

# Aviation Liability

in Panama

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## APPLICABLE TREATIES

### Major air law treaties

To which major air law treaties related to carrier liability for passenger injury or death is your state a party?

The Republic of Panama is party to the Montreal Convention, effective since 2002 by Law 31 of 2002 and the Warsaw Convention, effective by Law 44 of 1996 but contemplated in the Decree Law of 1963.

In regard to other Conventions, Panama has recognised specific articles related to the repression of illicit acts against aviation safety as declared in article 5 of Law 21 of 2003:

- article 3 of the Tokyo Convention;
- article 4 of the Hague Convention 1970, and article 5 of the same Convention as per 1971; and
- article 3 of the Protocol for the repression of illicit acts of violence in airports providing services to civil aviation, complementary to the Convention for the repression of illicit acts of violence against civil aviation as per the Montreal Convention of 1971.

## INTERNATIONAL CARRIAGE – LIABILITY FOR PASSENGER INJURY OR DEATH

### Montreal Convention and Warsaw Convention

Do the courts in your state interpret the similar provisions of the Montreal Convention and the Warsaw Convention in the same way?

In matters of personal injury or death, Panama's courts have not had the opportunity to provide an established doctrine on interpretation of any of the Conventions nor on the application of Panama's Civil Aviation Law.

Do the courts in your state consider the Montreal Convention and Warsaw Convention to provide the sole basis for air carrier liability for passenger injury or death?

Law 21 of 2003 regulates domestic aviation liability in Panama. In its article 151, it acknowledges that for international carriage Panama recognises both conventions. Consequently, any chosen Convention in a contract of international carriage will be respected by a Panama court.

### Definition of 'carrier'

In your state, who is considered to be a 'carrier' under the Montreal and Warsaw Conventions?

The primary definition of 'carrier' is provided by Law No. 21 of 2003, which, in its drafting, is influenced by the Montreal and Warsaw Conventions. It extends to ground handling agents and other service providers when their services are provided within the airport confines.

For international carriers, Law 21, article 151 considers that liability will be subject first to the international Conventions recognised by Panama and Panama's law will be applied in its defect. In the specific case of successive carriers, Law 21, in article 113, considers that transportation provided by several carriers successively will be considered as one single operation.

Panama's courts do not have a defined test for the successive carriage but will consider the doctrine or interpretation provided by known academics or international case law.

### **Carrier liability condition**

How do the courts in your state interpret the conditions for air carrier liability - 'accident', 'bodily injury', 'in the course of any of the operations of embarking or disembarking' - for passenger injury or death in article 17(1) of the Montreal Convention and article 17 of the Warsaw Convention?

Panamanian courts have not had the opportunity to review the matter to create a precedent for its interpretation.

Article 138 of Law 21 establishes that the carrier is responsible for the harm or death of a passenger, including in the course of operations of embarking or disembarking, which is essentially what both Conventions contemplate.

### **No negligence defence**

How do the courts in your state interpret and apply the 'no negligence' defence in article 21 of the Montreal Convention, and the 'all reasonable measures' defence in article 20 and the 'wilful misconduct' standard of article 25 of the Warsaw Convention?

No court precedent exists on this matter that has reviewed any of the defences as per either of the Conventions. At present, there is a case against the state pending of resolution before the Supreme Court that may become a future reference on the matter.

### **Advance payment for injury or death**

Does your state require that advance payment be made to injured passengers or the family members of deceased passengers following an aircraft accident?

There are no legal obligations to advance payment to injured passengers or the family members of deceased passengers, except for the established limitation amounts set by Law 21 or the applicable international Conventions.

Civil courts may accept a carrier's motion of a voluntary deposit in certain instances.

### **Deciding jurisdiction**

How do the courts of your state interpret each of the jurisdictions set forth in article 33 of the Montreal Convention and article 28 of the Warsaw Convention?

Panama's courts have not defined an interpretation of these articles; they would initially rely on the academic interpretations and international case law.

With regard to the doctrine of forum non conveniens, the Supreme Court has declared that Panama is not a party to the doctrine as per common law interpretations. However, by means of a decision from 2015, the Court declared it may be possible to hear cases when coming from abroad rather than be automatically dismissed when the claimant argues harm or damage has been suffered in a different jurisdiction.

**Period of limitation**

How do the courts of your state interpret and apply the two-year period of limitations in article 35 of the Montreal Convention and article 29 of the Warsaw Convention?

Law 21 acknowledges the same period of limitations in article 170 and courts may take into consideration whether the time limitation has been interrupted if brought as an argument by a claimant.

**Liability of carriage**

How do the courts of your state address the liability of carriage performed by a person other than the contracting carrier under the Montreal and Warsaw Conventions?

Courts have not reviewed the matter and, consequently, will rely on international academic interpretations and international case law.

**DOMESTIC CARRIAGE – LIABILITY FOR PASSENGER INJURY OR DEATH****Governing laws**

What laws in your state govern the liability of an air carrier for passenger injury or death occurring during domestic carriage?

Law 21 of 2003 in its Title XII, Chapter IV regulates liability for domestic carriage.

**Nature of carrier liability**

What is the nature of, and conditions, for an air carrier's liability?

Article 158, Law 21 establishes that the air carrier and its employees' liability limits.

**Liability limits**

Is there any limit of a carrier's liability for personal injury or death?

Article 157, Law 21 establishes the limit of liability as US\$25,000.

**Main defences**

What are the main defences available to the air carrier?

The principal defence is contemplated in article 156, which establishes that the carrier must prove it has taken all necessary measures to prevent an accident.

In cases where it can be proven that the injured party contributed to his or her injury then the liability may be reduced or completely exonerated.

**Damages**

Is the air carrier's liability for damages joint and several?

The liability will include the carrier and its employees or dependants.

**Rule for apportioning fault**

What rule do the courts in your state apply to apportioning fault when the injury or death was caused in whole or in part by the person claiming compensation or the person from whom the right is derived?

Article 166 considers the possibility of apportioning fault to the claiming party for injury or death. It is worth mentioning that even though it is considered in this special legislation, the principle of contributory negligence is not characteristic of our civil law system and the application of the article has not been properly tested in the courts. With regard to minors or persons with reduced mental capacity, applicable special legislation would need to be considered.

**Statute of limitations**

What is the time within which an action against an air carrier for injury or death must be filed?

Article 170 is clear in establishing that the time limitation is two years from the time the accident occurred.

**THIRD-PARTY ACTIONS****Seeking recovery**

What are the applicable procedures to seek recovery from another party for contribution or indemnity?

Most third-party actions may be included by either claimant or the defence at the beginning of litigation process and would be resolved at the same time within the same decision.

**Time limits**

What time limits apply?

In principle, two years as per article 170, Law 21. However, it should be noted that an extra contractual civil action may be available for damages and negligence, as per article 1644 of the Panama Civil Code, for which the time limit is one year.

**LIABILITY FOR GROUND DAMAGE****Applicable laws**

What laws apply to the liability of the air carrier for injury or damage caused to persons on the ground by an aircraft accident?

The applicable legislation is contained in Title XII, Chapter IX of Law 21.

### **Nature and conditions of liability**

What is the nature of, and conditions for, an air carrier's liability for ground damage?

The principle established is strict; as per article 183, the harm or damage must be caused by an aircraft in any circumstance.

### **Liability limits**

Is there any limit of carriers' liability for ground damage?

Article 187 contemplates the possibility of limiting liability for repairable damages. The amounts of indemnity have to be calculated in accordance with the weight of the aircraft as per the scale set in article 187.

### **Main defences**

What are the main defences available to the air carrier in a claim for damage caused on the ground?

The main defence is proving that the carrier has not acted with any fault and that it has taken all necessary measures to prevent the accident.

Additionally, and in the event of collision of two aircraft, both will be solidarily responsible.

## **LIABILITY FOR UNRULY PASSENGERS AND TERRORIST EVENTS**

### **Applicable laws**

What laws apply to the liability of the air carrier for injury or death caused by an unruly passenger or a terrorist event?

As in many other countries, this matter has not been tested.

Since Panama is party to the Warsaw and Montreal Conventions and Law 21 of 2003 contents are similar, it will be mostly an academic discussion that these laws will become the initial reference to a claim against a carrier for injury or death caused by an unruly passenger or terrorist event. Importance will also be given to discussions over the matter and existing legal precedents in other jurisdictions.

### **Nature and conditions of liability**

What is the nature of, and conditions, for an air carrier's liability for injury or death caused by an unruly passenger or a terrorist event?

The tests for liability would be via fault, negligence or intent, the latter by an employee, for example.

### Liability limits

Is there any limit of liability for injury or death caused by an unruly passenger or a terrorist event?

The limitations of liability available will be in principle those applicable by the international applicable conventions recognised by Panama in the event of international flights and secondarily Law 21. The latter would apply for national flights as per article 151.

Special attention will be drawn to the international legal precedents where decisions have applied and interpreted articles 17 and 21 of the Montreal Convention in these types of events.

### Main defences

What are the main defences available to the air carrier in a claim for injury or death caused by an unruly passenger or a terrorist event?

The main defences would be those available by the Conventions and would be that the carrier had taken all necessary measures to avoid the damage, and that damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents or that damage was solely owing to the negligence or other wrongful act or omission of a third party.

## LIABILITY FOR HARM CAUSED BY DRONES

### Applicable legislation

Summarise the laws or regulations related to the liability for injuries or damage caused by drones.

Drones or distance piloted devices are regulated by Regulation AAC/DSA/DG-01-16.

Any drone over 250grams needs to be registered. Any drone used for commercial uses, regardless of the weight requires to be registered. Drone pilots are also required to be registered and licensed, the same applies to businesses that use drones for various activities.

Liability is treated in consideration and with reference to Panama aviation law.

## CONSUMER PROTECTION AND PASSENGER RIGHTS

### Applicable legislation

Summarise aviation-related consumer-protection laws or regulations related to passengers with reduced mobility, flight delays and overbooking, tarmac delay and other relevant areas.

Panama has a general consumer protection legislation, Law 45 of 2007, which allows passenger consumer-related complaints to be received through its regulator, the Authority for Consumer Protection and Competition.

The Regulator has not dealt with flight delays, overbooking or tarmac delays. The majority of the claims entail loss of baggage, overcharging or damages.

Additionally, Law 134 of 2013, article 2(3) grants a 25 per cent discount to generally handicapped person, be it reduced mobility or not.

Specifications for servicing passengers with reduced mobility at airports and on aircraft are regulated by Law 42 of

1999 and Executive Decree No. 88 of 2002.

## LIABILITY OF GOVERNMENT ENTITIES PROVIDING SERVICES TO CARRIERS

### Relevant laws

What laws apply to the liability of the government entities that provide services to the air carrier?

Any autonomous entity, such as an airport administrator, may be subject for a civil extra contractual action for damages in accordance with the Civil Code of Panama. Similar actions may be available against the employees individually.

Additionally, the entities or the employees will be subject to their own special legislation, the Administrative Code and the Criminal Code.

In most instances where the state is involved, the claim is known as a 'direct repairs' administrative claim and is presented before the Supreme Court.

### Nature and conditions of liability

What is the nature of, and conditions for, the government's liability?

The nature of the liability is similar to that of an air carrier - it must be fault-based and be at the administrative, civil or criminal level.

### Liability limits

Are there any limitations to seeking recovery from the government entity?

There are no limitations as to possible claims against government entities when seeking recovery for damages.

## CRIMINAL PROCEEDINGS

### Responsibility for accidents

Can an air carrier be criminally responsible for an aviation accident?

There are possibilities for an air carrier to be investigated and charged criminally, but any proceedings charges will be pending on the results of the experts and technical investigation.

### Effect of proceedings

What is the effect of criminal proceedings against the air carrier on a civil action by the passenger or their representatives?

Both actions are completely separate and will not have an impact on the other.

**Compensation**

Can claims for compensation by passengers or their representatives be made against the air carrier through the criminal proceedings?

Compensation claims are processed in the civil court system and are a completely separate process.

**EFFECT OF CARRIER'S CONDITIONS OF CARRIAGE AND TARIFFS****Liability**

What is the legal effect of a carrier's conditions of carriage or tariffs on the carrier's liability?

The carrier's conditions of carriage are binding on the passenger; as per Panama's Commercial Code, it is a private agreement between the two parties. Panamanian courts would rely on the carrier's conditions and the applicable legislation for its resolution.

**DAMAGES****Damage recovery**

What damages are recoverable for the personal injury of a passenger?

A claimant may try to request extra contractual damages in accordance with the Civil Code of Panama, article 1644 and subsequent.

The damages claimed can be related to loss of income or patrimony, as well as moral; the latter relates to the personal loss and psychological impact suffered by the claimant. The concept of damages in our civil law system is not punitive but based on the principle of repair.

The principal limitation on the damages is that the claimant has the burden of proof of demonstrating the negligence of the carrier or its employees.

If the injured party has not survived the accident, all immediate relatives are entitled to claim on the deceased's behalf. No court appointment is necessary to seek recovery unless the surviving relatives are under age or handicapped.

What damages are recoverable for the death of a passenger?

See question 37.

**ACCIDENT INVESTIGATION AND FAMILY ASSISTANCE****Investigatory authority**

Who is responsible in your state for investigating aviation accidents?

The Civil Aeronautics Authority (CAA) investigates accidents by means of article 104 of Law 21. The standards of investigation are equal to those set in the Chicago Convention, which are contemplated in the Civil Aeronautics Regulations. The CAA maintains a special department for the prevention and investigation of accidents, which manages all investigations in accordance with established rules and procedure.

**Disclosure restrictions**

Set forth any restrictions on the disclosure and use of accident reports, flight data recorder information of cockpit voice recordings in litigation.

Any of the above will be available at proof stages or at discovery during the proceedings in any claim.

**Relevant post-accident assistance laws**

Does your state have any laws or regulations addressing the provision of assistance to passengers and their family after an aviation accident?

Panama's legislation does not specifically demand assistance for passengers and their family after an aviation accident, but it demands protocols of safety and procedure of carriers that may include such provisions.

**INSURANCE REQUIREMENTS****Mandatory requirements**

Are there mandatory insurance requirements for air carriers?

Article 196, Law 21 of 2003 establishes the obligations and conditions for air carriers.

**LITIGATION PROCEDURE****Court structure**

Provide a brief overview of the court structure as it relates to civil aviation liability claims and appeals.

Aviation liability claims are the competence of the civil courts of Panama. Civil procedure is mostly managed via written statements from each party and the judge. The only instances open for oral discussion are depositions, cross-examinations and discussions over practice of proof. Civil claims proceedings do not have a jury.

The procedure of a civil claim is as follows:

- presentation of the claim before the civil courts;
- court admission of the claim and notification of it to the defendant;
- upon notification, the defendant has 10 working days to answer and request proofs if available and counterclaim; and
- once the claim has been answered, the court will announce a 15-day review for each party to make any observations to the proceedings.

Following the above instance, the court will allow the period for which both parties are permitted to invoke or request the evidence for their case, upon which each party may have the opportunity of counterproof and to object to each party's evidence.

Once the judge has evaluated the above instance, he or she will instruct the parties on its valuation and practice, for example, expert witness depositions, visit to a site, among other things.

The next stage is the practice of evidence, discovery, depositions and cross-examinations.

The following stage is the closing statements upon which the judge will declare sentence, which can be appealed by any of the parties.

Appeals will have one instance at the Superior Court and, upon its decision, a final appeal may be available before the Supreme Court.

As in many other countries, these procedural steps may take years to conclude.

### **Allowable discovery**

What is the nature and extent of allowable discovery/disclosure?

Discovery is ample and, on most occasions, information is agreed or disclosed at the will of each party unless requested by one of the parties.

### **Evidence**

Does the law of your state provide for any rules regarding preservation and spoliation of evidence?

Yes, the parties to a claim may request and justify the protection of evidence when it requires special care or needs proper protection or preservation to avoid its deterioration or loss.

### **Recoverability of fees and costs**

Are attorneys' fees and litigation costs recoverable?

Panama's civil courts award expenses and litigation costs (including legal fees) in their decisions. Judges in civil courts may also contemplate and award discretionary fines related to the claim amount, or establish fines at appeal stage.

## **JUDGMENTS AND SETTLEMENT**

### **Pre and post-judgment interest**

Does your state impose pre-judgment or post-judgment interest? What is the rate and how is it calculated?

If a case is decided by the court, the interest will be rated from pre-judgment. Most damages judgments in a civil court will date the interest annually from the date the claim is presented. The rate is 7 per cent per year.

### **Settlements**

Is court approval required for settlements?

The parties can terminate the litigation at any stage. If there is litigation in process, the court must be notified of the settlement and admit it to close the claim.

What is the effect of a settlement on the right to seek contribution or indemnity from another person or entity? Can it still be pursued?

If the entity or a person is not part of settlement, there may be possibilities of it being pursued, but to be legally feasible, the party must have a link with the possible cause of the claim and the claim must not be time-barred.

Are there any financial sanctions, laws or regulations in your state that must be considered before an air carrier or its insurer may pay a judgment or settlement?

Settlements are agreements between private parties in accordance with Panama's procedural laws; they are also denominated as 'extrajudicial agreements' and as such they become a contract between the parties. In the event the settlement is to conclude a claim, the court must be notified of the settlement in order to approve the termination of the case and its process. In either case, settlement or judgement, there are applicable financial regulations to the payment.

## UPDATES AND TRENDS

### Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

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None.

## LAW STATED DATE

### Correct on

Give the date on which the information above is accurate.