



SUPPLEMENTARY PEER REVIEW REPORT

Phase 1

Legal and Regulatory Framework

PANAMA



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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. The international standard which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information partners.

2. This is the second supplementary report on the amendments made by Panama to its legal and regulatory framework for transparency and exchange of information. It complements the Phase 1 review report which was adopted and published by the Global Forum on Transparency and Exchange of Information for Tax Purposes in September 2010 (the 2010 Phase 1 Report) and the first supplementary report which was adopted and published by the Global Forum in April 2014 (the 2014 Supplementary Report).

3. The 2014 Supplementary Report concluded that six of the ten essential elements were in place. Two of the essential elements were determined to be “not in place”. These were the availability of ownership and identity information (Element A.1); and the availability of accounting records (Element A.2). One essential element related to Panama’s network of information exchange mechanisms with all relevant partners (Element C.2) was determined to be “in place but certain aspects of the legal implementation of the element needed improvement”. Another essential element concerning Panama’s ability to provide information in a timely manner (Element C.5) involves practical issues that will be assessed at a later stage.

4. This supplementary report reviews the legislative amendments made by Panama since February 2014 (i.e. the date at which the legal and regulatory framework was previously assessed) to address some of the recommendations made in the 2014 Supplementary Report. These amendments pertain to the determinations and recommendations made in respect of availability of ownership and identity information (element A.1). In response to the letter from the Chair of the Global Forum on 28 November 2014 inviting all jurisdictions that were previously prevented from moving to Phase 2 to request a supplementary review, Panama asked for a supplementary peer

review report pursuant to paragraphs 58 and 60 of the Revised Methodology for Peer Reviews and Non-member Reviews.

5. Significant amendments have been made to the legal framework governing the availability of ownership information in Panama (Element A.1). The Commercial Code has been amended to impose a new obligation on all existing and new legal entities to keep updated share registers and records of shareholders' minutes, subject to penalties for non-compliance. The legislation introduced by Panama in 2013 to immobilise bearer shares was also amended. As a result of these changes, the transition period for the deposit in custody of existing bearer shares issued prior to the date of entry into force of the law was substantially reduced from three years to three months. Under this law, authorised custodians are required to keep identity information on the owners of the bearer shares issued by Panamanian corporations.

6. Panama has also enacted new legislation to strengthen its anti-money laundering (AML) framework. Under the new AML legislation, resident agents are required to hold detailed records of their clients, including those of final beneficiaries. These measures help to ensure the availability of identity and ownership information on companies and private foundations. However, it appears that resident agents are not required to hold information on all shareholders and beneficiaries, but just on the natural persons that have the final control on the legal entities for whom they are acting as resident agents. With respect to companies, a regulation to the new AML legislation clarified that resident agents are required to identify and verify the identity of final beneficiaries holding 25% or more of the shares of the legal entity. In any event, the new obligation imposed by the amended Commercial Code on all legal entities to keep updated share registers for nominal shares, subject to penalties for non-compliance, is sufficient to ensure the availability of ownership information with respect to shareholders where nominal shares are concerned.

7. In view of the legislative changes introduced to Panama's legal and regulatory framework governing the availability of ownership information, the recommendations made in the 2014 Supplementary Report in relation to the availability of ownership information on companies and bearer shares are removed and the recommendation on the availability of identity information on beneficiaries of private foundations is retained but adjusted. Accordingly, Element A.1 is determined to be "in place, but in need of improvement".

8. Accounting requirements are not in place in Panama for entities other than companies and partnerships that carry on business in Panama. In addition, the Panamanian law does not specify the type of records and minimum retention period related to accounting documents pertaining to trusts and foundations. Since no changes have been made since the 2014 Supplementary Report, the recommendations made in relation to Element A.2 and the determination "not in place" remain unchanged.

9. Banking information is available in Panama in line with the standard. 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. As no changes have been made since the 2014 Supplementary Report, these issues are not further considered in this second supplementary report.

10. Panama's network of information exchange mechanisms encompasses a total of 25 exchange of information agreements (EOI agreements), including 16 double tax conventions (DTCs) and 9 tax information exchange agreements (TIEAs). These EOI agreements largely follow the OECD Model Tax Convention and Model TIEA and include sufficient provisions to protect confidentiality. The 2014 Supplementary Report found that four of these 25 EOI agreements contain identification requirements that are inconsistent with the international standards. Panama has not amended these EOI agreements or signed new ones, but two TIEAs have been brought into force (see Annex 3). Accordingly, the recommendation in relation to Element C.1 is retained and the determination remains as "in place".

11. Since the 2014 Supplementary Report, Panama has continued to work on expanding its network of information exchange mechanisms with some jurisdictions, having concluded the negotiation of four new EOI agreements which are still pending signature. Negotiations are advancing with a number of other relevant jurisdictions, including Colombia. Nevertheless, a number of peers have expressed frustration with Panama's hesitancy to commence or advance the negotiation of EOI arrangements. At least one peer has indicated that Panama has not been receptive to several requests to sign any kind of EOI agreement with it which could be interpreted as a refusal to do so. Panama takes the position that it has not refused to negotiate with this jurisdiction but has not yet agreed a timetable to do so. Panama is committed to negotiating an EOI agreement with this jurisdiction that conforms with the international standards, and will begin negotiations by the end of 2015 or the first semester of 2016. Panama has reiterated its commitment to engage in EOI negotiations with all its relevant partners, meaning those partners who are interested in entering into an EOI arrangement. Accordingly, the recommendation and underlying factor made in the 2014 Supplementary Report in relation to Element C.2 are revised to reflect continuing concerns expressed by peers vis-à-vis Panama's position regarding the negotiation of EOI agreements. The determination for Element C.2 remains "in place but in need of improvement".

12. Panama has taken some steps to comply with the international standards for exchange of information, including improvements to the custodian regime introduced in 2013 to immobilise bearer shares. However, Panama is

yet to act on some of the recommendations made in the 2010 Phase 1 report and a number of elements which are crucial to achieving effective exchange of information are still not in place, particularly with regard to Element A.2 (availability of accounting records). Panama is encouraged to continue to review and update its legal and regulatory framework in line with the standard.

13. In light of the actions undertaken by Panama to address some of the recommendations made in the 2014 Supplementary Report, Panama is in a position to move to its Phase 2 Peer Review. Any further developments in the legal and regulatory framework, as well as the application of the framework to EOI practice in Panama, will be considered in detail in the Phase 2 Peer Review. It is proposed that the Phase 2 Peer Review be launched in the last quarter of 2015.

Introduction

Information and methodology used for the peer review of Panama

14. The assessment of Panama’s legal and regulatory framework contained in this second supplementary peer review report was based on the international standards for transparency and exchange of information as described in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes (“the Terms of Reference”). It was prepared pursuant to paragraphs 58 and 60 of the Global Forum’s Revised Methodology for Peer Reviews and Non-member Reviews and considers recent changes to Panama’s legal and regulatory framework for transparency and exchange of information. The assessment was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or signed as at 13 August 2015, and information supplied by Panama. It complements the 2010 Phase 1 Report and the 2014 Supplementary Report.

15. 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. This review assesses Panama’s legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element, a determination is made that either (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.

16. The second supplementary peer review was conducted by an assessment team, which consisted of two expert assessors and one representative of the Global Forum Secretariat: Mr. David Smith, Delegated Competent Authority, CTIS Business International, HM Revenue and Customs, United Kingdom; Ms. Yanga Mputa, International Tax Specialist, Large Business Centre, South African Revenue Service, South Africa; and Ms. Renata Fontana from the Global Forum Secretariat.

17. 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 second supplementary report, can be found at the end of this report.

Compliance with the Standards

A. Availability of information

Overview

18. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If the information is not kept or it is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of the Panama's legal and regulatory framework on availability of information.

19. In particular, this section of the second supplementary report considers the legal and regulatory framework in place in Panama with regard to the availability of information, in so far as it relates to companies (A.1.1) bearer shares (A.1.2), foundations (A.1.5) and enforcement provisions to ensure availability of information (A.1.6).

20. According to the 2014 Supplementary Report, Element A.1 (availability of ownership and identity information) was determined to be “not in place”. Two recommendations were made in relation to the lengthy transition period for the enforcement of a mechanism to immobilise bearer shares and the lack of an obligation to maintain identity information on the beneficiaries of foundations, in combination with the absence of penalties for failure to maintain a stock register of companies.

21. Since the 2014 Supplementary Report, significant amendments have been made to the legal framework governing the availability of ownership information in Panama. The Commercial Code has been amended to impose a new obligation on all existing and new legal entities to keep updated share records for nominal shares, subject to financial and administrative penalties for non-compliance. The legislation introduced by Panama in 2013 to immobilise bearer shares (Law No 47 of 6 August 2013) was also amended. As a result of these changes, the transition period for the deposit in custody of bearer shares issued prior to the date of entry into force of the law was substantially reduced from three years to three months. Under Law No. 47/2013, authorised custodians are required to know the identity of the owners of the bearer shares issued by Panamanian corporations, but they are not required to know the identity of the beneficial owners of such bearer shares.

22. Panama has also enacted new legislation to strengthen its anti-money laundering (AML) framework. Under the new AML legislation, the resident agents are required to perform due diligence measures to identify the final beneficiaries of clients who are legal persons. These measures help to ensure the availability of identity and ownership information on companies and private foundations. However, it appears that resident agents are not required to hold information on all shareholders and beneficiaries, but just on the natural persons that have the final control on the legal entities for whom they are acting as resident agents. With respect to companies, a regulation to the new AML legislation clarified that resident agents are required to identify and verify the identity of final beneficiaries holding 25% or more of the shares of the legal entity. In any event, the new obligation imposed by the amended Commercial Code on all legal entities to keep updated share registers for nominal shares, subject to penalties for non-compliance, is sufficient to ensure the availability of ownership information with respect to shareholders where nominal shares are concerned. It is also noted that, under the new AML legislation, authorised custodians other than financial entities are not explicitly required to know the identity of the beneficial owners of bearer shares.

23. Whereas registered agents are required to identify the final beneficiaries, meaning the natural persons that have the final control on the legal entities for whom they are acting as resident agents, authorised custodians, other than Panamanian financial entities, are required to know the identity of the legal owners of bearer shares. It is noted, however, with respect to company ownership information that, under the Terms of Reference applicable to this supplementary report beneficial ownership information is not necessarily required to be available. In view of the changes introduced to Panama's legal and regulatory framework governing the availability of ownership information, the recommendations in relation to the availability of ownership information on companies and bearer shares are removed and the

recommendation on the availability of identity information on beneficiaries of private foundations is retained but adjusted. Accordingly, Element A.1 is determined to be “in place but needing improvement”.

24. With regard to Element A.2 (availability of accounting records), the 2010 Phase 1 Report found that 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 has not taken any action to address the recommendations made in the 2010 Phase 1 Report and therefore the recommendations and the determination that Element A.2 is “not in place” remained unchanged in the 2014 Supplementary Report and in this second supplementary report.

25. The 2010 Phase 1 Report found that measures were in place to ensure that banking information is available for all account holders. Therefore, Element A.3 (availability of bank information) was determined as “in place” and no recommendations were made in that regard. The 2014 Supplementary Report and this second supplementary report do 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 (ToR A.1.1)

26. There are two forms of companies in Panama: *Sociedades Anónimas* (SAs or corporations) and *Sociedades 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.

27. SAs are the most commonly used Panamanian companies by both resident and foreign investors. Since Law No. 32 was enacted in 1927, approximately 857 383 SAs have been incorporated and registered in Panama, and out of these registered SAs, approximately 175 792 have been formally dissolved. As of June 2015, there are approximately 196 821 active SAs registered in Panama. Although Panamanian entities are not automatically struck off from the Public Registry, entities that are in arrears with their payment of annual

franchise duties to the Panamanian Government for more than one year are deemed to have been abandoned. While a Panamanian legal entity is in arrears with its payments of annual franchise duties, it cannot make any filings at the Panama Public Registry. Since a fiscal reform carried out in 2005, SAs that have failed to pay their annual franchise duties for 10 years are deemed to be dissolved. The dissolution of an entity constitutes the termination of its existence, while the striking off only means that the entity is prevented, pursuant to the rule of law, to engage in commercial or corporate activities. The same legal obligations are applicable to active and inactive SAs concerning the availability of identity and ownership information, regardless of their status. The practical application of these legal obligations and their effectiveness will be tested in the Phase 2 review of Panama.

28. 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.

29. Information about ownership of the company is kept by the company itself and by its resident agent. 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 (Law No. 32 of 1927, article 36). However, the 2010 Phase 1 Report and the 2014 Supplementary Report concluded that Law No. 32 of 1927 does not prescribe penalties for failure to do so or for failure to keep the register up to date. Panama was, therefore, recommended to implement penalties for failure to keep a stock register.

30. In response to this recommendation, Panama enacted Law No. 22 of 27 April 2015 amending its Commercial Code. Article 71 of the Commercial Code imposes an obligation on merchants to keep accounting records. Following these amendments, article 71 was expanded to establish a new obligation equally applicable to all existing and new legal entities to keep updated share registers for nominal shares and records of shareholders' minutes. As further discussed below in section A.1.6, the amended article 71 of the Commercial Code imposes financial and administrative sanctions on all legal entities for non-compliance with their obligation to maintain an updated share register.

31. The 2010 Phase 1 Report also concluded that deficiencies in the know-your-client standards in Executive Decree No. 468 of 1994 would limit the availability of identity and ownership information held by resident agents on companies and private foundations. The 2010 Phase 1 Report recommended that the know-your-client standards 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.

32. In order to address the recommendations in the 2010 Phase 1 Report, Panama enacted Law No. 2 of 1 February 2011 (Law No. 2/2011), which clarified and enhanced the know-your-client rules for resident agents of all legal entities including companies and private foundations. This includes a requirement to identify a client when entering into a business relationship and when there is knowledge about a change in ownership. However, the 2014 Supplementary Report identified a number of imperfections with regard to Law No. 2/2011 and concluded that it was insufficient to ensure the availability of identity and ownership information in relation to all companies and private foundations.

33. The 2014 Supplementary Report concluded that the definition of “client” provided in Law No. 2/2011 was not specific enough to ensure that resident agents were in fact obliged to hold information on all shareholders of companies or beneficiaries of private foundations for whom they were acting as resident agents. In addition, Law No. 2/2011 will not be fully operational until February 2016, as it provides for a five year transition period for resident agents to comply with the obligations provided therein. Furthermore, since it repealed Executive Decree 468 of 1994, there appeared to be no obligation on resident agents to undertake due diligence measures during this transition period. It was, therefore, recommended that Panama establish a legal mechanism that will ensure the availability of information during this five year transition period, and afterwards.

34. In response to the recommendation made in the 2014 Supplementary Report, Panama enacted Law No. 23 of 27 April 2015 (Law No. 23/2015), effective as of 28 April 2015 (article 78), introducing new know-your-client measures for AML purposes. According to the Panamanian authorities, these measures complement the ones established by Law No. 2/2011. Law No. 23/2015 establishes additional due diligence requirements in respect of clients of reporting entities, including financial reporting entities, non-financial reporting entities, as well lawyers, certified public accountants, external auditors and notaries in the exercise of activities subject to supervision.

35. The supervised activities performed by professionals explicitly include those of creation, operation or management of legal persons or legal structures, such as private foundations, corporations, trusts and others (article 24(5)) and those of a resident agent of legal entities incorporated or existing under the laws of the Republic of Panama (article 24(11)). As such, some of the new know-your-client measures introduced by Law No. 23/2015 are explicitly applicable to lawyers who act as resident agents of Panamanian companies and private foundations.

36. Under Law No. 23/2015, resident agents are required to hold detailed records of their clients, including those of final beneficiaries of legal entities for whom they are acting as resident agents, as described in the following

paragraphs. For the purpose of this law, “client” is defined as any natural or legal person with whom the resident agent establishes, maintains, or has maintained, regularly or occasionally, a contractual, professional or business relationship for the delivery of any product or service related to its activity (Law No. 23/2015, article 4(6)).

37. “Final beneficiary” is defined as natural person(s) who owns, controls or has significant influence on the account relation, the contractual relation or business relation and/or the natural person in whose name or benefit a transaction is made, which also includes natural persons that have the final control on a legal person, trust and other legal structures (Law No. 23/2015, article 4(4)). On 13 August 2015, Executive Decree No. 363 was enacted, interpreting and describing how Law No. 23/2015 should be applied. With respect to companies, article 8 of this AML regulation clarified that resident agents are required to identify and verify the identity of final beneficiaries holding 25% or more of the shares of the legal entity. In any event, the new obligation imposed by the amended Commercial Code on all legal entities to keep updated share registers for nominal shares, subject to penalties for non-compliance, is sufficient to ensure the availability of ownership information with respect to the shareholders of the issuing companies.

38. Law No. 23/2015 establishes different sets of basic due diligence measures depending on whether it pertains to a natural person or a legal person. With regard to natural persons, the resident agent is required to identify and verify the identity of the clients, verify the authority of the persons acting on behalf of other persons, identify the final beneficiary and take reasonable measures to verify the information and documentation provided by each natural person identified as final beneficiary (Law No. 23/2015, article 27).

39. As to legal entities and other structures, the resident agent is required to take the following basic due diligence measures provided under article 28 of Law No. 23/2015:

- Request the corresponding certificates evidencing the incorporation and legal existence of the legal persons, as well as the identification of officers, directors, agents, authorised signatures and legal representatives of such legal persons, as well as their identification, verification and address (article 28(1));
- Identify and take reasonable measures to verify the final beneficiary using relevant information obtained from reliable sources (article 28(2));
- In the event that the final beneficiary is a legal person, due diligence will prolong until getting to know the natural person that is the owner or controller (article 28(3)); and

- Conduct the appropriate due diligence for natural persons acting as administrators, representatives, agents, beneficiaries and signatories of the legal person (article 28(8)).

40. The Panamanian authorities clarified that, while “final beneficiary” generally refers to natural persons as defined under article 4(4) of Law No. 23/2015, there are exceptions to this rule in cases where it is difficult to ascertain a single final beneficiary. This is, for example, the case for state-owned or publicly-traded companies. Article 28(3) specifically applies to such cases, mandating reporting entities to identify the natural person(s) who controls or has a significant influence over the company.

41. Financial reporting entities are explicitly required to keep updated records in relation to ownership changes, regarding legal owners and final beneficiaries of their clients, but this provision is not explicit with respect to non-financial reporting entities and professions engaged in activities subjected to supervision (Law No. 23/2015, article 29, first paragraph). Nevertheless, Executive Decree No. 363, enacted on 13 August 2015, clarified that non-financial regulated entities and professions engaged in activities subjected to supervision are also required to maintain records on the transactions and updated information of their clients resulting from the due diligence measures (Executive Decree No. 363, article 19). Furthermore, financial reporting entities, non-financial reporting entities and professions engaged in activities subjected to supervision (including resident agents) are required to safeguard this information and documentation for five years from the date of termination of their professional relationship with the client (Law No. 23/2015, article 29, second paragraph). This obligation is equally applicable to clients who are national or foreign individuals, legal entities or other legal arrangements. Records must be kept in physical, electronic or any other means authorised by the relevant supervisory body (Executive Decree No. 363, article 19).

42. Resident agents are prohibited from establishing a relationship or conducting a transaction when the client does not facilitate compliance with the relevant due diligence measures and they may report such suspicious activities to the Financial Analysis Unit (Law No. 23/2015, article 36). Law No. 23/2015 prescribes a generic sanction for non-compliance with its provisions and provides that specific, proportionate and dissuasive sanctions will be established by the relevant supervisory bodies (articles 60 and 61), as further explained below in section A.1.6.

43. According to the Panamanian authorities, resident agents should obtain identity information on the final beneficiaries of legal entities for whom they are acting as resident agents. This information is obtained directly from their clients at the time of establishing the relationship and on a regular basis thereafter. Normally, the resident agent receives a sworn declaration from its principal confirming the identity of the shareholders and final

beneficiaries of these legal entities. This issue should be further examined during the Phase 2 review of Panama.

Conclusion

44. The know-your-client measures introduced by Law No. 23/2015 ensure that resident agents are obliged to hold information on the natural persons that have the final control over a client who is a legal person. The resident agent must perform due diligence measures before establishing a relationship with or conducting a transaction for the client and this information must be kept for at least five years from the end of the professional relationship with the client. Appropriate penalties apply in the case of non-compliance. With respect to companies, article 8 of Executive Decree No. 363, of 13 August 2015, clarified that resident agents are required to identify and verify the identity of final beneficiaries holding 25% or more of the shares of the legal entity.

45. In any event, the Commercial Code has been amended to impose a new obligation on all legal entities to keep updated share registers and records of shareholders' minutes, subject to penalties for non-compliance. Taken together, the legislative changes introduced by Panama since the 2014 Supplementary Report are sufficient to ensure the availability of updated information on the owners of companies and the Phase 1 recommendation made in the 2014 Supplementary Report is, therefore, deleted.

Bearer Shares (ToR A.I.2)

46. Law No. 32 of 1927 allows for shares to be issued in registered or bearer form. In the case of bearer shares the stock register is required to show the number of such shares issued, the date of issue and that the shares are fully paid and non-assessable (article 36). According to the Panamanian authorities, most articles of incorporation allow the issuance of bearer shares, making it impossible for the Public Registry to keep detailed records of the number of SAs which have issued bearer shares.

47. The 2010 Phase 1 Report identified significant deficiencies with regard to the availability of ownership information on bearer shares, which may be issued by Panamanian corporations. It recommended Panama to take all necessary steps to ensure that its competent authorities can identify the owners of bearer shares. In response to the recommendation made in the 2010 Phase 1 Report, Panama enacted Law No. 2/2011 which requires resident agents to perform know-your-client measures on their clients and third parties on whose behalf the client acts. 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 above, the 2014 Supplementary Report highlighted a number

of deficiencies which lead to the conclusion that Law No. 2/2011 was not an effective means of identifying the holders of bearer shares issued by Panamanian corporations.

48. Panama subsequently enacted Law No. 47 of 6 August 2013 (Law No. 47/2013), creating a custodial regime to immobilise bearer share certificates. Under Law No. 47/2013, authorised custodians are required to know the identity of the owners of the bearer shares issued by Panamanian corporations, but they are not required to know the identity of the beneficial owners of such bearer shares. While the 2014 Supplementary Report considered the substantive provisions of Law No. 47/2013 as satisfactory, it noted that the obligations set forth by this statute in respect of bearer shares issued before August 2015 would only become enforceable in August 2018. Given this long transition period, Panama was recommended to take measures to ensure that identity information on the owners of bearer shares is available as quickly as possible.

49. Since the 2014 Supplementary Report, Panama enacted Law No. 18 of 23 April 2015 (Law No. 18/2015), which amends certain provisions of Law No. 47/2013 to improve the custodial regime applicable to bearer shares issued by Panamanian companies. More importantly, it substantially shortens the transitional period for the deposit of bearer shares certificates issued prior to the date of entry into force of Law No. 47/2013. Following the amendment to article 28 introduced by Law No. 18/2015, the new date of entry into force of Law No. 47/2013 is 4 May 2015, instead of two years computed from its promulgation (i.e. 6 August 2015).

50. Article 4 provides that the bearer share certificates issued prior to 4 May 2015 (i.e. the date of entry into force of the law) must be deposited with an authorised custodian, along with the sworn statement referred to in article 8, within the transition period established in article 25. Article 4, as amended by Law No. 18/2015, also prescribes that any corporation issuing bearer shares should be authorised by its board of directors or the shareholders to adopt the custodial regime and this resolution must be registered at the Public Registry of Panama. A corresponding amendment was made to article 5 that deals with the deposit of bearer share certificates issued after 4 May 2015.

51. Law No. 18/2015 substantially reduced the transitional period provided by article 25, which was originally three years from the date of entry into force of the law. Following this amendment, article 25 prescribes that bearer share certificates issued prior to 4 May 2015 must either be replaced by registered share certificates or deposited in custody on or before 31 December 2015. After 31 December 2015, the articles of incorporation of the issuing corporation will be automatically amended by default, thereby prohibiting the emission of new bearer shares, except in those cases where

the board of directors or the shareholders have resolved to adopt the custodial regime for bearer shares and this resolution has been registered at the Public Registry of Panama.

52. As noted on paragraph 54 of the 2014 Supplementary Report, article 21 of Law No. 47/2013 (not subject to any amendments by Law No. 18/2015) stipulates that, if the bearer shares are not deposited with the authorised custodian on or before 31 December 2015, the owner will not be able to exercise his legal rights in relation to the issuing company in a definite manner. This is in addition to the legal actions that third parties acting in good faith, may exercise for any damages caused. The Panamanian authorities have stated that “in a definite manner” is interpreted as definitive suspension of the holders’ political and economic rights in relation to the issuing company. As such, the rights in respect of the shares (including voting, receiving dividends and other proceeding and transferring ownership) are annulled and cannot be reactivated or restored. Since the amendments to articles 4 and 25 do not contain explicit language to this effect, the issue should be followed up during the Phase 2 review of Panama.

53. Pursuant to article 5, bearer shares certificates issued after 4 May 2015 must be deposited with an authorised custodian, together with the sworn statement, within 20 days from the approval of the issuance of the bearer shares. Any corporation issuing bearer shares should be authorised by its board of directors or the shareholders to adopt the custodial regime and this resolution must be registered at the Public Registry of Panama (Law No. 47/2013, article 5, as amended).

54. For the purpose of appointing the authorised custodian, 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. If the owner fails to supply this information about the authorised custodian and sworn statement within 20 days from the approval of the issuance of the bearer shares, the corporation must annul the issuance of bearer shares (Law No. 47/2013, article 5). However, Law No. 47/2013 does not impose any sanction on the issuing company for failing to annul the bearer share certificates in these circumstances. According to the Panamanian authorities, imposing sanctions on the issuing company would have an adverse effect on other shareholders who are in full compliance with local obligations. The effectiveness of the enforcement measure established by article 5 of Law No. 47/2013 should be tested during the Phase 2 review of Panama.

55. Law No. 18/2015 amended article 28 of Law No. 47/2013 to grant a three month transitional period from the date of entry into force of the law for the enforcement of the obligation set forth under article 5, i.e. 4 August 2015. In practical terms, the deposit of bearer shares issued between 4 May

2015 (i.e. date of entry into force of the law) and 15 July 2015 (i.e. twenty days before the end of the three month transitional period) is due by 4 August 2015 while the deposit of bearer shares issued after 15 July 2015 is due within 20 days from the approval of their issuance.

56. As discussed in section A.1.1 above, Panama enacted Law No. 23/2015 which strengthens Panama’s AML framework by requiring that reporting entities (including resident agents) hold detailed records of their clients, including those of final beneficiaries. Pursuant to article 28(2), resident agents have an obligation to perform due diligence measures in order to identify and verify the final beneficiary of their clients. With respect to companies, article 8 of Executive Decree No. 363, of 13 August 2015, clarified that resident agents are only required to identify and verify the identity of final beneficiaries holding 25% or more of the shares of the legal entity.

57. Articles 28(6) and 36 of Law No. 23/2015 specifically refers to clients who are legal persons with bearer shares, imposing on financial reporting entities an obligation to take effective measures to ensure the identification of the final beneficiary or “the real owner” and implement transactional due diligence so that these legal persons are not misused for AML purposes. The Panamanian authorities clarified that the terms “final beneficiary” (*beneficiario final*) and “real owner” (*propietario efectivo*) are used as synonyms in the context of article 28(6) of Law No. 23/2015. According to the Panamanian authorities, the specific due diligence requirements imposed by article 28(6) on financial reporting entities with regard to clients who are legal persons with bearer shares do not exclude the obligation imposed by article 28(2) on resident agents to identify the final beneficiaries of their clients, including those who are legal persons with bearer shares.

58. Therefore, according to the Panamanian authorities, resident agents should obtain identity information on the final beneficiaries of legal entities for whom they are acting as resident agents, including with regard to corporations that issue bearer shares. This information is obtained directly from their clients, at the time of establishing the relationship and on a regular basis thereafter. Normally, the resident agent receives a sworn declaration from its principal confirming the identity of the shareholders and final beneficiaries of these legal entities. The Panamanian authorities have also clarified that resident agents do not need to rely on authorised custodians as source of ownership information, although they may obtain such information from authorised custodians in the circumstances provided by Law No. 47/2013. This issue should be followed up during the Phase 2 review of Panama.

Conclusion

59. The know-your-client measures introduced by Law No. 23/2015 ensure that resident agents are obliged to hold information on the natural persons that have the final control over a client who is a legal person. Although not explicitly provided by Law No. 23/2015, this obligation also applies with regard to clients who are legal persons with bearer shares. Pursuant to the regulation to the new AML legislation, resident agents are not required to identify and verify the identity of all shareholders of the legal entities for whom they are acting as resident agents, but only final beneficiaries holding 25% or more shares in the legal entity.

60. It is noted, however, that the Terms of Reference applicable to this supplementary report do not require beneficial ownership information to be available with respect to bearer shares holders. Further under Law No. 47/2013, authorised custodians are required to know the identity of the owners of bearer shares. Bearer share certificates issued prior to 4 May 2015 must either be replaced by registered share certificates or deposited in custody on or before 31 December 2015. Bearer shares certificates issued after 4 May 2015 must be deposited with an authorised custodian within 20 days from the approval of the issuance of the bearer shares, and this obligation becomes enforceable as of 4 August 2015. Accordingly, Panama has taken measures to ensure that identity information on the owners of bearer shares is available as quickly as possible. The Phase 1 recommendation made in the 2014 Supplementary Report concerning bearer shares is therefore deleted. The effectiveness of the custodian regime introduced by Law No. 47/2013, and in particular cancellation of bearer shares issued before 4 May and not deposited with the authorised custodian on or before 31 December 2015, will be tested during the Phase 2 review of Panama.

Foundations (ToR A.1.5)

61. 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. Since private interest foundations were introduced in Panama by Law No. 25 of 1995, as an estate planning alternative to the common law trusts, approximately 51 940 entities have been incorporated and registered in Panama. Out of these registered entities, approximately 10 044 foundations have been formally dissolved. As of June 2015, there are 24 944 active private foundations registered in Panama.

62. Although Panamanian entities are not automatically struck off from the Public Registry, entities that are in arrears with their payment of annual

franchise duties to the Panamanian Government for more than one year are deemed to have been abandoned. Since a fiscal reform carried out in 2005, entities that have failed to pay their annual franchise duties for 10 years are deemed to be dissolved. The same legal obligations are applicable to active and inactive foundations concerning the availability of identity and ownership information, regardless of their status. The practical application of these legal obligations and their effectiveness will be tested in the Phase 2 review of Panama.

63. 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, and this is an essential requirement in order for the foundation to formally and legally exist. However, identity information about the beneficiaries is not included in the Public Registry.

64. The 2010 Phase 1 Report concluded that, due to deficiencies in the know-your-client standards in Executive Decree No. 468 of 1994, the availability of information in relation to beneficiaries of private foundations was not assured in all cases. The 2010 Phase 1 Report recommended that the know-your-client standards be amended to ensure that ownership information held by resident agents identifies the founders, members of the foundation council and beneficiaries of private foundations.

65. As discussed in section A.1.1 above, the 2014 Supplementary Report noted that Law No. 2/2011 was deficient and concluded that it was insufficient to ensure the availability of ownership information in relation to beneficiaries of private foundations. The 2014 Supplementary Report also re-examined the Foundations Law and concluded that it ensures the availability of identity information on the founder and members of the foundation council, but not necessarily with regard to all beneficiaries. The Phase 1 recommendation was therefore amended to reflect this new position, with a focus on availability of information in relation to beneficiaries of private foundations.

66. In response to the recommendation made in the 2014 Supplementary Report, Panama enacted Law No. 23/2015, effective as of 28 April 2015, which enhances due diligence measures for AML purposes applicable to resident agents of private foundations. The supervised activities performed by professionals explicitly include those of creation, operation or management of legal persons or legal structures, such as private foundations, corporations, trusts and others (article 24(5)) and those of a resident agent of legal entities incorporated or existing under the laws of the Republic of Panama (article 24(11)).

67. Under Law No. 23/2015 resident agents are required to hold detailed records of their clients, including those of final beneficiaries. For the purpose of this law, “final beneficiary” is defined as natural person(s) who own, control or has significant influence on the account relation, the contractual relation or business relation and/or the natural person in whose name or benefit a transaction is made, which also includes natural persons that have the final control on a legal person, trust and other legal structures (Law No. 23/2015, article 4(4)). Article 8, second paragraph of Executive Decree No. 363, enacted on 13 August 2015, deals with the identification of final beneficiaries of trusts, private interest foundations, non-governmental, and other entities whose final beneficiaries cannot be identified by shareholding. In these circumstances, details about the final beneficiaries of such entities must be included in a minute, certificate or affidavit, duly signed by its representatives or authorised persons. Since the legal definition of final beneficiaries under Law No. 23/2015 is confined to the natural persons that have the final control on the private foundations, it is unclear whether the definition of final beneficiary is broad enough to encompass all the beneficiaries of private foundations established in Panama. As such, Law No. 23/2015 is insufficient to ensure the availability of identity information in relation to all beneficiaries of Panamanian private foundations at all times.

68. As noted in section A.1.1 above, article 28 of Law No. 23/2015 requires resident agents to take basic due diligence measures. These measures include identifying and taking reasonable measures to verify the final beneficiary of the client, defined as the natural persons that have the final control on a legal person for whom they are acting as resident agents (article s 4(4) and 28(2)), and conducting the appropriate due diligence for natural persons acting as administrators, representatives, agents, beneficiaries and signatories of the legal person (article 28(8)). In the event that the final beneficiary is a legal person, due diligence will prolong until getting to know the natural person that is the owner or controller of the final beneficiary (article 28(3)).

69. Financial reporting entities are explicitly required to keep updated records in relation to ownership changes, regarding legal owners and final beneficiaries of their clients, but this provision is not explicit with respect to non-financial reporting entities and professions engaged in activities subjected to supervision (Law No. 23/2015, article 29, first paragraph). Nevertheless, Executive Decree No. 363, enacted on 13 August 2015, clarified that non-financial regulated entities and professions engaged in activities subjected to supervision are also required to maintain records on the transactions and updated information of their clients resulting from the due diligence measures (Executive Decree No. 363, article 19). Furthermore, financial reporting entities, non-financial reporting entities and professions engaged in activities subjected to supervision (including resident agents) are required to safeguard this information and documentation for five years from the date of termination

of their professional relationship with the client (Law No. 23/2015, article 29, second paragraph). This obligation is equally applicable to clients who are national or foreign individuals, legal entities or other legal arrangements. Records must be kept in physical, electronic or any other means authorised by the relevant supervisory body (Executive Decree No. 363, article 19).

70. Panama is therefore recommended to clarify its laws to ensure that the resident agent or the foundation council holds updated information on the identity of the beneficiaries of private foundations at all times. The Phase 1 recommendation is adjusted to reflect this new position.

Conclusion

71. The know-your-client measures introduced by Law No. 23/2015 ensure that resident agents are obliged to hold information on the natural persons that have the final control over a client who is a legal person. The resident agent must perform due diligence measures before establishing a relationship with or conducting a transaction for the client and this information must be kept for at least five years from the end of the professional relationship with the client. Appropriate penalties apply in the case of non-compliance. However, it appears that resident agents are not required to hold information on all shareholders and beneficiaries of the legal entities for whom they are acting as resident agents. It is, therefore, recommended that Panama clarify its laws to ensure the availability of updated identity information on the final beneficiaries of Panamanian private foundations at all times.

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

72. The 2010 Phase 1 Report noted that Panamanian law requires SAs to keep a stock register (Law No. 32 of 1927, article 36) 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 2010 Phase 1 Report concluded that this represented a gap in the law and recommended that Panama implement penalties for failure to keep a stock register.

73. The 2014 Supplementary Report acknowledged the improvements brought by Law No. 2 of 1 February 2011 which requires resident agents to perform know-your-client measures on their clients and third parties on whose behalf the client acts. Nevertheless, it concluded that the law itself was deficient in other respects. The 2014 Supplementary Report noted that the Panamanian laws still did 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. Accordingly, the recommendation made in the 2014 Supplementary Report with regard to Element A.1.6 was maintained.

74. In response to this recommendation, Panama enacted Law No. 22 of 27 April 2015 (Law No. 22/2015) amending its Commercial Code. Article 71 of the Commercial Code imposes an obligation on merchants to keep accounting records. Following the amendments introduced by Law No. 22/2015, it was expanded to establish a new obligation for all legal entities to keep updated share registers and records of shareholders' minutes, subject to penalties for non-compliance. According to the Panamanian authorities, article 71 of the Commercial Code should be understood as a general rule equally applicable to all existing and new legal entities, including SAs, while article 36 of Law No. 32 of 1927 should be treated as a special standard applicable to SAs. Both requirements are simultaneously applicable to SAs and are not incompatible. Article 71 of the Commercial Code is silent as to the location where the share register should be kept.

75. According to the amended article 71 of the Commercial Code, if any competent authority, in the exercise of powers, concludes that a legal entity has failed to keep updated records as required by this provision, this will be notified to the Ministry of Economy and Finance and a daily fine of up to PAB 100 (equivalent to USD 100) will be imposed on the legal entity for the duration of the non-compliance period. In addition, if the legal entities prove unwilling to address this non-compliance, the competent authority will notify the Public Registry of Panama and a marginal note will be added to the legal entity's files at the Public Registry denoting a violation to the provisions of the Commercial Code.

76. Pursuant to the amended article 71 of the Commercial Code, the marginal note will not impede the non-compliant legal entity from registering its corporate documents at the Public Registry or its issuing of certificates. Nevertheless, as long as the marginal note remains in the legal entity's files, the legal entity cannot be dissolved and any certificate issued by the Public Registry will state that the legal entity has pending obligations with the competent authority, resulting from a violation to the provisions of the Commercial Code. The marginal note will be removed once the competent authority notifies the Public Registry that the legal entity has redressed the situation.

77. As discussed above, Panama enacted Law No. 23/2015 which enhances the know-your-client measures for AML purposes, requiring resident agents to hold detailed records of their clients, including those of final beneficiaries, for at least five years from the termination of the professional relationship. However, there appears to be no obligation on resident agents

to keep these records up-to-date once the professional relationship has been established. Article 60 prescribes a generic sanction for failure to comply with the provisions of Law No. 23/2015, amounting to fines from USD 5 000 to USD 1 000 000, depending on the seriousness of the offense and the degree of recidivism. Article 61 provides that specific, proportionate and dissuasive sanctions will be established in due course by the relevant supervisory bodies.

78. The recommendation made in the 2014 Supplementary Report with regard to element A.1.6 is removed since enforcement provisions are now in place to ensure the availability of identity and ownership information for all relevant entities and arrangements. The effectiveness of these penalties will be reviewed during the Phase 2 review of Panama.

Determination and factors underlying recommendations

Determination	
The element is not in place but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
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 Foundations Law and the know-your-client rules established by Law No. 23/2015 are not sufficiently clear to ensure the availability of updated identity information on all of the beneficiaries of private foundations established in Panama. 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 <i>Sociedad Anónima</i> 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 the identity of all of the beneficiaries of private foundations at all times.

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.)

79. The 2010 Phase 1 Report found that only companies and partnerships in Panama that carry on business in Panama are required to maintain accounting records. Therefore the 2010 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.

80. 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. The Trusts Law establishes that the trustee shall render a report of its management to the settlor or to the existing beneficiaries, as indicated in the instrument or at least once a year (Trusts Law, article 28). It follows that a trust instrument cannot provide that there is no requirement to keep accounting records. Contrary to case of trusts, however, it would appear that the foundations charter could provide that there is no requirement to keep accounting records at all (Foundations Law, article 20). Subsequent to the 2010 Phase 1 Report, Panama has taken no action on this issue, and therefore no change is made to the recommendation made in the 2010 Phase 1 Report that Panama must 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.

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
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.

Record-keeping requirements (ToR A.3.1)

81. The 2010 Phase 1 Report and the 2014 Supplementary Report found that Panama had a legal and regulatory framework in place to ensure the availability of relevant banking information for all account holders. Since no relevant changes have been made to Panama’s legal and regulatory framework in this regard, the determination for Element A.3 remains “in place”.

Determination and factors underlying recommendations

Determination
The element is in place.

B. Access to information

Overview

82. 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. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Panama’s legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information.

83. The 2010 Phase 1 Report concluded that Element B.1 (access to information) was “not in place”. Three recommendations were made in relation to restrictions to Panama’s access powers for international exchange of information purposes, due to a domestic tax interest requirement, overbroad professional secrecy rules and insufficient penalties in place to compel information. The 2014 Supplementary Report concluded that the legislative changes introduced by Panama were substantial enough to delete all three Phase 1 recommendations and upgrade the determination under Element B.1 to “in place”. Since the 2014 Supplementary Report, no relevant changes have been made to the Panama’s legal and regulatory framework and this issue is therefore not further addressed in this second supplementary report.

84. On Element B.2 (notification requirements and rights and safeguards), the 2010 Phase 1 Report found that the element was “in place” and no recommendations were made. The 2014 Supplementary Report found, however, that Panama’s *Manual de Procedimiento* leaves it to the discretion of the competent authority of Panama as to whether the taxpayer will be notified or not. The practical impact of this discretionary notification will be considered in the context of the Phase 2 review of Panama.

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).

Ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2)

85. No recommendation was made with regard to access to ownership and identity information or accounting records, and no relevant legislative changes have been made since the 2014 Supplementary Report. This second supplementary report does not consider the issue further.

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

86. After the 2014 Supplementary Report, no changes have been to Panama’s legal and regulatory framework with regard to a domestic tax interest requirement that could restrict the exercise of its access powers for exchange of information purposes. This issue is therefore not subject to further consideration in this second supplementary report.

Compulsory powers (ToR B.1.4)

87. Following the 2014 Supplementary Report, no legislative changes have been introduced by Panama with respect to enforcement measures for compelling information, so this issue is not subject to further analysis this second supplementary report.

Secrecy provisions (ToR B.1.5)

88. Since the 2014 Supplementary Report, no changes have been made to Panama’s legal and regulatory framework with regard to professional secrecy provisions that could hinder effective exchange of information. The issue is therefore not subject to further consideration in this second supplementary report.

Determination and factors underlying recommendations

Determination
The element is in place.

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.

Not unduly prevent or delay exchange of information (ToR B.2.1)

89. Panama's domestic law and exchange of information agreement seem to provide for a taxpayer notification requirement with exceptions consistent with the international standards. However, as noted in the 2014 Supplementary Report, the *Manual de Procedimiento* leaves it to the discretion of the Competent Authority of Panama as to whether the taxpayer will be notified or not. Panama has taken no action to clarify the matter since the 2014 Supplementary Report so this issue is not subject to further examination in this second supplementary report. The practical application of this discretionary notification on the effective exchange of information will be reviewed during the Phase 2 review of Panama.

Determination and factors underlying recommendations

Determination
The element is in place.

C. Exchanging information

Overview

90. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. This section of the report examines whether Panama has a network of information exchange that would allow it to achieve effective exchange of information in practice.

91. Panama’s network of information exchange mechanisms encompasses a total of 25 exchange of information agreements (EOI agreements), including 16 double tax conventions (DTCs) and 9 tax information exchange agreements (TIEAs). These EOI agreements largely follow the OECD Model Tax Convention and Model TIEA and include sufficient provisions to protect confidentiality. The 2014 Supplementary Report found that four of these 25 EOI agreements contain identification requirements that are inconsistent with the international standards. Panama has not amended these EOI agreements or signed new ones. Two TIEAs with Faroe Islands and Greenland have been brought into force since the 2014 Supplementary Report, increasing the total number of EOI agreements in force to 22 (see Annex 3). Accordingly, the recommendation in relation to Element C.1 (exchange of information mechanisms) is retained and the determination remains as “in place.”

92. Since the 2014 Supplementary Report, Panama continues to expand its network of information exchange mechanisms, having concluded the negotiation of four new EOI agreements with Austria, Bahrain, Germany and Vietnam, which are still pending signature. Negotiations are ongoing with a number of other relevant jurisdictions, including Colombia. Nevertheless, a number of peers have expressed frustration with Panama’s hesitancy to commence or advance the negotiation of EOI arrangements. At least one peer has indicated that Panama has not been receptive to several requests to sign any kind of EOI agreement with it which could be interpreted as a refusal to do so. Panama takes the position that it has not refused to negotiate with this jurisdiction but has not yet agreed a timetable to do so. Panama is committed to negotiating an EOI agreement with this jurisdiction that conforms with

the international standards, and will begin negotiations by the end of 2015 or the first semester of 2016. Panama has reiterated its commitment to engage in EOI negotiations with all its relevant partners, meaning those partners who are interested in entering into an EOI arrangement. Accordingly, the recommendation and underlying factor made in the 2014 Supplementary Report in relation to Element C.2 (agreements with all relevant partners) are revised to reflect continuing concerns expressed by peers vis-à-vis Panama's position regarding the negotiation of EOI agreements. The determination for Element C.2 remains "in place but in need of improvement".

93. The 2014 Supplementary Report found that Element C.3 (confidentiality) and Element C.4 (rights and safeguards) were in place. Since the 2014 Supplementary Report, no relevant changes have been made to the Panama's legal and regulatory framework and these issues are therefore not subject to further consideration in this second supplementary report. As to Element C.5 (timeliness of responses to information requests), the 2014 Supplementary Report noted the organisational steps taken by Directorate of General of Revenue in order to fulfil its obligations under EOI agreements and deferred the practical assessment of Panama's organisational processes and resources to the Phase 2 review.

C.1. Exchange of information mechanisms

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

94. Since 2009, Panama has signed 25 EOI agreements of which 22 are in force. These agreements include 16 double tax conventions (DTCs) with Barbados, Czech Republic, France, Ireland, Israel, Italy, Korea, Luxembourg, Mexico, Netherlands, Portugal, Qatar, Singapore, Spain, the United Arab Emirates and the United Kingdom; and 9 tax information exchange agreements (TIEAs) with Canada, Denmark, Faroe Islands, Finland, Greenland, Iceland, Norway, Sweden and the United States.

Foreseeably relevant standard (ToR C.1.1)

95. The 2014 Supplementary Report found that four DTCs with Ireland, Luxembourg, the Netherlands and Qatar contain identification requirements that are inconsistent with the international standards. Panama was recommended to bring these EOI agreements in line with the standards for effective exchange of information. Panama has taken no action on this recommendation and therefore no change is made with regard to Element C.1.1. As further discussed under Element C.2 below, Panama has indicated that it is not in a position to negotiate further EOI agreements until September 2015 due to limitations of time and resources.

In respect of all persons (ToR C.1.2)

96. The 2014 Supplementary Report raised no concerns with respect to Element C.1.2 and no changes have been made since, so this issue is not further considered this second supplementary report.

Obligation to exchange all types of information (ToR C.1.3)

97. No recommendation was made with regard to Element C.1.3 and no relevant legislative changes have been made since the 2014 Supplementary Report.

Absence of domestic tax interest (ToR C.1.4)

98. Following the 2014 Supplementary Report, no changes have been to Panama's legal and regulatory framework with regard to a domestic tax interest requirement. Element C.1.4 is therefore not subject to further consideration in this second supplementary report.

Absence of dual criminality principles (ToR C.1.5)

99. The 2014 Supplementary Report made no recommendation with regard to Element C.1.5 and no relevant legislative changes have been made since.

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

100. The 2014 Supplementary Report raised no concerns with respect to Element C.1.6 and no relevant legislative changes have been introduced since by Panama.

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

101. No recommendation was made with regard to Element C.1.7 and no relevant legislative changes have been made since the 2014 Supplementary Report.

In force (ToR C.1.8)

102. Since the 2014 Supplementary Report, an additional two TIEAs with Faroe Islands and Greenland have entered into force. This brings the total number of EOI agreements into force to 22 out of 25 signed instruments. As noted in the 2014 Supplementary Report, Panama has taken the steps to ratify

the remaining EOI agreements and is currently awaiting action from its treaty partners to bring them into force.

In effect (ToR C.1.9)

103. Following the 2014 Supplementary Report, no relevant legislative changes have been made with regard to Element C.1.9, so this issue is not further examined this second supplementary report.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
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.

104. The 2014 Supplementary Report noted the significant progress made by Panama in expanding its exchange of information network since the 2010 Phase 1 Report, which bought the number of signed EOI agreements from one to 25. It also acknowledged that Panama was undertaking negotiations with a number of additional jurisdictions. Nevertheless, based on inputs provided by five peers, the 2014 Supplementary Report concluded that Panama should give a high priority to concluding and bringing into force EOI agreements with all relevant partners, including Colombia. Accordingly, Element C.2 was determined to be “in place but needing improvement”.

105. Since the 2014 Supplementary Report, Panama experienced a governmental transition in mid-2014, which included a restructuring of the negotiating team responsible for overseeing the negotiation of EOI agreements, delaying EOI negotiations until 2015. Panama advises that negotiations with Germany have been concluded and the TIEA is due to be signed shortly. Panama also reported that negotiations over a DTC with Colombia

– which will include provisions for exchange of information, as called for in a bilateral Memorandum of Understanding agreed to in October 2014 – are underway, including monthly rounds of negotiation until September 2015. To date, four rounds of negotiations have been held. In addition, Panama informed that it is undertaking negotiations of DTCs with Belgium, Hungary and Chinese Taipei and of TIEAs with Australia, Japan and India, having concluded the first rounds with all of these jurisdictions. Furthermore, Panama and the United States of America have negotiated an intergovernmental agreement (IGA) to facilitate implementation of the Foreign Account Tax Compliance Act (FATCA), which is pending signature.

106. Notwithstanding the progress that Panama has made in concluding EOI agreements with some of its relevant partners, seven peers (two of them overlapping with prior inputs to the 2014 Supplementary Report) have reported that they have been unable to commence or advance negotiations with Panama despite their efforts. Some of these peers have expressed frustration with Panama's hesitancy to conclude EOI agreements. More specifically, four peers have indicated that they had attempted to start EOI negotiations with Panama, a number of times over the period between 2010 and 2015, without success. Three other peers have indicated that EOI negotiations with Panama have stalled, due to differences in positions taken by the negotiating parties with regard to specific issues or non-responsiveness by Panama, and their attempts to re-engage have been ignored.

107. The Panamanian authorities have indicated that, until September 2015, Panama's efforts are focused on meeting three fundamental objectives: (1) compliance with the negotiation commitments previously acquired; (2) compliance with the international standards in the context of its Phase 1 peer review process; and (3) signing the IGA with the United States Treasury Department. Therefore, Panama has indicated that it is not in a position to negotiate further EOI agreements until September 2015 due to limitations of time and resources. However, Panama stated that this should not be interpreted as any lack of commitment on its part.

108. On 31 July 2015, Panama sent letters to four of these peers expressing its willingness to (re)start EOI negotiations with these relevant partners at the end of 2015 or the first semester of 2016. Three of these peers acknowledged receipt and confirmed their interest in engaging in EOI negotiations. The Panamanian authorities reported that they have subsequently contacted two other peers offering to begin or resume EOI negotiations. Panama expressed its strong commitment to prioritise negotiation of EOI agreements that conform with the international standards with these six peers and other jurisdictions. Panama has allocated resources to engage in these EOI negotiations and bring them to a speedy conclusion.

109. There is, however, at least one instance where Panama has not been responsive. In particular, Argentina (which had provided input to the 2014 Supplementary Report) has again indicated that Panama has not been receptive to several requests to engage in EOI negotiations with it, which could be interpreted as a refusal to have an EOI agreement with that jurisdiction. Because of Panama's importance as a financial centre it is reasonable to anticipate that Argentina would require information from Panama in order to properly administer its tax laws. Pursuant to the Terms of Reference, a jurisdiction's network of information exchange mechanisms should cover **all** relevant partners, meaning those partners who are interested in entering into an EOI arrangement. The last sentence of footnote 27 to Element C.2 further states that "[i]f it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, **in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws**, this should be drawn to the attention of the Peer Review Group, as it **may** indicate a lack of commitment to implement the standards" (**emphasis added**).

110. Panama takes the position that it has not refused to negotiate with Argentina but has not yet agreed a timetable to do so. Panama is committed to negotiating an EOI agreement with Argentina that conforms with the international standards, and will begin negotiations by the end of 2015 or the first semester of 2016. Furthermore Panama has reiterated its commitment to engage in EOI negotiations with all its relevant partners, meaning those partners who are interested in entering into an EOI agreement with it.

111. The recommendation and underlying factor made in the 2014 Supplementary Report in relation to Element C.2 (agreements with all relevant partners) are revised to reflect continuing concerns expressed by some peers about Panama's lack of responsiveness to their requests to engage in the negotiation of EOI agreements in a timely and effective manner. The determination for Element C.2 remains "in place but in need of improvement". Accordingly, the progress made by Panama in negotiating EOI agreements should be monitored in its Phase 2 review to ensure that Panama gives a high priority to concluding and bringing into force EOI agreements with all relevant partners, including Argentina, in a timely and effective manner.

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
<p><u>Peers continue to express concerns about Panama's lack of responsiveness to their request to engage in the negotiation of EOI agreements in a timely and effective manner. At least one peer has indicated that Panama has not been receptive to several requests to sign any kind of EOI agreement with it which could be interpreted as a refusal to do so.</u></p> <p><u>Panama has been approached by some jurisdictions to negotiate a DTC or TIEA and has so far not entered into negotiations with them.</u></p>	<p>Panama should enter into agreements for exchange of information (whether DTCs, TIEAs or multilateral instruments) <u>in a timely and effective manner</u> with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.</p>

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)

112. No recommendation was made with regard to Element C.3 and no relevant legislative changes have been made since the 2014 Supplementary Report. This second supplementary report does not consider Element C.3 further.

Determination and factors underlying recommendations

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)

113. Following the 2014 Supplementary Report, no changes have been to Panama's legal and regulatory framework with regard to the attorney-client privilege. Element C.4 is therefore not subject to further consideration in this second supplementary report.

Determination and factors underlying recommendations

Determination
The element is in place.

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.), Organisational process and resources (ToR C.5.2.) and Absence of unreasonable, disproportionate or unduly restrictive conditions on exchange of information (ToR C.5.3)

114. A review of the practical application of the organisational processes and the resources available to the Directorate of General of Revenue to handle information request in a timely manner will be conducted at a later stage.

Determination and factors underlying recommendations

Determination
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. (<i>ToR A.1.</i>)		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The Foundations Law and the know-your-client rules established by Law No. 23/2015 are not sufficiently clear to ensure the availability of updated identity information on all of the beneficiaries of private foundations established in Panama.	The relevant provisions of Panama's laws should clearly ensure the availability of information on the identity of all of the beneficiaries of private foundations at all times.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. (<i>ToR A.2.</i>)		
The element is not 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. <i>(ToR A.3.)</i>		
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). <i>(ToR B.1.)</i>		
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. <i>(ToR B.2.)</i>		
The element is in place.		
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1.)</i>		
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. <i>(ToR C.2.)</i>		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Peers continue to express concerns about Panama's lack of responsiveness to their request to engage in the negotiation of EOI agreements in a timely and effective manner. At least one peer has indicated that Panama has not been receptive to several requests to sign any kind of EOI agreement with it which could be interpreted as a refusal to do so.	Panama should enter into agreements for exchange of information (whether DTCs, TIEAs or multilateral instruments) in a timely and effective manner 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. <i>(ToR C.3.)</i>		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4.)</i>		
The element is in place.		

The jurisdiction should provide information under its network of agreements in a timely manner. (<i>ToR C.5.</i>)		
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 review report¹

Panama agrees with the overall outcome of its second Supplementary Report. The document reflects Panama’s legal and regulatory framework and takes into account most of the substantial progress achieved since the 2014 Phase 1 review. The second Supplementary Report rightly concludes that Panama has implemented the necessary changes in order to move to a Phase 2 review.

Panama will continue being active in the Global Forum’s efforts to enhance fiscal transparency. Furthermore, Panama takes note of the recommendations included in the second Supplementary Report and reiterates its commitment to engage in EOI negotiations with all relevant partners.

Lastly, Panama would like to thank the members of the Peer Review Group and other exchange of information partners for their numerous and valuable contributions to the review.

1. 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 Second Supplementary Report received from Panama

Mr. 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; klouw@sars.gov.za

29th April 2015

Dear Mr. d'Aubert:

By means of this letter and in accordance with the *Follow-up* procedure 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 April 2014 due to the implementation of internal legislative changes and other measures related to the following elements:

- Element **A1** (Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities).
- Element **C2** (The jurisdictions’ network of information exchange mechanisms should cover all relevant partners).

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 “not in place” or “in place but” according to Panama’s Supplementary Peer Review Report of April 2014, 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 in 2015.

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.

Yours sincerely,

ISABEL DE SAINT MALO DE ALVARADO

Vice-President and
Minister of Foreign Affairs

Attachments:

- Law 18 of 23rd April 2015
- Law 23 of 27th April 2015
- Law 22 of 27th April 2015
- Panama Progress Report, April 2015

Annex 3: List of all exchange of information mechanisms

List of EOI agreements signed by Panama as at July 2015, including Tax Information Exchange Agreements (TIEAs) and Double Tax Conventions (DTCs).

	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	15 March 2014
6	Finland	TIEA	12 November 2012	20 December 2013
7	France	DTC	30 June 2011	1 February 2012
8	Greenland	TIEA	12 November 2012	9 March 2014
9	Iceland	TIEA	12 November 2012	30 November 2013
10	Ireland	DTC	28 November 2011	19 December 2012
11	Israel	DTC	8 November 2012	Not yet in force
12	Italy	DTC	30 December 2010	Not yet in force
13	Korea	DTC	20 October 2010	1 April 2012
14	Luxembourg	DTC	7 October 2010	1 November 2011
15	Mexico	DTC	23 February 2010	1 January 2011
16	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	Qatar	DTC	23 September 2010	6 May 2011
20	Singapore	DTC	18 October 2010	19 December 2011
21	Spain	DTC	7 October 2010	25 July 2011
22	Sweden	TIEA	12 November 2012	28 December 2013

	Jurisdiction	Type of EOI arrangement	Date signed	Date entered into force
23	United Arab Emirates	DTC	13 October 2012	23 October 2013
24	United Kingdom	DTC	29 July 2013	12 December 2013
25	United States	TIEA	30 November 2010	18 April 2011

Annex 4: List of all laws, regulations and other material received

Anti-Money Laundering Laws

Law No. 23 of 27 April 2015

Executive Decree No. 363 of 13 August 2015

Commercial Laws

Law No. 18 of 23 April 2015

Law No. 22 of 27 April 2015

For more information
**Global Forum on Transparency and
Exchange of Information for Tax Purposes**
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