

Litigation 2016
Puerto Rico

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Edge Legal Strategies PSC

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Reference

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1 Outline the court system in your jurisdiction.

State and federal jurisdictions

The state court system is divided into three levels: the Court of First Instance (CFI), the Court of Appeals and the Supreme Court. The CFI is subdivided into municipal and superior courts, which are traditional trial courts of general jurisdiction where all types of civil and criminal matters are filed.

The Court of Appeals is an intermediate appellate court organised into different judicial regions made up of three- or four-judge panels and entertains appeals filed from partial and final judgments issued by the CFI, as well as petitions for certiorari that seek discretionary review of specific interlocutory orders or resolutions entered by the CFI.

The Court of Appeals also reviews the decisions issued by most state government agencies in quasi judicial proceedings. The standard of review is, as to determinations of fact, substantial evidence from the record as a whole and, as to conclusions of law, de novo review.

The Supreme Court is Puerto Rico's highest court and has a maximum of nine justices. With the exception of specific cases in which direct appeals can be filed, the majority of the cases are petitions for certiorari, which seek discretionary review of judgments and resolutions issued by the Court of Appeals. Also, in very limited and specific cases, the Supreme Court has original jurisdiction to issue writs of mandamus, grant injunctive relief and other extraordinary remedies. The High Court also has original jurisdiction to entertain matters related to the professional conduct of attorneys. Decisions of the Puerto Rico Supreme Court may be reviewed by the US Supreme Court in the same limited scenarios where decisions by the highest courts in the 50 states of the United States are subject to review by the US Supreme Court.

Puerto Rico also has a federal district court – the United States District Court for the District of Puerto Rico – which is located in San Juan (Hato Rey County); appeals are filed before the United States Court of Appeals for the First Circuit (Boston, Massachusetts) and discretionary review may be sought in limited and specific cases at the US Supreme Court.

The interaction between both court systems is identical to that of state and federal courts in all 50 states. In federal cases where a novel issue of state substantive law arises,

the federal court may certify the question at the Puerto Rico Supreme Court.

Puerto Rico has its own state Constitution, which is very similar to that of the US, and has a republican system of government. In accordance with the legislation that regulates the relations between the US and Puerto Rico, the Puerto Rico Constitution may grant more, but not less, rights than those afforded by the US Constitution, as long as these do not conflict with the US Constitution. There is no common law in Puerto Rico but its state courts are bound by the decisions of the US Supreme Court in all constitutional matters. Puerto Rico has several codes, such as the Civil Code, which includes the general principles of obligations and contracts, estate law, family law, trusts, property law, etc, Commercial Code, Insurance Code and others. Puerto Rico corporation law is derived from Delaware's Corporations' Law. Almost every federal law is applicable to Puerto Rico unless Puerto Rico is expressly excluded by Congress.

2 What remedies are available to a local entity or resident that is in a dispute with a foreign entity? Do the laws provide foreign entities the same rights afforded to local entities? Are there laws requiring foreign entities to post a bond or other security before they can defend a suit?

The Puerto Rico judicial system affords essentially the same due process rights to local entities that it does foreign ones. In local courts, foreign litigating parties may be required to post a bond to cover costs and fees that may be imposed by the court as part of a litigation process. Foreign corporate entities are strongly advised to obtain a register with the Puerto Rico Department of State in order to solidify its standing to bring claims before Puerto Rico courts.

3 What is the process by which a foreign entity may challenge the jurisdiction or venue of the; court where litigation is filed? What factors are considered when a court evaluates whether; to exercise jurisdiction over a foreign entity?

As a general rule, a foreign defendant may challenge jurisdiction if the said defendant does not have the required minimum contacts with Puerto Rico in order to make jurisdiction proper.

4 What is the most common type of litigation encountered in your jurisdiction by foreign entities?

Commercial disputes.

5 How frequently do parties pursue criminal actions in the context of commercial disputes? May criminal trial evidence be adduced in follow-on civil litigation? May civil cases be brought concurrently or after criminal litigation?

This is not a frequent scenario for commercial disputes and, typically, commercial disputes are resolved through civil action. To pursue a criminal action the claimant must allege that the defendant committed a crime in the context of a commercial litigation, such as, for example, embezzlement of monies. To initiate the criminal process, the party would have to file the claim with the corresponding police department or investigations unit. The claim will be subject to investigation by the police, and the result of the investigation, in turn, will be evaluated by a State Attorney. The State Attorney has the discretion to determine whether the state will pursue a conviction or dismiss the complaint. Restitutive remedies for a third party are available, but not commonly granted.

Criminal trial evidence is allowed under Rule 805 of the Rules of Evidence of Puerto Rico. Civil cases may be brought concurrently with or after criminal litigation. There is no rule of law impeding concurrent filings.

6 Is there a right to a trial by jury in a commercial dispute?

Trials by juries are only available in a federal court, provided that the complaint complies with the jurisdictional requirements of Title 28 USC sections, 1331 and 1332. Actions to collect money have to meet a minimum jurisdictional requirement of US\$75,000.

7 Do courts require or strongly encourage mediation or other alternative dispute resolution methods before or during a litigation proceeding?

It is always available and generally encouraged, but any alternative dispute resolution process is purely voluntary.

8 Will choice of law and choice of forum provisions in a contract be recognised?

Yes, choice of law and choice of forum provisions in a contract are recognised in the State and the Federal Court.

9 Does your jurisdiction have specific arbitration law? Are arbitration awards enforced by the courts? May courts enjoin/prohibit arbitration proceedings in matters that are also pending in a court proceeding?

Puerto Rico has its own arbitration law and there is a strong public policy in favour of arbitration in cases where it has been freely stipulated by the parties. Local courts can validate and enforce arbitration awards. Courts are unlikely to enjoin an arbitration process that has been freely stipulated by the parties concerned.

10 Do the courts recognise attorney-client privilege? If so, is the privilege applicable to in-house lawyers?

Yes, the attorney-client privilege is recognised in state and federal jurisdiction. The Rules of Evidence in both jurisdictions contain specific provisions that describe the specifics and scope of said privilege. The question of whether the privilege is also applicable to in-house lawyers has not been addressed by the Puerto Rico Supreme Court. In this context, certainly all communications with an in-house counsel in the context of the attorney-client relationship should be deemed protected by the privilege. However, nowadays, in-house counsels are also involved in administration, management and other non-legal tasks, which may very well be excluded from the privilege.

11 Are legal proceedings public? In other words, can the general public observe hearings and review the filings of the parties?

Legal proceedings are generally public in nature. However, in criminal cases and depending on the nature of the crime involved, the court may determine that the proceedings must be held in private. As a general rule, only the parties to a case may review the file while the case is in process. However, in matters of public interest, the court may grant access to third parties, including the media.

12 May a defendant join other potentially liable parties into the existing lawsuit?

Yes, in state and federal court, additional parties may be joined as plaintiffs, defendants, or intervenors. Specifically, the joinder of defendants is in many instances mandatory, since in order for an action to proceed, all indispensable parties must be joined. Failure to do so will entail the dismissal of the complaint. Interventors are parties that may join the action if they possess a specific interest or right that may be affected by the outcome of the litigation. Defendants may also file cross-claims against other co-defendants or third-party complaints.

13 How may a party enforce a foreign judgment?

By an exequatur process that will validate a foreign judgment and make it enforceable within the jurisdiction.

14 How much time does a party have to answer a complaint? Can a party extend this time?

A defendant has 30 days to answer the complaint. Extensions of 20 to 30 days are generally granted provided the motion for extension is filed prior to the expiration of the original term.

15 How long does it take to obtain a first-instance judgment in a typical commercial litigation case?

One to three years, depending on the complexity of the case.

16 Is a party required to submit all facts, arguments and supporting evidence with its initial pleading?

No, the initial pleading by the plaintiff need only contain general factual allegations, a description of the causes of action and requests for remedy. Specific allegations are only required

for special matters such as fraud, property description and special damages, among others. The responsive pleading may also be general in its scope, but must admit or deny the allegations. Failure to admit or deny will be deemed as a denial. Also, a defendant must raise all available affirmative defences. A particular affirmative defence that is available to the defendant but is not raised in the responsive pleading may be deemed waived.

17 Does litigation provide a process for investigating claims or right to discovery of evidence prior to trial?

Yes, in civil cases in state and federal court, the parties are allowed to carry discovery pursuant to the rules of civil procedure. Discovery is liberal and permits the discovery of relevant evidence as well as of any evidence that may lead to relevant evidence. The parties may use written interrogatories, requests for admissions and for production of documents, and written or oral depositions. Non-party witnesses are also subject to depositions, provided a subpoena is issued and served upon the individual or entity to be deposed.

18 Does litigation provide a process to subpoena or obtain documents or testimony from third parties?

Yes, non-party witnesses are also subject to depositions and to the production of documents, provided a subpoena is issued and served upon the individual or entity to be deposed.

19 Does the judge or opposing counsel examine witnesses?

A judge has authority and ample discretion to question a witness during trial. All witnesses on trial may be subject to cross-examination by opposing counsel. Also, during an oral deposition in the discovery phase, once the deposed witness is interrogated by the attorney for the movant, other counsel present at the deposition may also interrogate the witness.

20 How may evidence be challenged? Are there specific rules of evidence?

The Puerto Rico Rules of Evidence provide extensive procedural and substantive provisions for the presentation and validation of evidence in judicial proceedings.

21 Do courts typically allow hearings at or before a trial? At what stage may parties present expert witness testimony?

Yes. Puerto Rico courts allow pretrial hearings. There are statutory hearings, such as the initial hearing and the pretrial hearing, which are provided for by Rule 37 of the Civil Procedure Rules. In addition, the courts have ample prerogatives and discretion in conducting the trial procedures and may allow such hearings as the parties request and the court may deem reasonable. Generally, expert witness reports and testimony will be disclosed to the parties before trial, as part of the discovery proceedings and taking of depositions. The court will be able to evaluate expert witness testimony at trial.

22 What must be demonstrated to collect a debt based on a written instrument?

In all cases of collection of monies, the plaintiff must establish the existence of an obligation to pay and the amounts that are due, liquid and outstanding.

In order to prevail, other requisites will be required depending on the entity who is collecting the debt, the nature of the debt, the amount of the debt and the nature of the written instrument. For example, in a case initiated by a collection agency, there are mandatory prerequisites to engage in the collection of claims and filing of a suit. For instance, the agency must be registered with the pertinent governmental agency as a bona-fide collection agency and the agency must issue written notices via certified mail to the alleged debtor to the actual place of residence, prior to filing judicial suit. See, generally, 10 Laws of PR Ann sections 981, et seq. As another example, if the amount of the debt is less than US\$15,000, Rule 60 of the Rules of Civil Procedure will apply and provide for an expedited civil process with citation or notice process requirements that must be served upon the alleged debtor, as well as shorter response terms. In the case of the filing of an ordinary claim for collection of monies (for an amount over US\$15,000) the plaintiff will be subject to ordinary proceedings according to the Rules of Civil Procedure of Puerto Rico. Finally, should the written instrument be authenticated before a notary, the plaintiff will have available attachment remedies, not available otherwise without the posting of bonds.

23 What remedies are available in your jurisdiction to a minority shareholder of a corporation in a dispute with the corporation or the majority shareholders?

The Puerto Rico General Corporations Law provides myriad remedies to minority shareholders including, among others, derivative actions.

24 What rights are available in the courts for someone holding a maritime lien interest in a vessel?

US Federal Maritime Law applies in Puerto Rico, which makes duly constituted maritime liens enforceable in Puerto Rico. The United States District Court for the District of Puerto Rico, sitting in the Admiralty, handles these types of cases.

25 What rights are available for a party holding a security interest in real property and personal property? Are there expedited proceedings to allow the recovery of property serving as security for debt obligations?

Secured lien holders over property may foreclose upon their collateral by way of a judicial proceeding. There are certain 'self help' provisions that may also be available in certain cases relating to personal property. The Puerto Rico Rules of Civil Procedure provide remedies for the preservation of collateral while collection and foreclosure actions are adjudicated.

26 Describe the types of employment disputes that frequently result in litigation.

The employment disputes that frequently result in litigation are unjust dismissal, payment of salaries due and employment discrimination based on political beliefs, age, sex or gender.

27 Does your jurisdiction allow class actions or some form of collective litigation proceeding?

Class actions, mass tort litigations and other forms of complex civil litigations are all allowed in this jurisdiction.

28 Do government-owned or controlled entities enjoy any privilege when they are engaged in commercial activity and involved in a commercial or administrative litigation?

No.

29 Is injunctive or other relief available on an emergency basis?

Yes. Rules 56 and 57 of the Civil Procedure Rules allow for the granting of provisional remedies, including preliminary injunctive relief as may be necessary. Further, case law provides additional criteria for the court to evaluate in determining whether it is proper to grant a preliminary injunction or injunction pendente lite in aid of a court's jurisdiction:

[...] (a) the nature of the damages which may be inflicted on the parties upon granting or denying the injunction; (b) its irreparability or the existence of an adequate remedy at law; (c) the probability that the movant will eventually prevail upon deciding the case on the merits; (d) the probability that the action becomes academic if the injunction is not granted and, above all (e) the possible impact on public interest of the remedy being requested.

(Mun de Ponce v Gobernador, 136 DPR 776 (1994)).

30 Is injunctive relief available as part of a final award? If so, in what types of cases do courts usually provide injunctive relief?

Yes, see the discussion above. Courts usually provide injunctive relief in cases where there is a threat to the environment or a community (such as cases involving construction of determined projects).

31 What are the typical court fees and costs required to file a civil lawsuit?

Court fees are approximately US\$90 to US\$102 for the initial filing. No additional fees are required during the proceedings, except in special circumstances (motions requesting suspension, etc). Costs related to the suit, in general, will depend on the nature of the lawsuit: the amount of witnesses, discovery methods used and the need for expert witnesses.

32 Is a bond required for a non-resident? What is the amount of the bond?

Yes. Rule 69.5 of the Civil Procedure Rules establishes the requirement of non-resident bonds. The bond amount will be imposed by the court and in no event shall be less than US\$1,000.

33 What types of damages are available? How are damages quantified? Are punitive damages available?

The types of damages available will depend on the legislation. The Civil Code provides for general damages. Specialised

statutes may also have specific provisions that govern the award for damages. Types of damages under Puerto Rico legislation include patrimonial damages (economic loss) and moral damages (emotional sufferings and mental anguish). Punitive damages may be also available for certain causes of action (eg, in discrimination cases, under the Dealer's Act, among many others). Damages are quantified by the court. Case law precedent governs the formula applicable and the manner in which a court quantifies damages.

34 Is the losing party liable for the prevailing party?

A losing party is always liable for the costs of the proceedings. Costs are the necessary expenses incurred by the prevailing party in the action. Costs are generally limited to service of process expenses, deposition transcripts and expert witness fees. Absent a specific statutory provision or contractual agreement, attorneys' fees are imposed on the losing party only if the court deems that the filing and prosecution of the action is frivolous in nature. There is no particular formula for an award for attorneys' fees, but the court may consider several factors such as the complexity of the case, legal issues involved, the expertise and reputation of the attorneys, etc.

35 Will courts enforce a liquidated damages provision in a contract?

There is a strong public policy against liquidated damages in Puerto Rico, since "penal clauses" are generally barred under Puerto Rico contract law. Only liquidated damages provisions that are narrowly tailored to the actual damages caused by a potential breach are allowed.

36 What is the appeal process against trial court decisions?

All final judgments entered by trial courts are appealable as a matter of right to the Puerto Rico Court of Appeals. Decisions of the Puerto Rico Court of Appeals are reviewable by writ of certiorari to the Puerto Rico Supreme Court.

37 How frequently do appellate courts reverse trial court decisions?

It is not unusual for the appellate courts to reverse a trial court decision if a reversible error is found in the judgment subject to appeal.

38 May the courts entertain challenges to administrative decisions made by federal or local governments? If so, how frequently do courts reverse administrative decisions in favour of a private party?

Courts are able to review administrative decisions within the process established by Puerto Rico or the federal administrative law provisions. Although ample deference is given by courts to the expertise of a government agency, a court will reverse its determinations if a reversible error is found in the ruling in question.

39 How are trade secrets protected in judicial proceedings?

Rule 513 of the Puerto Rico Evidence Rules protects trade secrets and creates an evidentiary privilege that limits the

disclosure of such trade secrets. It further allows the court to impose provisional remedies to limit the disclosure of trade secrets.

40 Are settlement agreements confidential? Must the parties' settlement agreement be certified by the court?

Settlement agreements are confidential in nature only if the parties agree to it. There may be instances in which the court will require that the parties submit the agreement to the court under seal for the court's review and approval. If the agreement involves public funds, the agreement, as a general rule, may not be confidential.

41 Who has the burden of proof at trial? What is the burden?

The burden lies on the plaintiff in civil cases, and on the prosecutor in criminal cases. In civil cases, the standard is preponderance of the evidence, and in criminal cases the state must prove its case beyond a reasonable doubt.

42 What are the most significant recent developments regarding judicial reform? Is any proposed legislation likely to affect the civil litigation market?

The Rules of Civil Procedure and the Rules of Evidence of Puerto Rico were recently amended in 2009. These rules are very similar to their federal counterparts. No subsequent amendments or substantial changes are foreseen for the near future.

43 Describe any recent noteworthy litigation and arbitral cases.

Puerto Rico is a very litigious society. The list of important litigation is quite extensive. However, among the most important recent decisions is the case of *Franklin California Tax-Free Trust, et al, v Commonwealth of Puerto Rico, et al*, Opinion of 6 July 2015 where the US Court of Appeals for the First Circuit affirmed a decision by the US District Court for the District of Puerto Rico, striking down a law enacted by the Puerto Rico legislature, which would have forced investors in public corporations with harsh restructuring terms. The decision is considered a victory for investment funds battling to protect billions of dollars in debt claims against a Puerto Rican electric utility company.



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