Global Forum on Transparency
and Exchange of Information for Tax Purposes

Supplementary Peer Review Report
Phase 1
Legal and Regulatory Framework

PANAMA

OECD

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, and in Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary as updated in 2004. The standards have also been incorporated into the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to www.oecd.org/tax/transparency and www.eoi-tax.org.

Executive Summary

1. This is a supplementary report on the legal and regulatory framework for transparency and exchange of information in Panama. It complements the original Phase 1 Peer Review report on Panama (the Phase 1 Report) which was adopted and published by the Global Forum in September 2010.

2. This supplementary report considers the legal and regulatory changes made by Panama to address the recommendations made in the Phase 1 Report since May 2010, the date at which the legal and regulatory framework was previously assessed. It takes account of Panama's intermediary reports[1] and a progress report of October 2013, concerning the legislative amendments made to address the determinations and recommendations relating to elements A.1. (availability of ownership and identity information), B.1. (access to information), C.1. (effective exchange of information mechanisms) and C.2. (exchange with all relevant partners) which were found to be "not in place" in the Phase 1 Report as well as element C.4. (rights and safeguards) which was found to be in place, but in need of improvement. In order to reflect the amendments made to its legal framework and the current position with regard to its implementation of the international standard, Panama has asked for a supplementary peer review report pursuant to paragraph 58 of the Methodology.[2]

3. Since the adoption of its Phase 1 report in September 2010, Panama has made a number of changes to its legal and regulatory framework, including removing its domestic tax interest limitation on access to information, revising the know-your-client standards for attorneys acting as resident agents, and introducing legislation to immobilise bearer shares. It has also put in place new exchange of information agreements as well as systems

1. An intermediary report is made under paragraph 57 of the Global Forum's Revised Methodology for Peer Reviews and Non-Member Reviews, May 2011 (the Methodology).
2. This refers to the 2011 version of the Methodology. Under the 2013 version of the Methodology, the procedure for requesting a supplementary report is contained in paragraph 60.

and procedures for exchange of information, including reorganising the Directorate of General of Revenue (DGI) in order to make and respond to requests pursuant to its international agreements and reviewed the penalties provided for in its Fiscal Code to consider whether these meet the requirement of ensuring access to information.

4. Information on the owners of nominal shares in companies, on partners in partnerships and settlors and beneficiaries of trusts is generally available in Panama. However, a recommendation regarding lack of penalties for not maintaining a stock register by companies remains. The recommendation on foundations has been amended to reflect a concern that information on beneficiaries of foundations may not always be available to the Panamanian authorities. Information on the owners of bearer shares will be available after the obligations under new legislation immobilising such shares (Law No 47 of 2013) becomes enforceable at the end of the transition period provided for in the legislation. Law 47 has been ratified by the President of Panama and promulgated in the official gazette. Its obligations will be enforceable in respect of new bearer shares after two years and it provides for a further transition period of three years in respect of shares issued before the obligations under the law become enforceable. Given the long transition period a recommendation on bearer shares is maintained and the determination for element A.1 remains unchanged. The recommendation made in the Phase 1 report on nominees has been revisited and deleted in the light of the new material provided by Panama. The concept of nominees does not exist in Panama.

5. Accounting requirements are not in place in Panama for entities other than companies and partnerships that carry on business in Panama. In addition, the law does not specify the type of records trusts and foundations are required to keep and for how long. Banking information is, however, available in Panama in line with the standard. Panama has not made any changes to its legal framework since the Phase 1 report so the recommendations and determinations for element A.2 remain unchanged.

6. The Panamanian authorities have access to information pursuant to a request from a treaty partner, irrespective of whether there is a domestic tax interest and have sufficient powers to compel the production of information. Rights and safeguards do not appear to impede access to information.

7. Panama has recently enhanced its international cooperation in tax matters, concluding a total of 25 exchange of information agreements, including 16 double tax conventions (DTCs) and 9 tax information exchange agreements (TIEAs). These agreements largely follow the OECD Model Tax Convention and Model TIEA and include sufficient provisions to protect confidentiality. However, four of these 25 agreements contain identification requirements that are inconsistent with the standard for effective exchange

of information and are therefore not to the standard. In addition, a number of peers have reported that Panama has been reluctant to negotiate exchange of information arrangements with them although Panama has indicated that it is not in a position to negotiate further agreements at the moment due to limitations of time and resources. It is recommended that Panama amend its EOI agreements to bring them in line with the international standard and that Panama enter into EOI agreements with all relevant partners (meaning whoever is interested in entering into an agreement), regardless of form.

8. Panama has taken some steps to comply with the international standards for exchange of information, including doing away with its domestic tax interest requirement. However, Panama is yet to act on some of the recommendations made in the Phase 1 report and a number of elements which are crucial to achieving effective exchange of information are still not in place. Panama is encouraged to continue to review and update its legal and regulatory framework in line with the standard.

9. Until Panama has acted on the factors highlighted in this supplementary report and made further progress in addressing the related recommendations, it is recommended that it should not move to a Phase 2 Review. A follow up report on the steps undertaken by Panama to answer the recommendations made in this report should be provided to the Peer Review Group within six months after the adoption of this report. In addition, Panama should provide a detailed written report to the Peer Review Group within 12 months of the adoption of this report. The question of whether Panama moves to a Phase 2 Review will be considered again at that time.

Introduction

Information and methodology used for the supplementary peer review of Panama

10. This supplementary peer review report was prepared pursuant to paragraph 58 of the Global Forum's Methodology,[3] and considers recent changes to the legal and regulatory framework of Panama based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference. The assessment was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 10 February 2014 and information supplied by Panama. It follows the Phase 1 Report on Panama which was adopted and published by the Global Forum in September 2010.[4]

11. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. In respect of each essential element a determination is made that *(i)* the element is in place, *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement, or *(iii)* the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In particular, this report considers changes in the Panama's legal and regulatory framework which relate to the availability of ownership and identity information and its information exchange mechanisms.

12. The supplementary review was conducted by an assessment team, which consisted of two expert assessors and one representative of the Global Forum Secretariat: Mr. David Smith, Senior Intelligence Manager, Centre for Exchange of Intelligence, HM Revenue & Customs; Ms. Yanga Mputa,

3. 2011 version.
4. The 2010 Report was based on information available up to May 2010.

International Tax Specialist, Large Business Centre, South African Revenue Service; and Mr. Bhaskar Goswami from the Global Forum Secretariat.

13. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the Terms of Reference, which takes into account the conclusions of this supplementary report, is set out at the end of this report.

Compliance with the Standards

A. Availability of Information

Overview

14. This section of the report considers the legal and regulatory framework now in place in Panama with regard to the availability of information, in so far as it relates to the know your client rules for companies and foundations, nominee identity information, bearer shares (A.1.2), enforcement provisions to ensure availability of information (A.1.6) and accounting records (A.2).

15. The Phase 1 Report found that information on the owners of bearer shares was not available, and that there was no requirement for nominees to have or make available information about the person on whose behalf shares are registered. In addition, although there were "know your client" rules in place that applied to resident agents for companies and foundations, it was not clear what information was required to be kept. Finally, where a *Sociedad Anónima* was not subject to audit by the tax authorities (for example, a company not doing business in Panama therefore not subject to Panama's territorial tax system), there did not appear to be a mechanism to ensure that the stock register is kept up to date, or at all.

16. In order to address the recommendations in the Phase 1 Report, Panama enacted Law No. 2 of 1 February 2011 (Law No. 2), which clarifies and enhances the "know your client" rules for resident agents of all legal entities including, companies and private foundations. Law No. 2 requires that a resident agent of a company or a private foundation undertake

know-your-client measures which include identifying a client when entering into a business relationship and when there is knowledge about a change in ownership. It also introduces an on-going duty to perform know-your-client measures. However, it is not clear from the law how the definition of "client" ensures that the "know your client" measures are applied so that the resident agent is in fact obliged to hold information on all shareholders of the legal entity for whom it is acting as a resident agent.

17. In addition, Law 2 of 2011 provides a transition period of five years for resident agents to comply with the obligations under the law for existing companies for existing companies and foundations. In addition, it also repeals Executive Decree 468 of 1994 that used to govern the obligations on resident agents, with the result that there appears to be no obligation on resident agents to undertake due diligence during this transition period which could ensure availability of information with the resident agents (unless they had already collected this information prior to the repeal of Executive Decree 468).

18. The recommendation in the Phase 1 report on nominees has been revisited. It is now clear that the concept of nominee does not exist in Panama. The person whose name appears as the owner of shares in the register of shareholders is the legal and beneficial owner. Based on this revised analysis the Phase 1 recommendation on nominees is deleted.

19. To meet the Phase 1 recommendation with regard to bearer shares Panama has enacted Law 47 of 6 August 2013. The Law creates a custodial arrangement for bearer shares that is aimed at ensuring that identity information on the owners of bearer shares is available at all times. While the substantive provisions of this Law are satisfactory, the main issue is that the obligations under this law will only be enforceable two years after its promulgation. Thereafter, there is an additional transition period of three years. This means that there is, effectively, a five year transition period before the law comes into full operation. Accordingly, the recommendation with regard to bearer shares has been amended to indicate that Panama should take measures to ensure that identity information on the owners of bearer shares is available as quickly as possible. The recommendation on foundations in the Phase 1 report has been amended after re-examining the Foundations Law.

20. On element A.1.6, Panama has not taken action to effectively address the recommendation in the Phase 1 Report that penalties for companies, for failing to maintain a stock register up to date should be prescribed for all *Sociedad Anónima* and therefore this recommendation remains in the report.

21. Taken together, the amendments that Panama has made to its laws to address the recommendations in section A.1 do not go far enough to change the current determination and therefore element A.1. remains not in place.

22. The Phase 1 Report found that with regard to element A.2. (accounting records), Panama only required that companies and partnerships carrying on business in Panama maintain accounting records, and recommended that record keeping requirements should apply to all companies, limited partnerships and partnerships limited by shares registered in Panama, irrespective of the business they carry on in Panama. It also noted that the Trust Law and Foundations Law were silent on the type of records required to be kept and their retention period, and recommended that these requirements be clarified to ensure that reliable accounting records are maintained for a five year period. Panama did not take any action to address these recommendations and therefore the recommendations and the determination that the element is "not in place" remains in the report.

23. The Phase 1 Report found that measures were in place to ensure that banking information is available for all account holders. Therefore, element A.3 (banking information) was found to be in place and this supplementary report does not consider the issue further.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

Companies

24. There are two forms of companies in Panama: *Sociedad Anónima* (SAs) and *Sociedad de Responsabilidad Limitada* (SRLs). Both SAs and SRLs are required to have a resident agent. The names and addresses of the owners of an SRL must be published in the Public Registry.

25. SAs are the most commonly used Panamanian companies by both resident and foreign investors. There are approximately 266 000 SAs registered in Panama. SAs are created by public deed which must be registered in the Public Registry. They must have a resident agent at all times who must be a lawyer admitted to practice in Panama. The name of the resident agent must appear in the public deed along with the name of the Director and other officials of the company. Information about ownership of the company is also kept by the company. The company is required to keep a stock register with the name, address, number of shares held, amount paid on the shares, and date they became shareholders. However the relevant law (Law No. 32 of 1927) does not prescribe penalties for failure to do so or for failure to keep the register up to date (see section A.1.6 below). The law does not require that the stock register or a copy of the register be kept in Panama.What is required is

that it be kept at the company's "office in the Republic, or at such other place or places as the articles of association or the bye-laws provide".

Know Your Client rules for companies and foundations

26. Prior to the enactment of Law No. 2, "know your client" rules applied to resident agents for companies and foundations in accordance with Executive Decree No. 468 of 1994 which has now been repealed by Law No.2. The Executive Decree outlined the responsibilities and obligations of resident agents, specifically that any lawyer or firm of lawyers acting as a resident agent must "know its client" and keep sufficient information for the client to be identified to the competent authorities when required to do so. However, the Decree did not provide any guidance as to the scope and level of knowledge that the resident agent is required to have regarding its client, the steps that must be taken to verify information obtained, or for how long the information must be retained. The Phase 1 Report concluded that deficiencies in the "know your client" standards in Executive Decree No. 468 would limit the availability of information on the owners of companies and founder and beneficiaries of a private foundation. The Phase 1 Report recommended that the "know your client" law be amended to ensure that ownership information held by resident agents identifies the owners of companies and the founders, members of the foundation council and beneficiaries of foundations.

27. Panama enacted Law No. 2 on 1 February 2011 to address this recommendation with regard to the know-your-client rules. The law applies to all attorneys and law firms in Panama that provide resident agent services. It requires that every resident agent providing professional services for legal entities must apply know-your-client measures when the professional relationship is established with the client or when the resident agent "has knowledge that the client has transferred, directly or indirectly, its interest in the legal entity". It also creates an on-going requirement for the resident agent to undertake know your client measures when it is necessary "in order to keep the documents and information obtained as part of the know-your-client measures up to date" (Article 5). The resident agent is required to keep the information for five years from the date of termination of the professional relationship with the entity (Article 10). There are a number of issues with Law No. 2 which are identified below.

28. Article 6 of Law No. 2 provides the following:

> "Every resident agent must apply the know your client measures, for which it shall require that the client provides it with satisfactory evidence of its identity; when the client acts on behalf of a third party, it shall provide satisfactory evidence of the identity of said third party; and, when the stock certificates that represent

> the title of ownership of the legal entity are issued in bearer form, it shall provide satisfactory evidence of the identity of the bearers of said certificates."

This paragraph requires that the resident agent should know the identity of its client and where the client is acting on behalf of a third party, the identity of that third party. "Client" is defined in the Law as the: "natural or legal person, acting on its behalf or on behalf of a third party, that maintains a professional relationship with a lawyer or law firm so that it may provide the service of resident agent for one or more of its legal entities" (Article 2). The "client" is thus the person (natural or legal) who requires the lawyer to incorporate the legal entity. The client may or may not be one of the shareholders. It could also be an intermediary such as a lawyer or another service provider. A "third party on whose behalf the client acts" could be a shareholder that approaches the client. Article 2 also defines "legal entity" as "every legal structure or relationship that requires, by law, the services of a resident agent". This includes all legal entities such as companies and foundations.

29. Article 6 of Law 2 further requires that every "client" must provide satisfactory evidence of its identity to the resident agent. The article states that where the client or the person on whose behalf the client acts is a natural person, the documents that the resident agent must obtain include the name, address and copy of the national identity document or passport. In case the client or the third party on whose behalf the client acts is a legal person, the registered agent must, among other things, obtain from each of them, the name, jurisdiction and incorporation information, details of the legal representative or person responsible for administration and copy of national identity document or passport of person or persons who own 25% or more of their capital.

30. Accordingly, where the resident agent sets up a company on instruction of the "client" which may be acting on its behalf or on behalf of a third party, the legislation requires that the agent performs KYC on that person rather than on the Panamanian company. With respect to the company that is set up, the resident agent would have information about the client or the third person if one of them is the shareholder but will not have information about other shareholders of the company since it is not clear, that the legislation requires the resident agent to identify all of the shareholders of the company.

31. Panama interprets the term "client" to include third parties on whose behalf the client acts which means the shareholders and beneficiaries of the legal entity (company or foundation) that is being incorporated. However, this is not evident from the legislation.

32. Another issue arising from Article 7 is that where the information is held abroad, it may not always be possible to obtain it to respond to a

request. This is because the resident agent is not required to hold information where it is certain that the client acting for a third party is a legal person that belongs to a professional organisation whose conducts and practices require it to adopt and maintain professional and ethical standards for the prevention and detection of money laundering, the fight against terrorism and any other illicit activity in terms not inferior to those required by Law No. 2, such as law firms, banks, trust companies, insurance companies, securities firms and certified public accountants. In these cases the client is required to provide the information regarding the identity of the third party on whose behalf it acts, if requested by the resident agent, according to the requirements and procedures established by the legislation of the jurisdiction where it operates. Article 7 does not require that KYC information held by the client be provided to the registered agent in advance of, the company's formation. An extension from this is that if the client is a bank, for example,in a jurisdiction other than Panama, and the information is protected by bank secrecy or confidentiality requirements in that jurisdiction, it might not be possible for it to provide the information without the consent of the person for which it was acting, as it could claim that it violates the requirements and procedures established by that jurisdiction.

33. Panama states that in cases covered by Article 7 of Law 2, the client must provide confirmation to the resident agent that he will provide information regarding the identity of the third party on whose behalf he acts, if required, before incorporation. Panama states that where this confirmation is not given, the resident agent will be considered in non-compliance of the Law and the sanctions as provided under Chapter IV of Law 2 shall follow. These sanctions include a warning, a fine of USD 5 000 and/or a temporary suspension of the resident agent for a period no less than three months but not exceeding three years.

34. However, in respect of existing clients and relationships established prior to the entry into effect of the law in 2011, the resident agent shall have five years after the entry into force of the law to comply with the obligation and it is not entirely clear what legal obligations would follow from confirmations given in respect of existing companies.

35. In addition, while the law came into operation six months after its passage, for resident agents that incorporate new entities, for existing entities and relationships the resident agent has five years from the law's entry into effect to comply with the obligations. Thus, for existing entities the law is not fully operational until 2016.

36. There is another issue arising from the five year transition period. Panama has reported that requests for information made within the five year transition period will be answered on the basis of information required to be maintained under the Executive Decree 468 of 19 September 1994, as

amended by Executive Decree 124 of 27 April 2006. However, Article 33 of Law 2 states, "This Law repeals Executive Decree 468 of 19 September 1994 modified by Executive Decree 124 of 27 April 2006".

37. The net effect of this appears to be that during the five year transition period there will be no legal obligation requiring resident agents to obtain information on the owners of companies (existing before the entry into force of Law 2) for which they act as agents. Executive Decree 468 will have been repealed and until the end of the five year transition period, the resident agents will not be bound to comply with the obligations created under Law 2. However, if this information has already been gathered by resident agents in compliance with Executive Decree 468, they are obliged to provide this information to the competent authority if requested to do so. It is therefore recommended that Panama establish a legal mechanism that will ensure the availability of information during this five year transition period, and afterwards, as Law 2 of 2011 is itself insufficient to ensure the availability of ownership information of relevant entities.

Conclusion

38. The changes to Panama's know your client laws reflected in Law No. 2 do not ensure the availability of information on ownership of companies. There is a requirement that companies keep a share register and register initial ownership information in a Public Registry. However there is no need to update the information in the Public Registry following incorporation and there are no specific sanctions on the company if the stock register is not kept up to date. It is therefore recommended that Panama clarify its laws to ensure that the resident agent or the company hold ownership information for all of the company's shareholders. The Phase 1 recommendation is amended to reflect this.

Private foundations

39. Although private foundations cannot be "profit oriented" under the foundations law, they may "engage in commercial activities in a non habitual manner … provided that the result or economic product … is … used exclusively towards the foundations objectives" (Article 3, Foundations Law). A foundation's objective can be any lawful purpose, such as the maintenance and welfare of the founder or his family or charitable purposes.

40. Private foundations are required to have a resident agent who must be a lawyer or a law firm admitted to practice in Panama. The name of the founder (whether or not he is member of the foundation council) and members of the foundation council is available in the Public Registry and with the notary before whom the deed that constitutes the foundation is

notarised. (Articles 4 and 6 of the Foundations Law). Foundation incorporation documents that do not contain the founder's identity information cannot be notarised, an essential requirement, in order for the foundation to formally and legally exist. However, identity information about the beneficiaries is not included in the Registry. The 2010 report concluded that the availability of information in relation to beneficiaries was not assured in all cases. Law No. 2 of February 2011 requires that the resident agent of a private foundation perform and keep up to date know-your-client measures on the client and the third party on behalf of whom the client acts. As mentioned earlier, Law 2 does not unambiguously state that this third party is the beneficiaries of the foundation.

41. As already indicated in relation to companies, however, it is not clear who is the client in the context of a foundation. The resident agent will therefore carry out KYC on the client, who is likely to be the founder and not necessarily on all the beneficiaries of the foundation. Panama is of the view that the reference in Law 2 to "third parties" on whose behalf the client acts includes all the beneficiaries of the a foundation. However as already indicated this is not evident from the law. The provisions of the Law 2 distinguish between the entity itself and the client and third parties (being persons on whose behalf the client acts) and it is not entirely clear which, if any, of these categories beneficiaries fall into. In any event, identity information which is held outside of Panama by a client pursuant to Article 7 of Law 2 may be difficult to retrieve depending on the laws of the country where the information is located and when the foundation was formed.

42. Notwithstanding the apparent deficiencies of Law 2 it is clear after further analysis of the Foundations Law that information on the founder is required to be kept pursuant to the provisions of that law. However, there remains an issue regarding the availability of identity information about beneficiaries.

43. The foundation charter must, among other things, contain the details of the members of the foundation council (which may include the founder), the purposes of the foundation, the manner of appointing of the beneficiaries, among whom the founder may be included, and the name and address of the registered agent (Article 5). The foundation's charter as well as any amendments thereto, must be registered in the Public Registry. The Foundations Law also states that once the foundation has been registered, the founder and any other third party that has pledged some property to the foundation must formalise the transfer of same to the foundation (Article 10). Article 16 states that the transfer of assets may be effected by a private or public document which would, necessarily, identify the founder or donor. This document will be available with the foundation council. Article 16 also states that in case

the property is real estate, the transfer must conform to the rules for transfer of real estate.

44. Article 18 of the Foundations Law states that the duties of the foundation council include, *(i)* to administer the assets in accordance with the charter *(ii)* inform the beneficiaries of the economic situation of the foundation and *(iii)* to deliver to the beneficiaries the assets or resources set up in their favour by the foundation charter. All these acts would seem to require that the foundation council know the identity of the beneficiaries. The competent authority of Panama has the power to request all relevant information from the resident agent; the council members and the founder, under Law 24 of 2013 as they are information holders for the purposes of this Law (see discussion in section B.1). However, since the Law does not make it mandatory for one of the Council members to be resident in Panama, where information on beneficiaries is held outside of Panama because the foundation council and service providers are outside of Panama this information might not be available because it is not accessible, not being in control or possession of persons resident in Panama.

Conclusion

45. The provisions of the Foundations Law therefore ensure that identity information on the founder and members of the foundation council will be available. However information on beneficiaries may not always be available to the Panamanian authorities. A recommendation is maintained in this regard.

Nominee identity information

46. The Phase 1 Report found that there were no specific regulations in Panamanian law regarding the identification of nominee shareholdings. Although all SAs are required to keep a register showing the names of all of the shareholders of the corporation, it appears to require only that the nominal shareholder is listed in the share register, regardless of whether the shareholder is a nominee. For SRLs, although the names of the quota holders must be registered in the public registry, it appears that these may also be nominees. Because a requirement for nominees to have or make available information about the person on whose behalf shares are registered did not exist, the Phase 1 Report recommended that Panama amend its laws to include a requirement to identify the person on whose behalf the shares are registered.

47. The issue has now been examined afresh in the light of some of the explanations given by Panama. The concept of nominees does not exist in Panamanian law and therefore a Panamanian resident person may not act as

a nominee shareholder on behalf of another person. What does exist is the concept of *mandatario,* which is quite different from the concept of nominee owners. Under the Panamanian law of mandates, the mandate may be expressed (by a written instrument) or may be oral or tacit. By virtue of the mandate the person who receives the mandate (*mandatario*) agrees to provide a service for the person giving the mandate. The mandate may be general or special. Under a general mandate, the person receiving the mandate can act in respect of all the businesses of the person giving the mandate and in the case of special mandates, he can act only for specified purposes.

48. The *mandatario* must comply with all the terms of the mandate. In case of acts beyond the terms of the mandate, the person giving the mandate is not responsible for such acts. A *mandatario* who exceeds his mandate is responsible for the losses caused to a third party and also to the person giving the mandate. The *mandatario* has to inform a third party as to who has given him the mandate, as the *mandatario* cannot enter into contracts in his own name. The contract will always be in the name of the person giving the mandate. Pursuant to article 1411 of the Civil Code, the *mandatario* is obliged to give an account of his operation and to pay amounts received under the mandate to the person giving the mandate. It follows from this that he must know who he is dealing for. In any case where the *mandatorio* is a financial intermediary he would also be subject to customer due diligence obligations under Panama's anti-money laundering law and could provide information in response to a request which relates only to tax purposes.

Conclusion

49. The concept of nominees is not recognised in Panamanian law. Based on the new analysis that has been carried out now, the recommendation in the Phase 1 report on nominees is deleted.

Bearer Shares *(ToR A.1.2)*

50. The Phase 1 Report identified significant deficiencies with regard to the availability of ownership information on bearer shares, which may be issued by SAs in Panama. A SA's shareholder register must show the number of the bearer shares issued, the date of the issue and that the share is fully paid and non-assessable. Bearer shares can be transferred simply by the delivery of the certificate. At the time of the Phase 1 Report, there were no mechanisms in place to identify the owners of bearer shares and therefore a recommendation was made that Panama take all necessary steps to ensure that its competent authorities can identify the owners of bearer shares.

51. Since its Phase 1 Report, Panama enacted Law No. 2 of 1 February 2011 (discussed previously) which required the resident agent to take know

your client measures in respect of the client. This includes a requirement to acquire from the client, satisfactory evidence of the identity of the owner of bearer shares of the legal entity incorporated by the resident agent. However, as discussed there are a number of deficiencies in Law 2 which lead to the conclusion that it is not an effective means of identifying the holders of bearer shares.

52. Note that Panama considers that Law No. 2 requires registered agents to have information on the identity of bearer shareholders in all cases after 2016, except where confirmation is received pursuant to Article 7 of the law that a "good introducer" has the this information and will provide it if requested by the resident agent. In the absence of any requirement to immobilise the shares however it is unclear how it can be ensured that the owner is known. This point is now addressed by Law No. 47 of 2013 which does require immobilisation of bearer shares but only from 2018 in respect of shares issued before 2015.

53. Law No. 47 of 6 August 2013 is aimed at adopting a custodial regime for bearer share certificates. Article 5 of the Law requires that a corporation that issues bearer shares after the entry into force of the Law shall deposit them with an authorised custodian within 20 days from the approval of the issuance of the bearer shares. For this purpose, the owner of the bearer shares is required to provide the issuing corporation with the complete name of the authorised custodian, its physical address and contact information of a person who may be contacted by the corporation if necessary. The corporation shall annul the issuance of bearer shares if the owner fails to supply this information within the stipulated time of 20 days.

54. For shares that have been issued prior to the obligations under the Law becoming enforceable, Article 4 provides that the bearer share certificates shall be deposited with an authorised custodian within the transition period provided by the Law. Article 25 of the Law provides for a transition period of three years after the obligations under the Law become enforceable. Article 28 of the Law provides that the obligations under the Law shall be enforceable two years after its promulgation making for a transition period of five years for shares already issued. Article 21 of the Law stipulates that in case the bearer shares are not deposited with the custodian within the time as allowed by the Law, the owner will not be able to exercise his legal rights in relation to the shares. In effect, rights in respect of the shares are annulled and cannot be restored. This is in addition to the legal actions that third parties acting in good faith, may exercise for any damages caused.

55. Law 47 provides that along with the bearer shares, the authorised custodian has to be provided with a sworn statement (Article 8). The sworn statement must contain *(i)* complete name, *(ii)* nationality or country of incorporation, current identification number or current passport number

or general incorporation information, *(iii)* physical address and telephone number of the owners of the bearer shares. Article 8 also requires that the complete name, physical address, telephone number and email address or fax number of the resident agent of the issuing corporation be provided to the authorised custodian, by means of a sworn statement, when depositing the bearer share certificates in custody. This procedure has to be followed regardless of whether the bearer shares have been issued before or after the entry into force of the Law.

56. The Law stipulates that banks holding a general license and Panamanian trust companies regulated by the Superintendence of Banks in Panama can act as authorised custodians of bearer share certificates. Brokerage firms and brokerage centrals established in the Republic of Panama and regulated by the Superintendence of Stock Markets may also act as authorised custodians. Likewise, lawyers registered before the Supreme Court of Justice can act as custodians provided they provide their complete name, physical address at which the bearer shares will be held and their contact details. The respective superintendence of these authorised custodians has to keep an updated list of registered local authorised custodians. The superintendence authority also has to provide a certified list to the competent authority, whenever requested.

57. Law 47 also allows foreign authorised custodians to have custody of the bearer share certificates. Article 7 states that banks, trust companies and financial intermediaries holding a license to carry out their activities established in member jurisdictions of the FATF or its associate members which are registered with the Superintendence of Banks of Panama may act as foreign authorised custodians. These persons have to provide information (to the Superintendence of Banks of Panama) that includes *(i)* general incorporation number, name, physical address, contact information *(ii)* letter issued by their supervising entity that they are subject to its supervision along with all details of the supervising entity *(iii)* proof of appointment of a notification agent with contact details of the notification agent *(iv)* sworn statement guaranteeing that they practice KYC measures not inferior to those required by Panama's Law 2 of February 2011 and that they will provide the resident agent of the issuing corporation the complete name, nationality or country of incorporation, current identification number or current passport number or general incorporation number, physical address and contact details of the owner of the bearer shares whose certificates will be held in custody. The foreign custodian must provide this information to the resident agent within 10 days of being appointed as the custodian (numeral 4 of Article 11 and Article 17 of Law 47). The custodian will be deemed "appointed" once the shares have been deposited together with the sworn statement referred to in Article 8 of Law 47.

58. The custodians (local and foreign) of the bearer share certificates are obliged under the Law to keep all documents related to rendering of service of custody in their office for a period of five years after the conclusion of the service. They must also keep physical custody of the bearer share certificates and provide the information when requested by the competent authorities. Providing this information to the competent authority will not be a breach of the duty of secrecy cast upon the custodian.

59. Foreign authorised custodians must also provide the resident agent of the issuing corporation, a notification of his appointment as custodian and details of the owner of the bearer shares, within 10 days of being appointed as custodian. Banks, trust companies and financial intermediaries that, together with the information and documents referred to in article 7 (see above), post, by means of a compliance bond, the amount of USD 25 000 in favour of the National Treasury, are exempt from compliance with the obligation to provide the resident agent of the issuing corporation, with identification information on the owners of the bearer shares held in custody within ten days of their notification as authorised custodians. Instead, the foreign authorised custodians that opt to post this bond, shall provide the resident agent of the issuing corporation, when requested by the competent authority, the name, nationality or country of incorporation, current identification number or current passport number or general incorporation information, physical address, telephone number and email address or fax number of the owners of the bearer share certificates held in custody. Under Article 7 of Law 47 the foreign custodian must give an undertaking that it will provide this information to the resident agent following a request from the competent authority. Non-compliance results in the execution of the bond referred to above. The foreign custodian could also be suspended for three years pursuant to Article 22 of Law No. 47 or permanently suspended in the event that the compliance bond is executed.

60. Law 47 prescribes penalties for authorised custodians who fail to comply with their obligations. This is further discussed in section A.1.6.

61. It is noted that the obligations under Law 47 will be enforceable two years after its promulgation (August 2013). Thereafter for bearer shares that have already been issued there is a transition period of three years to immobilise them by depositing them into custody. Hence, the effective transition period for shares already in existence is five years and it will not be possible to fully assess the effectiveness of this law until the end of 2018. In the meantime, companies can continue to issue bearer shares without depositing them with a custodian until 2015 and once issued they do not have to be immobilised until 2018. This means that Panama will not have effective mechanisms to identify the owners of bearer shares in place until 2018. Given this long transition period it is recommended that Panama implement changes

to its laws to ensure the availability of ownership information as quickly as possible.

Conclusion

62. Following the discussion in the preceding paragraphs, the recommendation that Panama should take all necessary steps to ensure that there are proper mechanisms in place to allow the owners of bearer shares to be identified in all cases is amended to reflect that Panama make changes to its law so that information on the holders of bearer shares is available as soon as possible.

Enforcement provisions to ensure availability of information (ToR A.1.6)

63. The Phase 1 Report noted that Panamanian law requires SAs to keep a stock register (Law No. 32 of 1927) but does not prescribe penalties for failure to do so or for failure to keep the register up to date. Because this may be the only reliable source of ownership information on nominal shares in a company, especially for companies which are not in receipt of Panamanian source income and therefore would not be subject to ownership requirements of the Fiscal Code, the Report concluded that this represents a gap in the law. There are provisions in Panama's Corporation Law (Law 32 of 1927) that indicate that shareholder rights cannot be exercised unless the shareholder's name appears in the stock register. Transfers of shares that are not duly documented in the share register are not binding upon the corporation. However, there is no sanction upon the company if it fails to maintain a stock register or keep it up to date.

64. As discussed previously, Panama enacted Law No. 2 of 2011 which requires resident agents to perform know-your-client measures on their clients and third parties on whose behalf the client acts. The issues around the meaning of the "third party" have been discussed earlier in this report. This law includes sanctions for non-compliance on the part of resident agents, including a warning, fine of up to USD 5 000 or a temporary suspension of a lawyer's ability to provide resident agent services for new legal entities for a period of between three months and three years (Article 20). Although this is an improvement, the law itself is deficient in other respects (see discussion in para's 27 to 35 above) and it still does not impose a penalty on the company itself for failure to keep a share register, which is necessary in order to know the holders of all nominal shares in Panama.

65. Therefore the recommendation with regard to element A.1.6 remains in place and it is recommended that Panama implement penalties for failure to keep a stock register.

66. Following the enactment of Law 47 of 6 August 2013 on bearer shares, some penalties have been introduced to enforce obligations placed upon authorised custodians of bearer shares. A fine of USD 5 000 is prescribed for an authorised custodian (domestic and foreign) who fails to comply with the legal requirements while receiving the bearer share certificates. Failure to keep a copy of the information referred to in the Law attracts a fine of USD 500 upon the authorised custodian. A fine of USD 2 500 is prescribed for an authorised custodian who fails to keep physical custody of the bearer share certificates. Where foreign custodians opt to post a bond of USD 25 000 (see section A.1.2 above), the bond will be executed in case they do not provide the information on the owners of bearer shares to the resident agent of the issuing corporation, following a request from the competent authority. The effectiveness of these penalties will be reviewed during the Phase 2 review of Panama, when it is scheduled.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
~~Information on the owners of bearer shares is not available in all cases.~~ Under Panamanian legislation, the provisions that ensure availability of information on the owners of bearer shares will not be effective until August, 2018.	~~Panama should take all necessary steps to ensure that its competent authorities can identify the owners of bearer shares.~~ The Panamanian authorities should ensure that the information regarding the holders of bearer shares is available as quickly as possible.
~~There is no requirement for nominees to have, or make available, information about the person on whose behalf shares are registered.~~	~~Where shares or securities are registered in the name of a person the competent authorities should have power to require that person to state whether he/she holds the shares as a nominee and if so to identify the person on whose behalf the shares are registered.~~

~~Although "know your client" rules apply to resident agents for companies and foundations, in accordance with Executive decree No. 468 of 1994, it is not clear what information these rules require to be kept.~~ The "know your client" rules that are created by Law 2 of 2011 do not clearly ensure the availability of information on all of the owners of companies or beneficiaries of foundations and do not have full effect until 2016. Further, unless a *Sociedad Anónima* is subject to audit by the tax authorities there appears to be no mechanism to ensure that the stock register is kept up to date, or at all.	~~The "know your client" rules for resident agents should be amended to ensure that ownership information held by resident agents identifies the owners of companies and the founders, members of the foundation council and beneficiaries of foundations.~~ The relevant provisions of Panama's laws should clearly ensure the availability of information on all of the owners of companies and beneficiaries of foundations.
~~Unless a Sociedad Anomina is subject to audit by the tax authorities there appears to be no mechanism to ensure that the stock register is kept up to date, or kept at all.~~	~~Penalties for failing to maintain stock registers up to date should be prescribed for all the Sociedad Anomina,~~

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

General requirements (ToR A.2.1.), Underlying documentation (ToR A.2.2.) and the 5-year retention standard (ToR A.2.3.)

67. Only companies and partnerships in Panama that carry on business in Panama are required to maintain accounting records. Therefore the Phase 1 Report recommended that Panama amend its Commercial Code to ensure that record keeping requirements apply to all companies, limited partnerships and partnerships limited by shares registered in Panama irrespective of whether they carry on business in Panama. Panama has taken no action on this recommendation and therefore no change is made.

68. The Trusts Law and Foundations Law are silent on both the nature of accounting records required to be maintained as well as the time period for which they should be kept. Subsequent to the Phase 1 Report, Panama has taken no action on this issue, and therefore no change is made to the recommendation to amend its laws to ensure that maintaining proper accounts and retention periods are mandatory.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is not in place	
Factors underlying recommendations	**Recommendations**
Only companies and partnerships operating in Panama are required to maintain accounting records.	The record keeping requirements in the Commercial Code should apply to all companies, limited partnerships and partnerships limited by shares registered in Panama irrespective of whether they carry on business in Panama.
The Trust Law and Foundations Law are silent on the type of records which are required to be kept and their retention period.	The record keeping requirements for trusts and foundations should be clarified to ensure that reliable accounting records are kept and retained for a period of five years.

A.3. Banking information

Banking information should be available for all account-holders.

69. The Phase 1 Report found that Panama had a legal framework in place to ensure the availability of relevant banking information for all account holders. No changes have been made to the legal and regulatory framework since the Phase 1 report.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place

B. Access to Information

70. A variety of information may be needed in respect of the administration and enforcement of relevant tax laws and jurisdictions should have the authority to access all such information. The Phase 1 Report concluded that element B.1 (access to information) was "not in place". It found that Panama had a domestic tax interest requirement in its access powers and recommended that Panama ensure that the statutory powers given to the Directorate General of Revenue (DGI) to obtain information specifically include powers to obtain information for the purposes of responding to a request for information from a treaty partner, even if Panama does not need the information for its own tax purposes.

71. The Phase 1 Report also found that Panama's professional secrecy rules were overbroad and recommended that Panama make clear that the DGI's power to obtain information under a treaty overrides any obligation to secrecy imposed by another law. In addition, the Report found that Panama did not have sufficient penalties in place to compel information and recommended that Panama review the penalties provided for in its Fiscal Code to ensure access to information necessary to comply with its treaty obligations.

72. Since the Phase 1 Report, Panama enacted Law No. 33 of 30 June 2010 (Law No. 33) to expand its access powers to include the power to obtain information regardless of whether Panama needs the information for its own tax purposes. As a result, Panama can now access information without regard to any domestic tax interest. The recommendation has therefore been deleted.

73. Panama enacted Law No. 2 of 2011 (discussed in section A), which enhances the know-your-client duties of attorneys acting as resident agents. The law also includes provisions on attorney-client privilege which limits the previously overbroad standard somewhat, and provides that information obtained as part of a resident agent's know your client duties is no longer protected by legal privilege. Panama has also enacted Law 24 of 2013 by which the competent authority has access to information whether or not it is considered confidential, subject to normal limits of the attorney-client privilege. This matter will be followed up in the Phase 2 review of Panama, once this is scheduled. Accordingly the Phase 1 recommendation on this point has been deleted.

74. As recommended in the Phase 1 Report, Panama has reviewed the penalties provided for in its Fiscal Code and continues to believe that these are sufficient to ensure access to information. This recommendation has therefore been deleted.

75. Taken as a whole, the changes Panama has made to its laws on element B.1 are substantial enough to change the determination from "not in place" to "in place".

76. On element B.2 (notification requirements and rights and safeguards), the Phase 1 Report found that the element was in place and that this should be the subject of further review in Phase 2. However Panama's *Manual de Procedimiento* now leaves it to the discretion of the Competent Authority of Panama as to whether the taxpayer will be notified or not. The practical operation of this will also be considered in the Phase 2 review of Panama, once it is scheduled. The determination of the element B.2 remains "in place".

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

Use of information gathering measures absent domestic tax interest (ToR B.1.3)

77. The Phase 1 Report identified serious deficiencies in the Panamanian authorities' power to obtain information for exchange purposes, the most serious being the existence of a domestic tax interest requirement. This was found to be a particularly significant impediment to exchange of information in a jurisdiction like Panama where its income tax system is based on the territoriality principle, as income arising from foreign sources is not taxable. The Report found that a significant number of companies and private foundations in Panama were likely to be in this position.

78. Article 20 of Cabinet Decree 109 of 7 May 1970 states that the DGI is empowered to obtain all information, "necessary and inherent to the determination of tax obligations". The Phase 1 Report found that Panama interpreted "tax obligations" to mean Panamanian tax obligations, and therefore this was found to be a domestic tax interest requirement.

79. In order to address this deficiency, Panama enacted Law No. 33 of 30 June 2010, which modified Article 20 of the Decree to give the DGI power to request and obtain tax information from any type of institution, public

or private in order to comply with its international agreements. This is true without exception and without regard to a domestic tax interest. Significantly, it added the following to Article 20:

> "[t]he General Directorate of Income is authorised to request and obtain information, with the only and exclusive purpose of complying with the international conventions subscribed by the Republic of Panama for the exchange of tax information, even if such information is not related to a domestic tax interest."

80. This change in the law effectively eliminates any domestic tax interest requirement in Panama and allows the DGI to access information whether it needs it for its own tax purposes or not. Significantly, this means that the DGI can have access to information held by companies that only have foreign source income.

81. Law 24 0f 2013 has created the National Public Revenue Authority (the Tax Authority) with all the powers originally available to the General Directorate of Income of the Ministry of Economy and Finance. Additionally, this Law creates the International Taxation Directorate with all the powers originally available to the International Taxation and Exchange of Information Units by Resolution 088-DS/AL of 30 September 2010. Article 5 (numeral 15) of Law 24 states that the Tax Authority can

> "Request and obtain from public entities, private entities and third parties in general, without exception, any type of information necessary and useful in the determination of tax obligations, events that generate tax or exemptions, the amounts, sources of income, remittances, withholdings, costs, reserves, expenses, among others, related to taxation, as well as information about those responsible for these obligations or the holders of tax exemption rights undergoing a tax process or in compliance with international conventions."

It should be mentioned here that the term "third party" used in Law 24 covers all information holders.

Conclusion

82. Pursuant to Law No. 33 and Law 24, Panamanian authorities now have access to information, even if such information is not related to a domestic tax interest. Therefore, the recommendation with regard to the existence of a domestic tax interest is deleted.

Compulsory powers *(ToR B.1.4)*

83. The Phase 1 Report found that it was difficult to assess the effectiveness of the penalties for exchange of information purposes and that the threshold between the various categories of penalties was unclear. Further, it found that because Panama attracts international companies that may not do business in Panama, and because these are the most likely objects of a request for information, some of the more extreme forms of penalty available to Panama, e.g. definitive closure of a business, would not always be practical or effective. It was recommended that Panama review the penalties provided for in the Fiscal Code to ensure that these meet the requirement of ensuring access to information necessary to comply with its treaty obligations. Part of the concern expressed in the Phase 1 Report was that because adequate access powers were not in place, it was difficult to determine whether the compulsory powers were also present.

84. Pursuant to the recommendation, Panama has reviewed these penalties and believes them to be adequate. Executive Decree 109 of 1970 provides for fines, closure of business and even arrest. There are also penalties in the Fiscal Code and the Commercial Code. Article 756 of the Fiscal Code prescribes a penalty of USD 1 000 to USD 5 000 for a first failure to provide information to the competent authority and a penalty of USD 5 000 to USD 10 000 for re-occurrences. The effectiveness of these penalties will be the subject of further review in the Phase 2 Review of Panama, when it is scheduled.

Conclusion

85. Panama has reviewed its penalties to ensure access to information, as recommended by the Phase 1 Report and has found them to be sufficient to ensure that adequate records are maintained. The Tax Authority in Panama has powers to ensure access to information necessary to comply with treaty obligations. These powers are available in the Fiscal and Commercial Codes and can be used to answer EOI requests. Therefore, the recommendation that Panama review its penalties to guarantee that they meet the requirement of ensuring access to information necessary to comply with its treaty obligations is deleted.

Secrecy provisions *(ToR B.1.5)*

86. Lawyers play a leading role in the provision of international financial and wealth management service. Only lawyers admitted to practice in Panama may provide incorporation services and all corporations and private foundations must have a resident agent who must be a lawyer.

87. The Phase 1 Report concluded that professional secrecy protected lawyers even when they were not acting as legal representatives. This follows

from Article 13 of the Code of Conduct of Lawyers in Panama which provides that lawyers have a duty to keep secrets and confidences of their clients even after the contractual relationship has ended. The Code does not distinguish between a lawyer's activities and it clearly states that a lawyer cannot be forced to disclose information on a client without the client's consent. There is no exception where a request under an exchange of information arrangement is made. The Report recommended that Panama make clear that the DGI's power to obtain information to respond to a treaty request overrides any obligation to secrecy imposed by other legislation.

88. Panama has since advised that its International treaties override domestic law (Article 4 of Panama's Political Constitution). Moreover it has entered into a number of EOI arrangements incorporating the definition of Attorney-Client privilege in Article 7 of the OECD Model TIEA. It has also advised that the Code of Conduct applicable to Lawyers is a Code that has not been approved by the National Assembly of Panama; therefore, it is not Law of the Republic. It establishes the framework by which an attorney must abide while providing services to a client. However, it does not affect the dealings of a resident agent with a competent authority which has broad powers to access information required in order to comply with treaty obligations.

89. Subsequent to the Phase 1 Report, Panama also enacted Law No. 2 of 2011, which sets forth some limitations on the attorney-client privilege standard in Panama. Specifically, it provides that although a lawyer is not required to submit any information or documents protected by attorney client privilege in response to a request from the competent authority, if the information requested is "limited strictly to that required by its obligations of the know your client measures", the lawyer cannot claim attorney-client privilege and is required to provide the information (Article 14). The law further provides that "[t]he supply of information upon request by a competent authority shall not be considered as a violation of the attorney-client privilege or a lack of professional ethic, as it is a superior interest for the Republic of Panama" (Article 16).

90. However, the new attorney-client privilege exception in Law No. 2 of 2011 (Article 16) provides for a potential additional restriction to exchange of information. It states:

> "Notwithstanding the forgoing [attorney-client privilege standard], the resident agent shall not have the obligation to submit information upon request by a competent authority, when the request is devised without due compliance with the rules, requirements and procedures established in Panamanian legislation or when the request is based on information obtained, by any national or international authority, through illegitimate or illegal means according to the provisions of the Republic of Panama."

91. Panama advises that the purpose of the provision is first to ensure that information requests are devised with strict compliance with the law and the treaty and second to permit the resident agent to challenge a request which is based on information that was obtained in a way that would be considered "illegitimate or illegal means" under Panamanian law. This could arise if it were publicly known that the information is obtained by "illegitimate or illegal means".

92. As regards the first point, Panama has stated that the requesting state must comply with Panamanian law to the extent that the exchange must respect the provisions contained in the Conventions or Agreements and their Protocols which, after being ratified by the National Assembly, become laws of the Republic of Panama. To this end, Panama established requirements in Executive Decree No. 85 which requires that the DGI verify, among other things, the powers of the competent authority of the requesting state to request the information, the legal basis on which the request is based, and a statement from the requesting state that the request complies with the laws, jurisprudence and administrative practices of its state.

93. Regarding the second point, the resident agent may challenge the request by demonstrating and proving that the information was obtained illegitimately and the DGI shall decide whether the challenge proceeds. Although the term "illegitimate means" is not defined in the provision, Panama advises that the intent is to ensure that Panama is not obligated to further the illegitimate acts of a foreign government. The practical implementation of this provision will be followed up when Panama moves to Phase 2.

94. It should be noted that the reference to "illegitimate means" is found only in Law 2 of 2011 and is not a general principle of the Panamanian legal framework. Law No 2 refers only to situations where the registered agent is not obliged to provide the information. It does not cover other information holders like banks. Panama continues to evaluate whether any amendment is required to Law 2 of 1 February 2011 to include a specific definition of "attorney-client privilege" for a clearer understanding of its effective application.

95. Meanwhile by Law 24 of 2013 (Article 5), Panama has provided that the National Manager of the National Public Revenue Authority (the competent authority) now has the power to obtain and provide information that is subject of a request under an exchange of information agreement from any person within the territorial jurisdiction, who is in possession or in control of such information (irrespective of any legal obligation on such person to maintain secrecy of the information) subject to recognised exceptions such as attorney-client privilege. The procedural manual of the Tax Information Exchange Unit of Panama (*Manual de Procedimiento*) also mentions that the rules on what constitutes a confidential communication should not be interpreted or applied in a broad sense so as to prevent effective exchange of information.

Conclusion

96. Panama has limited its attorney-client privilege standard by Law No. 2, which says that information obtained by an attorney pursuant to know your client measures is no longer protected. By virtue of Law 24 of 2013 Panama has ensured that the competent authority will have access to information irrespective of any secrecy obligation on the information holder. In addition Panama's TIEAs incorporate the definition of Attorney-Client privilege in Article 7 of the OECD Model TIEA. The practical implementation of these measures will be reviewed during the Phase 2 review of Panama. Accordingly, the recommendation in the Phase 1 Report with regard to professional secrecy is deleted.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is ~~not~~ in place.	
Factors underlying recommendations	**Recommendations**
~~The power of Panama's tax authorities to obtain information for exchange purposes is limited to circumstances in which the information is also required for their own tax purposes (domestic tax interest).~~	~~The statutory powers given to the Directorate General of Revenue to obtain information should be amended to specifically include power to obtain information for the purposes of responding to a request for information under an international agreement that provides for the exchange of information in tax matters, even if Panama does not need the information for its own tax purposes.~~
~~It is unclear that the Directorate General of Revenue's power to obtain information overrides competing requirements prohibiting disclosure of information, particularly with respect to lawyers acting in capacity other than that of legal representative~~	~~It should be made clear in legislation that the Directorate General of Revenue's power to obtain information to respond to a request for information under an international agreement overrides any obligation to secrecy imposed by any other legislation or other restriction on the disclosure of information subject to recognised exceptions such as attorney-client privilege.~~

~~The penalties available to ensure access to information for exchange purposes are not adapted to ensure access to information likely to be requested under exchange of~~	~~Panama should review the penalties provided for in its Fiscal Code to ensure these meet the requirement of ensuring access to information necessary to comply with its treaty obligations.~~

B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

97. At the time the Phase 1 Report was drafted, Panama had not yet enacted any law providing for rights and safeguards applying to the subject of a request for information in Panama. The Report, therefore, could only assess the Protocol to the Model Convention developed by Panama for negotiations of its DTCs and a draft Regulation for the Reception, Evaluation and Response to Request of Tax Information. The Report concluded that the rights and safeguards available under Panama's laws were in place.

98. Subsequent to the Phase 1 Report, Panama issued Executive Decree No. 85 of 28 June 2011 to set forth the process by which effective exchange of information takes place. Further guidance was provided by means of Resolution No. 201-7257 of 12 July 2011, which adopted the Internal Manual for the Exchange of Information (*Manual de Procedimiento)*. Taken together, these documents provide for taxpayer notification with recognised exceptions, consistent with the international standard.

99. Executive Decree No. 85 regulates the procedures to request information from treaty partners and procedures to answer information requests. Article 4 of the Decree sets forth factors that the DGI must consider before requesting information from an internal or external source, one consideration being whether there is an indication by the requesting state or party if there are reasons to avoid notifying the taxpayer under investigation because the notification could affect the investigation (Article 4(q)). The *Manual de Procedimiento* states:

> "It should be pointed out here that Panama reserves the right to notify the taxpayer that the Competent Authority of the other Contracting State or Party, to which there is an existing Convention for the Avoidance of Double Taxation or for Tax Cooperation and Information Exchange on Tax, is requesting information about the taxpayer, unless the authority of the State or the Requesting Party justify its reasons to avoid notifying the taxpayer: if it could harm the investigation it is being subject to.

> Even in the latter case, the Competent Authority of Panama has the discretion to decide whether or not to notify the taxpayer of the request for information that another State or Requesting Party shall make on such taxpayer" (Section I(K)).

Panama has therefore reserved the right to notify a taxpayer but there are also exceptions to notification in situations where this could harm the investigations. However, the *Manual de Procedimiento* leaves it to the discretion of the Competent Authority of Panama as to whether the taxpayer will be notified and whether it will not. Panama states that the *Manual de Procedimiento* cannot create obligations that are absent in domestic law and Panama's domestic law does not require notification of the investigated person. In summary there is no legal requirement to notify but the absence of clear guidelines in this regard may hinder effective exchange of information in practice. This matter will be followed up in Phase 2 when it is scheduled.

100. The Protocol to some of Panama's DTCs includes a provision that generally states that the administrative procedure rules regarding a taxpayers' rights in a requested state remain applicable and that these procedural rules include notifying the person in regard to the request of information and granting the possibility for that person to file and present a case to the tax administration before it responds to the request. The administrative procedure rules that would apply in this situation refer to the Executive Decree and *Manual*.

Conclusion

101. Panama's domestic law and its treaties seem to provide for taxpayer notification with exceptions in certain cases. However, as pointed out above, the *Manual de Procedimiento* leaves it to the discretion of the Competent Authority of Panama as to when the taxpayer will be notified and when it will be not. The practical application of this discretion matter will be reviewed during the Phase 2 review of Panama.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**

C. Exchanging Information

102. This section of the report examines whether a jurisdiction has in place a network of agreements that would allow it to achieve effective exchange of information in practice. The Report concluded that element C.1 (exchange of information mechanisms) was not in place because Panama had no agreements in force to the international standard and that element C.2 (agreements with all relevant partners) was not in place because Panama had refused to negotiate agreements with all relevant partners and its laws allowed for exchange of information in the case of DTCs but not TIEAs or other information exchange arrangements. In addition, element C.4 (rights and safeguards) was found to be in place, but certain aspects of the legal implementation of the element needed improvement because the professional secrecy standards in Panama's domestic laws were overbroad. The Phase 1 Report found that element C.3 (confidentiality) was in place. As with other Phase 1 reports, in respect of element C.5 the report noted that it involved issues of practice that would be dealt with in Panama's Phase 2 review.

103. At the time of the Phase 1 Report, Panama had signed only one exchange of information agreement (with Mexico). Since then, Panama has worked to expand its exchange of information network, concluding 24 more treaties, including a number of tax information exchange agreements (TIEAs). However, in a few cases the Protocols to these treaties contain limitations on exchange of information, most significantly by requiring the name and address of a taxpayer in order to exchange information. Therefore, 21 of Panama's 25 agreements are to the standard and the element C.1 has now been determined to be "in place".

104. The Phase 1 Report had found that Panama had refused to negotiate exchange of information agreements with all relevant partners and that its policy was to negotiate DTCs rather than TIEAs. Subsequent to the Phase 1 Report, Panama has negotiated a number of TIEAs. Panama has now signed exchange of information agreements with relevant partners in line with the international standard, thus element C.2. is now determined to be "in place but needing improvement".

105. The Phase 1 report had found that many of Panama's EOI agreements were limited by an attorney-client privilege that was not in line with the international standard. This has been discussed in section B.1 and it has been concluded that Panama has made sufficient changes to its domestic laws to bridge this gap. Accordingly, the Phase 1 recommendation in element C.4 is also now deleted and the element is determined to be "in place".

106. Panama has taken steps to organise itself in order to comply with requests for exchange of information from treaty partners, including recently restructuring sections of the DGI. With regard to element C.5, a review of Panama's organisational processes and resources will be conducted in the context of its Phase 2 Review, when it is scheduled.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

107. At the time of the phase 1 Report, Panama had signed only one exchange of information agreement, with Mexico, which has since come into force. As of now, Panama has signed 25 EOI agreements of which 20 are in force. These signed agreements are considered below. These agreements include tax information exchange agreements (TIEAs) with the United States, Canada, Denmark, Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden and double tax conventions (DTCs) with Barbados, Czech Republic, France, Ireland, Israel, Luxembourg, Italy, Mexico, Spain, the Netherlands, Portugal, Korea, Singapore, Qatar the United Kingdom and the United Arab Emirates.

Foreseeably relevant standard (ToR C.1.1)

108. The international standard for exchange of information envisages information exchange to the widest possible extent. Nevertheless it does not allow "fishing expeditions", i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 26(1) of the OECD Model Tax Convention. Panama's DTCs all contain the equivalent of Article 26(1) of the OECD Model Tax Convention. However, some of its DTCs contain a Protocol that could limit the exchange of all foreseeably relevant information.

109. Although Panama has incorporated the language of Article 5 of the OECD Model TIEA, it has supplemented this with additional requirements that are more restrictive than the international standard in the following cases. Its Protocols to four DTCs (with Ireland, Luxembourg, the Netherlands and Qatar) say that the requesting state "shall provide" the name and address

of the person under investigation. This restriction does not conform to the standard, as the international standard requires only that the jurisdiction provide "the *identity* of the person under examination or investigation" (emphasis added).

110. Protocols to some of Panama's other DTCs did initially contain this requirement that the requesting jurisdiction provide the name of the person under investigation. Panama has reported that it has contacted all of its treaty partners to correct the deficiencies. It has completed mutual agreement procedures with Portugal, Mexico and Barbados with the result that the requirement now is that the requesting jurisdiction provides the "identity of the person under examination or investigation". All these agreements concluded through MAPs are in force.

111. Panama has issued Executive Decree No. 85 of 28 June 2011 which sets forth the procedures the DGI must follow in requesting information and responding to a request from a treaty partner. The Decree requires that the request from the treaty partner meet a list of conditions, one of which is the provision of "[d]etailed information by the Requesting State or Party of the identification data of the people under investigation, *according to what is established in the Protocol of the applicable Convention or Agreement*, such as: name, date of birth, marital status, tax identification number, date of incorporation and registration details (for legal entities), address and email" (emphasis added). Therefore, the Decree confirms the name and address requirements of the Protocols. However, as Panama has already commenced the process of bringing these agreements in line with the international standard, it is recommended that Panama continue its action to correct this in order to allow for exchange of all foreseeably relevant information.

112. In addition, several Protocols to DTCs (with Ireland, Luxembourg, the Netherlands, and Qatar) say that the requesting state "shall provide" the name and address of the person believed to be in possession of the information, without including the qualifying phrase "to the extent known" found in the OECD Model Convention. Panama therefore requires this information in order to comply with a request from a treaty partner (under these agreements), which restricts the exchange of foreseeably relevant information and does not conform to the standard.

113. The protocol to the DTC with Singapore was amended by a MOU to clarify that the name and address of the person believed to be in possession of the information will be supplied "to the extent known".

114. Panama has reported that it has also entered into mutual agreement procedures with Portugal, Mexico and Barbados to clarify this matter. All these agreements concluded through MAPs contain provisions whereby the requested state waives the requirement of the name and address of any

person believed to be in possession of the requested information, if they are not known.

115. Panama's DTCs, other than those named above do not contain either of the above "name and address" requirements and therefore meet the foreseeably relevant standard. Panama's TIEAs use the language "may be relevant" to describe the scope of the agreement, which is consistent with the international standard. Panama's TIEAs do not contain any of the restrictive language found in some of Panama's DTC Protocols.

116. Protocols to DTCs with Barbados, Korea, Luxembourg, Mexico, Qatar, Portugal, the Netherlands, Spain and Italy contain a provision that provides that exchange of information "does not include measures aimed only at the simple collection of pieces of evidence, when it is improbable that the requested information will be relevant for controlling or administering tax matters of a given taxpayer in a Contracting State". Most of these DTCs add "('fishing expeditions')" to the end of this sentence, although the DTCs with Luxembourg and United Arab Emirates only contain the first part of the sentence: "does not include measures aimed only at the simple collection of pieces of evidence". It was noted in the Phase 1 Report that the DTC with Mexico contained this language and that it was unclear what effect this would have on exchange of information. Since the Phase 1 Report, Panama has continued to include this language in all but two of the Protocols to its DTCs.[5] This language is not included in its TIEA with the U.S. or its Protocol. Panama advises that the purpose of the language is to avoid fishing expeditions and that it believes that this language is consistent with the commentary on Article 26 of the OECD Model Convention, which provides that "… Contracting States are not at liberty to engage in 'fishing expeditions' or to request *information that is unlikely to be relevant to the tax affairs of a given taxpayer*" [emphasis added]. However, whether the "simple collection of pieces of evidence" necessarily means that such information would not be relevant is an open question. In addition, information that is "improbable that … [it] will be relevant …" could be more narrow than simply "relevant" information as contemplated in the Model. Therefore, the application of this language in practice should be evaluated in Panama's Phase 2 review.

In respect of all persons (ToR C.1.2)

117. All of Panama's agreements allow for the exchange of information in respect of all persons.

5. DTCs with Singapore and France.

Exchange information held by financial institutions, nominees, agents and ownership and identity information (ToR C.1.3)

118. All of Panama's DTCs contain paragraph 26(5) of the OECD Model Tax Convention or its equivalent. Its TIEA with the U.S. contains language that is equivalent to Article 5(4) of the OECD Model TIEA.

Absence of domestic tax interest (ToR C.1.4)

119. All of Panama's DTCs contain paragraph 26(4) of the OECD Model Tax Convention or its equivalent, which provides that a contracting state may not decline to supply information solely because it has no interest in obtaining the information for its own tax purposes. Its TIEA with the U.S. contains the language in Article 5(1) of the OECD Model TIEA, which provides that information will be exchanged without regard to whether the requested Party needs the information for its own tax purposes or the conduct being investigated would be a crime under the laws of the requested Party if it had occurred in its territory.

120. The Phase 1 Report identified restrictions in Panama's domestic laws that limited the DGI's powers to obtain information to situations where the information is relevant to the determination of a tax obligation in Panama, which prevents the exchange of information in cases where the information was not publicly available or already in the possession of the Panamanian authorities. However, as discussed in section B.1, Panama has since enacted Law No. 33 of 30 June 2010, which modified Article 20 of the Decree to give the DGI power to request and obtain tax information without regard to a domestic tax interest in order to comply with its international agreements. Therefore, it is now clear that Panama can exchange information without regard to a domestic tax interest under all of its agreements.

Absence of dual criminality principles (ToR C.1.5)

121. None of the agreements concluded by Panama apply the dual criminality principle to restrict the exchange of information.

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

122. All of the agreements concluded by Panama provide for the exchange of information in both civil and criminal tax matters.

Provide information in specific form requested (ToR C.1.7)

123. There are no restrictions in Panama's treaties that would prevent it from providing information in a specific form. Its agreements state that the information must be provided in the form specified by the competent authority of the requesting party, including depositions of witnesses and authenticated copies of original documents.

124. Following the Phase 1 Report, Panama issued Executive Decree No. 85 of 28 June 2011, setting forth the procedures that the DGI should follow in requesting information and complying with requests from treaty partners. The Decree provides that the DGI should verify that the requesting state has indicated how the documents must be presented in the answer in case of a possible judicial process. This suggests that the DGI takes this into account in responding to a request.

In force (ToR C.1.8)

125. 20 of Panama's 25 exchange of information agreements are currently in force.[6] Panama has ratified all of its 25 signed agreement and is currently awaiting action from its treaty partners to bring the remaining agreements into force.

Be given effect through domestic law (ToR C.1.9)

126. For information exchange to be effective, the parties to the agreement need to enact any legislation necessary to comply with the terms of the agreement. The Phase 1 Report raised a number of issues concerning Panama's capacity to use its powers to obtain the information needed to give effect to the terms of arrangements.

127. Since the Phase 1 Report, Panama has enacted laws to give effect to its agreements, including Law No. 33 of 30 June 2010 and Law 24 of 2013, which remove the domestic tax interest requirement in its previous laws.

6. Barbados, Canada, the Czech Republic, Mexico, Finland, France, Ireland, Iceland, Luxembourg, Spain, the Netherlands, Norway, Portugal, Korea, Singapore, Sweden, Qatar, the United Kingdom, the United Arab Emirates and the United States of America.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is ~~not~~ in place.	
Factors underlying recommendations	**Recommendations**
~~Panama has no agreements in force which provide for effective exchange of information.~~	~~Panama should pursue policies to ensure it signs and brings into force agreements currently under negotiation as soon as possible.~~
Four of Panama's 25 agreements establish identification requirements for the person concerned and/or the holder of information which are inconsistent with the standard for effective exchange of information.	Panama should ensure that the identification requirements in all of its agreements are in line with the standard for effective exchange of information.

C.2. Exchange of information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

128. The Phase 1 Report noted that Panama had not at that time negotiated any tax information exchange agreements to the standard. At that time it had signed only one agreement with Mexico. Since then, Panama has made significant progress in expanding its exchange of information network, including signing 24 more exchange of information agreements for a total of 25 agreements. Panama advises that negotiations for a TIEA have been concluded with Germany and similar negotiations for TIEAs are at an advanced stage with Australia, India and Japan.

129. Law 33 of 2010 of Panama has been discussed earlier in this report in the context of domestic tax interest. By that same Law, Panama can now exchange information under TIEAs. Executive Decree no. 194 of 5 March 2012 eliminates the requirement of a specific EOI format, providing flexibility in order for contracting states to negotiate and agree upon a specific format. Of the 25 agreements that Panama has signed so far, 21 are to the international standard. Of the 25 agreements that have been signed by Panama so far, nine are TIEAs including one with its most important trading partner. Panama has advised that its main trading partner is the U.S., followed by countries within the European Union.

130. Notwithstanding the progress that Panama has made in concluding agreements, five peers have reported that they have been unable to

commence negotiations with Panama despite their efforts. Panama has indicated that it is not in a position to negotiate further agreements at the moment due to limitations of time and resources. Nevertheless, it is encouraged to give a high priority to concluding and bringing into force agreements with all relevant partners, including Colombia. Accordingly, while Panama has made significant progress in negotiating EOI agreements, given the peer input received the factor underlying recommendation in the Phase 1 report is amended. The recommendation remains but the element is determined to be "in place but needing improvement".

Determination and factors underlying recommendations

Phase 1 Determination	
The element is ~~not~~ in place, <u>but certain aspects of the legal implementation of the element need improvement.</u>	
Factors underlying recommendations	**Recommendations**
~~Panama has been approached by a number of jurisdictions to negotiate TIEAs but has not done so. Further, recent amendments to its domestic law to allow for exchange of information in the case of DTCs do not extend to TIEAs or other information exchange arrangements such as a multilateral agreement~~. <u>Panama has been approached by some jurisdiction~~s~~ to negotiate a DTC or TIEA and has so far not entered into negotiations with them.</u>	Panama should enter into agreements for exchange of information (whether DTCs, TIEAs or multilateral instruments) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use and safeguards (ToR C.3.1) and All other information exchanged (ToR C.3.2)

131. The Phase 1 Report found that Panama sought to include the terms of Article 26(2) of the OECD Model Tax Convention in all of its treaties. Since then, Panama has included this language in all of its DTCs. Additionally, its TIEA with the U.S. includes the equivalent of Article 7 of the OECD Model TIEA.

132. Since the Phase 1 Report, Panama has enacted legislation that includes confidentiality requirements for information exchanged pursuant to its agreements. Nothing in Panama's exchange of information agreements or its domestic laws suggest that its confidentiality rules would not apply to all types of information exchanged.

133. Executive Decree No. 85 of 28 June 2011 provides that the governmental employees of the DGI and employees of private sources of information, who are involved in the preparation of information requests "shall keep the information in strict confidentiality" and the information can only be provided to the Competent Authorities in accordance with law (Article 10). According to the internal regulations of the Ministry of Economy and Finance and the National Public Revenue Authority, which are applicable to public officials breach of confidentiality can be sanctioned by removal from office. Article 8 of Law 2 of 2011 prescribes fines ranging from USD 1 000 to USD 25 000 for breach of confidentiality.

134. In addition, the *Manual de Procedimiento* contains a section entitled "Confidentiality of the Information Received". It mirrors the confidentiality provisions of the OECD Model Tax Convention and specifies that "the confidentiality provisions contained in the instruments for the exchange of information are intended to take precedence over any national legislation which permits the disclosure of information, keeping in mind the delicate, sensitive and critical results of the dissemination of such information".

135. There is therefore no change in the determination in the Phase 1 Report that element C.3 is in place.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

Exceptions to requirement to provide information (ToR C.4.1.)

136. The Phase 1 Report found that while Panama's policy is to ensure that parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney client privilege, its professional secrecy policy was inconsistent with the standard.

137. Since the Phase 1 Report, Panama has concluded 24 exchange of information agreements. Each of its DTCs now contain a paragraph equivalent to Article 26(3)(c), which makes clear that the agreement does not oblige Panama to supply information which would disclose any trade, business, industrial, commercial or professional secret.

138. All of Panama's TIEAs state that the term "information subject to legal privilege" would mean information that would reveal confidential communications between a client and an attorney, where such communications are made for the purpose of seeking or providing legal advice or for the use in existing or contemplated legal proceedings. This language is in line with the international standard (see Article 7, OECD Model TIEA). Panama has also clarified that international agreements override domestic law and the Code of Conduct for lawyers.

139. As discussed in section B.1.5 of this report, subsequent to the Phase 1 Report, Panama has made improvements to its professional secrecy laws. In particular it has limited its attorney-client privilege standard by Law No. 2 of 2011, which says that information obtained by an attorney pursuant to know your client measures is no longer protected. Further, Law 24 of 2013 Panama has ensured that the competent authority will have access to information irrespective of any secrecy obligation on the information holder. The practical implementation of these measures will be reviewed during the Phase 2 review of Panama. Accordingly, the recommendation in the Phase 1 Report with regard to professional secrecy is deleted and the element is determined to be "in place".

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place~~, but certain aspects of the legal implementation of the element need improvement~~.	
Factors underlying recommendation	**Recommendation**
~~Professional secrecy protects information held by lawyers even when they are not acting as legal representatives.~~	~~Professional secrecy rules should be amended to ensure they do not prevent the disclosure of information for exchange purposes beyond the limits permitted in the international standard, particularly in cases where lawyers are acting as resident agents.~~

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

140. Panama's Phase 1 Report concluded that a review of the practical ability of Panama's tax authorities to respond to requests in a timely manner will be conducted in the course of its Phase 2 Review.

141. Subsequent to the Phase 1 Report, the Ministry of Economy and Finance issued Regulation No. 088/-DS/AL of 30 September 2010 which creates two new units under the General Directorate of Income (DGI): the International Taxation Unit and the Tax Information Exchange Unit. The International Taxation Unit has responsibility for analysis, preparation and negotiation of tax treaties or conventions and the application of these agreements or conventions. The Tax Information Exchange Unit is responsible for drafting all tax information requests directed to foreign tax authorities on behalf of the Republic of Panama and answering tax information requests that it receives from treaty partners.

142. As part of its restructuring, the Ministry of Economy and Finance also issued Executive Decree No. 85 of 28 June 2011 which sets forth procedures to request information and to answer information requests, and which also adopted and authorised the Form for the Request of Tax Information. It also adopted the *Manual de Procedimiento* by means of Resolution No. 201-7257 of 12 July 2011 which provides procedural guidelines for the DGI to follow.

143. The *Manual de Procedimiento* provides that the Competent Authority should acknowledge the receipt of the request as soon as possible and must notify the Competent Authority of the requesting state as soon as possible of any deficiencies in the application. The *Manual* further recommends that the Competent Authority seek to provide the requested information within 90 days of receipt of the request and that if it cannot provide the information within 90 days, it must inform the Competent Authority and explain the reason for the delay.

144. There do not seem to be any specific legal or regulatory requirements in place which would prevent it from responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request. Panama's agreements do not contain any guidance on the timeliness of a response.

*Organisational process and resources (ToR **C.5.2.**)*

145. It is clear that the Panamanian authorities have now taken steps to organise the DGI in order to handle requests for exchange of information and have put processes in place, including the *Manual,* in order to facilitate responses. However, a review of the organisational processes and resources of Panama will be the subject of further review in the Phase 2 review of Panama.

Absence of unreasonable, disproportionate or unduly restrictive conditions on exchange of information (ToR C.5.3)

146. A review of the practical application of the processes and the resources available to the DGI will be conducted in the context of Panama's Phase 2 review.

Determination and factors underlying recommendations

Phase 1 Determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review. This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
The element is not in place.	Under Panamanian legislation, the provisions that ensure availability of information on the owners of bearer shares will not be effective until August, 2018.	The Panamanian authorities should ensure that the information regarding the holders of bearer shares is available as quickly as possible.
	The "know your client" rules that are created by Law 2 of 2011 do not clearly ensure the availability of information on all of the owners of companies or beneficiaries of foundations and do not have full effect until 2016. Further, unless a *Sociedad Anónima* is subject to audit by the tax authorities there appears to be no mechanism to ensure that the stock register is kept up to date, or at all.	The relevant provisions of Panama's laws should clearly ensure the availability of information on all of the owners of companies and beneficiaries of foundations.

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
The element is not in place.	Only companies and partnerships operating in Panama are required to maintain accounting records.	The record keeping requirements in the Commercial Code should apply to all companies, limited partnerships and partnerships limited by shares registered in Panama irrespective of whether they carry on business in Panama.
	The Trust Law and Foundations Law are silent on the type of records which are required to be kept and their retention period.	The record keeping requirements for trusts and foundations should be clarified to ensure that reliable accounting records are kept and retained for a period of five years.
Banking information should be available for all account-holders. *(ToR A.3)*		
The element is in place.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
The element is in place.		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
The element is in place.		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1.)*		
The element is in place.	Four of Panama's 25 agreements establish identification requirements for the person concerned and/or the holder of information which are inconsistent with the standard for effective exchange of information.	Panama should ensure that the identification requirements in all of its agreements are in line with the standard for effective exchange of information.

The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Panama has been approached by some jurisdictions to negotiate a DTC or TIEA and has so far not entered into negotiations with them.	Panama should enter into agreements for exchange of information (whether DTCs, TIEAs or multilateral instruments) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		

Annex 1: Jurisdiction's Response to the Supplementary Report[7]

Please add this sentence: This page is left blank as Panama has chosen not to provide any material to include in it.

7. This Annex presents the jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

Annex 2: Request for a Supplementary Report Received from Panama

M. François d'Aubert
Chair of the Peer Review Group
Global Forum on Transparency and Exchange of Information for Tax Purposes
OECD
Paris, France

Sent by email: gftaxcooperation@oecd.org

Cc: Pascal.SAINT-AMANS@oecd.org;
Monica.BHATIA@oecd.org;
Donal.GODFREY@oecd.org;
Andrew.AUERBACH@oecd.org;
Michele.KELLY@oecd.org

22 October 2013

Dear M. D'Aubert:

By means of this letter and in accordance with paragraph 58 of the Revised Methodology for Peer Reviews and Non-Member Reviews, the Government of Panama requests the Peer Review Group to launch the preparation of a Supplementary Report to Panama's Peer Review Report of September 2010 due to the implementation of internal legislative changes and other clarifications that will result in an upgrade in the determinations of the following essential elements to "*in place*":

- Element **A1** (Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities).
- Element **B1** (Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information – irrespective of any legal obligation on such person to maintain the secrecy of the information).

- Element **C1** (Exchange of information mechanisms should provide for effective exchange of information).
- Element **C2** (The jurisdictions' network of information exchange mechanisms should cover all relevant partners).
- Element **C4** (The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties).

For this purpose, I am pleased to provide you with a detailed written progress report clearly indicating the reasons why the actions taken justify a revision of most determinations qualified as "*in place but*" or "*not in place*" according to Panama's Peer Review Report of September 2010, together with explanations, ample information and the corresponding supporting laws and regulations.

We expect this Supplementary Report to be discussed at the Peer Review Meeting that will take place during late February 2014.

I wish to reiterate Panama's efforts throughout this process led by the Peer Review Group together with the Global Forum.

Please do not hesitate to contact us shall you require further clarification or information.

Best Regards,

Frank De Lima
Minister of Economy and Finance

Attachments:

- Article 1 of Law No. 33 of 30 June 2010
- Resolution No. 088-DS/AL of 30 September 2010
- Resolution No. DS/AL-253 of 28 December 2010
- Law No. 2 of 1 February 2011
- Resolution No. 201-7257 of 12 July 2011
- Exchange of Information Manual, 2011
- Executive Decree No. 85 of 28 June 2011
- Executive Decree No. 194 of 5 March 2012
- Article 7 of Law No. 52 of 28 August 2012
- Resolution No. DS/AL-036 of 8 August 2013
- Law No. 47 of 6 August 2013
- Panama's Progress Report, 2013

Annex 3: List of all Exchange of Information Mechanisms

	Jurisdiction	Type of EOI Arrangement	Date Signed	Date Entered Into Force
1	Barbados	DTC	21 June 2010	18 February 2011
2	Canada	TIEA	17 March 2013	16 December 2013
3	Czech Republic	DTC	4 July 2012	25 February 2013
4	Denmark	TIEA	16 November 2012	Not yet in force
5	Faroe Islands	TIEA	12 November 2012	Not yet in force
6	Finland	TIEA	12 November 2012	20 December 2013
7	Mexico	DTC	23 February 2010	1 January 2011
8	France	DTC	30 June 2011	1 February 2012
9	Greenland	TIEA	12 November 2012	Not yet in force
10	Iceland	TIEA	12 November 2012	30 November 2013
11	Ireland	DTC	28 November 2011	19 December 2012
12	Israel	DTC	8 November 2012	Not yet in force
13	Luxembourg	DTC	7 October 2010	1 November 2011
14	Italy	DTC	30 December 2010	Not yet in force
15	Spain	DTC	7 October 2010	25 July 2011
16	The Netherlands	DTC	6 October 2010	1 December 2011
17	Norway	TIEA	12 November 2012	20 December 2013
18	Portugal	DTC	27 August 2010	10 June 2012
19	Korea	DTC	20 October 2010	1 April 2012
20	Singapore	DTC	18 October 2010	19 December 2011
21	Sweden	TIEA	12 November 2012	28 December 2013
22	Qatar	DTC	23 September 2010	6 May 2011
23	United Arab Emirates	DTC	13 October 2012	23 October 2013
24	United Kingdom	DTC	29 July 2013	12 December 2013
25	United States of America	TIEA	30 November 2010	18 April 2011

Annex 4: List of all Laws, Regulations and Other Material Received

Law No. 33 of 30 June 2010

Resolution No. 088-DS/AL of 30 September 2010

Law No. 2 of 1 February 2011

Resolution No. 201-2093 of 26 February 2011

Executive Decree No. 85 of 28 June 2011

Form for the Request of Tax Information

Manual de Procedimiento (Manual for the Exchange of Information)

Resolution No. 201-7257 of 12 July 2011

Resolution DS/AL-253 of 28 December 2010

Law 24 of 2013

Law 47 of 6 August 2013

Executive Decree 194 of 5 March 2012