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White-Collar Crime 2025

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Panama: Law and Practice & Trends and Developments

Inocencio Galindo, Omar Rodriguez,
Maria Eugenia Brenes and Joy Paull Torres
Morgan & Morgan

PANAMA

Law and Practice

Contributed by:
Inocencio Galindo, Omar Rodriguez, Maria Eugenia Brenes and Joy Paull Torres
Morgan & Morgan

Contents

Morgan & Morgan is one of the largest and most recognised full-service law firms in Panama, with roots dating back to 1923. The firm has extensive experience in assisting both local and multinational corporations from various industries, as well as individual clients. The firm's corporate investigations and compliance practice and its criminal law practice comprise three partners and four associates. The first of these practices has broad expertise in advising on compliance-related matters; the development, implementation and improvement of governance frameworks; cybersecurity; compliance programmes focused on prevention of corruption and bribery; high-stakes investigations; and enforcement actions. The criminal law practice is a pioneer in Panama and provides comprehensive and multidisciplinary representation in criminal actions, with a focus on representing multinational and corporate clients. The team has a multidisciplinary approach and represents clients in criminal cases, including (among others) in cases of financial and corporate fraud, damage to economic assets, and crimes against public administration and the national economy.

Authors

Inocencio Galindo is a partner and leads Morgan & Morgan's mining and natural resources practice and its corporate investigations and compliance practice. He is also co-leader of the project development and public procurement practice and the banking and finance practice. He is highly recognised for his experience in corporate and commercial law and M&A. He has over 25 years of experience and has played a significant role in the development and financing of large infrastructure projects, such as Lines 1, 2 and 3 of the Panama Metro, toll road projects, electricity generation, potable water and sanitation, and the Cobre Panama mining project (the largest private investment in Panama's history), as well as all types of related disputes, including arbitration.

Omar Rodriguez is a partner and leads Morgan & Morgan's criminal law practice. He also plays a leading role in the firm's litigation and dispute resolution practice and its arbitration practice. He has over 30 years of experience and has advised on processes across various industries, specialising in criminal law at both corporate and private levels. In recent years, he has been involved in high-profile cases in Panama, addressing financial and corporate fraud, economic asset misappropriation, cybersecurity, and crimes against public administration and the national economy. Before joining Morgan & Morgan, he held various public positions within the Public Prosecutor's Office, and this experience has enriched his skills in handling complex and high-profile cases.

Maria Eugenia Brenes is a senior associate in Morgan & Morgan's corporate and commercial law, logistics and international trade, project development and public procurement, corporate investigations and compliance, and intellectual property practices. María has more than 25 years of experience advising clients across various industries. Specialising in intellectual property matters related to healthcare products, María navigates the complex landscape of medical regulations. María is well versed in regulations covering pharmaceuticals and medical devices. In terms of compliance and governance, María has contributed to the creation and adaptation of compliance and ethics programmes and manuals. Additionally, she provides legal advice and training on preventative actions and immediate responses to any incidents.

Joy Paull Torres is a senior associate in Morgan & Morgan's litigation and dispute resolution, criminal law, and corporate investigations and compliance practices. He represents both defendants and plaintiffs in criminal and constitutional cases at the national level, participating in hearings that must be conducted before Panamanian courts. Joy has over eight years of experience in the national public sector, having been part of the Ministry of Economy and Finance, the National Mortgage Bank, the Superintendence of Insurance, the Public Prosecutor's Office and the Office of the Comptroller General of the Republic. Since 2016, he has served as a Prosecutor in the Metropolitan Area under the rules of the Accusatory Penal System.

Morgan & Morgan

Paseo del Mar Ave.
23rd Floor
MMG Tower
Costa del Este
Panama City
Panama

Tel: +507 265 7777
Email: customerservice@morimor.com
Web: www.morimor.com

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1. Criminal Law

1.1 Criminal Offences

There are two categories of punishable behaviour in Panama:

- minor offences, known as administrative infractions; and
- more serious offences, called crimes.

Both administrative infractions and crimes are defined in legal regulations – the former in the Administrative Code and the latter in the Criminal Code. In both types of offences, the intention to commit the criminal act is punished, and in exceptional cases, negligence or fault that results in criminal consequences is also punished. In Panama, it is not necessary for the criminal result to be achieved, as the attempt to commit the crime is also punished.

1.2 Burden of Proof

In white-collar criminal proceedings, the burden of proof lies with the prosecutor, and, during the course of the investigation and until a verdict declaring guilt is issued, the person under investigation is presumed innocent. The prosecutor must prove that a crime has been committed and must also present evidence that demonstrates that the accused person is guilty of committing it. The current evidentiary standard in Panama is that the commission of the crime must be proven beyond all reasonable doubt. If there is doubt, the defendant must be acquitted.

1.3 Statute of Limitations

The general principle in Panama is that the maximum period for investigation of a crime is equivalent to the maximum jail time applicable to it under law. For those offences that are not punishable with imprisonment, the maximum period for investigation is three years. For crimes against the public administration (including corruption, embezzlement of public funds/property and abuse of authority), the period is double the maximum term of imprisonment imposed for these crimes.

1.4 Extraterritorial Reach and Cross-Border Co-Operation

In white-collar crimes, Panamanian authorities only have jurisdiction over offences that occur within the national territory. Exceptionally, the Criminal Code provides the possibility for a Panamanian authority to investigate and judge acts committed outside the national territory, such as crimes against humanity, public health and the national economy, among others.

International Instruments and the Application of Criminal Law

A series of instruments has been signed between the Republic of Panama and various countries relating to mutual legal assistance, extradition and investigative co-operation. For example, in the *Odebrecht* case, there is ongoing judicial assistance from Brazil due to international co-operation between Public Prosecutor's Offices. The same applies in the case of *FCC*, where the court has relied on international assistance to carry out the necessary notifications for proceeding with the case.

According to the National Constitution, the Panamanian government cannot extradite its nationals to other countries, which creates an obstacle to prosecuting white-collar crimes that occur outside Panamanian territory. Foreigners, on the other hand, cannot be extradited for political crimes.

Article 20 of Panama's Criminal Code stipulates that Panamanian criminal law shall also apply to crimes committed abroad when:

- they produce or are to produce their effects in Panamanian territory;
- they are committed to the detriment of a Panamanian or their rights;
- they are committed by diplomatic agents, officials or Panamanian employees who have not been tried at the place of their commission due to reasons of diplomatic immunity; and
- a national authority has denied the extradition of a Panamanian or a foreigner.

1.5 Corporate and Personal Liability

A legal entity can be subject to criminal liability when it is created or used to commit a crime. However, in the Panamanian legal system, it is not possible for the legal entity itself to commit a criminal act; it is the natural person who created or used the legal entity to commit the crime who is capable of guilt. This person is usually punished with imprisonment, but in some cases the law also allows the legal entity involved in the criminal conduct to be sanctioned, such as through fines, suspension of operations, or dissolution of the company.

Liability of the Legal Person and the Natural Person: Differences

Regardless of the type of investigation, Panama's legal system does not establish a difference between investigating legal or natural persons; both will receive the same treatment, and their rights will be respected. Directors and officers (legal representative, president of the board, manager, CEO) of a corporation would only be held responsible for a criminal act if it is proven, beyond reasonable doubt, that said persons knew that the company was created or used to commit the criminal act or if they maintained some degree of participation in the crime as authors or accomplices.

In Panama, punishment is based on the law at the time the criminal act was committed. Therefore, the fact that the company created or used to commit the crime was acquired by or merged with another company does not make the acquirer or counterpart in the merger responsible for a criminal act committed in the past. If the shares of a company are purchased, that company will continue to be liable in the event that it has been used to commit a crime, as long as it is proven, which would only carry sanctions. Likewise, if the company used to commit a crime is absorbed by another company in a merger, the absorbing company would be assuming all the rights and obligations of the absorbed company, which would include – in the author's opinion – any criminal liability that the absorbed company may have had. This should not affect the directors or dignitaries of the absorbing company, since they had nothing to do with the absorbed at the time of the commission of the crime.

It should be made clear that the liability of legal persons in Panamanian legislation is limited, since it does not contain penalties precisely – sanctions are listed in a single article (Article 51 of the Penal Code), which range from a fine to the dissolution of the company.

1.6 Sentencing and Penalties

Panama's legal system includes a series of guidelines as to what must be considered when determining a penalty. For example, factors such as whether the perpetrator has a criminal record, the severity of the crime, and the existence of a relationship between the perpetrator and the victim are taken into account.

Once the penalty has been set, and subject to the fulfilment of certain requirements, it is possible for a declared prison sentence to be suspended or replaced by another form of penalty, so that the perpetrator may receive a different type of punishment and avoid serving jail time. There is also the possibility that, before the judge issues a judgment, the prosecutor and the accused person reach a plea agreement. This agreement results in a mandatory reduction of up to one-third of the penalty described in the law as the basis for the prosecutor to negotiate the reduction. Collaboration agreements are also possible in Panama, which empower the prosecutor to dispense with the criminal prosecution in its entirety or grant reductions in the sentence on condition of the accused providing testimony or information relevant to the case.

Regarding mitigation, the norm arguably provides for mitigating circumstances, which reduce not only the penalty to be imposed but also the seriousness of the action, and involve a subjective opinion on the part of the judge. By law, these must be considered when imposing sanctions or penalties; as far as legal entities are concerned, regulatory compliance programmes or criminal compliance would be an element to consider. The Penal Code maintains a list of these – see Article 90, where common mitigating circumstances include the following:

- to have acted for noble or altruistic reasons;
- not having had the intention of causing an evil of such seriousness as the one that occurred;
- the physical or mental conditions that placed the agent in a situation of inferiority;

- repentance, when, by acts subsequent to the execution of the act, the agent has diminished or tried to reduce its consequences;
- the effective collaboration of the agent; and
- to have committed the crime in conditions of diminished capacity.

1.7 Damages and Compensation

In order to claim compensation, the victim of the crime must first prove the occurrence of the crime and, second, that the crime caused them damage and harm. It is necessary for the victim to prove the amount of damage and harm they claim to have suffered as a result. The trial court is responsible for convicting a person of a crime and at the same time for declaring civil liability arising from the criminal act. No class action procedures or collective redress mechanisms are available in Panama's criminal justice system; unfortunately, class actions are only found in consumer protection civil actions under Law 45 of 2007.

2. Enforcement

2.1 White-Collar Enforcement Authorities

There is no civil or administrative enforcement in criminal investigations (although evidence of crimes may arise from the investigation of administrative offences, and this evidence would need to be sent to the prosecutor for criminal investigation and/or prosecution). Only the criminal authorities – specifically the Public Prosecutor's Office – have the competence to investigate white-collar crime.

Under the laws on compliance and on prevention of money laundering, financing of terrorism and financing of the proliferation of weapons of mass destruction, a series of powers has been created for the control entities – namely the Superintendency of Banks and the Superintendency of Non-Financial Entities. Said entities gather and have the duty to provide information to the prosecutors for the early detection of money laundering, financing of terrorism and financing of the proliferation of weapons of mass destruction.

With respect to public policy/political pressure, in general, corruption and crime in the context of public contracts, as well as related money laundering, have been subject to increased investigation and prosecution. Political pressure affecting enforcement cannot be disregarded, but this has not impeded high-profile politicians and private persons from criminal investigation/prosecution. Cases under the criminal accusatory system (*sistema penal acusatorio* SPA), which came into effect in 2012 are expected to expedite investigation and prosecution of said offences (vis-à-vis the prior criminal prosecution system).

2.2 Initiating an Investigation

Investigations of white-collar crimes can be initiated ex officio, by complaint or by direct accusation. This means that authorities can start an investigation on their own initiative, in response to a complaint filed by an individual or entity, or based on a formal accusation made by an interested party. This approach allows for more flexibility and effectiveness in the detection and prosecution of such crimes, ensuring that appropriate measures are taken regardless of how the crime is discovered.

2.3 Powers of Investigation

The authorities responsible for investigating white-collar crime have broad freedom to conduct any type of investigation, if it relates to the facts under investigation. However, they must avoid making broad or vague requests for information in the hope of uncovering incriminating evidence by chance rather than through targeted investigation. Authorities and prosecutors must be careful not to engage in fishing expeditions that lack specific grounds or probable cause. Individuals and authorities are required to provide the information needed to investigate these crimes. The official in charge of the investigation has legal powers to execute all matters related to this inquiry.

Prior to the initiation of a criminal investigation, and in terms of prevention related to anti-money laundering (AML) or countering the financing of terrorism (CFT), obligated entities must take measures for registration, liaison, due diligence and reporting of suspicious transactions. These obligated entities include:

- entities engaged in financial services and insurance business;
- companies in the Free Zones in the Republic of Panama;

- casinos, operators of games of chance and betting systems, and other entities that do business over the internet;
- real estate promoters, agents and brokers;
- companies dedicated to construction, general contractors and specialised contractors;
- armoured transport companies;
- pawnbrokers;
- companies trading in precious metals or precious stones, including diamond exchanges;
- the National Lottery of Beneficence (LNB);
- mail services;
- companies engaged in the purchase and sale of new and used vehicles;
- lawyers and public accountants, when in the exercise of their professional activity they perform on behalf of a client any of the activities subject to supervision; and
- public notaries.

In matters of AML/CFT, the above-mentioned entities must report a suspicious transaction regarding any transaction that cannot be justified or substantiated against the financial or transactional profile of the client, or any transaction that could be related to money laundering, terrorist financing or the financing of the proliferation of weapons of mass destruction.

2.4 Use of Technology in Investigations

Internal investigations conducted by individuals or companies are not considered evidence to establish or prove the facts under investigation in a criminal case. Any element provided to the prosecutor is considered an element towards a possible conviction (but not evidence per se) and will help to clarify the facts. In turn, the existence of prevention manuals (and a history of application thereof) can be considered as a bona fide action, and may be part of the conditions for a suspension of the criminal process and for exploring an alternative method of conflict resolution.

Some types of internal investigations, such as audit reports, can be presented to the prosecutor as evidence. In a criminal investigation, private statements are not considered evidence. The defendants have the right to a cross-examination, and the use of lie detectors is not valid in the official investigation. Any report made to regulatory entities in the matter of preventing money laundering, financing of terrorism or financing of the proliferation of weapons of mass destruction is not considered evidence in a proceeding, but rather as indications for the prosecutor in charge to carry out the necessary investigations to verify the commission of crimes.

As far as the Public Prosecutor's Office is concerned, a support tool is used in AI issues. This is very similar to a virtual operational assistant – the fact under investigation is entered and creates the so-called legally relevant fact, used in the accusations of charges. Before, this had to be done manually, and it allowed the creation of the fact to be charged with a view to framing it in the theory of crime, requiring the prosecutors to be more studious – today, this method is questionable.

2.5 Internal Investigations

Internal investigations are not mandatory, but they are needed to provide lines of investigation to the prosecutor – in fact, they are considered elements of conviction and even evidence in an eventual oral trial.

Companies are not generally obliged to grant such investigations; however, if the prosecutor knows about them and requests information by law, they are obliged to grant them.

2.6 Prosecution

White-collar prosecutions must be initiated by the prosecutor. The prosecutor has full legal authority to refrain from directing an investigation against a person or company involved in this type of crime, as long as the basis for that decision is that the company or individual will contribute to the process in order to uncover and sanction those with a higher degree of participation, if applicable.

2.7 Deferred Prosecution

Panama's criminal investigation process begins with a preliminary investigation, which can then lead to the formulation of charges. If the process continues, it will advance to a trial stage. Before this stage, it is possible to conclude the process through mediation, conciliation, withdrawal, suspension of the process subject to conditions, discretionary prosecution and plea agreements.

As long as the crime allows it, in view of the list of withdrawable crimes in the Criminal Code, methods other than a penalty agreement could be explored. For example, the forgery of documents is a crime that can be withdrawn, just as intellectual property crimes can be subject to mediation. Moreover, even if it is explored in the appropriate way, the prosecutor can decide to dispense with the action if it is of low importance to society. For example, the prosecutor has the right not to continue with a criminal case for trade mark counterfeiting, provided that the perpetrator reaches an agreement with the trade mark owner to pay damages.

Agreements with the prosecutor's office do not depend on the implementation of improvements in compliance programmes.

3. White-Collar Offences

3.1 Criminal Company Law and Corporate Fraud

Article 51 of the Criminal Code is the only rule that refers to the liability of legal entities, and only contemplates sanctions for them, not penalties. Any crime included in the Criminal Code that refers to the involvement of an entity in criminal conduct, whether by commission or omission, can carry the corresponding sanction, as long as it is proven that the legal entity was used or created for it – this sanction ranges from a fine to the dissolution of the entity, without neglecting the attribution of criminal responsibility to those natural persons who had some dominion or control over the act.

The Criminal Code imposes severe penalties for various white-collar crimes. Document falsification, covered in Chapter I of Title XI of the Code (Crimes Section), includes altering public and electronic documents, with penalties ranging from one to 15 years depending on the document type and severity.

Fraud under Article 243 involves the misuse of financial resources and is punishable by four to eight years in prison, with harsher penalties for those exploiting their positions. The crime was designed for financial institutions, with aggravating circumstances for those who had the power to exercise such acts or who were employees of a trust.

Article 244 addresses the falsification of financial records, which is sometimes used to maintain or obtain credit facilities fraudulently. The Article imposes six to eight years of imprisonment.

The newly included crime of tax evasion, under Article 288-G, penalises intentional tax fraud with two to four years in prison, as long as the fraud exceeds USD300,000 within a calendar year.

Money laundering, detailed in Article 254, involves handling illicit funds from serious crimes and carries a penalty of five to 12 years in prison.

The above-mentioned additions to the law reflect Panama's commitment to combating financial crimes and enhancing legal transparency. The existence of a preceding crime is at least indicatively necessary.

3.2 Bribery, Influence Peddling and Related Offences

According to the Criminal Code, bribery involves the unlawful solicitation, acceptance or offering of benefits to influence the actions of a public servant. Criminal law classifies bribery in the following way.

- Bribery (Article 345 of the Criminal Code): a public servant accepts, receives or solicits any form of benefit to perform, omit or delay an act in violation of their duties, or because of failing to fulfil their duties. This also includes accepting benefits to perform acts inherent to their position without failing in their duties.
- Bribery in procedural actions (Article 346 of the Criminal Code): a public servant in a judicial or administrative role accepts, receives or solicits benefits to harm or favour a party in a process. This includes issuing resolutions contrary to the law, giving legal advice to parties or maliciously delaying processes. If this results in the conviction of an innocent person, the penalties are more severe.
- Bribery for giving or offering (Article 347 of the Criminal Code): a person offers, promises or gives a public servant any benefit to influence their

actions, whether to perform, delay or omit any act related to their duties.
- Inducement to bribery (Article 352 of the Criminal Code): a public servant induces someone to improperly give or promise money or another benefit for their own benefit or that of a third party.

Under Article 354 of the Criminal Code, influence peddling involves the act of using one's influence, or pretending to have influence, to solicit, receive or accept promises, money, goods, or any other economic or legal advantage. This is done with the aim of obtaining a benefit from a public servant or a foreign public servant of an international organisation in a matter they are managing or may manage.

These crimes must be committed intentionally, meaning that the public official who receives the bribe must be aware that they are receiving a benefit as a consequence of not fulfilling their obligations, thus favouring the briber. These crimes are punished with imprisonment and aim to protect the proper functioning of public administration.

Applicable Accessory Penalties

In addition to imprisonment, the person who receives the bribe is sanctioned with accessory penalties of disqualification from holding public office and the confiscation of the money, goods or objects received as a result of the bribery.

3.3 Anti-Bribery Regulation

In Panama, there is legislation aimed at preventing bribery and influence peddling. This includes (among others):

- Law 23 of 2015 (and its amendments) on the prevention of money laundering, financing of terrorism and financing of proliferation of weapons of mass destruction, which creates obligations on financial and non-financial obligated entities;
- the Anti-Corruption Law; and
- the United Nations Convention against Corruption.

Additionally, there are regulations that relate to codes of ethics for public officials and integrity pacts that companies contracting with the State must sign. There are also disqualification rules in public contracting that apply to companies and their directors who commit (among other things) falsification and crimes against the public administration.

Supervisory bodies will verify compliance with the mechanisms for AML/CFT control, adopting a risk-based approach that allows for a clear understanding of the risks to which the obligated party is exposed. For this supervision, the bodies may request information and documentation from the obligated companies.

When implementing a risk-based approach, obligated parties must establish processes to identify, evaluate, monitor, manage and mitigate the risks of money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction.

The obligations for obligated parties in accordance with Law 23 of 2015 and its amendments and regulations are as follows.

Registration Obligation

Obligated parties must register with the relevant Superintendency, according to the procedure and fees it establishes.

Liaison Obligation

Obligated parties must designate a person or unit responsible for serving as a liaison with the Financial Analysis Unit (UAF) and the relevant Superintendency. Until such a person or unit is appointed, the legal representative (in the case of entities) or the natural person will perform the liaison function.

The liaison will have the function of attending to the requirements and requests of the UAF and the Superintendency. The registration of the liaison will be regulated, in the case of vehicle traders, by the Superintendency, which will issue the guidelines and other functions that the liaison must fulfil.

Obligation to Adopt a Prevention Manual

Obligated parties must implement and adopt an AML/CFT manual that allows for the implementation of policies, procedures and controls necessary to reduce exposure to the risks identified in their own risk assessments. This manual must be approved by

senior management – ie, partners, directors, officers, representatives, etc. These people will be obligated to monitor the implementation of internal controls, improving or reinforcing them, and will be responsible for maintaining such internal control structures in their company.

Due Diligence Obligation

Obligated parties must take the necessary measures to identify, evaluate and understand their AML/CFT risks relating to clients, countries or geographic areas, products, services, transactions, or distribution or marketing channels.

Obligations to Report Unusual or Suspicious Transactions

Under Law 23 of 2015, obligated entities and supervised professionals in Panama must promptly report any suspicious or attempted transactions to the UAF, regardless of the amount. Suspicious transactions include any activity potentially linked to money laundering, terrorism financing, or the proliferation of weapons, even if outside normal business practices. Entities must keep detailed records of these transactions and update due diligence files accordingly.

Additionally, entities must have systems to detect unusual transactions, analyse them and determine whether they should be reported as suspicious. All unusual transactions must be documented, including who analysed them and the decision made. If deemed necessary, these can be reported to the UAF using the same form for suspicious operations, supporting Panama's efforts to combat financial crimes.

Failure to report suspicious transactions as required by Law 23 of 2015 can result in significant administrative, financial and even criminal sanctions for obligated entities in Panama. These include fines that may exceed PAB300,000 in cases involving serious offences such as tax fraud or money laundering. Entities may also face disciplinary actions, such as the suspension or revocation of operating licences, and criminal liability for compliance officers or directors who knowingly omit reports. The law emphasises immediate reporting upon detection and requires robust internal controls to ensure compliance, reinforcing Panama's commitment to combating financial crimes.

3.4 Insider Dealing, Market Abuse and Criminal Banking Law

In Panama, the issues of insider dealing, market abuse and criminal banking law are codified in the Criminal Code under Articles 238, 243 to 253, and 283. These provisions establish the legal framework for addressing and penalising such offences, ensuring the integrity and transparency of financial and market activities within the country.

On conduct that relates to insider dealing, Article 249 of the Criminal Code addresses the misuse of privileged information. It stipulates that anyone who, for personal gain or the benefit of a third party, improperly uses or discloses privileged information obtained through a privileged relationship, relating to securities registered with the National Securities Commission or traded in an organised market, causing harm, shall be punished with a prison sentence of six to eight years. For the purposes of this Article 249, confidential information is defined as information that, by its nature, can influence the prices of securities and that has not yet been made public.

Additionally, Article 251 of the Criminal Code penalises the creation of false or misleading appearances in the trading of registered securities. It states that anyone who, with the intent of obtaining undue profit for themselves or a third party, makes deceptive offers to buy or sell registered securities, creates a false impression of active trading, or manipulates the market price of any registered security to facilitate its sale or purchase, shall be punished with a prison sentence of four to six years.

On market abuse, Articles 238 and 239 of the Criminal Code address market abuse and consumer protection. Individuals who withdraw or withhold essential raw materials or products from the market with the intent to create shortages or manipulate the prices of goods or services, thereby harming consumers, shall be sanctioned with imprisonment from two to five years.

Also, those who, to the detriment of consumers, charge higher amounts for products or services measured by automatic devices or apparatuses shall be sanctioned with imprisonment of four to eight years.

Criminal Conduct in Approvals Outside the Parameters of the Banking Law

In Panama, specifically regarding insider trading, the Criminal Code stipulates that directors, managers, legal representatives or employees of financial institutions who approve credit or financing beyond legal regulations, potentially causing forced liquidation, insolvency or permanent illiquidity, face imprisonment of four to seven years. This penalty also applies to beneficiaries involved in the crime and is increased by a quarter if done for personal gain. Individuals who use or disclose privileged information for personal or third-party benefit, causing harm, face six to eight years of imprisonment. Privileged information is defined as confidential data that can influence securities prices and that has not been made public.

3.5 Tax Fraud

Panama has taken a significant step in its fight against financial crimes by enacting Law 70 of 2019, which criminalises tax evasion. The Criminal Code stipulates that anyone who intentionally commits tax fraud against the National Treasury, affecting the accurate determination of a tax obligation to avoid paying taxes in whole or in part, shall be punished with two to four years of imprisonment. Under this regulation, any individual who intentionally evades taxes amounting to USD300,000 or more in a calendar year faces severe penalties, including a prison sentence of two to five years and a financial penalty ranging from two to ten times the amount evaded. This law aligns Panama with international standards set by organisations such as the Financial Action Task Force, and aims to enhance the country's compliance with global anti-money laundering and tax transparency norms. The regulation has been well received by local business associations and government agencies, as it strengthens Panama's legal framework and helps maintain its international investment rating. By criminalising tax evasion, Panama has demonstrated its commitment to upholding the rule of law and fostering a transparent financial environment.

No reporting requirements or procedures are stipulated, but they are usually initiated by the regulatory authority, with copies being sent to the Public Prosecutor's Office.

Law 70 of 2019 punishes anyone who personally, or through third parties, alters securities, goods and other financial resources in full or partial knowledge against the Panamanian National Treasury. These actions will be punished with a sentence of two to four years in prison and fines of one to three times the amount of the tax defrauded. In addition, if it is determined that the offence was committed through one or more persons, the penalty will be imposed on the legal entities in question, and will be a fine of one to three times the amount of the tax transferred. The penalty described is applicable when the amount of the tax is equal to or greater than USD300,000 in a fiscal period. Cases where the tax amount is less than USD300,000 will be sanctioned by the General Directorate of Revenue (DGI).

3.6 Financial Record-Keeping

Articles 244 and 245 of the Criminal Code address financial record-keeping offences. Individuals who destroy, conceal or falsify accounting books, financial records or other financial information of a natural or legal person to obtain, maintain or extend credit or capital facilities from financial institutions, resulting in harm, can face six to eight years of imprisonment, and the same applies to those who use or benefit from falsified documents. These penalties are also applicable to those who destroy, conceal or falsify financial records or custody account entries of entities registered with the National Securities Commission or operating as investment advisers, investment companies or intermediaries, also resulting in harm.

3.7 Cartels and Criminal Competition Law

With regard to competition-related crimes in Panama, Article 238 of the Criminal Code penalises individuals who withdraw or withhold raw materials or essential products from the market with the intent to create shortages or manipulate prices of goods or services, thereby harming consumers. The punishment for such offences is four to eight years of imprisonment. The Criminal Code also addresses the fraudulent billing of higher amounts for products or services measured by automatic devices, to the detriment of consumers, and imposes a prison sentence of two to five years for such actions. Under Law 45 of 2007, absolute and relative monopolistic practices are fined; nonetheless, these practices are not considered crimes as per the

Criminal Code, and therefore can only be prosecuted in the civil courts and under the administrative procedures of the antitrust authority (the Authority for Consumer Protection and Competition Defence; ACODECO).

In Panama, monopolistic practices – both absolute and relative – are subject to strict sanctions under Law 45 of 2007. Absolute monopolistic practices, such as price-fixing agreements or collusion between competitors, can be penalised with fines of up to PAB1 million. Meanwhile, relative monopolistic practices, which involve abuse of market power to displace competitors or impose unfair conditions, may result in fines of up to PAB250,000. These sanctions are enforced by ACODECO, which also has the power to impose administrative measures and pursue judicial actions against violators to safeguard free competition in the Panamanian market.

3.8 Consumer Criminal Law

In Panama, the Criminal Code outlines several criminal offences aimed at protecting consumers. Those who intentionally withdraw or withhold essential raw materials or products from the market to create shortages or manipulate prices, resulting in harm to consumers, face penalties ranging from four to eight years of imprisonment. Also, fraudulent billing practices, whereby individuals charge consumers higher amounts for products or services measured by automatic devices, are punishable by two to five years in prison. Panama also criminalises false advertising, whereby businesses include misleading information or uncertain benefits relating to their products or services in their offers or advertisements, causing significant harm to consumers.

The following are less common but may arise under the Criminal Code when consumer harm involves fraud or public safety.

- Consumer fraud: intentional deception to cause economic harm. Liability includes up to five years' imprisonment.
- Endangerment through unsafe products: sale of goods that pose health or safety risks. Liability includes imprisonment depending on harm caused.
- Obstruction of consumer oversight: tampering with inspections or falsifying compliance documents. Liability includes fines or imprisonment.

3.9 Cybercrimes, Computer Fraud and Protection of Company Secrets

The Criminal Code addresses various cybercrimes, computer fraud and the protection of company secrets. Articles 289 and 290 penalise unauthorised access, use, modification or interference with databases, networks or computer systems with imprisonment of two to four years. These penalties are increased if the offences involve public offices, financial institutions or medical entities, or if committed for profit. Penalties are increased if the offences are committed by individuals responsible for or authorised to access the systems; this increase is from one-sixth to one-third of the original penalty.

Regarding trade secrets, the Criminal Code punishes the unauthorised use or appropriation of industrial or commercial secrets for economic gain or to cause harm with four to six years of imprisonment.

Unjustified disclosure of trade secrets is punishable by two to four years of imprisonment.

Theft of economic innovations or secrets is also punished by imposing two to four years of imprisonment, or three to six years if committed by public officials, company employees or professional service providers.

The sanctions are as follows, in more detail:

- Article 289 – anyone who improperly enters or uses a database, network or computer system shall be punished with two to four years in prison; and
- Article 290 – anyone who improperly seizes, copies, uses or modifies data in transit or contained in a database or computer system, or interferes with, intercepts, obstructs or prevents its transmission, shall be punished with two to four years in prison.

3.10 Financial/Trade/Customs Sanctions

In Panama, the principal offences relating to financial, trade and customs sanctions are governed by a combination of domestic laws and international

commitments. While Panama does not maintain an autonomous national sanctions regime, it enforces sanctions derived from international frameworks – particularly those issued by the United Nations and supported by extraterritorial standards such as US and EU sanctions, GAFILAT, and in co-ordination with countries such as the United States. These sanctions may include asset freezes, cancellation of registrations, and trade restrictions.

Panama has cancelled hundreds of vessel registrations linked to sanctioned entities, including 136 vessels tied to the National Iranian Oil Company and 78 vessels involved in IUU fishing.

The main offences include:

- engaging in financial or commercial transactions with individuals or entities subject to international sanctions;
- facilitating the movement of goods or funds in violation of such sanctions; and
- failing to conduct due diligence or implement compliance controls.

Constituent elements of these offences typically involve:

- knowledge of the sanctioned status of the counterparty;
- intentional or negligent participation in prohibited transactions; and
- omission of reporting obligations.

In customs contexts, offences such as contraband and customs fraud – regulated under Law 30 of 1984 – are also relevant, particularly when they involve sanctioned goods or entities.

Sanctions for breaches vary. Administrative penalties include fines ranging from PAB5,000 to PAB1 million, suspension or revocation of licences, and public reprimands. Criminal penalties may apply in cases involving money laundering, terrorist financing, or fraudulent concealment of sanctioned transactions, with imprisonment ranging from five to ten years.

Enforcement authorities include the UAF, the DGI, the *Superintendencia del Mercado de Valores* (SMV) and the *Autoridad Nacional de Aduanas*. Liability arises when entities fail to implement adequate compliance programmes, ignore red flags, or obstruct regulatory oversight.

3.11 Concealment

Article 254 of the Criminal Code addresses the offence of concealment. It penalises individuals who, either personally or through intermediaries, receive, deposit, negotiate, transfer or convert money, securities, assets or other financial resources, knowing they originate from various serious crimes such as international bribery, human trafficking, drug-related offences, terrorism and more. The intent must be to hide, cover up or disguise the illicit origin of these resources or to help evade legal consequences. The punishment for this offence is imprisonment for five to 12 years.

3.12 Aiding and Abetting

According to the degree of participation, people can be punished based on the help or collaboration they provide, and, depending on the level of collaboration, a corresponding sanction will be imposed.

Determining sanctions without knowing the crime that the natural person has committed is highly subjective – they may even be responsible for instigation, and this leads to the same result as for the perpetrator of the crime.

3.13 Money Laundering

Money laundering is attributed to anyone who personally or through an intermediary receives, deposits, negotiates, transfers or converts money, securities and other financial resources, and who should have reasonably foreseen that they came from illicit activities.

To establish the crime of money laundering, the following must be proven:

- illicit origin of funds – the money must originate from a predicate offence;

- intent to conceal or disguise – the offender must intend to hide the origin, ownership or destination of the funds; and
- use of financial or economic systems – the funds are inserted into the financial system through transactions or operations.

The illicit activities in money laundering are called predicate offences. These are detailed in the Criminal Code (they include crimes against industrial property rights, financial crimes, forgery of documents in general, organised crime, and many others; see the Criminal Code for further detail). These acts, or helping someone to evade the legal consequences of such punishable acts, will be sanctioned with a penalty of five to 12 years in prison.

Attribution of Criminal Liability

To attribute guilt, it is necessary to prove that the funds came from one of the so-called predicate offences and that the person who received, deposited or transferred them was aware of their illicit origins. The penalty ranges from five to 12 years in prison.

Obligation to Prevent Money Laundering

The legal basis is Law 23 of 2015, which establishes mandatory compliance for:

- financial institutions;
- non-financial obligated entities; and
- professionals (eg, lawyers, accountants, real estate agents).

The nature of the offence for non-compliance is as follows:

- administrative – failure to implement AML controls;
- criminal – wilful omission or facilitation of laundering; and
- civil – liability for damages caused by negligence.

Authorities Responsible for Enforcement

Competent authorities include:

- the UAF – receives and analyses suspicious transaction reports;
- the Superintendence of Banks – supervises financial institutions;
- the Attorney General's Office – leads criminal investigations; and
- the National Commission Against Money Laundering – the national commission for AML strategy.

Circumstances for liability include:

- failure to report suspicious activity;
- lack of due diligence or know-your-customer (KYC) procedures; and
- obstruction of inspections or audits.

Penalties include:

- financial sanctions – fines of up to PAB1 million;
- criminal penalties – imprisonment for responsible individuals;
- administrative actions – licence suspension, public reprimand; and
- monitoring – enhanced supervision and audits.

3.14 ESG-Related Offences

Panama does not currently have a comprehensive legal framework that criminalises ESG-related misconduct (such as environmental pollution, human rights violations or modern slavery) under a unified ESG law. However, specific environmental, labour and social laws do exist and can lead to administrative, civil and criminal sanctions depending on the nature and severity of the violation.

Environmental Offences

Under Law 41 of 2004 (the General Environmental Law), companies are required to conduct Environmental Impact Assessments (EIAs), obtain environmental permits, and manage waste and emissions responsibly. Violations – such as unauthorised emissions, illegal waste disposal or operating without permits – can result in:

- fines (amounts vary depending on severity and recurrence);
- suspension of operations;
- revocation of permits; and
- criminal liability in cases of environmental harm to protected areas or ecosystems.

Offences against natural resources

- Illegal destruction, contamination or degradation of natural resources: three to six years' imprisonment, increased by one-third to one half in aggravating circumstances (eg, protected areas, irreversible damage, falsified environmental data).
- Unauthorised construction affecting water flow: two to five years' imprisonment.
- Obstruction of waste water flow: one to three years' imprisonment or fines/weekend arrest.
- Improper handling of hazardous materials or waste: four to eight years' imprisonment, increased for toxic or explosive materials.
- Illegal sale or acquisition of forestry permits: one to five years' imprisonment or 50 to 100 days' fine.
- Exceeding authorised tree felling limits: two to five years' imprisonment.
- Unauthorised deforestation in protected or sensitive areas: three to seven years' imprisonment.
- Vegetation burning: one to three years' imprisonment or fines/weekend arrest, increased in aggravating cases.
- Excessive emissions (noise, gases, etc) that cause pollution: two to four years' imprisonment.

Offences against wildlife

- Illegal hunting, fishing or extraction of protected species: two to four years' imprisonment, increased in aggravating cases.
- Illegal trafficking of endangered species or genetic resources: three to five years' imprisonment, reduced if species are returned unharmed.
- Introduction of harmful biological agents: four to eight years' imprisonment.

Urban planning and environmental compliance offences

- Falsifying environmental studies or omitting key data: two to four years' imprisonment, increased if damage occurs.
- Public officials approving projects in violation of environmental law: two to four years' imprisonment.
- Unauthorised permits for protected public spaces: six months to two years' imprisonment.
- Failure to comply with approved environmental plans: two to five years' imprisonment, increased if serious harm occurs.
- Benefiting from illegal approvals: the same penalty as for the principal offender.
- Illegal transfer of public land or protected areas: five to ten years' imprisonment.
- Unauthorised construction in protected or public areas: three to six years' imprisonment.
- Starting projects without required environmental approvals: two to five years' imprisonment, increased if damage occurs.
- Approval of urban projects violating zoning laws: four to six years' imprisonment.
- Construction that endangers environment or public safety: two to four years' imprisonment.

Legal entities involved in environmental crimes

Fines range from PAB5,000 to PAB100 million, depending on severity.

Social Offences

Panama's labour laws regulate working conditions, safety and workers' rights. While there is no specific law addressing modern slavery, violations such as forced labour or unsafe working conditions may be prosecuted under labour and criminal codes. Companies are expected to comply with:

- minimum wage and working hour regulations;
- occupational safety standards; and
- anti-discrimination laws.

Sanctions for violations include:

- fines;
- closure of facilities; and
- legal action by affected workers or unions.

Governance Offences

Corporate governance is regulated primarily by Law 32 of 1927 and Law 5 of 2007, which governs company formation, board responsibilities and shareholder rights. While ESG-specific governance rules are not yet codified, Panama's alignment with international standards (eg, AML/KYC under Law 23 of 2015) means that companies must maintain ethical governance practices or face regulatory sanctions, loss of licences, and reputational damage.

Supply Chain Monitoring

Panama does not yet mandate supply chain ESG compliance across all sectors. However, companies – especially those with international exposure – are increasingly expected to monitor suppliers for environmental and labour compliance. Failure to do so may result in loss of contracts, exclusion from public tenders, and international sanctions or trade restrictions.

3.15 Artificial Intelligence and Automation Misuse

Panama currently lacks a comprehensive legal framework specifically addressing criminal offences related to the misuse of AI, algorithmic trading or automated decision-making in financial or commercial contexts. However, certain regulatory and compliance obligations do apply under existing financial and corporate laws, particularly in the fintech sector.

Algorithmic Trading and AI in Finance

There are no specific laws criminalising the development or use of trading algorithms or AI-based financial tools, as long as the developers are not directly executing trades themselves.

Automated Decision-Making and AI Governance

Panama has no specific criminal offences tied to misuse of automated decision-making systems (eg, biased credit scoring, discriminatory hiring algorithms).

Compliance Expectations

Companies using AI in regulated sectors must ensure transparency, fairness and accountability.

There is no regulatory sandbox for testing AI models, but regulators may issue non-binding opinions on compliance matters.

Gatekeeper Liability

Financial institutions are expected to monitor their platforms for AML compliance. This includes oversight of automated systems used for transaction monitoring and risk scoring.

Corporate Liability

While corporate criminal liability exists for environmental and financial crimes, there is no express provision for AI misuse. However, if AI systems are used to commit fraud, violate AML laws or breach consumer protection standards, companies may be held liable under general criminal or administrative law.

3.16 Crypto-Assets and Digital Currency Crimes

Crypto-assets are not recognised as legal tender, though they are legally used in transactions. Panama does not yet have a unified crypto law, though several offences may apply under general financial and AML laws:

- fraud and misrepresentation – misleading investors in initial coin offerings or token sales, and false claims about project viability or returns;
- market manipulation – such as pump-and-dump schemes, wash trading or spoofing on crypto exchanges;
- money laundering – use of crypto to conceal illicit funds, or lack of KYC/AML procedures; and
- operating without a licence – offering exchange, wallet or token services without registration.

4. Pleas and Defences

4.1 White-Collar Defences

If it is established during the investigation process that all the requirements set forth in both the law and the regulations aimed at preventing money laundering were met, and also that there was no money laundering, an acquittal should consequently be obtained.

Compliance and Regulation of Law

The law establishes requirements that must be included in compliance programmes. If an organisation creates regulations to prevent the receipt of money from an illicit source, the actions of someone within the organisation who, for some reason, receives money from an illicit source should not be considered intentional.

4.2 De Minimis

Panamanian criminal law provides very well-defined exemptions from guilt; however, most of these would apply to common crimes – for example, legitimate defence after an unjust aggression, lack of provocation and the use of a rational means to repel the imminent damage. When talking about white-collar crime, everything is reduced to the intentionality of the act. Given that ignorance of the law does not exempt a person from liability, lack of knowledge that an act was illicit could hardly be used as an exception.

4.3 Plea Agreements, Co-Operation, Self-Disclosure and Leniency

Article 220 of the Criminal Code provides rules on sentencing agreements, which are divided into two categories, as follows.

Collaboration Agreements

Collaboration agreements are designed so that the prosecutor can dispense with a prosecution in a total or partial manner depending on the information provided by the collaborator, sometimes even negotiating the provision of information in exchange for the imposition of a lesser sentence.

Penalty Agreements

In contrast, a penalty agreement involves the acceptance of criminal responsibility, the penalty for which cannot be less than a third of the penalty that would otherwise be imposed for the crime under investigation.

4.4 Whistle-Blower Protection

Panama's criminal laws provide protections as incentives for whistle-blowers. These protections include the possibility of not appearing in the proceeding and having their identity safeguarded by the prosecutor. However, it is important to note that, during the trial, the defence may have the right to know the identity of the protected witness. This balance aims to encourage the reporting of wrongdoing while ensuring a fair trial process.

In the realm of antitrust law, within the civil and administrative spheres, whistle-blower protections and benefits are granted exclusively to the first individual who reports the wrongdoing. Subsequent witnesses who provide information leading to evidence of monopolistic practices or actions that harm economic free competition and free market entry in the production, processing, distribution, supply or marketing of goods or services do not receive the same benefits. This policy aims to incentivise early reporting while maintaining a fair and competitive market environment.

Whistle-blowing can significantly impact trade secrets and confidential information, potentially causing commercial disadvantages to a corporation. When an employee discloses information about illegal or unethical practices, they might inadvertently reveal sensitive data that competitors could exploit. This could include proprietary technologies, business strategies or customer information. However, there is a delicate balance to maintain. Legal frameworks often provide protections for whistle-blowers to encourage the reporting of wrongdoing while also safeguarding certain types of confidential information. For instance, whistle-blower laws typically include provisions to protect trade secrets and other sensitive information from unnecessary disclosure. The expectation is that only information directly relevant to the illegal or unethical activity should be disclosed, and measures should be taken to minimise any potential harm to the corporation's legitimate business interests.

The rule that protects a protected witness is set out in Article 340 of the Criminal Code, which states that the prosecutor's office, within the development of the investigation, at the time of presenting the accusation and announcing its elements of evidence, may accompany this with the identification data of witnesses and experts in a sealed envelope. This measure loses force when the identity of the witness may be known to the defence in the intermediate phase of the criminal process, which leaves them exposed to any danger before the oral trial. The protected witness ceases to be a protected witness in the intermediate phase, since they are revealed to the defence – a situation that could possibly jeopardise the amount of evidence to be debated in oral trial. Everything will depend on the way the defence acts and its procedural loyalty to the process.

There is no anonymous reporting channel provided by regulators or prosecutors – the truth is that criminal

actions can begin anonymously and even by reports from the financial analysis unit or another entity without one's knowledge that this internal or administrative investigation would lead to a criminal case.

4.5 Cross-Border Defence Strategies

The defence is affected due to the complexity of cases, and even more so when the evidentiary flow thereof depends on another jurisdiction, since it does not have the force or the recourse of the punitive power of the State (Public Prosecutor's Office).

There are no limits to international support nor to a coordinated defence mechanism; however, in high-profile cases with multiple defenders, these join forces in attacking violated forensic experts or procedural protocols, which sometimes benefits the co-investigated.

5. Key Trends and Future Outlook

5.1 The Year Ahead

There is much discussion about the forfeiture of property as a method of confiscating property without conviction and even from non-investigated third parties; this project is currently shelved in the Assembly. A project on the criminal liability of the legal person was also initiated but has not passed the first debates. Currently, there are attempts to bring a General Anti-Corruption Law up for discussion, which does not benefit the defence at all but rather the prosecutor, in order to "strengthen" their position. This has been met with opposition from many sectors.

Trends and Developments

Contributed by:
Inocencio Galindo, Omar Rodriguez, Maria Eugenia Brenes and Joy Paull Torres
Morgan & Morgan

Morgan & Morgan is one of the largest and most recognised full-service law firms in Panama, with roots dating back to 1923. The firm has extensive experience in assisting both local and multinational corporations from various industries, as well as individual clients. The firm's corporate investigations and compliance practice and its criminal law practice comprise three partners and four associates. The first of these practices has broad expertise in advising on compliance-related matters; the development, implementation and improvement of governance frameworks; cybersecurity; compliance programmes focused on prevention of corruption and bribery; high-stakes investigations; and enforcement actions. The criminal law practice is a pioneer in Panama and provides comprehensive and multidisciplinary representation in criminal actions, with a focus on representing multinational and corporate clients. The team has a multidisciplinary approach and represents clients in criminal cases, including (among others) in cases of financial and corporate fraud, damage to economic assets, and crimes against public administration and the national economy.

Authors

Inocencio Galindo is a partner and leads Morgan & Morgan's mining and natural resources practice and its corporate investigations and compliance practice. He is also co-leader of the project development and public procurement practice and the banking and finance practice. He is highly recognised for his experience in corporate and commercial law and M&A. He has over 25 years of experience and has played a significant role in the development and financing of large infrastructure projects, such as Lines 1, 2 and 3 of the Panama Metro, toll road projects, electricity generation, potable water and sanitation, and the Cobre Panama mining project (the largest private investment in Panama's history), as well as all types of related disputes, including arbitration.

Omar Rodriguez is a partner and leads Morgan & Morgan's criminal law practice. He also plays a leading role in the firm's litigation and dispute resolution practice and its arbitration practice. He has over 30 years of experience and has advised on processes across various industries, specialising in criminal law at both corporate and private levels. In recent years, he has been involved in high-profile cases in Panama, addressing financial and corporate fraud, economic asset misappropriation, cybersecurity, and crimes against public administration and the national economy. Before joining Morgan & Morgan, he held various public positions within the Public Prosecutor's Office, and this experience has enriched his skills in handling complex and high-profile cases.

Contributed by: Inocencio Galindo, Omar Rodriguez, Maria Eugenia Brenes and Joy Paull Torres, **Morgan & Morgan**

Maria Eugenia Brenes is a senior associate in Morgan & Morgan's corporate and commercial law, logistics and international trade, project development and public procurement, corporate investigations and compliance, and intellectual property practices. María has more than 25 years of experience advising clients across various industries. Specialising in intellectual property matters related to healthcare products, María navigates the complex landscape of medical regulations. María is well versed in regulations covering pharmaceuticals and medical devices. In terms of compliance and governance, María has contributed to the creation and adaptation of compliance and ethics programmes and manuals. Additionally, she provides legal advice and training on preventative actions and immediate responses to any incidents.

Joy Paull Torres is a senior associate in Morgan & Morgan's litigation and dispute resolution, criminal law, and corporate investigations and compliance practices. He represents both defendants and plaintiffs in criminal and constitutional cases at the national level, participating in hearings that must be conducted before Panamanian courts. Joy has over eight years of experience in the national public sector, having been part of the Ministry of Economy and Finance, the National Mortgage Bank, the Superintendence of Insurance, the Public Prosecutor's Office and the Office of the Comptroller General of the Republic. Since 2016, he has served as a Prosecutor in the Metropolitan Area under the rules of the Accusatory Penal System.

Morgan & Morgan

Paseo del Mar Ave.
23rd Floor
MMG Tower
Costa del Este
Panama City
Panama

Tel: +507 265 7777
Email: customerservice@morimor.com
Web: www.morimor.com

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100 YEARS

Contributed by: Inocencio Galindo, Omar Rodriguez, Maria Eugenia Brenes and Joy Paull Torres, **Morgan & Morgan**

Introduction

The landscape of criminality has fundamentally shifted from individual acts to sophisticated operations embedded within corporate structures and digital networks. This evolution demands a parallel transformation in legal systems, moving beyond traditional doctrines to address collective responsibility, systemic corruption and digital vulnerabilities. In Panama, this imperative is reflected in three significant legal developments:

- the push to establish a robust framework for the criminal liability of legal persons;
- the introduction of the expansive General Anti-Corruption Law (Bill 291); and
- the implementation of data protection protocols under Law 81 of 2019.

While targeting distinct areas – corporate crime, public sector corruption and data security – these initiatives converge on a common goal: to close legal gaps that have allowed complex, socially damaging offences to thrive. This analysis explores the pros and cons of these legal reforms, examining whether they strike a necessary balance between empowering the state and safeguarding fundamental rights in the pursuit of justice.

Criminal Liability of Legal Persons

The criminal liability of legal persons is the legal attribution of criminal consequences (sanctions or measures) to collective entities – such as companies, associations, co-operatives or other forms of legal persons – when, within the framework of their activities, crimes are committed for their direct or indirect benefit.

In other words, not only can natural persons be criminally liable but so too can legal persons, provided that the unlawful conduct was executed by their representatives, administrators or managers, in the exercise of their functions, or by their employees or dependents, when the crime was made possible due to the lack of controls, supervision or regulatory compliance within the organisation.

Sanctions applied to a legal person declared responsible for committing a crime

The criminal sanctioning of legal persons is regulated in Article 51 of the Criminal Code, which establishes that, when a legal person is used or created to commit a crime, even if it did not benefit from it, a criminal sanction will be applied to it.

Among the sanctions are:

- the cancellation or suspension of its operation licence;
- a fine of not less than PAB5,000;
- total or partial loss of tax benefits;
- disqualification from contracting with the State; and
- dissolution of the entity.

How to avoid the criminal liability of legal persons

In accordance with doctrinal and jurisprudential opinions, a legal person shall be liable under criminal law in the event that there exists an organisational defect in its structure. The notion of "objective dangerousness" of the legal person thus arises, which is understood as the set of characteristics existing in the organisational structure of an entity that leads to the commission of crimes.

For crimes to be attributable to the organisational structure, they must have been committed as a consequence of the lack of control and/or supervision in the legal person or due to the promotion, favouritism or acquiescence of the hierarchical superiors of an organisation.

Unlike for natural persons, where culpability implies proof of the direct commission of a crime, for a legal person there exists the "attribution or imputation of criminal liability":

- for having allowed or favoured the commission of a crime by a natural person related to the entity;
- by failure to create a business culture of regulatory compliance; and
- for infringing its responsibility to foster compliance with the law and establish barriers to avoid or hinder the commission of crimes by members of the organisation during the performance of their duties.

The legal person will be punished for not having organised itself adequately to avoid or considerably reduce the risks that its activity generates, expressed by the possibility that some natural person takes advantage of such a structural failure of the organisation to commit crimes that harm third parties. Therefore, it can be affirmed that criminal liability of the legal person is totally independent of the culpability of the natural person who committed the crime.

Adequate self-regulation programmes or compliance programmes must include the objectives and values of the entity. Depending on the sector in which it operates, it must adopt measures for due compliance, according to the complexity or possible harm derived from its activities, and for the prevention of criminal conduct.

In this context, compliance programmes emerge as an internal normative body that manages criminal and administrative risks, structured considering a series of measures with a common objective: to promote compliance with legal norms and ethical rules in the entity, preventing the breach of existing regulations, including the commission of criminal acts.

Compliance is not based on a legal duty in the strict sense, but rather on an incentive to better position the entity in the face of certain risks and scenarios with criminal consequences.

When criminal liability is imputed to the legal person for not having organised itself adequately to mitigate risk of criminal acts in its business, the basis for its punishment will be what it did not do but should have done – ie, organise its structure in such a way as to prevent or considerably hinder the commission of crimes by the natural persons acting within its organisation.

Therefore, an entity is not sanctioned directly for the criminal conduct of an individual, but is punished for factual scenarios of omission by the entity – essentially, for not adopting mechanisms of organisational compliance and adequate risk management inherent to its activity, which encompasses both the material sources of risk or danger and the personnel that manage or employ these sources of risk or danger.

Consequently, the illicit act that is punished is of an omissive character: not having an adequate culture of regulatory compliance.

If it is proven that the compliance programme in place exceeds all standards, and that the person committed the crime by evading the effectiveness of these controls, the entity will be exempt from liability. This involves verifying that relevant parameters were followed to detect, avoid and address the conduct of applicable natural persons, showing that the entity was not indifferent to the consummation of the crime.

The authors consider that the liability of the legal person must be based on an organisational defect. If a company has correctly established the management, organisation and control mechanisms to avoid crimes, and despite this a criminal act is committed, the entity will not be criminally liable, as there is no culpability. Furthermore, if, once the crime is committed, the company demonstrates adequate post-criminal behaviour, proving that the event was isolated and adopting the relevant internal norms to prevent new crimes in the future, the culpability and the penalty may even disappear.

A new proposal for the criminal liability of legal persons

In the Panamanian legal system, there are no procedural rules that guide or delimit the manner in which a legal person could be incorporated into the criminal process. Therefore, there is no clear or specific processing of cases in this matter; rather, through jurisprudence, doctrine and comparative law, the practice has been to achieve the appearance of legal persons in the process and verify potential criminal liability through the imputation of those natural persons who in one way or another have influenced the behaviour of the collective entity.

In order to fill this legal gap, Bill 160 of January 2023 has been presented before the National Assembly, and seeks to create a regulatory regime for the criminal liability of legal persons in Panama.

According to the introduction of said bill, it is based on the need to implement a special regime supplementary to the Criminal Code and the Criminal Procedure

Code, in order to establish a transparent mechanism for prosecuting legal persons in Panama, separating the criminal liabilities of the organs of decision-making in the entity, its administration, legal representative, dignitaries, directors, council members, and other positions established in commercial laws and in the respective by-laws.

Under the bill, criminal liability of legal persons is premised on the criterion of "objective dangerousness", highlighting that only when a legal dangerousness is configured, which has endangered or injured legal interests protected by criminal law, can legal persons be held criminally liable within criminal processes in Panama.

The bill provides that any of the following events shows "objective dangerousness":

- when it is proven that there was an organisational defect verified by the absence of preventative controls in the legal person;
- when it is proven that there was express consent or acquiescence from the management or owners of a legal person;
- when it is proven that the legal person is used solely as a facade to commit a crime; and
- when it is proven that the legal person is used solely for the integration of assets that are products of the commission of crimes.

For its part, in its Article 15, the bill indicates the cases or scenarios in which legal persons can be declared criminally responsible, among which are:

- when a legal person is created fraudulently as a facade to conceal a crime;
- when a legal person is used fraudulently to commit a crime by its legal representatives, administrators, statutory managers and/or its ultimate beneficiaries;
- when crimes are committed intentionally or negligently in the name or on behalf of the entity, and for its direct or indirect benefit, by its legal representatives or by those acting individually or as members of an organ of the legal person, authorised to make decisions on behalf of or on account of the legal person or hold powers of organisation and control within it, provided there is an organisational defect in its structure; and
- in the case where it is shown that it is a legal entity created by its promoters, founders, administrators and/or representatives for the purpose of evading criminal liability.

In summary, the authors deem Bill 160 to represent an advancement in the sense of establishing criteria for the attribution of criminal liability of legal persons, since the current legislation is not sufficiently developed as only one article in the Criminal Code and another in the Criminal Procedure Code currently comprise the regime for this type of criminal liability.

Bill 291 – the General Anti-Corruption Law: Progress or Inquisitorialism?

Bill 291, called the "General Anti-Corruption Law", has as its main objective the creation of a comprehensive regulatory framework for the specialised investigation of crimes against the public administration and derived money laundering, following a model similar to Law 121 of 2013 against organised crime. It seeks to streamline and strengthen the procedural tools of the Public Ministry and other institutions in the fight against corruption.

The bill aims to strengthen the criminal investigation system regarding the aforementioned crimes in order to avoid impunity and overcome the budgetary and operational deficiencies that currently hinder the effective prosecution of such conduct.

However, this strengthening must be carried out in strict accordance with the principles of the accusatory, adversarial and guarantee-oriented criminal procedural system in force in Panama. Consequently, the incorporation of figures, methods or interpretations typical of inquisitorial systems that contravene (among others) the right to defence, the presumption of innocence and the impartiality of the judge is prohibited.

Violation of due process and fundamental rights

When a rule establishes, for example, prolonged investigation confidentiality regimes that disproportionately favour the Public Ministry, indications of procedural imbalance arise. It may be argued that this does not strengthen the effectiveness of the investigation and

may violate the right to defence and breach the principle of equality of arms, inherent to the accusatory system.

This principle requires that both parties – prosecution and defence – have the same procedural opportunities, including access to the necessary means of appeal to challenge judicial decisions. If the prosecutor has exceptional powers to keep evidence confidential, while the defence sees its right to appeal such decisions in the second instance limited, it may be argued that this creates a regression towards an inquisitorial model that the Panamanian legal system intended to overcome.

A system that aspires to be guarantee-oriented cannot be based on investigative asymmetries that privilege the accusing body. On the contrary, it must ensure that every restriction on individual rights is judicially controlled and subject to appeal, thus preserving the balance between prosecutorial effectiveness and the protection of public liberties.

Contradictions regarding the qualification and eligibility of experts for the Public Ministry

Furthermore, this bill empowers the Public Ministry to dispense with the Institute of Legal Medicine and Forensic Sciences to accredit, through expert opinions, the elements of proof required for its case theory. Specifically, within the framework of this General Anti-Corruption Law, it is intended that any official from autonomous entities or even police agents can act as experts, despite the evident hierarchical subordination that characterises said public servants.

It should be recalled that probative freedom was conceived to balance the faculties of the defence and the prosecution, avoiding procedural asymmetries. Extending this freedom to the prosecution regarding expert opinions could lead to reports lacking technical and legal rigour (even hindering the prosecution). Therefore, it is essential to establish in the bill the parameters of suitability and the required profile for these officials, in order to evaluate whether a modification of this nature in the Criminal Procedure Code is viable, especially in crimes against the public administration.

The bill requires a comprehensive review to:

- clarify ambiguous terms;
- ensure conformity with the Constitution and international human rights standards; and
- establish clear and balanced mechanisms that do not sacrifice procedural guarantees in the name of effectiveness.

It would be advisable to subject it to a broad dialogue with legal, academic and civil society sectors before its approval.

Reporting Data Breaches Under Panama's Law 81 of 2019: Legal Duties and Criminal Implications

In an increasingly digital world, the protection of personal data is not just a technical concern but is also a legal and ethical obligation. Panama's Law 81 of 2019 provides a comprehensive framework for the protection of personal data, including clear procedures for reporting data breaches and guidance on when such incidents may escalate into criminal matters.

A data breach occurs when personal information is accessed, disclosed, altered or destroyed without authorisation. This can result from cyberattacks, internal misuse or accidental exposure. Law 81 defines personal data broadly, including sensitive information such as health records, biometric data, and political or religious beliefs.

Under Article 2, organisations must adopt technical and organisational measures to ensure data security. If a breach occurs, the data controller or custodian must notify the affected individuals as soon as possible, especially if the breach involves sensitive data.

The responsibility to report lies with:

- the data controller – the entity that determines the purpose and means of processing personal data; and
- the data custodian – the entity that stores and manages the data.

Reports should be submitted to the National Authority for Transparency and Access to Information (ANTAI). If the data is regulated by a special law (eg, financial

or health data), the report must first go to the relevant regulator. If that authority does not respond, the case should be escalated to ANTAI.

A proper report should include:

- a description of the breach;
- the type and volume of data affected;
- the number of individuals impacted;
- measures taken to contain the breach; and
- whether and how the data subjects were notified.

Not all data breaches are criminal. However, Law 81 identifies specific circumstances where a breach may be considered a criminal offence or lead to criminal liability:

- intentional data collection or misuse (Article 41) – if data is collected or used fraudulently or maliciously, it may be classified as a "very serious" violation;
- unauthorised international data transfers – transferring personal data across borders without meeting legal requirements can trigger criminal investigations;
- failure to suspend data processing after official orders – ignoring directives from ANTAI or other authorities may result in criminal sanctions; and
- repetition of serious violations – recurrent breaches may escalate the severity of penalties.

In these cases, the breach may be reported to the Public Ministry or relevant criminal investigation authorities.

The affected party or ANTAI may initiate legal proceedings, and the courts will determine liability and impose penalties, which may include fines, suspension of operations, or imprisonment, depending on severity.

If a data breach appears to involve criminal intent or gross negligence, the following steps should be taken:

- document the incident thoroughly – include logs, communications and evidence of unauthorised access;
- notify ANTAI immediately – even if the breach is under investigation, ANTAI must be informed;
- consult legal counsel – determine whether the breach meets the threshold for criminal reporting;
- file a complaint with the Public Ministry – if criminal conduct is suspected, a formal complaint should be submitted; and
- co-operate with investigations – provide all requested documentation and access to systems as needed.

Law 81 of 2019 empowers individuals and holds organisations accountable for the protection of personal data. Reporting breaches promptly and understanding when they cross into criminal territory is essential for compliance and ethical responsibility. By following the law's procedures and co-operating with authorities, organisations can mitigate risks and contribute to a safer digital environment in Panama.

In Panama's current socio-economic context, data protection is increasingly tied to consumer trust, digital transformation and international compliance. Businesses that fail to report breaches or mishandle personal data risk reputational damage, financial penalties and legal consequences.

Moreover, with growing concerns around cybercrime, identity theft and digital fraud, Law 81 serves as a critical tool for safeguarding citizens' rights and ensuring accountability.

Crimes involving data breaches are often underreported, leaving victims vulnerable to further exploitation. In many cases, individuals or organisations may be subjected to *ransom demands, extortion, blackmail or threats* following unauthorised access to their personal or confidential data. Criminals may use stolen information to pressure victims into silence or payment, especially when the data involves sensitive financial, health or reputational details. The fear of reputational damage or legal consequences often discourages victims from coming forward, which allows these criminal practices to continue unchecked.

For this reason, it is crucial to *report a data breach immediately* – not only to the relevant data protection authority (ANTAI) but also to law enforcement if criminal conduct is suspected. Early reporting helps prevent further harm, enables authorities to investigate

and respond effectively, and contributes to broader efforts to combat cybercrime in Panama. Victims should not hesitate to seek legal support and file formal complaints with the Public Ministry or the Cybercrime Division, ensuring that their rights are protected and that perpetrators are held accountable.

Conclusion

The legislative initiatives analysed above – the proposed regime for corporate criminal liability, Bill 291 (the General Anti-Corruption Law) and Law 81 on data protection – collectively represent Panama's ambitious efforts to modernise its legal arsenal against 21st-century threats. They correctly identify critical weaknesses: the inability to hold organisations accountable, procedural bottlenecks in prosecuting high-level corruption, and the vulnerabilities inherent in a digital society. However, their effectiveness and legitimacy hinge on a crucial balance. The move towards attributing liability to legal persons through "compliance" models is a progressive step that aligns with international standards, focusing on organisational culture rather than just individual bad actors. Conversely, Bill 291, despite its laudable goals, risks undermining this progress by tilting the scales of justice too far towards the prosecution, potentially resurrecting inquisitorial practices that violate due process and the adversarial principle. Similarly, Law 81 establishes essential accountability for data breaches but requires vigilant enforcement to ensure that breaches with criminal intent are properly investigated.

Ultimately, the convergence of these three areas underscores a central theme: effective justice in a complex world requires laws that are not only powerful but also principled. The challenge for Panama is to ensure that the fight against corruption, corporate malfeasance and cybercrime is waged within a framework that is itself incorruptible – one that steadfastly upholds the rule of law, procedural guarantees, and fundamental rights. The path forward requires not just the passage of new laws but a sustained commitment to their careful implementation, continuous review, and alignment with constitutional and international human rights standards.

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