled directly or indirectly 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, Dominican Republic and Mexico) and FTAs (eg, Colombia, Mexico and Peru) provide that a juridical person constituted in a contracting party may bring a claim against that same contracting party if an investor of the other contracting party directly or indirectly owns or controls the enterprise bringing the claim. 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: to be considered a Panamanian juridical person, the enterprise must have a seat in the territory of Panama.

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, Finland, France, Germany, Korea, 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, France, Qatar, Spain, US BITs; Mexico, Peru, 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. Several FTAs exclude certain types of assets, such as loans from one party to another; public debt; claims arising from commercial contracts; credits granted in connection with commercial transactions; or an administrative or judicial judgment (eg, Mexico, Canada, Peru, Singapore FTAs).
Exhaustive list of assets	The Mexico, Canada and Colombia FTAs provide an exhaustive list of assets that are considered investments.
Changes in the manner assets are invested or reinvested	Some Panama IIAs 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, Korea, France, Germany, Dominican Republic, Spain, Uruguay BITs and Mexico FTA). The Cuba BIT provides for treaty protections for the reinvestment of profits from the investment (Cuba BIT).

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.
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>Closely following the text of the 2012 US Model BIT, the Mexico, Singapore 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> <p>Certain FTAs (eg, Colombia, Peru and Singapore) provide that the fair and equitable treatment standard is based on customary international law.</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 and transferable currency (eg, Argentina, Canada, Czech Republic, Finland, Germany, Mexico, Netherlands, Qatar, Spain, Sweden, UK, Ukraine, Uruguay BITs and Central America FTA). 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, Qatar, Sweden, Spain, Ukraine, Uruguay BITs and Central America FTA), 'fair market value' (eg, Korea, Mexico, UK BITs), 'genuine value' (eg, Netherlands BIT), or 'full value' (eg, US BIT). Others refer to a specific valuation criteria to consider in determining the market value, inter alia, the invested capital, the current value, the replacement value, the increase value, the declared tax value, and goodwill (Finland, Mexico BITs and Canada FTA).</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 and Qatar BITs provide that the interest rate should be that of the London Interbank Offered Rate (LIBOR).</p> <p>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, Czech Republic, Finland, Korea, France, Germany, Mexico, Netherlands, Qatar, 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, Korea, Italy, Qatar, Spain, Sweden, Ukraine, UK BITs).

Issue	Distinguishing features of the 'expropriation' standard
Right to Regulate	The right to regulate is included in Panama FTAs (eg, Canada and Central America, Mexico, Peru and US FTAs). For instance, the text of the Canada FTA provides, '[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.'

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, Italy, Korea, Mexico, Netherlands, Sweden, Switzerland, UK and Ukraine BITs).
National treatment	Some Panama BITs and FTAs provide for national treatment in addition to most favoured nation treatment (eg, Canada, Italy, Qatar, Spain, Sweden, UK, US BITs and Mexico, Central America 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. 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 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 Colombia 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, Korea, Qatar, 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. 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 allow parties to restrict transfers through good faith application of its laws related to bankruptcy, dealing in securities, criminal offences, cooperation with law enforcement, and compliance with orders or judgments in judicial or administrative proceedings (eg, Canada, Dominican Republic, Finland, Mexico, Qatar, 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?

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 United States).</p> <p>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.</p> <p>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 (1) government procurement, (2) government-supported subsidies or grants, (3) measures denying investors rights or preferences provided to aboriginal peoples, (4) foreign aid programs to promote economic development, (5) investments in cultural industries, and (6) taxation measures. 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>
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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).

Preservation of rights to adopt measures

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)

Denial of benefits

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:

- The enterprise does not have substantial business activities in the territory of the party under whose domestic laws it is organized (eg, Canada, Korea-Central America, Central America, Colombia, Mexico, Singapore, Peru, Taiwan, 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

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 United States). These FTAs require that, where a respondent asserts as a defense 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.

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	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, Qatar and Uruguay BITs).
ICSID or ad hoc arbitration	Most Panama BITs and FTAs allow the investor to choose to pursue arbitration before ICSID or ad hoc arbitration under the UNCITRAL rules. The Chile BIT only allows the investor to go to ICSID. The France BIT only allows the investor to pursue ad hoc arbitration under the UNCITRAL rules. The Cuba and Belgium–Luxembourg BIT also allow investors to choose to pursue arbitration before the International Chamber of Commerce in Paris. In addition to ICSID and UNCITRAL, the Finland BIT and the Mexico and Peru FTAs allow the parties to agree on another arbitration forum. The Qatar BIT imposes additional requirements on an ad hoc arbitration, in addition to the UNCITRAL rules.
Governing Law	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, Qatar, Spain BITs). The Spain BIT, for example, provides that the domestic law of the party where the investment was made will govern an arbitration proceeding.
Cooling off period	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.
Exceptions	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.

Issue	Procedural rights
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 of 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.

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

Article 1.3 of the Panama–US Free Trade Agreement (the FTA) includes a sunset provision that suspends the investment dispute provisions of the Panama–US Bilateral Investment Treaty (the Treaty) effective 31 October 2012. Article 1.3 of the FTA provides for continued settlement of only certain investment disputes under the Treaty: disputes (a) involving investments covered by the Treaty prior to 31 October 2012, or (b) that arose prior to 31 October 2012. The period of the TPA's sunset provision is 10 years, expiring on 31 October 2022, after which time no investor will be able to bring a claim under the Panama–US Bilateral Investment Treaty.

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>The Ministry of Commerce and Industry through the National Department of Administration of Trade Agreements and Trade Protection. See, articles 34 to 50 of Law No. 38 of 31 July 2000; article 5(8) of Legislative Decree No. 6 of 15 February 2006; and articles 102, 104 (12) and (15) of Executive Decree No. 46 of 14 July 2008.</p> <p>Some FTAs indicate the following address for service of notices and requests: Dirección Nacional de Administración de Tratados Comerciales Internacionales y de Defensa Comercial (DINATRADEC) del Ministerio de Comercio e Industrias de Panamá, o su sucesor. Edificio Plaza Edison, Segundo Piso Avenida El Paical, Panamá, República de Panamá.</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	The Office of the Attorney General, the Ministry of Economy and Finance, and any other entity designated by the Cabinet Council, manage investment treaty arbitrations in Panama.
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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	External counsel are used by Panama in investment treaty arbitrations, following a procurement process.
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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. The Washington Convention entered into force in Panama on 8 May 1996. Panama implemented the Washington Convention by Law No. 13 dated 3 January 1996, published in the Official Gazette No. 22.947 on 8 January 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. Implemented by Law No. 5 dated 25 October 1983, published in the Official Gazette No. 20.079 on 15 June 1984.

Panama has also signed and ratified the Panama Convention, implemented 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

Panama does not have a specific non-ICSID investment arbitration legislation.

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, as an ICSID state member, recognises an award rendered pursuant to article 54(1) of the Washington Convention. Five awards have been issued in arbitrations to which Panama has been a party.¹ Four have been in favour of Panama (*Nations Energy*, *Transglobal*, *Álvarez*, and *Bridgestone*) and one embodies the parties' settlement agreement (*Enel*). In two of those four, legal fees and costs awards were rendered against the claimant (*Bridgestone* and *Transglobal*); and in one, a costs award was rendered against the claimant (*Nations Energy*).

[1] *Nations Energy, Inc. and others v Republic of Panama* (ICSID Case No. ARB/06/19); *Transglobal Green Energy, LLC and Transglobal Green Panama, SA v Republic of Panama* (ICSID Case No. ARB/13/28); *Álvarez y Marín Corporación S.A. and others v Republic of Panama* (ICSID Case No. ARB/15/14); *Bridgestone Licensing Services, Inc and Bridgestone Americas, Inc v Republic of Panama* (ICSID Case No. ARB/16/34); and *Enel Fortuna SA v Republic of Panama* (ICSID Case No. ARB/19/5).

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

Attitude of government towards investment treaty arbitration

The government of Panama has had a favourable attitude towards investment treaty arbitration. The execution of 25 bilateral investment treaties, 13 treaties with investment provisions and 19 investment related instruments confirms this.

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

Based on publicly available information, 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 that are 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. As Panama has a heavy export-import industry, in 1948 Panama created the Colon Free Trade Zone.

Foreign investments are protected by Law No. 54, Legal Stability of Investments dated 22 July 1998. Law No. 54 generally provides several requirements for an investment (eg, to file and register an investment plan with the Ministry of Commerce) in order to be protected by the law. Investors who fulfil the requirements will be eligible to obtain certain tax incentives and legal protections.

Law No. 54 has specific substantive protections regarding expropriation so as to allow Panama to proceed with an expropriation so long as it is for a public purpose and with compensation, except if the asset in question has been insured for country risk purposes. The same law provides the formula to calculate compensation for an expropriation for public purpose. Law No. 54 prohibits Panama from taking any measure that directly or indirectly results in expropriation, nationalisation or any other measure, including amendment of a law which has the same effect, unless such measure: (i) is adopted in the public interest and in accordance with the Constitution; (ii) is non-discriminatory; and (iii) affords adequate compensation.

Law No. 54 also provides procedural rights. Excepting disputes that are fiscal in nature, in case of a controversy between the state and an investor, the parties should first submit the controversy to conciliation, pursuant to the rules of the Centro de Conciliación y Arbitraje de Panamá. If the dispute is not resolved within 30 days, the investor may bring a claim before competent judicial authorities or to arbitration pursuant to the Rules of Arbitration of the Centro de Conciliación y Arbitraje de Panamá. The awards are final, except in some cases that allow a request for annulment pursuant to the Judicial Code.

More recently, the National Assembly of Panama enacted Law No. 207 on 5 April 2021, which created a new Export and Investment Promotion Agency. ProPanama "aims to 'attract foreign direct investment and promote exports by [...] the implementation of public policies aimed at establishing instruments, strategies, programs, studies, and mechanisms for promotion, facilitation and coordination.

National Legislation	Substantive protections			Procedural rights	
	FET	Expropriation	Other	Local courts	Arbitration
Law No. 54 Legal stability of investments (22 July 1998)	N/A	Yes	N/A	Yes	Yes
Law No. 207, which creates ProPanama	N/A	N/A	Promotion of foreign investment and exportation	N/A	N/A

[1] See Panama's Official Gazette of 5 April 2021 available at: <https://www.gacetaoficial.gob.pa/pdfTemp/29256/84210.pdf>; see also Investment Policy - Panama, available at <https://investmentpolicy.unctad.org/country-navigator/165/panama>.

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	<p>Panama is a party to the Convention establishing the Multilateral Investment Guarantee Agency (MIGA), as approved by Law 19 of 8 January 1996. Under the terms of MIGA, for medium or long-term investments, Panamanian nationals may acquire political risk insurance in exchange for the payment of a premium. The insurance covers investments made in certain developing countries as long as the investments are financially viable, support the host country's developing goals, and meet MIGA's Policy on Social and Environmental Sustainability and anti-corruption and fraud standards.</p> <p>Due to the covid-19 pandemic, between 3 March and 3 August 2020, MIGA issued guarantees covering more than USD 900 million in loans from different financial institutions to state-owned Panamanian banks such as <i>Caja de Ahorros</i> and <i>Banco Nacional de Panamá</i>. MIGA's guarantees are intended to be for a period of up to 15 years and are aimed to protect <i>Caja de Ahorros</i> and <i>Banco Nacional de Panamá</i> from the risk of Non-Honouring of Financial Obligations by a State-Owned Enterprise (NHFO-SOE).²</p>

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 v Republic of Panama, ICSID Case No. ARB/06/19, Award (24 November 2010).

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

Bridgestone Licensing Services, Inc and Bridgestone Americas, Inc v Republic of Panama, ICSID Case No. ARB/16/34, Decision on Expedited Objections (13 December 2017).

Álvarez y Marín Corporación SA and others v Republic of Panama, ICSID Case No. ARB/15/14, Award (12 September 2018).

Bridgestone Licensing Services, Inc and Bridgestone Americas, In. v Republic of Panama, ICSID Case No. ARB/16/34, Award (14 August 2020).

Dominion Minerals Corp v Republic of Panama, ICSID Case No. ARB/16/13, Award (5 November 2020)

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

Pending proceedings

IBT Group LLC, IBT LLC, and Eurofinsa Concesiones e Inversiones S v Republic of Panama, ICSID Case No. ARB/21/34

IBT Group, LLC and IBT, LLC . Republic of Panama, ICSID Case No. ARB/20/31

Campos de Pesé, SA v Republic of Panama, ICSID Case No. ARB/20/19

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

Jochem Bernard Buse v Republic of Panama, ICSID Case No. ARB/17/12

Omega Engineering LLC and Oscar Rivera v Republic of Panama, ICSID Case No. ARB/16/42.

Sacyr v Panama, ICSID Case No. UNCT/18/6.

Reading List

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

United States Department of States, Bureau of Economic and Business Affairs, 2020 Investment Climate Statement: Panama.

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

Juan Carlos Araúz, La porfiada reforma del arbitraje en Panamá, in *Revista de Arbitraje Comercial y de Inversiones*, 2014.

Alfredo Ramírez Jr., Panama, in *Latin American Investment Protections* (Jonathan C. Hamilton et al. eds., 2012).

Notes

- Article 1.3 of the Panama-US Free Trade Agreement (the FTA) includes a sunset provision that suspends the investment dispute provisions of the Panama-US Bilateral Investment Treaty (the Treaty) effective 31 October 2012. Article 1.3 of the FTA provides for continued settlement of only certain investment disputes under the Treaty – disputes (a) involving investments covered by the Treaty prior to 31 October 2012, or (b) that arose prior to 31 October 2012. The period of the TPA's sunset provision is 10 years, expiring on 31 October 2022, after which time no investor will be able to bring a claim under the Panama-US Bilateral Investment Treaty.
- See Multilateral Investment Guarantee Agency (World Bank Group), Projects in Panama, available at: <https://www.miga.org/project/caja-de-ahorros-panama-covid-19-response>.



Natalia Giraldo-Carrillo

Arnold & Porter Kaye
Scholer LLP

Natalia Giraldo-Carrillo is a foreign attorney in Arnold & Porter's international arbitration practice. Ms Giraldo-Carrillo's practice focuses her practice on matters in Latin America.

Before she joined the firm, Ms Giraldo-Carrillo was a foreign associate at a major international law firm, where she acted as counsel for claimants and respondents in the course of investment and commercial arbitration proceedings under the auspices of the ICSID, UNCITRAL and ICC rules.

Ms Giraldo-Carrillo is a 2010 graduate of New York University School of Law, where she received her LLM in International Legal Studies. She served a graduate editor of the *Journal of International Law and Politics* for the academic year 2009–2010. Ms Giraldo-Carrillo received her LLM in French, European and International Business Law from Université Paris II-Institut de Droit Comparé in 2007 and her law degree from Pontificia Universidad Javeriana in 2004.



Caroline Kelly

Arnold & Porter Kaye
Scholer LLP

Caroline Kelly is an associate in Arnold & Porter's international arbitration practice. Ms Kelly focuses her practice on both investment treaty arbitration and international commercial arbitration. She also has experience with domestic litigation and advises clients on a broad range of international legal issues.

Ms Kelly is a graduate of Georgetown University Law Center, where she received her JD, and Boston College, where she received her BA in International Studies.

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601 Massachusetts Ave
NW Washington, DC 20001
United States
Tel: +1 202 942 5000
Fax: +1 202942 5999
www.apks.com

Natalia Giraldo-Carrillo
natalia.giraldo-carrillo@arnoldporter.com

Caroline Kelly
caroline.kelly@arnoldporter.com

www.arnoldporter.com



Gaela K Gehring Flores

Allen & Overy

Gaela Gehring Flores is a partner in Arnold & Porter's international arbitration practice, where she draws on decades of focused experience in international arbitration and litigation as well as on her bilingual and bicultural background to act as counsel in international arbitration and litigation matters. Ms. Gehring Flores has represented multinational corporations, international organisations, and sovereign states in over 50 high-stakes international commercial and investment arbitrations under UNCITRAL Rules and before the International Centre for Settlement of Investment Disputes (ICSID), the International Chamber of Commerce (ICC) International Court of Arbitration, the International Centre for Dispute Resolution (ICDR/AAA), and litigation proceedings before US federal courts. She advises clients in a broad range of disputes, including energy, natural resources, construction, hospitality, transportation, sovereign debt instruments, government contracts and intellectual property.

Ms Gehring Flores 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.

Ms Gehring Flores also serves as co-chair of the District of Columbia Bar Inter-American Legal Affairs Committee and is co-host of the podcast series *The Tea on International Arbitration*. She has been recognised as a leading practitioner of international arbitration in publications such as *Global Arbitration Review*, *Chambers USA*, *Chambers Global*, *Chambers Latin America*, *The Legal 500*, *Latin Lawyer 250* and *Euromoney*, among others.

Ms Gehring Flores is committed to pro bono service, particularly to the immigrant and undocumented community.

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1101 New York Avenue, NW
Washington, DC
20005
United States
Tel: +1 202 683 3800
www.allenoverly.com

Gaela K Gehring Flores
gaela.gehringflores@allenoverly.com