



Panama

| | Corporate liability | Public bribery | Commercial bribery | Extraterritorial applicability of criminal laws | Adequate procedures defense |
|-----|---------------------|----------------|--------------------|---|-----------------------------|
| Yes | X | X | X | X | X |
| No | | | | | |

Panama

1. What are the applicable laws referring to anti-corruption, bribery, and money laundering in your country?

In addition to the Constitution of Panama, the main laws applicable in Panama to anti-corruption, bribery and money laundering are as follows:

- Law 14 of 2007, as amended, adopting the amended and restated Criminal Code (*Ley 14 de 2007, como ha sido modificada, que adopta el texto único del Código Penal*).
- Law 59 of 1999, as amended, regulating Article 299 of the Constitution and including dispositions against corruption in public office (*Ley 59 de 1999, como ha sido modificada, que reglamenta el Art. 299 de la Constitución Política y dicta otras disposiciones contra la corrupción administrativa*).
- Law 6 of 2002 regulating transparency in public office and establishing the Habeas Data action and other regulations (*Ley 6 de 2002, que dicta normas para la transparencia en la gestión pública, establece la acción de Habeas Data y dicta otras disposiciones*).
- Law 33 of 2013, as amended, creating the National Authority of Transparency and Access to Information (*Ley 33 de 2013, como ha sido modificada, que crea la Autoridad Nacional de Transparencia y Acceso a la Información*).
- Law 121 of 2013, modifying the Criminal Code, Judicial and Criminal Procedure and adopting certain measures against organized crime (*Ley 121 de 2013, que reforma el Código Penal, Judicial y Proceso Penal y adopta medidas contra las actividades relacionadas con el delito de delincuencia organizada*).
- Law 23 of 2015, as amended, adopting measures to prevent money laundering, financing of terrorism, and financing of the proliferation of weapons of mass destruction and other regulations (*Ley 23 de 2015, que adopta medidas para prevenir el blanqueo de capitales, el financiamiento del terrorismo y el financiamiento de la proliferación de armas de destrucción masiva, y dicta otras disposiciones*).
- Law 23 of 2015 and Law 121 of 2013 specifically address money laundering activity and its associated conduct, in addition to anti-corruption and bribery.

2. Do the following persons/bodies have the right to be informed or the company obliged to inform about an internal investigation before it is commenced and/or to participate in the investigation (e.g., the interviews)?

a) Employee representative bodies such as a works council or union.

Organized workers' associations, such as work councils or labor unions, do not have the right to be informed of an internal investigation before it is commenced or to participate in the investigation, unless this has been agreed upon in a collective bargaining agreement.

b) Data protection officer or data privacy authority.

Law 81 of 26 March 2019 (Law 81) regulates data

protection, creates a Council for Data Protection composed of members of the public and private sector and establishes the *Autoridad Nacional de Transparencia y Acceso a la Información* (National Authority for Transparency and Access to Information) as the entity that supervises data protection matters. Law 81, which enters into effect in 2021, does not impose an obligation to inform the aforementioned authority or council before commencing an internal investigation.

c) Other local authorities.

If related to a potential crime, there is an obligation to report an internal investigation to the competent criminal authority. Furthermore, internal investigations of regulated entities, such as banks, insurance companies, among others, must be notified to their respective regulator, which in the case of money laundering may include the Financial Analysis Unit (*Unidad de Análisis Financiero*).

d) What are the consequences in case of non-compliance?

In general terms, consequences for non-compliance include fines, suspension of licenses, and ethical code violations, among others. Under the Criminal Code, failure to act where there is a duty to do so may have criminal implications where such failure is related to a crime that is being prosecuted and the omission can be perceived as the act of an accomplice or participant in the crime.

3. Do employees have a duty to support the investigation, e.g., by participating in interviews? Are there any recommendations for the company to be better prepared to request such support (e.g., advance consents)? If so, may the company impose disciplinary measures if the employee refuses to cooperate?

Employees must participate in an interview to support an investigation, but they can refuse to cooperate with the interview process. In those cases, the employer cannot impose any disciplinary measures. Nevertheless, if the company has evidence

that the employee is involved in wrongdoing that amounts to a good cause for employment termination, it will have the right to dismiss the employee without paying severance, as established in the Labor Code.

4. May any labor law deadlines/statute of limitations be triggered or any rights to sanction employees be waived by investigative actions? How can this be avoided?

The Statute of Limitations is governed by the following rules:

- According to Article 12(6) of the Labor Code, the right to dismiss an employee or to impose disciplinary measures expires after two months. This period shall be counted from the date of the misconduct.
- In the case of criminal acts, the statute of limitations will run from the date on which the incident becomes known to the employer, but in no event can this period exceed a total of two years.

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a) Conducting interviews?

There is no express regulation on the matter. From an employment law perspective, there is no regulation prohibiting employee interviews in connection with internal investigations.

b) Reviewing emails?

An employer can review emails or other electronic data if the computer, cell phone, or other electronic device is property of the company and was provided to the employee to perform their hired job. We recommend that companies regulate in writing the use of electronic equipment and warn employees that any files stored on company devices are subject to review by the employer.

We also recommend that the employer include a disclaimer in employment contracts or a separate form that states that company-provided equipment should only be used for work purposes, that no personal information should be kept therein, and that the employer has consent to access, review, dispose of and store any personal information found in company devices.

c) Collecting (electronic) documents and/or other information?

Employers have the right to collect any type of documents, electronic or non-electronic, or any other information from employees if the computer, cell phone, or other electronic device is the property

of the company and was provided to the employee to perform their hired job. In this case, we recommend that the review of emails or documents be completed in the presence of a Public Notary that will serve as witness to verify the information retrieved. Another option is to seek a court order issued as part of a judicial process in which it is requested by the interested party.

d) Analyzing accounting and/or other mere business databases?

There are no restrictions for employers to perform accounting functions or to access business databases.

Lastly, for purposes of 5.b), 5.c) and 5.d) above, criminal investigations are a matter of public order, and as such, the State Prosecutor has broad authority to investigate any misdemeanor or felony and its authors or participants. The State Prosecutor may hold interviews without restrictions. However, for the purposes of searching or confiscating mail or other private documents, prior authorization of a supervisory judge will be required. Similarly, searching or confiscating computers or other electronic equipment or information stored therein also requires authorization by a supervisory judge.

6. Do any specific procedures need to be considered in case a whistleblower report sets off an internal investigation (e.g., for whistleblower protection)?

There are no specific procedures and there is no legal protection for whistleblowers, unless a company's internal rules include provisions addressing the matter.

For criminal investigations, there are measures for the protection of witnesses, victims, legal experts or expert witnesses, or other parties who intervene in a case (Article 332 of the Criminal Code).

7. Before conducting employee interviews in your country, must the interviewee:

a) Receive written instructions?

In Panama, there are no legal regulations for conducting employee interviews. There is no obligation to provide written instructions to the interviewee. If an employee is required to participate in an interview, the employer can provide a verbal explanation of the reasons or causes for the interview.

they are attending the interview on behalf of the company. If an external lawyer will be present at the interview, the interviewee must be informed. There is no obligation for the employer to accept a request by the interviewee to have a lawyer present at the interview. Nevertheless, an employee can refuse to participate in the interview or answer questions.

b) Be informed that he/she must not make statements that would mean any kind of self-incrimination?

It is not necessary. If the interview will be taped, it is advisable to inform the interviewee and obtain consent before moving forward with the interview.

d) Be informed that he/she has the right to have his/her lawyer attend?

The employer does not have the obligation to inform the interviewee that he/she has the right to have a lawyer present at the interview.

c) Be informed that the lawyer attending the interview is the lawyer for the company and not he lawyer for the interview (so-called Upjohn warning)?

There is no Upjohn warning obligation under local law. However, it is common practice for a lawyer to communicate to the employee that

e) Be informed that he/she has the right to have a representative from the work council (or other employee representative body) attend?



If the employee is a member of a labor union, the employee has the right to have a representative of the union present during the interview.

f) Be informed that data may be transferred across borders (in particular to the United States)?

Under the Panamanian Labor Code, there is no obligation to inform employees of cross-border data transfers. However, if the information is considered personal data, consent will be required for the information to be collected, stored, and transferred.

g) Sign a data privacy waiver?

There is no obligation on employers to provide employees a data privacy waiver. However, if personal information (personal data, sensitive, confidential, or restricted) is expected to be discussed at the interview, and this information will be collected, stored, or transferred, it is recommended that the interviewee sign a waiver consenting to the use, collection, and storage of personal information.

h) Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?

Yes, we recommend that the interviewee be informed that information gathered at the interview may be shared with third parties, and that consent is requested by the employer to share this information. Note that if the employer is legally required to share information obtained at the interview, then consent from the employee is not required and the information may be passed to local or foreign authorities without taking any additional steps.

i) Be informed that written notes will be taken?

Before beginning an interview, employers should inform employees that written notes will be taken and that they may be asked to sign the minutes or records of the interview.

During the interview, it is recommended that the company be represented by at least two witnesses that should sign the final minutes or report of the interview.



8. Are document hold notices or document retention notices allowed in your country?
Are there any specifics to be observed (point in time/form/sender/addressees, etc.)?

There are no employment law regulations addressing document hold or retention notices in Panama; therefore, in-house counsel would be able to send such warning to employees.

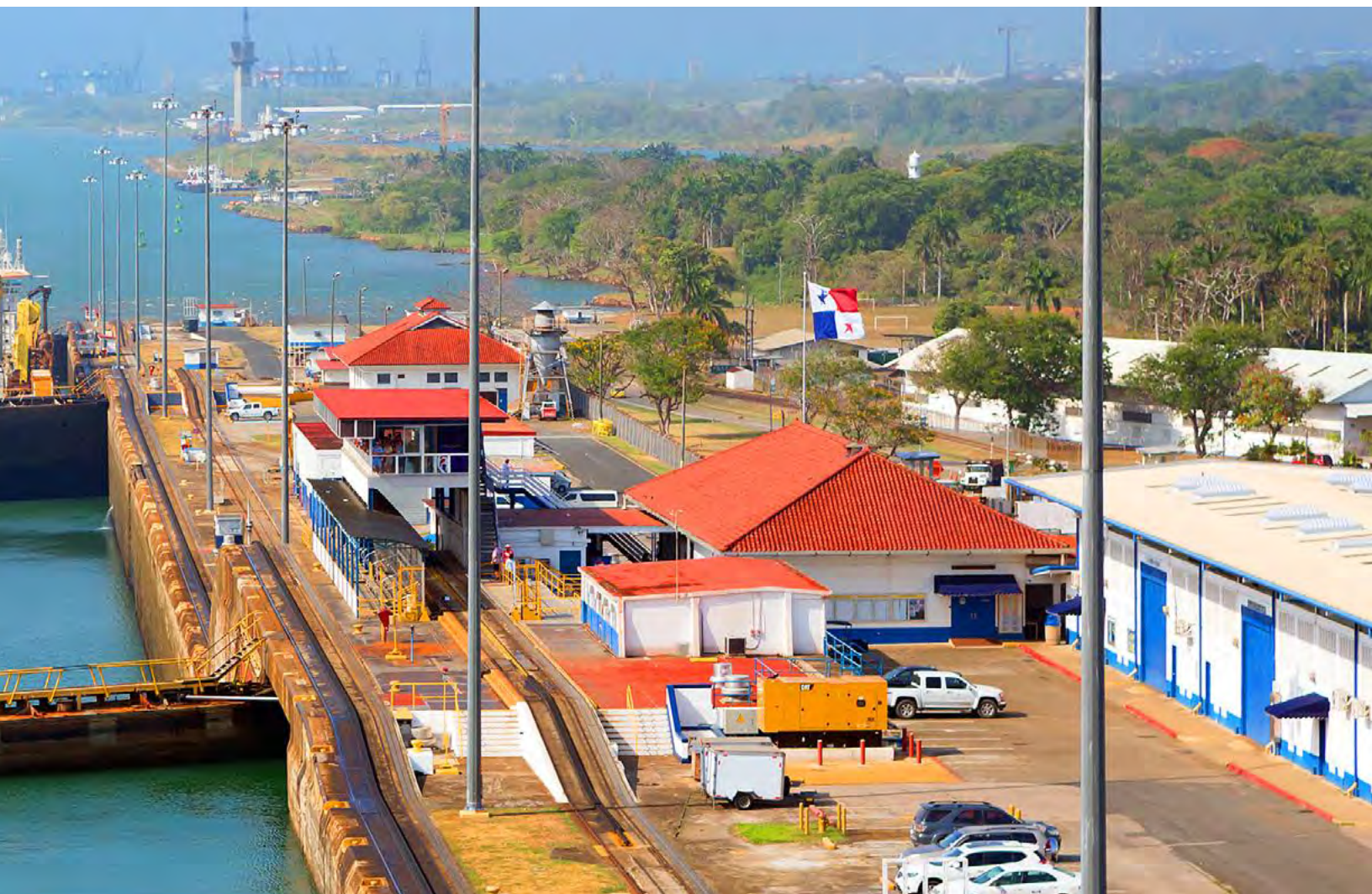
Moreover, there are no such notices under the Criminal Code. However, Article 255 of the Criminal

Code establishes as a crime any behavior that tends to conceal, cover, or obstruct the determination, origin, location, destination, or ownership of moneys, assets, securities, or other financial resources, or grants benefits when those benefits are a result, directly or indirectly, of any crime related to money laundering.

9. May attorney-client privilege be claimed over findings of the internal investigation?
What steps may be taken to ensure privilege protection?

Article 309 of the Criminal Code establishes that the following items cannot be confiscated or searched: (1) written communications or notes between an accused and their attorney or between persons that have abstained to act as witnesses due to a legal requirement (e.g., physicians and patients, lawyers and clients, parent and child, among others); and (2) medical exams or diagnosis related to medicine or science performed under professional confidentiality if they do not relate to the purpose of

the investigation. This limitation only applies when the communications or documents are held by the person(s) that must abstain from rendering testimony or act as witness or, in the case of professionals, are subject to the professional privilege. Furthermore, Art. 912 (1) of the Judicial Code establishes that “[t]he following [parties] are not obligated to testify: 1. The attorney or attorney in fact about confidences received from their clients and the advice given to them regarding the process that they are handling.”





10. Can attorney-client privilege also apply to in-house counsel in your country?

Yes, it is applicable to any person that is an attorney, without distinction.

11. Are any early notifications required when starting an investigation?

Under the Labor Code, early notifications are not required when starting an internal investigation. If criminal activity is found, it is advisable to report it to the authorities.

a) To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.

Yes, in general terms.

b) To business partners (e.g., banks and creditors).

Yes.

c) To shareholders.

Yes, as a matter of good corporate governance and subject to the relevance and materiality of the issues for the company, notice should be provided, at a minimum, as part of the corporate annual report.

d) To authorities.

Yes. If criminal activity is suspected, it must be reported to the appropriate regulatory authority. If the activity is related to financing transactions of money laundering, financing of terrorism or weapons of mass destruction, the Financial Analysis Unit (*Unidad de Análisis Financiero*) should be notified.

There is no regulation in the Criminal Code that requires the State Prosecutor to notify insurance companies, banks or creditors, shareholders, or other authorities. Law 121 of 2013 against organized crime allows the State Prosecutor to issue a resolution ordering a total or partial gag order for up to 30 days, and this time may be extended by the same period if required by the investigation.

12. Are there certain other immediate measures that have to be taken in your country or would be expected by the authorities in your country once an investigation is started, e.g., any particular immediate reaction to the alleged conduct?

If the company has enough evidence that proves criminal activity by an employee or employees, the parties involved can be immediately dismissed with cause, in which case no severance will be owed to such parties.

At the same time, a complaint to the competent criminal authority should be submitted by the legal

representative of the employer. Once the competent criminal authority has knowledge of the criminal action, if it is considered a crime, it will have to initiate the appropriate investigations and the State Prosecutor will take necessary actions to prove the crime and discover the authors and other participants.

13. Will local prosecutor offices generally have concerns about internal investigations or do they ask for specific steps to be observed?

In Panama, the crimes of corruption by governmental officials (against public administration) and money laundering (against the economic order) are prosecuted *ex officio*, and a complaint or internal investigation is not required. Nonetheless, an internal investigation by a regulatory body of a regulated entity, such as banks, insurance companies, and

broker firms, or by the Financial Analysis Unit may serve as a stepping stone to start a separate investigation. Investigations by the Financial Analysis Unit are limited to financial transactions. In turn, this may also result in the investigation of any other crimes by the Public Ministry.

14. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. In case the prerequisites are not fulfilled, may gathered evidence still be used against the company?

It is necessary for a resolution to be issued explaining the reasons for the warrant. It is not enough to only mention the existence of a crime; the resolution must describe any signs or evidence to support the issuance of the warrant. Moreover, the warrant must be issued

by a competent authority. If any evidence is found or collected without a warrant or if the warrant is issued by a government official without authority, the search is deemed invalid under the law and any evidence gathered is of no legal value.

15. Are deals, none-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

Panama's Code of Criminal Procedure allows corporations to enter into plea agreements for final judgements or agreements of collaboration to provide information to uncover the authors of a crime or to provide evidence of a crime. In those cases, an

investigation against the company is suspended and it is possible for the criminal file to be closed if the company's collaboration results in the prosecution of the parties involved or if the information provided by the company serves to uncover another crime.

16. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) may companies, directors, officers, or employees face for misconduct of (other) individuals of the company?

An employee can be subject to monetary fines or penalties for crimes involving the company, but the consequences of those actions are only civil damages. In Panama, from a criminal law perspective, only the individuals who committed the crime are subject to prosecution. However, in accordance with Article

51 of our Criminal Code, if a company was used to commit a crime, then it may be subject to penalties, cancellation of licenses, loss of fiscal benefits, barred from entering into contracts with the government, and dissolution, among others.

17. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).

Recently approved legislation to fight organized crime allows defendants to enter into collaboration or sentencing agreements for the purposes of uncovering those crimes or the criminal authors. This legislation also permits the State Prosecutor's Office to impose gag orders and deny access to the case files to all other parties, including defense attorneys. This last element is currently a matter of study and dispute since many

consider that it violates the right to a defense. At the time of this writing, our constitutional courts have not addressed the constitutionality of this measure. In addition, recently approved legislation criminalizes certain tax offenses. Lastly, there is a bill under consideration by our Legislative Branch related to the imprescriptibility of crimes of corruption.



Inocencio Galindo

Morgan & Morgan, Partner

Inocencio Galindo is a partner at Morgan & Morgan and heads the Banking and Finance and the Mining practice groups. Prior to joining Morgan & Morgan, Mr. Galindo worked as an associate at a major U.S. law firm.

Mr. Galindo has more than 20 years of experience in the legal sector. He advises private and public companies on banking, finance, prospect development and financing, corporate and M&A, public tenders, and concession contracts.

He is recognized as a leading corporate and project finance lawyer in Panama, participating in large projects such as Line 1, 2, and 3 of the Metro of Panama – the most important public infrastructure project under development in Panama; the Cobre Panama copper mining project – the largest private sector investment in Panamanian history; and the public bus rapid system for Panama City Metro Bus, among others.

In addition, Mr. Galindo practices general corporate and commercial law, advising clients on a wide range of commercial transactions, both domestic and cross-border.

Mr. Galindo is also involved in pro bono activities at the firm, playing an active role advising various NGOs on legal issues. In addition, he served as the 2017-2018 President of the Chamber of Commerce, Industries, and Agriculture of Panama, the principal organization of the private sector in Panama. He served as First Vice President of the Chamber of Commerce for the 2016-2017 period, and Second Vice President for the 2015-2016 period. Mr. Galindo is also an ICSID arbitrator/mediator appointed by Panama for the 2016-2022 period.

Mr. Galindo obtained a B.A. in Business Administration (cum laude) in 1993 from Georgetown University and a J.D. in 1996 from Georgetown University Law Center.

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Ricardo Aleman

Morgan & Morgan, Partner

Ricardo Aleman is a partner at Morgan & Morgan and focuses his practice in Labor Law.

Throughout his 40 years of experience in the legal field, Mr. Aleman has advised local and international corporations on labor and employment matters, including corporate restructurings, collective bargaining negotiations, employment contracts, termination agreements, and labor litigation.

In the public sector, Mr. Aleman has been appointed as Ambassador of the Republic of Panama to Mexico (2004-2009), Secretary of the Conciliation and Arbitration Commission of the Chamber of Commerce (2002-2004), Member of the Tripartite Commission responsible for the revision of the Panamanian Labor Code (1978), Deputy Judge of the Superior Labor Court (1986), Deputy Judge of the Supreme Court of Justice (1999), and General Manager of the Colon Free Zone (1998-1999). He has also presided over the Chamber of Commerce, Industries, and Agriculture of Panama and the Federation of Chambers of Commerce of Central America (1991-1992) and served as Vice-President of the National Council of Private Enterprises during that same period.

Mr. Aleman holds an LL.B. from the Universidad de Panama and is admitted to practice law in the Republic of Panama.

Prior to joining Morgan & Morgan, Mr. Aleman was a partner at a consulting regional firm specializing in corporate labor counsel and related affairs.



Kharla Aizpurua Olmos

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Kharla Aizpurua Olmos is a partner at Morgan & Morgan and has worked in the Corporate Law Department since 2008.

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Mrs. Aizpurua Olmos is also committed to the firm's pro bono activities. She regularly participates as a volunteer in the Legal Open Houses organized by the firm for low-income communities. Furthermore, she played a key role in the drafting of a bill to organize national volunteering in the Republic of Panama and serves as counsellor to different Panamanian NGOs.

Mrs. Aizpurua Olmos obtained an LL.B. from Universidad Complutense de Madrid and an LL.M. from Cornell Law School. She has also completed a course in Business Management of NGOs from the University of Louisville in Panama and obtained a certification in Financial Skills for Practice and Management from the INIDEM Business School.

Mrs. Aizpurua Olmos is a member of the National Bar Association of Panama. In addition, she is an affiliate of WIP Panama, the Panamanian chapter of Women in the Profession of the Cyrus R. Vance Center for International Justice of the New York Bar Association.

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Joy Paull Torres

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Joy Paull Torres is an attorney at Morgan & Morgan and works in the areas of Litigation, Dispute Resolution, and Criminal Law.

Mr. Torres has extensive experience in criminal, correctional, administrative, and insurance processes, among others.

Mr. Torres is also a professor of Criminal Law, Criminal Procedure Law, Insurance Law and Administrative Law at several local universities.

He obtained a degree in Law and Political Science from the Law School of the University of Panama. In addition, he has postgraduate degrees in Accusatory Criminal Justice System and in Higher Education as well as master's degrees in Procedural Law, Criminal Law and Criminal Procedural Law, and Administrative Law (in progress).

He was trained as Professor of the Adversarial Criminal Justice System by the Judiciary, the Higher Institute of the Judiciary, and the Embassy of the United States.

Mr. Torres is a member of the National Bar Association of Panama and President of the Liaison Committee with the Faculties of Law at the national level.

Mr. Torres is admitted to practice law in the Republic of Panama.

