GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard in Practice

PANAMA

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Panama 2016

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

November 2016
(reflecting the legal and regulatory framework
as at August 2016)

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Please cite this publication as:
OECD (2016), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Panama 2016: Phase 2: Implementation of the Standard in Practice*, OECD Publishing.
http://dx.doi.org/10.1787/9789264266162-en

ISBN 978-92-64-26615-5 (print)
ISBN 978-92-64-26616-2 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

Corrigenda to OECD publications may be found on line at: *www.oecd.org/publishing/corrigenda*.

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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 130 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.

Abbreviations

ANIP	National Public Revenue Authority (Autoridad Nacional de Ingresos Públicos).
AML	Anti-Money laundering
BHN	Banco Hipotecario Nacional
CRS	Common Reporting Standard
CDD	Customer due diligence
DNFBP	Designated Non-Financial Business Professions
DGI	Directorate General of Revenues
CTF	Counter Terrorism Financing
DTC	Double Tax Conventions
EOI	Exchange of information
FATF	Financial Action Task Force
ICIJ	International Consortium of Investigative Journalists
IPACOOP	Panamanian Autonomous Institute for Cooperatives
OECD	Organisation for Economic Co-operation and Development
SA	Joint-stock corporations (sociedad anónima)
SRL	limited liability companies (sociedad de responsabilidad limitada)
SBP	Superintendence of Banks
SMV	Superintendence of the Securities Market
SSRP	Superintendence of Insurance and Reinsurance

SWIFT Society for Worldwide Interbank Financial Telecommunication.

TIEA Tax Information Exchange Agreement

TIN Tax Identification Number

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in the Republic of Panama as well as the practical implementation of that framework.

2. Panama lies on one of the world's crossroads, straddling North and South America on one hand and the Atlantic and Pacific Ocean, connected by the Panama Canal, on the other. Its privileged geographical position has allowed it to develop a significant international services sector including international banking and wealth management services.

3. Panama has committed to the international standards of transparency and effective exchange of information since 2002 and this commitment was reaffirmed in March 2009. Since then it has been engaged in developing a network of international agreements which allow for exchange of information for tax purposes.

4. Since 2010, significant amendments have been made to the legal framework governing the availability of ownership information in Panama. In this respect the second supplementary phase 1 report noted that information on the owners of nominal shares (registered shares) in companies is generally available in Panama, but the law did not originally provide for penalties in case of non-compliance. In 2015, the Commercial Code was 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 concept of nominees does not exist in Panama.

5. Panamanian law also requires that every joint stock corporation has a resident agent which must be a lawyer. Resident agents are obliged to "know their client". Ownership information about Corporations (*sociedad anónima* or SA) is therefore kept by the company itself and by its resident agent. However, due to a variety of reasons the availability of identity and ownership information held by resident agents on SAs and foundations during the period under review was not ensured.

- First, there were no specific sanctions provided for if share registers were not kept or were not kept up to date for most of the review

period and Panama's authorities do not have any direct contact with many of the companies concerned, i.e. those organised under the laws of Panama with operations exclusively outside Panama. In order to address this shortcoming, Panama amended the Commercial Code in April 2015 to impose a new obligation on all existing and new legal entities to keep updated records for nominal shares and records of shareholders' minutes, subject to financial and administrative penalties for non-compliance.

- Second the "know your client" measures applicable to resident agents for much of this period were deficient in a number of areas and provided a transition period of five years, from 2011 for resident agents to comply fully with their obligations under the law for existing companies. Further, there were no established administrative or supervisory mechanisms during the period under review for the supervision of compliance and the application of any resulting sanctions.
- Third, around 70% of the companies currently on the Panamanian corporate register, 486 000 SAs and approximately 17 000 foundations, are deemed to be inactive. In these cases, the resident agent may have lost contact with the company and its owners. For this reason the availability of up-to date ownership information on the owners of registered or bearer shares cannot be ensured. Panama should modify its law and practices as appropriate and significantly reduce the substantially disproportionate number of inactive companies in order to ensure availability of relevant information in respect of all legal entities that are registered in Panama.

6. Over the period of review Panama has received in total 97 requests for information. From these requests more than 74 requests (77%) pertained to ownership and identity information. Most requests asked for ownership information regarding SAs (70 cases). Although Panama was not able to provide an exact number of cases where it has not been able to provide the requested information, both input provided by peers and Panamanian officials confirmed that in practice ownership information on SAs could not be provided in a number of cases due to issues related to Law No. 2 of 2011 as well as issues related to bearer shares.

7. In 2013, Panama introduced new legislation immobilising bearer shares. Under this law, authorised custodians are required to keep identity information on the owners of the bearer shares issued by Panamanian corporations. As a result of subsequent legal amendments introduced in 2015, 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. However, there is some uncertainty as to whether all

bearer shares have been immobilised with custodians or definitively suspended by 31 December 2015 as required by law. In practice, Panama was not able to provide ownership information in at least 4cases after the custodial regime was implemented. In a further 6 cases this information could only be provided at the second attempt and only at the peer's insistence that Panama provide this information. The newly introduced legislation regarding bearer shares including its transitional provisions might not, therefore, ensure that information is available in practice on all holders of bearer shares in all cases. Panama should therefore modify its law and/or practice as appropriate to ensure that information regarding the owners of bearer shares is available in all cases.

8. Information on partners in partnerships and settlors and beneficiaries of trusts is generally available in Panama. In 2015, Panama 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 interest 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. As a result, information on beneficiaries of private interest foundations may not always be available to the Panamanian authorities. 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.

9. Panamanian law provides for a number of enforcement provisions to support the legal and regulatory obligations which aim to ensure the availability of identity and ownership information in Panama. However, in many cases Panama has not been able to provide statistical or practical information regarding established administrative or supervisory mechanisms for the supervision of compliance with these requirements concerning the period under review and the application of any resulting sanctions. It appears that enforcement provisions are not, or in any case not adequately, applied in practice and therefore these provisions generally may not sufficiently ensure that ownership information with regard to the relevant entities is available.

10. As noted, Panama introduced changes concerning its AML framework in August 2015, including a number of enforcement provisions. Although a positive step, these measures and related supervision activities are very recent and therefore remain to be sufficiently tested. Panama should therefore monitor the implementation of the newly introduced AML legislation and take measures to address any identified deficiencies.

11. Accounting requirements are not in place in Panama for entities other than companies and partnerships that carry on business in Panama. It is therefore recommended that Panama introduce record keeping requirements that conform with the international standards and that apply to all companies, limited partnerships and partnerships limited by shares registered in Panama irrespective of whether they carry on business in Panama. In addition, the law does not specify the type of records trusts and foundations are required to keep and for how long. 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. In practice issues related to the availability of accounting records have had a significant impact on exchange of information, since this type of information could not be obtained in 40 out 48 cases. All these cases related to companies operating outside Panama. Panama should therefore ensure that reliable accounting records, including underlying documentation, are being kept by all relevant entities and arrangements for a period of at least five years.

12. Banking information is available in Panama in line with the standard. The obligations under the Banking Law and AML/CFT legislation ensures that all records pertaining to the accounts as well as to related financial and transactional information are required to be kept by Panamanian banks. Compliance by banks in respect of these legal obligations is checked and supervised by the Superintendence of Banks of Panama. Through their inspections, it has been established that banks keep the required information on their clients and transactions.

13. Since 2010, Panama has made a number of changes to its legal and regulatory framework to enhance its Competent Authority's ability to obtain and provide information relevant for tax purposes. As a result of legislation enacted in 2010, 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. In 2011, Panama enhanced the know-your-client duties of attorneys acting as resident agents to limit the previously overbroad attorney-client privilege.

14. Several peers indicated that the information received with respect their EOI requests was not sufficient to fulfil their request for assistance in situations where the request related to a company or foundation that had no operations in Panama. The Panamanian authorities explained that this was mainly caused by the practice during the three-year review period of only approaching the Resident Agent to obtain ownership information in respect of these companies. Accounting records and underlying documentation were not pursued at all.

15. Panama does not approach the entities concerned, even where they are obliged to keep the information sought as it does not consider this would be fruitful. Penalties have not been applied against these entities and may not be effective in any case, since there is nothing against which to apply them or anywhere to go in Panama to execute powers, e.g. of search and seizure or even to serve documents. This results in the Panamanian competent authority not always obtaining all of the information requested. The practice of only approaching the resident agent had a significant impact on exchange of information during the review period. Panama should therefore ensure that the access powers of its competent authority are fully utilised to obtain all information included in an EOI request from any person within their territorial jurisdiction that has possession or control of that information. Panama should also ensure that the enforcement of these access powers is supported by adequate penalties for failure to provide information to the competent authority in a timely manner.

16. Since 2010, Panama has also put in place new exchange of information agreements (EOI agreements), as well as systems and procedures for exchange of information, including reorganising the Directorate General of Revenues (DGI) in order to make and respond to requests pursuant to its international agreements and reviewed the penalties provided for in its Fiscal Code to consider whether these meet the requirement of ensuring access to information. Panama has since enhanced its international co-operation in tax matters, concluding a total of 25 EOI agreements, including 16 DTCs and nine 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. However, four of the 25 EOI agreements contain identification requirements that are inconsistent with the standard for effective exchange of information. It is recommended that Panama amend these EOI agreements to bring them in line with the international standard.

17. Panama continues to work on expanding its network of EOI agreements and negotiations are advancing with a number of other relevant jurisdictions, including Colombia. Nevertheless, at the time of the First and Second Supplementary Reports a large number of peers had expressed frustration with Panama's hesitancy to commence or advance the negotiation of EOI arrangements. One peer had 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. For its part Panama 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. However, Panama still does not have EOI agreements with many relevant partners. While significant progress has been made over the last year, having regard in particular to Panama's request to sign the Multilateral Convention,

no new agreements were signed during the last twelve months. It is therefore recommended that Panama enter into EOI agreements expeditiously with all relevant partners (meaning whoever is interested in entering into an agreement), regardless of form.

18. During the period under review Panama disclosed of the name of the taxpayer to third parties in cases where this was not necessary for gathering the requested information. This practice is not in accordance with the principle that information contained in an EOI request should be kept confidential. Although Panama stated that it would change its practice, it should be noted that the change in the practice is very recent (March 2016) and so it remains to be seen whether this will operate in practice in conformity with the confidentiality requirements of the international standard. Panama should therefore monitor that a disclosure of details such as the name of the taxpayer in certain circumstances does not exceed the confidentiality requirements as provided for under the international standard.

19. During the review period, governmental changes and changes in the set-up of the tax authorities impacted on the organisational structure and processes of the tax authorities including the EOI Unit. In 2014 this coincided with an increase in the number of incoming EOI requests and an understaffing of the EOI Unit. These circumstances led to EOI requests not being processed in a timely manner in the second half of the review period. Panama should therefore ensure that it has appropriate resources, organisational structures and processes in place to process and answer to EOI requests in a timely manner.

20. Panama uses only postal services for EOI incoming and outgoing requests and will not accept requests by encrypted e-mail. However, the postal service in Panama does not ensure door-to-door delivery of regular mail. This has given rise to communication problems and delays in responding to requests from one major EOI partner. Panama is recommended to communicate with its EOI partners about its processing requirements and consider the use of encrypted email for future EOI incoming and outgoing requests.

21. Panama did not systematically provide updates where it was not able to respond to a request within the 90 days period. Panama should therefore provide status updates to its EOI partners within 90 days where relevant.

22. Panama has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Panama's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Panama has been assigned the following

ratings: Compliant for elements A.3, B.2, C.1 and C.4, Largely Compliant for element C.3; Partially Compliant for elements C.2 and C.5; and Non-Compliant for elements A.1, A.2 and B.1. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Panama is Non-Compliant.

23. A follow up report on the steps undertaken by Panama to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.

Introduction

Introduction and methodology used for the peer review of Panama

24. The assessments of the legal and regulatory framework of Panama as well as its practical implementation was based on the international standards for transparency and exchange of information on request as described in the Global Forum's *Terms of Reference*, and were prepared using the Global Forum's *Methodology for Peer reviews and Non-Member Reviews*. The original Phase 1 assessment was based on the laws, regulations, and exchange-of-information mechanisms in force or effect as at May 2010, other materials supplied by Panama, and information supplied by partner jurisdictions. The First Supplementary Phase 1 assessment was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 10 February 2014, and information supplied by partner jurisdictions. The Second Supplementary Phase 1 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 partner jurisdictions.

25. The Phase 1 Report of Panama was adopted and published by the Global Forum in September 2010. The First Supplementary Phase 1 Report, which followed the Phase 1 Report of Panama, was prepared pursuant to paragraph 58 of the Global Forum's Methodology and was adopted by the Global Forum in April 2014. The Second Supplementary Phase 1 Report, which followed a letter from the Chair of the Global Forum of 28 November 2014 inviting all jurisdictions that were previously prevented from moving to Phase 2 to request a supplementary review, was prepared pursuant to paragraph 58 and 60 of the Revised Methodology for Peer Reviews and Non-member Reviews and was adopted by the Global Forum in October 2015. The following analysis reflects the integrated Phase 1, First Supplementary and Second Supplementary assessments of the legal and regulatory framework of Panama as in effect at 13 August 2015, while the Phase 2 review assessed the practical implementation of this framework during a three year period (1 July 2012 to 30 June 2015) as well as amendments made to this framework since

the Phase 1 review up to 12 August 2016. The assessment was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 12 August 2016, and information supplied by Panama and partner jurisdictions and other relevant sources as well as explanations provided by Panama during the on-site visit that took place from 1-4 March 2016 in Panama City, Panama. During the on-site visit, the assessment team met a wide range of officials and representatives of the, Public Registry, Ministry of Foreign Affairs, Ministry of Economy and Finance, Tax Authorities (DGI) and the Superintendency of Banks of Panama, among others.

26. The *Terms of Reference* (ToR) 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 and its application in practice 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. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Panama's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. As outlined in the Note on Assessment Criteria, an overall "rating" is applied to reflect the jurisdiction's level of compliance with the standards (see the Summary of Determinations and Factors Underlying Recommendations at the end of this report).

27. The Phase 1, First Supplementary, Second Supplementary and Phase 2 assessments were conducted by an assessment team which consisted of two expert assessors: Mr. David Smith, Delegated Competent Authority, CTIS Business International, HM Revenue and Customs, United Kingdom and Ms. Yanga Mputa, International Tax Specialist, Large Business Centre, South African Revenue Service, South Africa; and a representative of the Global Forum Secretariat; being Mr. Dónal Godfrey, Mr. Bhaskar Goswami, and Ms. Renata Fontana respectively. The assessment team assessed the legal and regulatory framework for transparency and exchange of information and relevant exchange-of-information mechanisms in Panama. For the Phase 2 assessment Ms. Renata Fontana was replaced by Mr. Boudewijn van Looij, also from the Global Forum Secretariat.

28. 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 integrated Phase 1, First Supplementary and Second Supplementary reports as well as the Phase 2 report, can be found at the end of this report.

Overview of Panama

General information on legal system and the taxation system

29. The Republic of Panama is located on the Isthmus of Central America. It occupies an area of around 75 000 square kilometres and has a population of about 3.6 million. It is a founding member of the United Nations.

30. Panama is a constitutional republic with a democratically elected president who is both Chief of State and head of government. The country has a unicameral legislative assembly, also elected by popular vote, and a fully independent judiciary. The legal system is based on the civil law tradition, although some features of its commercial legislation are influenced by legal institutions of common law (e.g. legislation on trusts). The hierarchy of laws is constituted by:

- The Constitution of the Republic of Panama
- Laws, including treaties approved by a formal law
- Decrees
- Resolutions, Agreements and other administrative Acts

31. Since its independence in 1903 Panama has oriented itself towards the establishment of a juridical framework that facilitates the carrying on of business and especially towards the promotion and rendering of services. The service sector constitutes the main part of the economy accounting for around 80% of Gross Domestic Product (GDP). Services include operating the Panama Canal, financial services and tourism. A major project to expand the Panama Canal began in 2007 and is estimated to be completed by 2016 at a cost of USD 5.3 billion. Created in 1948, the Colón free zone on Panama’s Atlantic coast is the largest and oldest free zone in the Western Hemisphere. Panama also has the largest ship registry in the world by number of ships and gross tonnage.

32. Panama has become a centre for international services for a variety of reasons related to its geographical position between Central and South America, economic characteristics, such as use of the US dollar as its currency, and incentives granted by commercial or tax legislation. The use of the US dollar has especially favoured the emergence of an international banking centre in Panama. The banking system is the largest in the Central American region with consolidated assets of around 118 billion USD representing more than two times Panama’s GDP. Other financial sectors are small by comparison.

33. Closely associated with banking activities are wealth management services which are provided to both domestic and foreign clients. These include the creation of companies and trusts to hold and administer assets which typically require the involvement of lawyers and accountants as well as banks and trust companies.

34. Panama has a well-developed income tax system which is based on the principle of territoriality (Article 694 of the Fiscal Code). In general, this means that income which is considered to be derived from Panamanian sources is taxable while income from foreign sources is not. Income tax is applied to the net income from Panamanian sources of individuals, corporations and other entities such as trusts and private foundations.[1] There is a system of definitive withholding concerning payments of income from Panamanian sources to beneficiaries residing abroad.

35. In addition to the general principle of territoriality, Executive Decree 170 of 27 October 1993 describes in more detail three categories of income, domestic, foreign or exempt and includes a list of activities giving rise to income under each of these headings. Included in the foreign source income category and therefore not taxable, is income from re-invoicing activities conducted from an office in Panama, provided that the goods do not enter Panama or only transit through its national ports or airports. Income derived from the international operation of ships under the Panamanian flag is also classified as foreign earnings and not subject to tax.

36. Foreign source income is not exempt from tax in Panama; it is simply not subject to tax as a result of the territoriality principle. Tax exempt income, on the other hand, is income which, although Panamanian sourced, is exempted from tax. Such exemptions are often given for the purpose of promoting certain economic sectors or activities. They include income exempted by special laws such as the Colon Free Zone which is subject to a special system of tax where profits from the re-exportation of goods are not subject to tax. It also includes income from leasing ships or aircraft engaged in international trade and interest income on savings accounts and time deposits maintained in banks established in Panama.

37. Substantial revisions to the taxation of dividends were enacted by Law No. 8 of 2010. Any legal entity that is required to obtain a business license is obliged to withhold tax at a rate of 10% from dividends on shares or participation quotas derived from Panamanian source income. Where income is derived from foreign sources or export activities the rate of withholding is 5%. The withholding tax must be applied by all types of companies doing business in Panama including companies established in Free Zones. However,

1. Corporations and legal entities pay tax at a rate of 27.5% on net income from 1 January 2010. The rate was reduced to 25% on 1 January 2011.

for Free Zone companies the withholding rate is 5% irrespective of whether the dividends derive from local or foreign sources.

Overview of commercial laws and other relevant factors for exchange of information

38. The 2010 report noted that traditionally, Panama had little interest in entering into exchange of information agreements (EOI agreements) as it did not see the need for them in the context of its territorial tax system. It has mutual legal assistance treaties (MLATs) with a number of countries aimed at combating money laundering originating from drug trafficking and other serious crimes. Tax matters are typically excluded from the definition of offences under these treaties, unless, in the case of the MLAT with the United States, it can be shown that the income on which tax was evaded derived from an activity that is otherwise included in the definition of an offence. For example, assistance could be given in a case of a criminal tax prosecution involving unreported income from drug trafficking because drug trafficking is a prescribed offence.

39. Panama initially made a commitment to the international standards of transparency and exchange of information in 2002 and reaffirmed that commitment in March 2009. Since 2010, it has put in place an active programme of negotiating EOI agreements. It signed its first double tax convention (DTC) with Mexico in March 2010. As at 12 August 2016, Panama's network of information exchange mechanisms encompassed a total of 25 EOI agreements, including 16 DTCs and 9 tax information exchange agreements (TIEAs). Out of these 25 EOI agreements, 22 are in force and, under 18 of these 22 EOI agreements, Panama can exchange information for tax purposes to the internationally agreed standard.

40. Legal entities or arrangements available for use in business and wealth management include corporations (*sociedad anónima*), limited liability companies (*sociedad de responsabilidad limitada*) and various types of partnerships. Private interest foundations and trusts may also be created.

41. Corporations (*sociedad anónima* or SA) are the most widely used entity and Panama is a significant centre for corporate formation. Since Law No. 32 was enacted in 1927, approximately 880 213 have been incorporated and registered in Panama, and out of these registered SAs, approximately 190 472 have been formally dissolved and of the remainder, approximately 70% or 486 000 are deemed to be inactive. Consequently there's a substantially disproportionate number of inactive companies incorporated and registered in Panama. The implications of this are addressed in section A.1.1 below.

Overview of the financial sector and relevant professions

42. Banking activities constitute the most significant component of the financial services sector. As at March 2016, a total of 91 banks are authorised to engage in banking business in or from Panama. This includes 49 banks with a General License, 27 banks with an International License as well as 15 Representative Offices of foreign banks.

43. Other components of the financial services sector include the securities industry, insurance, financial companies, co-operatives, and savings and credit institutions.

44. The regulatory agencies involved in the oversight of the financial services sector are:

- the Superintendence of Banks (SBP) for Banks and Trust Companies;
- the Administration for Supervision and Regulation of Non-Financial Subjects (such as casinos, pawnbrokers, money remittance companies, companies established in the Colón free zone) as well as lawyers, certified public accountants, external auditors and notaries in the exercise of activities subject to supervision. The activities include those of a Resident Agent;
- the Superintendence of the Securities Market (SMV) for the Securities Market entities including wealth management companies;
- Directorate of Financial Companies for Finance Companies;
- the Superintendence of Insurance and Reinsurance (SSRP) for Insurance and Reinsurance Companies;
- the Panamanian Autonomous Institute for Co-operatives (IPACOOP) for co-operative institutions (including credit co-operatives),
- *Banco Hipotecario Nacional* (BHN) for savings and credit unions.

These agencies are responsible for the supervision of anti-money laundering compliance in their respective sectors.

45. Lawyers play a leading role in the provision of international financial and wealth management services. Only lawyers admitted to practice in Panama can provide incorporation services and all corporations must have a resident agent which must be a lawyer. Private interest foundations are also required to have resident agents. There are approximately 10 000 lawyers and company service providers in Panama

46. Lawyers and accountants are not required to belong to a professional association in order to practice. There are ethical rules for lawyers established by law and subject to investigation and sanction by the Supreme Court

although there have been very few sanctions in practice. Accountants are also subject to ethical rules established in Cabinet Decree 26 of May, 1994.

47. Panama introduced changes to its AML framework by virtue of Law No. 23 of 27 April 2015. An important aspect of this new legislation is that it expands the scope of Panama's AML legislation to activities performed by the Designated Non-Financial Business Professions and makes these subject to Panama's general AML/CFT law and supervision. Law No. 23 of 2015 establishes additional due diligence requirements in respect of clients of reporting entities, including financial reporting entities, and non-financial reporting entities (such as casinos, pawnbrokers, money remittance companies, companies established in the Colón free zone) as well as lawyers, certified public accountants, external auditors and notaries in the exercise of activities subject to supervision. The activities include those of Resident Agent of legal entities incorporated or existing under the Laws of Panama (article 24).

48. Lawyers are required to maintain confidentiality in connection with the owners of companies for which they provide incorporation services or act as resident agents. The Foundations Law and Trusts Law also include confidentiality provisions. Panama enacted Law No. 2 of 2011, which sets forth some limitations on the attorney-client privilege standard in Panama. In addition, by virtue of Law No. 33 of 30 June 2010, Panama has ensured that the competent authority has access to information irrespective of any secrecy obligation on the information holder, but subject to normal limits of the attorney-client privilege.

49. Trust companies are regulated in Panama and are required by law to implement measures to prevent money laundering including identifying their clients.

Recent developments

50. In May 2016 Panama sent its commitment to the OECD to implement the Common Reporting Standard (CRS) on the same terms as other members with first exchanges in 2018. With this commitment, more than 100 jurisdictions are now committed to the new standard.

51. On 15 July 2016 Panama sent an official request to the OECD to be invited to sign the amended Convention on Mutual Administrative Assistance in Tax Matters ("Multilateral Convention"). It transmitted the confidentiality questionnaire and related background information to the Coordinating Body Secretariat on 5 August 2016.

52. On 25 August 2016 Panama and Japan signed a TIEA including a specific AEOI clause. On 30 August 2016 Panama also signed a DTC with Viet Nam.

53. Importantly, Panama has also indicated that it is already preparing legislation to address many of the recommendations which are made in this report. At the beginning of September 2016 draft laws were approved by Panama's Cabinet Council and these have now been submitted the National Assembly for enactment. These draft laws provide among other things for:

- Suspension of the corporate rights of companies that do not pay registration fees for a period of three consecutive years. If a company doesn't pay the required fees for two more years, it will be dissolved;
- An obligation to keep accounting records and underlying documentation for Panamanian entities that do not perform activities in Panama;
- New penalties for persons that do not provide information when requested to do so by the Competent authority;
- Primary legislation for the implementation of the Common Reporting Standard for automatic exchange of information.

Compliance with the Standards

A. Availability of information

Overview

54. 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 accounting 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 information is not kept or the information 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 Panama's legal and regulatory framework on availability of information and its implementation in practice.

55. Joint stock corporations (*sociedad anónima* or SA) are by far the most commonly adopted form of legal entity in Panama. SAs are required to maintain a stock register with the names of all stockholders, except in the case of shares issued to bearer. Any transfers in ownership of registered shares must be recorded in the register. Panamanian law also requires that every joint stock corporation has a resident agent which must be a lawyer. Resident agents are obliged to "know their client". Ownership information about SAs is therefore kept by the company itself and by its resident agent. However, due to a variety of reasons the availability of identity and ownership information held by resident agents on SAs during the period under review was not ensured.

- First, there were no specific sanctions provided for if share registers were not kept or were not kept up to date for most of the review period and Panama's authorities do not have any direct contact with companies which operate exclusively outside Panama. In order to address this shortcoming, Panama amended the Commercial Code in

April 2015 to impose a new obligation on all existing and new legal entities to keep updated share records for nominal shares and records of shareholders' minutes, subject to financial and administrative penalties for non-compliance.

- Second the "know your client" measures applicable to resident agents for much of this period were deficient in a number of areas and provided a transition period of five years, from 2011, for resident agents to comply fully with their obligations under the law for existing companies. Further, there were no established administrative or supervisory mechanisms during the period under review for the supervision of compliance and the application of any resulting sanctions.
- Third, around 70% of the companies currently on the Panamanian corporate register, 486 000 SAs, are deemed to be inactive. In these cases, the resident agent may have lost contact with the company and its owners. For this reason the availability of up-to date ownership information on the owners of registered or bearer shares cannot be ensured. Panama should modify its law and practices as appropriate and significantly reduce the substantially disproportionate number of inactive companies in order to ensure availability of relevant information in respect of all legal entities that are registered in Panama.

56. Over the period of review Panama has received in total 97 requests for information. From these requests more than 74 requests (77%) pertained to ownership and identity information. Most requests asked for ownership information regarding SAs (70 cases).Although Panama was not able to provide an exact number of cases where it hasn't been able to provide the requested information, both peers and Panamanian officials confirmed that in practice ownership information on SAs could not be provided in a number of cases due to issues related to Law No. 2 of 2011 as well as issues related to bearer shares (this is discussed further below).

57. In 2015 Panama enacted new legislation to strengthen its anti-money laundering (AML) framework. Resident agents are now 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 interest foundations. However, 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.

58. Panama also introduced changes to its AML framework and practice that took effect as of August 2015. Compliance by resident agents in respect of the new AML obligations is checked and supervised by the Administration for Supervision and Regulation of Non-Financial Subjects. Supervision also includes the recently introduced obligation on all existing and new legal entities to keep updated share records for nominal shares. It is unclear, however, how this would work in the case of inactive companies. Although a positive step, these measures and supervision activities are also very recent and therefore remain to be sufficiently tested. Panama should therefore monitor implementation of the newly introduced rules, including the obligation to keep updated share records for nominal shares, and take measures to address any identified deficiencies. The concept of nominees does not exist in Panama.

59. Panamanian companies may issue bearer shares. As a result of legal amendments introduced in 2013 and 2015, 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. As noted, Panama also introduced changes to its AML framework that took effect as of August 2015. Based on these new AML obligations, 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. Although both pieces of legislation can be considered to introduce significant changes, it should be noted that the custodial regime was introduced at the very end of the review period that runs from 1 July 2012 to 30 June 2015. The introduction of the enhanced AML framework took place after the period under review. In other words, these changes, which are intended to ensure the availability of ownership information regarding bearer shares, will typically affect requests for information that were either made at the very end of the review period or that were still unanswered (pending) at that point of time.

60. In practice Panama has not been able to provide information in a number of such cases. One major EOI partner of Panama noted that it received responses to 10 of its requests from Panama in March 2016 stating that Panama was not able to provide the requested ownership information *"as the capital is composed by bearer shares"*. In six of these cases ownership information was provided at the second attempt in June 2016 and only after the peer's insistence following the initial failure to obtain this information in any of the 10 cases involving bearer shares. These cases demonstrate that the custodian regime introduced by Law No. 47 of 2013, and in particular the cancellation of bearer shares issued before 4 May 2015 and not deposited with the authorised custodian on or before 31 December 2015, may not be wholly

effective or not yet wholly effective in ensuring of availability of ownership information in respect of bearer shares. Panama should therefore modify its law and/or practice as appropriate to ensure that information regarding the owners of bearer shares is available in all cases.

61. Information on partners in partnerships and settlors and beneficiaries of trusts is generally available in Panama, and in practice no issues or difficulties were reported regarding the availability of ownership information regarding partnerships or trusts.

62. As to private interest foundations, ownership information about the founders (whether or not members of the foundation council) and members of the foundation council is generally available. However, identity information about the beneficiaries is not included in the Public Registry. Private interest foundations are required to have a resident agent who must be a lawyer or a law firm admitted to practice in Panama. Under the know-your-client measures introduced by Panama in 2015, resident agents are obliged to hold ownership information on their clients, including those of final beneficiaries. Since the legal definition of final beneficiaries under this law 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. 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.

63. In practice there are approximately 17 000 foundations out of a total of around 42 000 currently registered in Panama that are deemed to be inactive. Similar to the situation regarding inactive SAs, availability of ownership and identity information of relevant entities cannot be ensured in these cases. Panama should therefore modify its law and/or practice as appropriate and significantly reduce the substantially disproportionate number of inactive foundations in order to ensure availability of relevant information and identity in respect of all legal entities that are registered in Panama.

64. One general shortcoming in Panama's legal and regulatory framework is that accounting information may not be available in a range of cases because there is no requirement to keep it. The Panamanian Commercial Code provides that merchants are required to keep accounting records for five years. This requirement applies irrespective of the type of entity involved, e.g. company or partnership. However, a company or partnership organised under the laws of Panama that does not operate within the country is not subject to the Commercial Code and is therefore not included in its record keeping requirements. As such entities do not earn income from a source in Panama, they are not subject to the record keeping requirements in the Fiscal Code either.

65. Accordingly, the 2010 report noted that there is a cohort of companies for which accounting information may not be available. The Panamanian authorities have been unable to provide an estimate of the number of companies involved but it could be considerable given Panama's prominence as a centre for company formation. In practice Accounting records have not been available in 40 out 48 cases. All these cases related to companies operating outside Panama. Panama should ensure that reliable accounting records, including underlying documentation, are being kept by all relevant entities and arrangements for a period of at least five years.

66. Trusts and private interest foundations may also be excluded from the record keeping requirements of the Commercial Code as these will often not be merchants. Foundations are prohibited from engaging in commercial activities in a habitual manner.

67. The Trusts Law and Foundations Law both contain provisions relating to accounting requirements but these do not specify the type of accounting records to be kept or the period for which they should be kept. Foundations may also opt out of the requirement.

68. The customer identification obligations and record keeping obligations on all transactions require banking information to be available in Panama for all account holders. Compliance by banks in respect of these legal obligations is checked and supervised by the Superintendence of Banks of Panama (SBP). Through their inspections, it has been established that banks keep the required information on their clients and transactions.

69. Panamanian law provides for a number of enforcement provisions to support the legal and regulatory obligations which aim to ensure the availability of identity and ownership information in Panama. However, in many cases Panama has not been able to provide statistical or practical information regarding established administrative or supervisory mechanisms for the supervision of compliance with these requirements concerning the period under review and the application of any resulting sanctions. It appears that enforcement provisions are not, or in any case not adequately, applied in practice and therefore these provisions generally may not sufficiently ensure that ownership information with regard to the relevant entities is available. Nevertheless, Panama introduced changes concerning its AML framework in August 2015, including a number of enforcement provisions. Although a positive step, these measures and related supervision activities, particularly for AML, are very recent and therefore remain to be fully tested. Panama should therefore monitor implementation of the newly introduced rules and take measures to address any deficiencies identified.

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)*

Types of companies

70. The laws of Panama provide for the creation of the following types of companies:

- *Sociedad Anónima* (SA) – Joint-stock corporations composed of shareholders whose liability is limited to the value of their shares. Law No. 32 of 1927 and its amendments govern the establishment of SAs.
- *Sociedad de Responsabilidad Limitada* (SRL) – Limited liability companies composed of members (quota holders) whose liability is limited to their capital contribution. SRLs are governed by Law No. 4 of 2009.

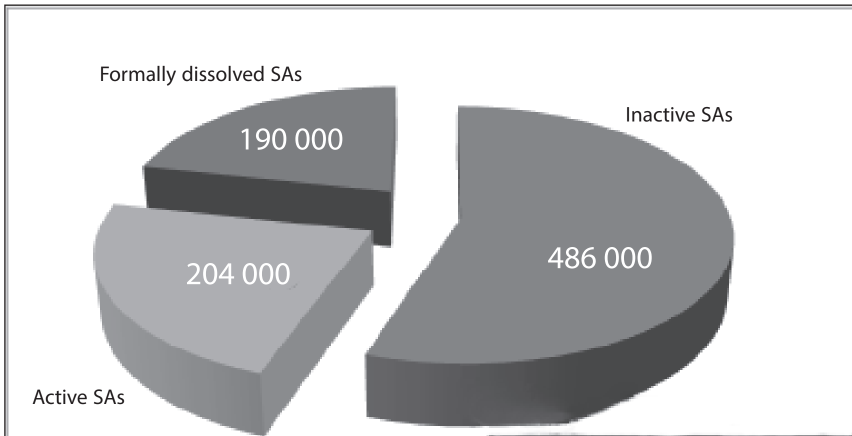
Both SAs and SRLs are required to have a resident agent as will be elaborated further below.

71. Pursuant to Law No. 5 of 2 July 1997, companies that are organised under a foreign law may opt to be redomiciled or continued in Panama by registering with the Public Registry and attaching the appropriate documentation. Non-resident companies may also maintain offices or agencies and conduct business in Panama.

Sociedad Anónima (SA)

72. SAs are the most commonly used Panamanian companies by both resident and foreign investors. Since Law No. 32 was enacted in 1927, approximately 880 213 SAs have been incorporated and registered in Panama, and out of these registered SAs, approximately 190 472 have been formally dissolved. As of July 2016, there are approximately 203 949 active SAs registered in Panama Consequently there is a substantially disproportionate number of inactive companies incorporated and registered in Panama, as reflected in the chart below. The implications of this are addressed later in this section.

SA's registered and incorporated in Panama



Company Registration

73. SAs are established by means of a public deed which is subject to registration in the Public Registry.[2] This identifies the name and domicile of each of the subscribers, the number of shares they agree to underwrite as well as the number and nominal value of the SAs shares. The names and address of the directors and other officials must appear in the deed together with the name and address of the resident agent. The transformation, dissolution, capital increase or reduction of an SA and changes in its articles of association must be executed by means of a public deed which is also subject to registration in the Mercantile Registry division within the Public Registry. The Mercantile Registry (sometimes also referred to as the Commercial Registry) only accepts documents that are protocolised in public deeds subscribed by lawyers**.** Accordingly, only lawyers are authorised to incorporate companies.

74. Legal entities including companies obtain legal personality only upon their registration with the Public Registry. Without registration the entities have no legal existence and cannot operate commercially or financially (e.g. to open a bank account or conclude contracts).

2. The Public Registry is an autonomous entity with legal personality, its own assets and internal autonomy, both administrative and financial (Law 3 of 1999 and Decree Law 3 of 1999).Its staff consists of 680 officers (451 in technical-operations and 229 in administrative functions). The Public Registry's website allows visitors to browse through their database after having been registered (registration is free). Access to the data is possible after providing the name of the company involved.

75. It is the responsibility of the applicant to ensure that an entity is duly registered in time – there is no additional overview or supervision by the Public Registry or any other government authority to identify companies which are under the obligation to register and have not done so. Nevertheless, Panamanian authorities feel confident that all newly established legal entities including companies are duly registered in a timely manner, and state that the company cannot operate before it has obtained the certification of its existence.

76. Any changes in the information provided to the Public Registry should be reported to the Public Registry. Changes in the capital of the company are only recorded in the share register which is not public (see also further below). The Register receives and files about 300 public deeds per day containing some type of amendment regarding SAs. The Public Registry should place a "marginal note" on the company's file where a company fails to comply with the requirement to notify it of any changes, indicating that the company has not met with all its obligations towards that authority.[3] Although this measure so far has not been applied in practice and there is no specific criminal or administrative penalty for failure to comply with the requirement to notify the public registry of any changes, the Panamanian authorities point out that legal entities have a vested interest in ensuring that entries are up to date, in particular because registration in the Public Registry has a legally constitutive effect. This means that third parties may rely on the information contained in the Register, and changes will therefore only be considered valid and have any effect before third parties after being properly registered. However, it can be noted that the majority of companies are inactive[4] and there is no contact with the Registry or the Resident Agent.

Company Share Registers

77. Information concerning the issuance of additional shares following incorporation or the transfer of shares issued on incorporation is not provided to the Public Registry. This information is maintained by the company. The company is obliged by Article 36 of Law No. 32 of 1927 to keep a stock register containing (except in the case of shares issued to bearer) the names of all the persons who are stockholders of the corporation showing their place of residence, the number of shares held by them respectively, the time when they became owners and the amount paid on the shares. There is no requirement to have information regarding the ultimate owners in the case of a chain of ownership or to keep the register in Panama if the articles of incorporation

3. A marginal note consists of a physical/paper note or electronic annotation that is added to the Company's file.
4. See paragraphs 103-111 below.

or by-laws permit it to be kept elsewhere. There are no specific sanctions provided for in Law No. 32 of 1927 if the register is not kept or is not kept up to date.

78. In order to address this shortcoming, Panama enacted Law No. 22 of 27 April of 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.

79. Panama reports that in practice, when looking for ownership information concerning SAs that are not operating within Panama, it would go to the Resident Agents to ask for it, since it would be difficult to contact or find the company involved.[5]

80. Although it is not necessary for the Resident Agent to have the company's share register, Panama would expect this information to be available with the Resident Agent based on the know-your-customer measures that the Resident Agent must apply pursuant to Law No. 2 of 2011 (see next section).

81. Panama's experience to date is that the information concerning ownership on SAs is "sometimes available and sometimes not", and "usually not in cases involving bearer shares". Both Panama and peers note that in practice ownership information on SAs could not be provided in a number of cases due to issues related to Law No. 2 of 2011.

82. Panama has stated that requests for this type of information from Resident Agents have been more successful recently since Law No. 23 of 27 April 2015 came into effect. This law introduced new know-your-client measures for anti-money laundering (AML) purposes, including a newly supervisory mechanism, applicable also to Resident Agents. Panama notes that their experience since then is that the information regarding share registers is provided by the resident agents in virtually all cases. In some cases a copy of the share register is provided, in other cases the resident agent would simply provide the names of the shareholders.

5. See Element B.1 regarding this practice to exclusively go to the resident agent and not to the company involved.

Resident agents

I. General

83. An SA must have a resident agent in Panama at all times which must be a lawyer admitted to practice in Panama or a law firm in Panama. The resident agent is empowered to file corporate documents with the Public Registry on behalf of the company. The resident agent also processes the payment of the corporation's annual franchise tax. But, the resident agent is not the legal representative of the company and is not the appropriate person for the service of documents on behalf of the company. This may mean that there is no person in Panama on whom documents can be served as there is no requirement for a corporation to have a registered office or a registered (as opposed to resident) agent in Panama or to have resident directors (see also element B.1 below) or any other form of physical presence there.

84. In practice therefore, the resident agent, together with the Public Registry, are the main sources of information regarding SAs. Currently around 2000 law firms and 8000 lawyers act as resident agents. Lawyers and other Designated Non-Financial Business Professions (DNFBP) were not subject to Panama's general AML/CFT regime until April 2015 and consequently did not have any formal AML/CFT obligations for most of the period under review that runs from 1 July 2012 to 30 June 2015. Nevertheless, pursuant to Law No. 2 of 1 February 2011, resident agents of all legal entities, including companies and private foundations, must perform certain know-your-client measures.

II. Ownership information on SAs to be held by the resident agent based on Law No. 2 of 2011

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

86. However, the 2014 Report noted that the definition of "client" provided in Law No. 2 of 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. The 2014 Peer Review Report further noted that another issue arising from Article 7 was that where the information was held abroad, it may not always be possible to obtain it to respond to a request.

87. In addition, Law No. 2 of 2011 provided a transition period of five years for resident agents to comply with the obligations under the law for existing companies and foundations. It also repealed Executive Decree No. 468 of 1994 that used to govern the obligations on resident agents, with the result that there appeared to be no obligation on resident agents to undertake due diligence during this transition period to ensure availability of information with the resident agents (unless they had already collected this information prior to the repeal of Executive Decree No. 468 of 1994). This situation materialised in practice during the period under review. One EOI partner noted in its peer input that ownership information regarding companies could not be provided in a number of cases as the resident agent has alleged that it was not bound by the KYC rules provisions of Law No. 2 of 2011 until the 5-year period had elapsed. Panama explained that in a number of these cases the Resident Agent only provided the information on the professional client or intermediary and not on the owner of the shares.

88. Law No. 2 of 2011 also limits the obligation for the resident agent to keep information when the client has not established contact with the resident agent for more than three years and has ceased its payments for the resident agent services during that same period.[6] In such a case, the resident agent is required to keep the information for only two more years from that date (therefore adding up to a period of five years; Article 10). Peer input also identified a case where this came up in practice. The peer noted that one of its requests was only partially responded to because of the fact that the company involved was inactive. In this case Panama contacted the resident agent and asked for the documents. However, the resident agent stated that the company was inactive and that it had disposed of all of the documents regarding the company after the five year period described above.

89. Regarding supervision and enforcement of the requirements under Law No. 2 of 2011, Panama states that the tax authorities (DGI) did not have the need to impose penalties because resident agents complied with the

6. This would basically mean that the company is also three years in arrears with the payment of its annual franchise duties, since the resident agent processes the payment of the companies' annual franchise duties. If a company misses three consecutive payments a fine of USD300 will be applied and a note will be made on the company's file in the Public Registry indicating that the company is in arrears.

legal provisions applicable at the time. This statement is based on situations where DGI contacted the resident agent in order to obtain information for an EOI request. Apart from these cases, all of which related to EOI requests, there were no established administrative or supervisory mechanisms for the supervision of compliance with the law and the application of any resulting sanctions during the review period. However, this issue started to be addressed after the review period with the establishment of the Administration for Supervision and Regulation of Non-Financial Subjects, described below.

III. Ownership information on SAs to be held by the resident agent for anti-money laundering (AML) purposes based on Law No. 23 of 2015

90. In order to address the deficiencies identified with regard Law No. 2 of 2011, Panama enacted Law No. 23 of 27 April 2015, effective as of 28 April 2015 (article 78), introducing new know-your-client measures for anti-money laundering (AML) purposes. According to the Panamanian authorities, these measures complement the ones established by Law No. 2 of 2011. An important aspect of Law No. 23 of 27 April 2015 is that it expands the scope of Panama's AML legislation to activities performed by the Designated Non-Financial Business Professions and makes these subject to Panama's general AML/CFT law and supervision. Law No. 23 of 2015 establishes additional due diligence requirements in respect of clients of reporting entities, including financial reporting entities and non-financial reporting entities (such as casinos, pawnbrokers, money remittance companies, companies established in the Colón free zone) as well as lawyers, certified public accountants, external auditors and notaries in the exercise of activities subject to supervision. The activities include those of Resident Agents of legal entities incorporated or existing under the Laws of Panama (article 24).

91. Under Law No. 23 of 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 of 2015, article 4(6)).

92. "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 of 2015, article 4(4)). On 13 August 2015, Executive Decree No. 363

was enacted, interpreting and describing how Law No. 23 of 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.

93. Law No. 23 of 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 of 2015, article 27).

94. 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 of 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)).

95. The Panamanian authorities clarified that, while "final beneficiary" generally refers to natural persons as defined under article 4(4) of Law No. 23 of 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.

96. Financial reporting entities such as banks, trust companies and financial companies 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 of 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 of 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).

97. 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 of 2015, article 36). Law No. 23 of 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.

98. 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.

99. Failure to carry out customer due diligence or to keep the documentation for at least five years can lead to a penalty of from five thousand balboas (USD 5 000) to one million balboas (USD 1 000 000), according to the seriousness or frequency of the fault (article 60 of the Law No. 23 of 2015).

100. The Administration for Supervision and Regulation of Non-Financial Subjects is responsible for supervision of the compliance with all the requirements stemming from the AML regarding non-financial reporting entities as well as lawyers, certified public accountants, external auditors and notaries in the exercise of activities subject to supervision. As already noted this includes the activities of Resident Agents of legal entities incorporated or existing under the Laws of Panama.

101. The establishment and the organisation of this Supervisory Administration is based on Law No. 23 of 27 April 2015 (article 13) in combination with Executive Decree No. 361 of 12 August 2015, which organises the Administration for Supervision and Regulation of Non-Financial Subjects, within the structure of the Ministry of Economy and Finance (MEF). The creation of this supervisory authority was one of the requirements for Panama to be excluded from the so called gray list of the Financial Action Task Force (FATF). The work carried out by this new regulator is specifically focused on a group of financial subjects and activities that had not been previously supervised in the field of AML.[7]

102. The supervisory authority started its operations in August 2015 beginning with training awareness and information campaigns. Panama estimates that there are around 30 000 non-financial reporting entities as well as around 2000 law firms and 8000 lawyers acting as resident agents. The number of supervision staff is currently around 30 persons, and will be increased in the course of 2016 to 55 staff members in total. The supervision model involves a combination of *in situ* (on-site) and *extra situ* (off-site) inspections.

103. As noted, Law No. 23 of 27 April 2015 also prescribes that specific, proportionate and dissuasive sanctions will be established by the relevant supervisory bodies (article 61).The sanctioning process of Administration for Supervision and Regulation of Non-Financial Subjects was established by Resolution No. JD-016-015 as of 29 December 2015[8] (published 28 January 2016).

104. The supervisory authority is currently conducting its first supervision exercises (on-site visits) in respect of 10 law firms (which are resident agents for the majority of the registered legal entities). The purpose is to verify whether the firms are compliant with the provisions of AML/CFT Self-Assessment "Action Plans" that they submitted to the supervisory authority. Supervision includes checking whether resident agents comply with the due diligence requirements in respect of their clients (CDD), which includes the identification and verification of the final beneficiary of legal entities. In this respect it is verified that documentation and information, is kept updated in accordance with the customer's risk level. This includes documentation and information concerning the company's minutes, IDs, passports and address verification. Around 20-25 files would be examined in respect of every law

7. www.mef.gob.pa/es/noticias/Documents/PUBLISHED%20DECREE%20THAT%20ORGANIZES%20THE%20ADMINISTRATION%20FOR%20SUPERVISION.pdf.
8. Published on 28 January 2016 in the Official Gazette No. 27958 (http://uncap.org.pa/images/docs/Decreto-Varios/GacetaNo_27958_AUPSA.pdf).

firm. Panamanian officials explain that the information is generally kept with only minor shortcomings. They further explained that they are working on improving their capacity to conduct onsite (*in situ*) inspections, to specifically take into account financial information, information about clients as well as cash reports.

Active and inactive SAs

105. All companies and foundations are required to pay a franchise duty of USD300 annually either before 1 July or before 1 January, depending on when they were created during the year. Late payments are subject to a USD50 surcharge per year or for any portion of the year. The Tax Code prescribes that these payments will be made through the legal representative, the resident agent or a resident company (318-A, para 1). In practice the payments are made by the resident agent.

106. A company is considered to be active when it is up to date with the payment of its annual franchise duties or if it is in arrears of no more than one payment of its annual franchise duty. Entities that are in arrears with their payment of annual franchise duties for more than one year are deemed to be inactive. If a company misses three consecutive payments a fine of USD 300 will be applied and a note will be made on the company’s file in the Public Registry indicating that the company is in arrears.

107. While a Panamanian legal entity is in arrears with its payments of annual franchise duties, it is prohibited from making any filings (i.e. registration of any act, document or agreement) at the Panama Public Registry or receiving any certificate related to the company. Relatively few companies in arrears bring affairs up to date with the Public Registry. Of the 300 public deeds received by the Public Registry on a daily basis, around 20 to 30 are related to SAs that are deemed to be inactive, usually only for one or two years. Panama notes that it is very rare for companies that are in arrears for more than four years to get reactivated.

108. The process by which companies are deemed inactive usually begins with the owners cutting off contact with the resident agent and discontinuing payments to the agent. As a result, the agent stops making the payments for franchise duties, on behalf of the company, which eventually causes the company to be considered as “inactive”.

109. Although the number of SAs that are dissolved increased over the last 10 years from around 4700 SAs in 2005 to around 14 200 SAs in 2015[9], in practice only a small fraction of all inactive companies actually get dissolved.

9. For perspective, these numbers represent around 10% of all newly incorporated SAs in 2005 versus 44% of all newly incorporated SAs in 2015.

As dissolution of a company triggers dissolution charges, it is common for the owners of companies to cut off contact with the resident agent and discontinue paying the annual franchise duties, rather than dissolving the company.[10]

110. As a result there has been a steady build up in the number of SAs that are still registered in Panama, but which may have no activities or physical presence there and where there is no contact between the resident agent and the Public Registry on one hand and the company or its owners on the other. This is a matter of concern, since these SAs may continue to carry on activity outside Panama and the resident agent may have no up to date information on their owners, or any information at all.[11]

111. Currently, there are around 486 000 inactive companies in Panama where there may no longer be any contact between the resident agent and the company or its owners. For this reason the availability of up-to date ownership information including information on registered owners or the owners of bearer shares, cannot be assured as no other active monitoring or enforcement measures are in place, e.g. in relation to the requirement on companies to keep share registers.

112. Since a fiscal reform carried out in 2005, SAs that have failed to pay their annual franchise duties for 10 consecutive years since that date are deemed to be dissolved. Around 200 000 companies are now threatened with dissolution under this provision. However, because of unresolved legal issues the legislation had not been given effect to at the time of the on-site visit and no dissolutions had occurred. Panama has indicated that it has now resolved these legal issues and that the DGI has published the names of defaulters and sent the information to the Public Registry although no statistics have been

10. When a company that has not carried out business within the territory of the Republic of Panama is to be dissolved it is required to file at the Registry the Shareholders Resolution approving the dissolution or a Certificate of Dissolution executed by the Directors of the company. Once the filing at the Registry has been completed a Notice of Dissolution is published at a local newspaper of daily circulation. The publication completes the dissolution process and the company is considered legally dissolved. The whole dissolution process takes approximately 15 working days. There is no need to prepare audit/financial statements for the purposes of liquidation. The company must be in good standing with payment of the current year license fee. Other fees include the Resident Agents fee, Government Fee of USD 65 and a Notary Fee of USD200.
11. Moreover pursuant to Law No. 2 of 2011 once a company is inactive for more than three years the resident agent is only required to preserve ownership information for a further two years, i.e. after which it can dispose of all its documentation (Article 10).

provided on this. The Public Registry is looking at ways to (automatically) place a preventive marginal note of dissolution in each of the relevant company files. Panama expects this to be finalised shortly, although it will still not ensure availability of relevant information in respect of all legal entities that are registered in Panama.

113. Panama should modify its law and practices as appropriate and significantly reduce the substantially disproportionate number of inactive companies in order to ensure availability of relevant information in respect of all legal entities that are registered in Panama.

Sociedad de Responsabilidad Limitada (SRL)

114. The formation of an SRL and any amendments to its articles of association must also be executed by means of a public deed which is subject to registration in the Public Registry (Article 5 of Law No. 4 of 2009). Once registered in the Public Registry the SRL acquires its own legal personality. The capital of the company can be in any currency and is divided into quotas. The names and address of the quota holders must appear in the public deed and any changes must be recorded in the Public Registry (Articles No. 5 and 26 of Law No. 4 of 2009). A minimum of two quota holders is required who may be company formation agents. Each member is entitled to a certificate which evidences the authorised capital, the name of the member and the value of the member's participation or quota.

115. An SRL is not permitted to issue bearer shares and must have a resident agent. Furthermore, any transfers of a member's interest must be amended in the articles of incorporation and notarised. As any transfers must be recorded in the Public Registry, information on the legal owners of SRLs is publicly available. Although there is no specific criminal or administrative penalty for failure to comply with the requirement to notify the public registry of changes in ownership, the Panamanian authorities have indicated that failure to do so would result in the loss of the SRL's legal capacity.

116. Panamanian authorities report that as of February 2016 there were 2 704 SRLs registered in Panama. In practice no requests were received or difficulties were reported regarding the availability of ownership information regarding SRLs.

Foreign Companies

117. Under the Global Forum's ToR (A.1.1), jurisdictions are required to have ownership information for all companies and corporate bodies formed under their laws. The ToR also applies these requirements to companies that operate in a jurisdiction without necessarily being incorporated there. In such

cases the ToR requires a jurisdiction to have ownership information available for a foreign company operating in that jurisdiction where it has sufficient nexus (for example by reason of having its place of effective management there) with that jurisdiction.

118. Chapter X of Law No. 32 of 1927 deals with foreign companies carrying on business in Panama. A non-resident company may maintain offices or agencies and conduct business in Panama (other than retail trade), provided that it files the following documents with the Mercantile Registry:

- a Panamanian deed containing the articles of incorporation;
- a copy of the last balance sheet and a statement of the amount of capital engaged or to be engaged in business in Panama; and
- a certificate issued by a Panamanian consul or by a consul of a friendly nation, stating that the company is organised according to the laws of its place of incorporation.

119. The registration requirements for foreign companies do not require that the company provide information concerning the identity of the company's shareholders or members However, Panamanian law requires that every foreign company has a resident agent. The resident agent would now be subject to AML requirements.

120. Full ownership information on foreign companies and arrangements with sufficient nexus in Panama are not required to be maintained and therefore may not be available in Panama in all cases. However, Panama did not receive any requests regarding such companies during the period under review, and consequently no difficulties or issues came up in this respect in practice.

Regulated Activities

121. Companies or other entities carrying on regulated services activities (banking, insurance and trust companies) must provide details of their legal and beneficial owners to the relevant regulatory authorities (Superintendence of Banks and Superintendence of Insurance and Reinsurance) in order to obtain a license to carry on such activities (Law No. 9 of 1998, Law No. 59 of 1996 and Executive Decree No. 16 of 1984 in Article 13). Changes in ownership must also be reported while banks and trust companies are prohibited from issuing bearer shares. Pursuant to Article 15 of Executive Decree No. 16 of 1984, the shares issued by trust companies must be in a nominative form. Licensed banks are similarly prohibited from issuing bearer shares by Article 5 of the Agreement No. 3-2001 of the Superintendence of Banks. Moreover, Article 2 of Agreement No. 1-2004 of the Superintendence of Banks establishes that the transfer of shares of banks and of economic groups that banks form a part of, as well as all amendments to the participation of

the shareholders in the capital of these banks requires previous authorisation from the Superintendence of Banks.

122. Pursuant to securities legislation (Decree Law No. 1 of 1999) only persons that have obtained a license from the Superintendence of the Securities Market (SMV) are entitled to exercise the business of broker-dealer or investment advisor in Panama. Shares of companies carrying on a broker-dealer business must be issued in registered form (Article 29) and the beneficial owners of shares that control more than 25% of the voting rights must be identified to the SMV. Prior permission of the SMV is required for any transfer of shares affecting the control of a broker-dealer business.

123. Furthermore, any subsequent transfer of shares that may change the beneficial ownership structure ("change of control") requires prior authorisation of the National Securities Commission; otherwise the National Securities Commission may revoke or suspend the intermediary's license, or fine the intermediary. The National Securities Commission is responsible for ensuring the proper compliance with these requirements. During the period of 2011-16, two (2) intermediaries have been sanctioned by the SMV for executing a change of control without the National Securities Commission prior authorisation.

124. Where foreign companies carry out regulated activities they must provide details of ownership on the same basis as domestic companies.

125. In practice no issues or difficulties were reported regarding the availability of identity or ownership information regarding the Regulated Activities referred to above.

Anti-money Laundering Law

126. The know-your-client rules introduced by Law No. 23 of 27 April 2015 are explained in detail above and are explicitly applicable to resident agents of all legal entities, including companies and private interest foundations.

Tax Law

127. Pursuant to Resolution No. 201-4306 dated 28 December 2001, all SAs registered and incorporated in Panama, whether they operate inside or outside the country, require to be registered in the Official Register of Taxpayers in order to ensure that the following years annual license fees are correctly applied to the corporation. In practice a company incorporated in Panama is automatically registered with the tax authority's web service.[12]

12. Subsequently, a tax payer ID number is assigned (RUC). The RUC is only activated by the DGI after the company files a form with additional information.

This annual license duty is payable irrespective of the fact that the entity's income may not be taxable because it is not in receipt of Panamanian source income. The registration requirement does not require that the company provides information concerning the identity of the company's shareholders or members. The following information must be provided:

- Identification of the Taxpayer (company's name and commercial name);
- Address (street, avenue, road, name of building, postal address, telephone number, jurisdiction, district and province);
- Economic Activities (principal and secondary);
- Type of juridical entity (corporation, limited liability company, etc.);
- Identification of the Legal Representative (ID number, complete name).

128. The requirement to register with the tax authorities for the purposes of the annual license applies also to private interest foundations and has been extended to SRLs by virtue of Law No. 8 of 2010.

129. As the Panamanian tax system is based on the principle of territoriality Panamanian companies which do not earn income from a source in Panama are not subject to the reporting requirements in the Fiscal Code, irrespective of the type of company involved. Where a company operates within the country and generates income from a source in Panama it is required to file a tax return but not to report information on its ownership at the time the return is filed. Information on ownership of the company can be requested by the Directorate General of Revenue (DGI) to establish the veracity of the tax return and other declarations of the company. Companies that pay dividends are also required to report details of the shareholders in receipt of such payments. The DGI is entitled to ask for shareholder information in cases where a foreign company is being audited. However, there is no independent requirement in the Fiscal Code that a company must maintain particular types of ownership information.

130. Colon Free Zone[13] and other free zone companies are exempt from tax on profits from sales to customers outside Panama or within the free

13. The Colon Free Zone is located next to the city of Colon on the Atlantic entrance to the Panama Canal. It consists of a closed and segregated Customs area for carrying out commercial and wholesale operations and is subject to a special tax system. Traditionally, the operations carried out in the zone consisted of the importation of goods from abroad duty free, assembly and repackaging followed by their export sale. The zone processes more than USD 18 billion in imports and re-exports annually and employs around 28 000 people. Currently there are around 2 500 enterprises operating in the zone.

zones. If goods are sold into the domestic market the profits are subject to Panamanian tax in the normal way. Companies operating in free zones must keep separate accounts for local sales and foreign sales and must file estimated tax returns for income derived from local domestic activities. The tax authorities' powers to compel free zone companies to provide information are the same as those for other taxpayers.

Nominees

131. The concept of nominees does not exist in Panamanian law and therefore a Panamanian resident person may not act as a nominee shareholder on behalf of another person. A person purporting to act as nominee would be considered as the shareholder and would be entitled to all the rights in the shares. What does exist is the concept of *mandatario,* which is quite different from the concept of nominee owners. Under the Panamanian law of mandates, the mandate may be expressed (by a written instrument) or may be oral or tacit. By virtue of the mandate the person who receives the mandate (*mandatario*) agrees to provide a service for the person giving the mandate. The mandate may be general or special. Under a general mandate, the person receiving the mandate can act in respect of all the businesses of the person giving the mandate and in the case of special mandates, he can act only for specified purposes.

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

133. In practice no issues or difficulties were reported regarding the availability of ownership information regarding nominees.

Conclusion on the availability of ownership and identity information regarding companies (ToR A.1.1)

134. There are two forms of companies in Panama: Sociedad Anónima (SAs) and Sociedad de Responsabilidad Limitada (SRLs). Both SAs and SRLs are required to have a resident agent at all times. The names and addresses of the owners of an SRL must be published in the Public Registry. Ownership information about SAs is kept by the company itself and by its resident agent. However, for a variety of reasons the availability of identity and ownership information held by companies themselves or resident agents, in the case of SAs operating exclusively outside Panama during the period under review, was not ensured.

- First, there were no specific sanctions provided for if share registers were not kept or were not kept up to date for most of the review period and Panama's authorities do not have any direct contact with many companies concerned, i.e. those with operations exclusively outside Panama. In order to address this shortcoming, Panama amended the Commercial Code in April 2015 to impose a new obligation on all existing and new legal entities to keep updated share records for nominal shares and records of shareholders' minutes, subject to financial and administrative penalties for non-compliance.
- Second the "know your client" measures applicable to resident agents for much of this period were deficient in a number of areas and provided a transition period of five years, from 2011, for resident agents to comply with their obligations under the law for existing companies. Further, there were no established administrative or supervisory mechanisms during the period under review for the supervision of compliance with these obligations and the application of any resulting sanctions.
- Third, around 70% of the companies currently on the Panamanian corporate register, 486 000 SAs, are deemed to be inactive. In these cases, the resident agent may have lost contact with the company and its owners. For this reason the availability of up-to date ownership information on the owners of registered or bearer shares in inactive companies could not be ensured then or now. Panama should modify its law and practices as appropriate and significantly reduce the substantially disproportionate number of inactive companies in order to ensure availability of relevant information in respect of all legal entities that are registered in Panama.

135. Panama introduced enhanced AML related know-your-client rules in April 2015, pursuant to which resident agents are required to hold detailed records of their clients. With respect to companies, and other legal persons

resident agents are required to identify and verify the identity of final beneficiaries holding 25% or more of the shares of the legal entity. Compliance by resident agents in respect of these legal obligations is checked and supervised by the Administration for Supervision and Regulation of Non-Financial Subjects. Although a significant and positive step, it would not appear to solve the problem of inactive companies. Further, these measures and supervision activities are very recent. Supervisory actions have just begun and therefore remain to be fully implemented and tested. Panama should therefore monitor implementation of the newly introduced rules, including the obligation to keep updated share records for nominal shares, and take measures to address any identified deficiencies. The concept of nominees is not recognised under Panamanian law.

Bearer shares *(ToR A.1.2)*

Introduction

136. Law No. 32 of 1927 allows for shares to be issued in registered or bearer form. According to the Panamanian authorities, most articles of incorporation allowed[14] 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. 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). Bearer shares may only be issued if fully paid and non-assessable (Article 28). The transfer of bearer shares requires only the delivery of the certificate (Article 30). Once issued a holder of a certificate of shares issued to bearer can exchange the certificate for a certificate of the same number of shares issued in his name and the holder of a certificate of shares issued in the name of the owner can exchange it for a certificate of a like number of shares issued to the bearer (Article 31).

137. Companies with income from Panamanian sources are obliged to withhold tax at 10% from dividend distributions in respect of shares in nominative form.[15] The rate of withholding is 20% where the shares are issued to bearer. However, as no return is required to be made by the shareholder in respect of this dividend income, the anonymity of the shareholder is preserved.

14. See section “Bearer share certificates issued prior to 4 May 2015” below.
15. See paragraph 19 supra.

Custodial regime to immobilise bearer share certificates.

138. Panama enacted Law No. 47 of 6 August 2013, creating a custodial regime to immobilise bearer share certificates. Under Law No. 47 of 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. Panama subsequently enacted Law No. 18 of 23 April 2015, which amended certain provisions of Law No. 47 of 2013 to improve the custodial regime applicable to bearer shares issued by Panamanian companies. More importantly, it substantially shortened the transitional period for the deposit of bearer shares certificates issued prior to the date of entry into force of Law No. 47 of 2013. Following the amendment to article 28 introduced by Law No. 18 of 2015, the new date of entry into force of Law No. 47 of 2013 is 4 May 2015, instead of two years computed from its promulgation (i.e. 6 August 2015).

Bearer share certificates issued prior to 4 May 2015

139. 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. Law No. 18 of 2015 substantially reduced the transitional period provided by article 25 of Law No. 47 of 2013, 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.

140. Article 21 of Law No. 47 of 2013 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.

141. Nevertheless, Article 21 does not contain explicit language to this effect. Also, Law No. 47 of 2013 does not impose any sanction on the issuing company for failing to treat the rights in respect of the shares (including voting, receiving dividends and other proceeding and transferring ownership) as definitively suspended in these circumstances.

142. In practice, it is not clear whether rights in shares have been definitively suspended, in all cases, since the coming into force of the new legislation.

143. To date there has been only limited (external) oversight and enforcement regarding the implementation of the obligations, requiring bearer shares to be deposited in custody or to be converted. Supervision primarily takes place in the context of recently introduced AML obligations that require identity information on the final beneficiaries of legal entities to be available with the resident agent. Panama notes that in case the client is an SA, the supervisory bodies verify that there are copies of the share certificates; and if the corporation has issued bearer shares, that the certificates have been duly immobilised. Panama stated at the onsite visit that there are no known cases where bearer shares have not been deposited or converted, or where this process is still ongoing.

144. However, statistical information provided by Panama indicates that in total 1606 companies have adopted the custodial regime for bearer shares, which is less than 1% of the number of active companies and seems very low in the light of information which has recently become available information on the number of bearer share companies that have been formed in the past in Panama by just one law firm.[16] Unfortunately, there are no statistics on the total number of companies that have issued bearer shares.

145. Further, as discussed above under element A.1.1 around 486 000 SAs are deemed to be inactive. In these cases there may be no contact between the shareholders or the company and resident agent and the authorities have limited or no possibilities to even be aware that bearer shares have been issued and, if so, whether they have been definitively suspended in the event that the company has not adopted the custodial regime. Finally, there were a number of requests that were made during the review period and that were answered after the introduction the custodial regime where the relevant information

16. Source: https://panamapapers.icij.org/graphs/ as viewed on 13 August 2016. This website contains information compiled by International Consortium of Investigative Journalists ICIJ following the recent leaks of information from a Panamanian law firm. The figures provided on the web extension include statistics regarding this law firm. These figures indicate that the one law firm formed 8170 bearer share companies in the past five years in Panama (3307 companies in the year 2010; 2411 in 2011; 1421 in 2012; 861 in 2014 and 170 in 2015).

could not be obtained from the resident agent or custodian (see section "conclusion and practice" below).

146. In summary, there is some uncertainty as to whether all companies that have issued bearer shares have adopted the custodial regime or failing that that all bearer shares that have not been deposited with a custodian as of 31 December 2015 are now definitely cancelled and cannot be resurrected. Given the fact that almost half a million companies are considered to be inactive, the absence of penalties for failure to comply and lack of clarity as to whether bearer shares can be resurrected at a later stage it seems unlikely that all owners of the bearer shares have in fact deposited the bearer shares in custody or converted them.

Bearer shares certificates issued after 4 May 2015

147. 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. 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. The issuing corporation, in its turn, is required to provide the bearer share certificates together with the sworn statement and the other information to the authorised custodian appointed by the owner of the bearer shares certificates (article 9). The bearer share certificates therefore are not in the hands of the owner but of the issuing company, and it is the company that is required to provide the shares to the authorised custodian. 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. However, Law No. 47 of 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.

148. As in the case of bearer share certificates issued prior to 4 May 2015, it appears that there's only limited supervision or enforcement regarding the implementation of these obligations. Similarly, it appears that the authorities only have limited possibilities to become aware of the fact that shares have not been deposited with a custodian, if the company has not been properly informed by the shareholder or where the issuing company possibly failed to annul the bearer share certificates in these circumstances. Nevertheless, it can be noted that under this procedure the issuing company would still hold

the share certificates. Although it's not clear what the precise status of these shares would be in cases where the shares would not be annulled, it seems likely that it provides a sufficient incentive for both the company and the owners to deposit the bearer share certificates with an authorised custodian.

Authorised custodians under Law No. 47 of 2013

149. Law No. 47 of 2013 provides that along with the bearer shares, the authorised custodian has to be provided with a sworn statement (Article 8). The sworn statement must contain *(i)* complete name, *(ii)* nationality or country of incorporation, current identification number or current passport number or general incorporation information, *(iii)* physical address and telephone number of the owners of the bearer shares. Article 8 also requires that the complete name, physical address, telephone number and email address or fax number of the resident agent of the issuing corporation be provided to the authorised custodian, by means of a sworn statement, when depositing the bearer share certificates in custody. This procedure has to be followed regardless of whether the bearer shares have been issued before or after the entry into force of the law.

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

151. There are currently 256 registered custodians of bearer shares registered with the Supreme Court of Justice. In addition, two trust companies are registered with the Superintendence of Banks of Panama to act as domestic authorised custodians of bearer shares. Currently, the Superintendence of Stock Markets does not have any custodians of bearer shares registered.

152. Law No. 47 of 2013 also allows foreign authorised custodians to have custody of the bearer share certificates. Article 7 states that banks, trust companies and financial intermediaries holding a license to carry out their activities established in member jurisdictions of the FATF or its associate members which are registered with the Superintendence of Banks of Panama may act as foreign authorised custodians. These persons have to provide information (to the Superintendence of Banks of Panama) that

includes *(i)* general incorporation number, name, physical address, contact information *(ii)* letter issued by their supervising entity that they are subject to its supervision along with all details of the supervising entity *(iii)* proof of appointment of a notification agent with contact details of the notification agent *(iv)* sworn statement guaranteeing that they practice KYC measures not inferior to those required by Panama's Law No. 2 of 2011 and that they will provide the resident agent of the issuing corporation the complete name, nationality or country of incorporation, current identification number or current passport number or general incorporation number, physical address and contact details of the owner of the bearer shares whose certificates will be held in custody. The foreign custodian must provide this information to the resident agent within 10 days of being appointed as the custodian (numeral 4 of Article 11 and Article 17 of Law No. 47 of 2013). The custodian will be deemed "appointed" once the shares have been deposited together with the sworn statement referred to in Article 8 of Law No. 47 of 2013.

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

154. Foreign authorised custodians must also provide the resident agent of the issuing corporation, a notification of his appointment as custodian and details of the owner of the bearer shares, within 10 days of being appointed as custodian. Banks, trust companies and financial intermediaries that, together with the information and documents referred to in article 7 (see above), post, by means of a compliance bond, the amount of USD 25 000 in favour of the National Treasury, are exempt from compliance with the obligation to provide the resident agent of the issuing corporation, with identification information on the owners of the bearer shares held in custody within ten days of their notification as authorised custodians. Instead, the foreign authorised custodians that opt to post this bond, shall provide the resident agent of the issuing corporation, when requested by the competent authority, the name, nationality or country of incorporation, current identification number or current passport number or general incorporation information, physical address, telephone number and email address or fax number of the owners of the bearer share certificates held in custody. Under Article 7 of Law No. 47 of 2013, the foreign custodian must give an undertaking that it will provide this information to the resident agent following a request from the competent authority. Non-compliance results in the execution of the bond referred to above. The foreign custodian could also be suspended for three years pursuant to

Article 22 of Law No. 47 of 2013 or permanently suspended in the event that the compliance bond is executed.

155. As of March 2016 there are no foreign authorised custodians and therefore there are no custodians that opted to post a bond rather than provide information on the owners of the shares to the resident agent.

156. Law No. 47 of 2013 prescribes penalties for authorised custodians who fail to comply with their obligations. This is further discussed in section A.1.6.

AML framework in respect of bearer shares

157. As discussed in section A.1.1 above, Panama enacted Law No. 23 of 2015 which strengthened 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.

158. Articles 28(6) and 36 of Law No. 23 of 2015 specifically refer 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 of 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.

159. 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 of 2013.

Conclusion and practice concerning availability of ownership information in respect of bearer shares

160. The know-your-client measures introduced by Law No. 23 of 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 of 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.[17]

161. Further under Law No. 47 of 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, the Second Supplementary Phase 1 Report noted that Panama has taken measures to ensure that identity information on the owners of bearer shares is available as quickly as possible.

162. Although the changes to the AML and custodial regime are significant, it should be noted that the custodial regime was introduced at the very end of the review period that runs from 1 July 2012 to 30 June 2015 and introduction of the enhanced AML framework took place after the period under review. In other words, these changes, which are intended to ensure the availability of ownership information regarding bearer shares, will typically affect requests for information that were either made at the very end of the review period or that were still unanswered (pending) at that point of time.

163. In practice Panama has not been able to provide information in a number of such cases. One major EOI partner of Panama noted that it received responses to 10 of its requests from Panama in March 2016 stating that Panama was not able to provide the requested ownership information *"as the capital is composed by bearer shares"*. In six of these cases ownership

17. It is noted, however, that the Terms of Reference applicable to this report do not require beneficial ownership information to be available with respect to bearer shares holders.

information could only be provided at the second attempt in June 2016 and only at the peer's insistence that Panama provide this information following its initial failure to provide it in any of the 10 cases involving bearer shares.[18]

164. These cases demonstrate that the custodian regime introduced by Law No. 47 of 2013, and in particular the cancellation of bearer shares issued before 4 May 2015 and not deposited with the authorised custodian on or before 31 December 2015, may not be wholly effective or not yet wholly effective in ensuring of availability of ownership information in respect of bearer shares. Given the very small number of companies that have availed of the custodial regime and the absence of reliable statistical data, for example on the number of companies that have issued bearer shares, it seems likely that there will be some ongoing legacy issues relating to bearer shares.

165. Panama should therefore modify its law and/or practice as appropriate to ensure that information regarding the owners of bearer shares is available in all cases.

Partnerships *(ToR A.1.3)*

166. The statutory provisions relating to the formation and governance of partnerships under Panama's laws are contained in Chapter II of Title VIII of the Commercial Code. The following types of partnerships are provided for:

- *Sociedad colectiva* (general partnership)
- *Sociedad en comandita simple* (limited partnership)
- *Sociedad en comandita por acciones* (partnership limited by shares)

167. The procedures for establishing a partnership are broadly the same irrespective of the type of partnership involved. All partnerships must be registered in the Mercantile registry, which is a section of the Public Registry. The Articles of Incorporation must contain the following information (Article 293 of the Commercial Code):

- The name and domicile of each of the partners;
- The name of the partnership;
- The capital of the partnership, specifying the amount subscribed and paid in by each partners;
- Details of how the partnership will be managed;
- Details of voting rights;

18. Around the same time a second peer also received the requested ownership iinformation regarding a bearer share company.

168. The identity of the partners in a partnership (legal owners) including ongoing changes is a matter of public record, accordingly. There is no requirement to disclose the ultimate owners of partnerships where a partner is a company. There is no requirement either for a partnership to have a resident agent.

169. Newly established legal entities including partnerships which are required to register obtain legal personality only upon their registration with the Public Registry. Without registration they don't exist and cannot commercially or financially operate (e.g. to open a bank account or conclude contracts).

170. It is the primary responsibility of the applicant to ensure that it is duly registered in time – there is no additional overview or supervision by the Public Registry or other government authority to identify partnerships which are under the obligation to register and, if necessary, to compel their registration. Nevertheless, Panamanian authorities feel confident that all newly established legal entities including partnerships are duly registered in a timely manner, and state that a partnership cannot operate before it has obtained the certification of its existence (extract of the partnerships) that it receives upon registration.

171. Any changes in the information provided to the Public Registry must be reported to the Public Registry. The name and domicile of each of the partners of the partnerships are included in the articles of incorporation. Any change regarding the partners involves an amendment of the articles of incorporation. Any modifications and amendments to the original deed must be executed by a public notary in the form of a notarised deed, and must also be registered.

172. The Register receives and files about 10 public deeds per day containing some type of amendment to information regarding partnerships. Although there is no specific criminal or administrative penalty for failure to comply with the requirement to notify the public registry of any changes, Panamanian authorities are of the view that it is rare that anyone who is obliged to register and update the information does not comply with this obligation. They point out that legal entities have a vested interest that entries are up to date, in particular because registration in the Public Registry has a legally constitutive effect. This means that third parties may rely on the information contained in the Register, and changes will therefore only be considered valid and have any effect before third parties after being properly registered.

173. In addition to the partnerships referred to above, three other types of partnership arrangements are possible but these are not widely used for international business. These are:

- *Asociación accidental o cuentas en participación* (informal partnership);

- *Agrupación de Interés Económico* (Economic Interest Grouping); and
- *Sociedad Civil* (Professional partnership)

174. The informal partnership is a written agreement whereby two or more individuals or legal entities (*asociados*) take an interest in one or more specified temporary ventures. The agreement is not subject to registration and the informal partnership does not have a separate business name or legal personality on its own. The Panamanian authorities have indicated that informal partnership and Economic Interest Grouping must make disclosures of ownership in their formation documents in order to ensure enforceability between its members.

Foreign Partnerships

175. There is no specific regulation regarding foreign partnerships. Panama explains that foreign partnerships cannot operate in and from Panama without having to register at the Commercial Registry. Further, if a partnership operates in Panama and derives Panamanian Income, it is obliged to register at the tax authorities for purposes of income tax and other tax obligations. In addition it is obliged to register with the Ministry of Commerce and Industry for purposes of a Commercial License, among others.

Tax Law

176. As Panama operates a territorial tax system a partnership that does not earn income from a source in Panama is not subject to the reporting requirements of the Fiscal Code, irrespective of the type of partnership involved. Where a partnership operates within the country and generates income from a source in Panama it is required to file a tax return but not to report information on its ownership at the time the return is filed. Information on the identity of partners including the identity of partners in foreign partnerships can be requested by the tax authority when an audit is carried out to establish the veracity of the tax return and other declarations of the partnership. However, there is no independent requirement in the Fiscal Code that a partnership must maintain particular types of ownership information.

177. In practice no issues or difficulties were reported regarding the availability of ownership information regarding partnerships.

Trusts *(ToR A.1.4)*

178. The statutory provisions relating to the creation and governance of trusts in Panama are contained in Law No. 1 of 5 January 1984 (Trusts Law).

179. Article 1 of the Trusts Law defines a trust as a juridical act by which a person named the "Settlor" transfers property to a person called the "Trustee" or "Fiduciary" for its administration or disposition in favour of a "Beneficiary" that may also be the "Settlor". Pursuant to Article 4 of the Trusts Law the intention to set up a trust must be expressly stated in writing. Consequently, oral or implied trusts are not provided for under Panama's laws.

180. Article 9 of the Trusts Act specifies the terms that the Trust Deed must contain:

- The complete and clear designation of the Settlor, the Trustee and the Beneficiary. When future Beneficiaries or different classes of Beneficiaries are contemplated, sufficient circumstances shall be expressed for their identification.
- Sufficient designation of substitute Trustees or Beneficiaries, should there be any such.
- The description of the assets or patrimony or share of same over which the Trust is constituted.
- The express declaration of the will to constitute a Trust.
- The faculties and obligations of the Trustee.
- The prohibitions and limitations imposed on the Trustee in the exercise of the Trust.
- The rules of accumulation, distributions or disposition of the assets, revenues and profits of the assets of the Trust.
- The place in which the Trust is constituted and the date of Constitution.
- The designation of a Resident Agent in the Republic of Panama who shall be a practising Attorney or law firm, who shall authenticate the Trust Deed.
- The domicile of the Trust in the Republic of Panama.
- The express declaration that the Trust is constituted in accordance with the laws of the Republic of Panama.
- The Trust Deed may also contain such clauses as the Settlor or the Trustee might wish to include and which are not contrary to the morality, the laws or Public order.

181. When the Trust is constituted by means of a private document, the signature of the Settlor and the Trustee, or of their Attorneys-in-Fact for its constitution, must be authenticated by a Notary Public. A declaration whereby the trustee declares to have received assets to be held in trust without the need to name the settlor is not possible in Panama, although it is possible for corporate settlors to create a trust.

182. Any natural or juridical person can act as trustee under the Trusts law, and public entity officials may also transfer or retain assets in trust. However, persons engaged in a trust business require a license, excepting official bank and public entity officials. Executive Decree No. 16 of 1984 regulates persons carrying on a trust business.

183. The term trustee is not defined in the Trust Law. However, Executive Decree No. 16 of 1984 defines a trustee as the natural or judicial person to whom property is transferred in order for the trustors will to be carried out.

184. The Trusts Law does not require identification protectors or enforcers. Nevertheless, the Panamanian authorities have stated that it would be necessary for the Trustee to fully identify them in order to properly administer the Trust. Article 9 of Law No. 1 of 1984 allows the incorporation into the Trust Deed of clauses the settlor and the trustee deem necessary to include, consequently, in trusts whose operation demands it, the figure of protector is included through a Council, a Committee or a Commission, whose members, responsibilities and obligations would form part of the contract.

185. Trusts established on real estate property in Panama must be created by public deed and only affect third persons, in relation to that property, from the date of registration of the trust deed in the public register. In all other cases trusts become effective as regards third parties once the signatures of the settlor and trustee, or their attorneys, have been authenticated by a Panamanian notary (Articles 11 and 13 of the Trusts Law).

Anti-money laundering law

186. Trust service providers (fiduciary enterprises) are included within the scope of Law No. 23 of 2015, and are therefore obliged to apply the anti-money laundering measures established by that law. They are subject to comprehensive regulation and inspection by the Superintendence of Banks (SBP) by virtue of Executive Decree No. 16 of 1984 even if the trust company is not affiliated to a financial institution. Following article 22 of Law No. 23 of 2015 trust companies are regarded as financial reporting entities and subject to due diligence and final beneficiary requirements that must be met (“minimum requirements”).

187. The SBP further specified these requirements in respect of trust companies in Agreements 5-2015 and 10-2015. In these agreements the SBP has regulated the minimum due diligence and final beneficiary requirements trust companies must apply to their customers.

188. As of March 2016, a total 76 trust companies and 2 banks were licensed by the SBP to engage in trust business in or from Panama. As of 30 September 2015 there were 103 777 registered trusts in Panama. Each trust company is responsible for the trusts it administers.

189. Within the SBP a specialised division is responsible for supervision in respect of AML. The supervision and monitoring programme is similar for all entities (including banks, see element A.3 below) that are regulated and supervised by the SBP.

190. The supervision model involves a combination of in situ (on-site) and extra situ (off-site) inspections. Off-site supervision consists of an analysis of the documents and reports that are submitted by financial entities on a periodical basis, and also through a specific reporting system known as FIDSYS.

191. During on-site inspections the SBP assesses selected institutions on their compliance with Panama's anti-money laundering laws, and evaluates the adequacy of customer due diligence (CDD) measures taken and record keeping practices.

192. The supervisors verify that documentation and information is updated in accordance with the customer's risk level, and that the entities minimum due diligence requirements are consistent with their customer's risk.[19] This includes checking the origin of funds, as well as the systems that are used to monitor, identify and to report unusual and suspicious transactions. On-site inspections further include a review of the contract between the trust and the customer to understand the ownership structure as well as the relationship between the parties. In case a legal entity is involved in the trust, the SBP would ask to see the share register or copies of the share register. In case a company is involved that has issued bearer share certificates, the SBP would ask for further information to verify the ownership structure. In respect of record keeping obligations, the SBP would check the (IFRS based) accounting records of the trust company as well as the 5 year record keeping requirements in respect of trusts as part of an inspection.

193. The SBP reports that trust companies generally showed a high level of commitment to their record keeping and updating obligations. The main

19. For a trust, due diligence is applied on the trustee and beneficial owner of the trust. However, the SBP states that it has access to all information on the trusts, meaning, the settlor, the service provider, and others. It can further be confirmed that all can be considered customers.

deficiencies found during the onsite inspections related to (smaller) issues in respect of CDD or risk profile, a lack of follow up procedures and manuals, as well as deficiencies related to corporate governance.

194. After each inspection an inspection report is drawn up and the trust company involved is required to present a plan that outlines how it will address the deficiencies identified. The SBP follows up on these issues and will go back to the trust company involved to check whether improvements have been made. In cases where the SBP identified shortcomings including issues that have not been addressed, it has the possibility to withdraw the license in cases of gross negligence. This occurred in one case in 2015. In that situation the SBP withdrew the licence and the trust company was closed down.

Number of onsite inspections conducted concerning trusts and financial fines that were imposed by the SBP in respect of AML/CFT

Year	No. of on-site inspections	No. of entities fined	Gross amount of penalties USD
2013	14	4	24 000.00
2014	15	13	75 000.00
2015	14	7	40 000.00

195. The SBP inspected 14 trust companies in 2013, 15 in 2014 and 14 in 2015. As noted a total of 76 trust companies were licensed by the SBP as of March 2016. Further statistics provided by Panama show the number of entities that were fined varied during the last three years, which reached a peak in the year 2014 (from the 15 entities inspected 13 were sanctioned). In one case AML/CFT infringements were identified. As a result, one licence was withdrawn. The frequency of inspections carried out by the SBP should ensure trust companies compliance with customer due diligence measures and record-keeping requirements.

196. One peer noted that it obtained the requested information regarding trusts. This included information regarding trustees, and beneficiaries of an express trust. The trust was administrated in Panama and the trustee was resident in Panama. The peer input was positive concerning the quality and the completeness of the information provided.

Tax Law

197. In the case of a trust it is the trustee who is liable for any taxes or charges payable in respect of trust assets. Where, accordingly, a trust is in receipt of Panamanian source income, the trustee would be required to

register with the tax authorities (Law No. 1 of 5 January 1987). A trustee holding only foreign assets in trust is not liable to tax and is not required to register with the tax authorities.

198. Moreover, Article 35 of the Trust Law provides that trust income and assets will be exempted from taxes, contributions, charges or levies provided that the trust involves:

i. assets located abroad;

ii. money deposited by natural or juridical persons whose income does not derive from Panamanian source or is not taxable in Panama; or

iii. shares or securities of any kind, issued by companies whose income is not derived from Panamanian source even when such money shares or securities are deposited in the Republic of Panama.

199. There are currently 145 trusts registered for tax purposes, out of which 102 are active. There are no requirements in the Fiscal Code that oblige a trust to have particular types of information available for tax purposes, e.g. on settlors or beneficiaries.

Foreign trusts

200. There is no prohibition on residents of Panama acting as trustee in relation of trusts formed under foreign laws. These trusts would generally be governed by the laws of the countries under which they are created. They would have to register for tax purposes only where the trust earns Panamanian source income. However, any Panamanian trustee which carries on a trust business and acts as a trustee for foreign trusts would require to be licensed and would be required to apply the anti-money laundering measures established by Law No. 23 of 2015, article 73 and Agreement No. 12-2005.

201. Trusts created in accordance with a foreign law may submit to the Panamanian law provided that the settlor and the trustee or the trustee alone, if so authorised by the Trust instrument, make a declaration of that intent, submitting to the fundamental requirements and to the formalities established in the Trusts Law for the creation of a Trust.

Conclusion regarding the availability of ownership information on trusts.

202. Trust companies appear to be adequately supervised by the SBP. Within the SBP a specialised division is responsible for supervision in respect of AML. The supervision and monitoring programme is similar for all entities – including banks – that are regulated and supervised by the SBP. The supervision model involves a combination of in situ (on-site) and extra situ (off-site)

inspections. Off-site supervision consists of an analysis of the documents and reports that are submitted by financial entities on a periodical basis, and also through a specific reporting system known as FIDSYS. The frequency of inspections carried out by the SBP should ensure their compliance with customer due diligence measures and record-keeping requirements. To date there have been no issues raised by peers in relation to the availability of ownership information in relation to trusts.

Foundations (ToR A.1.5)

203. The Panamanian private foundation is governed by Law No. 25 of 1995 (Foundations Law). The law does not contain a definition of a foundation similar to the definition of a trust contained in Trusts Law. In general terms, the creation of a foundation involves the endowment by a founder of assets to the foundation exclusively for the purposes expressed in the foundation charter. The founder may be a natural person, a juridical person or a nominee of them. 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.

204. 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.

205. Based on the statistics regarding active and inactive foundations above it seems there are approximately 17 000 foundations registered in Panama that are deemed to be inactive. As was the case for SAs (element A.1.1), the availability of ownership and identity information of relevant entities cannot be ensured in these cases. Panama should therefore modify its law and/or practice as appropriate and significantly reduce the substantially disproportionate number of inactive foundations in order to ensure availability of relevant information and identity in respect of all legal entities that are registered in Panama.

206. Article 3 of the Foundations Law provides that "private foundations shall not be profit oriented." However, "they may engage in commercial activities in a non-habitual manner (…) provided that the result or economic

product (…) is exclusively used exclusively towards the foundations objectives.” Otherwise a foundation can be created for any lawful purpose such as the maintenance and welfare of the founder or his family or for a charitable purpose. It can own the shares, bank accounts and real estate and engage in activities to increase the value of its assets.

207. Private foundations may be formed either by a private document signed by the founder, whose signature must be authenticated by the public notary in the place of its constitution or directly before the public notary in the place of its constitution (Article 4 of the Foundations Law). Whatever the method of constitution, the formalities for the creation of foundations set out by the law must be fulfilled. The foundation’s charter as well as any amendments thereto, must be registered in the Public Registry. Information which the charter must contain includes; details of the appointment, including the address, of the member or members of the foundation’s board, which may include the founder, and the name and address of the foundation’s agent resident in Panama, who must be a lawyer, or a firm of lawyers, who shall endorse the charter before its deposition in the Public Registry. The manner of designating beneficiaries must also be stated (Articles 5 of the Foundations Law).

208. The Foundations Law also states that once the foundation has been registered, the founder and any other third party that has pledged some property to the foundation must formalise the transfer of same to the foundation (Article 10). Article 16 states that the transfer of assets may be affected by a private or public document which would, necessarily, identify the founder or donor. This document will be available with the foundation council. Article 16 also states that in case the property is real estate, the transfer must conform to the rules for transfer of real estate.

209. Article 18 of the Foundations Law states that the duties of the foundation council include, *(i)* to administer the assets in accordance with the charter *(ii)* inform the beneficiaries of the economic situation of the foundation and *(iii)* to deliver to the beneficiaries the assets or resources set up in their favour by the foundation charter. All these acts would seem to require that the foundation council know the identity of the beneficiaries. The competent authority of Panama has the power to request all relevant information from the resident agent; the council members and the founder, under Law No. 33 of 30 June 2010as they are information holders for the purposes of this Law (see discussion in section B.1). However, since the law does not make it mandatory for one of the Council members to be resident in Panama, where information on beneficiaries is held outside of Panama because the foundation council and service providers are outside of Panama this information might not be available because it is not accessible.

210. These are less onerous requirements than those obtaining in the case of trusts for which a complete and clear designation of the Settlor, Trustee and Beneficiaries is required. However, information on the members of the foundation's board is available in the public registry

211. Registration of the charter in the Public Registry gives the foundation legal personality (Article 9 of the Foundations Law). It also constitutes publication to third parties.

Anti-money Laundering Law

212. Article 34 of the Foundations Law provides that the operations of foundations shall be subject to all the legal provisions contained in Executive Decree No. 468 of 1994 and any other law designed to combat money laundering related to the proceeds of drug trafficking. Executive Decree No. 468 of 1994 was entirely repealed and replaced by Law No. 2 of 1 February 2011, which established know-your-client rules applied to resident agents for companies and foundations.

213. Law No. 2 of 2011 requires that the resident agent of a private foundation perform and keep up to date know-your-client measures on the client and the third party on behalf of whom the client acts.

214. Complementing Law No. 2 Panama enacted Law No. 23 of 27 April 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)).

215. Under Law No. 23 of 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 of 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 of 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 of 2015 is insufficient to ensure the availability of identity information in relation to all beneficiaries of Panamanian private foundations at all times.

216. As noted in section A.1.1 above, article 28 of Law No. 23 of 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)).

217. 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 of 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 of 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).

Tax Law

218. Where a private interest foundation generates taxable income in Panama it is required to register with the tax authorities and to file a tax return. There are no requirements in the Fiscal Code that oblige a foundation to have particular types of information available for tax purposes, e.g. on

founders or beneficiaries though information on founders or beneficiaries could be requested in the case of a tax audit.

219. However, private interest foundations cannot habitually engage in commercial activities in Panama. Moreover, Article 27 of the Foundations Law provides that the transfer of assets to a foundation and any income from such assets shall be exempt from tax provided that such assets are:

i. assets located abroad;

ii. money deposited by natural or juridical persons whose income does not derive from Panamanian source or is not taxable in Panama; or

iii. shares or securities of any kind, issued by companies whose income is not derived from Panamanian source even when such money shares or securities are deposited in the Republic of Panama.

Conclusion and practice regarding availability of ownership and identity information in respect of foundations

220. Private interest 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.

221. In practice there is no additional overview or supervision by the Public Registry or any other government authority to identify foundations which are under the obligation to register and, if necessary, to compel their registration. Nevertheless, Panamanian authorities feel confident that all newly established legal entities including foundations are duly registered in a timely manner, and state that the foundation does not have legal existence, and thus cannot operate before it has obtained the certification of its existence (extract of the foundations) that it receives upon registration.

222. Any modifications and amendments to the original deed must be executed by a public notary in the form of a notarised deed, and must also be registered.

223. The Register receives and files about 100 public deeds per day containing some type of amendment regarding foundations. Although there is no specific criminal or administrative penalty for failure to comply with the requirement to notify the public registry of any changes, Panamanian

authorities are of the view that it is rare that anyone who is obliged to register and update the information does not comply with this obligation. They point out that legal entities have a vested interest that entries are up to date, in particular because registration in the Public Registry has legally constitutive effect. This means that third parties may rely on the information contained in the Register, and changes will therefore only be considered valid and have any effect before third parties after being properly registered.

224. However, in practice there are approximately 17 000 foundations registered in Panama that are deemed to be inactive. Similar to the situation regarding inactive SAs, availability of ownership and identity information of relevant entities cannot be ensured in these cases. Panama should therefore modify its law and/or practice as appropriate and significantly reduce the substantially disproportionate number of inactive foundations in order to ensure availability of relevant information and identity in respect of all legal entities that are registered in Panama.

225. The know-your-client measures introduced by Law No. 23 of 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.

226. As discussed above under element A.1.1. Panama introduced customer identification obligations and record keeping obligations in April 2015 that require identity information on the final beneficiaries of legal entities for whom lawyers are acting as resident agents. Compliance by resident agents in respect of these legal obligations is checked and supervised by the Administration for Supervision and Regulation of Non-Financial Subjects.

227. This supervisory authority started its operations after the period under review in August 2015 and is currently conducting its first supervision exercises in respect to 10 law firms which are resident agents for the majority of the registered legal entities. Panama states that the first results indicate that that required information on their clients and transactions was generally kept with only minor shortcomings. Although a positive step, these measures and supervision activities are very recent and therefore remain to be sufficiently tested. Panama should therefore monitor implementation of the newly introduced rules and take measures to address any identified deficiencies.

228. During the review period two peers requested information regarding the regulations of a foundation. In these cases Panama contacted the resident agent and asked for the documents. However, the resident agent stated that it didn't have the requested information and noted that it is a private document according to Panamanian law. In such cases, as in others where the resident agent doesn't have, or can't provide, the requested information Panama doesn't use its access powers against other information holders such as companies or foundations which have no physical presence in Panama. This issue concerning use of access powers is further examined under element B.1 below.

Other relevant entities and arrangement

229. Panamanian law considers an investment fund or society to be a legal entity, separate from its unit holders. As such it pays income tax in a manner equivalent to a corporation. Income arising from foreign sources is excluded from taxation. They may be constituted as legal persons, such as companies, as trusts or as a contractual arrangement. Further, they may be either registered or private investment funds. The latter are limited to 50 investors with a minimum subscription of USD 100 000. Investment societies made up of less than 20 investors whose units are not offered to the public are excluded from the scope of the legislation. In practice no issues or difficulties were reported regarding the availability of identity or ownership information regarding these entities.

230. Funds may have investment managers or custodians that are required to adequately identify their clients under Law No. 23 of 2015, article 73). Registered investment funds are required to have custodians, which must be authorised by the SMV, to hold their assets. Investment managers are also required to be authorised by the SMV but a fund may also manage its own assets. Panama has reported that there are currently only 33 investment societies in operation. In practice no issues or difficulties were reported regarding the availability of identity or ownership information regarding these entities. No other relevant entities and arrangements fall to be considered.

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

231. Law No. 32 of 1927 which governs the establishment of SAs requires all SAs to keep a stock register but does not prescribe penalties for any failure to do so or for a failure to keep it up to date. The information in the stock register may be required for all audits carried out by the tax authority and failure to supply this information leaves the company liable to the penalties provided for in Article 756 of the Fiscal Code.[20] As Panama has a territorial

20. See paragraph 334 infra.

tax system, however, there is a cohort of companies which may not be subject to audit and to the penalties mentioned above because they are not in receipt of Panamanian source income.

232. In order to address this shortcoming, 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 the amendments introduced by Law No. 22 of 2015, it was expanded to establish a new obligation for all legal entities to maintain a complete and current 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.

233. 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.

234. 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.

235. Oversight and enforcement of this obligation under article 71 is not in the hands of a specific authority. Any "competent authority" within the execution of their faculties and/or function, can ensure that a legal entity that has not complied with the obligation in keeping records of minutes and decisions, and inform the Ministry of Economy and Finance, in order to impose the correspondent sanction (if applicable). This notification also allows the Public Registry to place a "marginal note" on the company's file indicating that the company has not met with all its obligations towards that authority.

236. In practice, however, it's not clear that any competent authority checks, or is in in the position to check, whether companies are compliant with this obligation to maintain an updated share register. There is no requirement to keep the share register in Panama and companies that are operating exclusively outside of Panama fall outside the scope of the tax net there. As a result, they are not subject to tax audit or any other compliance programmes. In these cases it seems that that oversight would only occur where information pertaining to the share register is requested for EOI purpose.

237. Nevertheless, Panama states that Supervision takes place in the context of the recently introduced AML obligations, based on which resident agents should obtain identity information on the final beneficiaries of legal entities for whom they are acting as resident agents.

238. However, the sanctions which are now provided for in article 71 have not yet been applied in practice. Further, no statistics are available regarding the level of compliance with the obligation to keep a share register, either before or after the amendment to article 71 took effect.

239. SAs, SRLs, and private interest foundations are required to have a resident agent. A resident agent who is in non-compliance with "know your client" provisions could be disbarred by the Supreme Court due to breach of the Code of Ethics (Law No. 9 of 1984). Panama states that there have not been any such cases yet. Moreover, Panama was not able to provide any further information regarding established administrative or supervisory mechanisms for the supervision of compliance with this requirement and the application of any resulting sanctions. Consequently, it appears that in practice this requirement based on the Code of Ethics for resident agents to know their clients and any resulting sanction seems not to be enforced.

240. The identity of the subscribing shareholders in an SA, the quota holders in an SRL, the partners in a partnership and the members of foundation councils is a matter of public record. There are no specific criminal or administrative penalties for failing to comply with the requirement to notify the Public Registry of changes in ownership in the case of an SRL or of general partnerships, limited partnerships or partnerships limited by shares. The Panamanian authorities have indicated, however, that failure to notify changes in ownership would result in the relevant entity losing its legal status.

241. In practice there have not been any cases yet where this has occurred. Nevertheless, the Panamanian authorities feel confident that compliance with the requirement to notify the Public Registry of changes in ownership in the case of an SRL or of general partnerships, limited partnerships or partnerships limited by shares is met. They point out that legal entities have a vested interest that entries are up to date, in particular because registration in the Public Registry has legally constitutive effect. This means that third parties may

rely on the information contained in the Register, and changes will therefore only be considered valid and have any effect before third parties after being properly registered. They further point out that approximately between twenty (20) and thirty (30) public deeds, containing some type of an amendment to these types of entities are filed every day at the Public Registry. In Panama's view this shows that entities are interested in updating their information in the Public Registry. However, Panama was not able to provide any further information regarding established administrative or supervisory mechanisms for the supervision of compliance with this requirement and the application of any resulting sanctions. Consequently, it appears that in practice this requirement to notify changes in ownership and the resulting sanction for the relevant entity losing its legal status seems not to be actively monitored.

242. As discussed previously, Panama enacted Law No. 2 of 2011 which requires resident agents to perform know-your-client measures on their clients and third parties on whose behalf the client acts. The issues around the meaning of the "third party" have been discussed earlier in this report. This law includes sanctions for non-compliance on the part of resident agents, including a warning, fine of up to USD 5 000 or a temporary suspension of a lawyer's ability to provide resident agent services for new legal entities for a period of between three months and three years (Article 20). Although this is an improvement, the law itself is deficient in other respects. Moreover, no sanctions have been applied to date and there was no established administrative or supervisory mechanism for the supervision of compliance with this requirement or the application of any resulting sanctions throughout the review period. Consequently, it appears that in practice this requirement from Law No. 2 of 2011 for resident agents to know their clients and imposing sanctions was not actively enforced.

243. Panama also enacted Law No. 23 of 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. Article 60 prescribes a generic sanction for failure to comply with the provisions of Law No. 23 of 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.

244. The Administration of Supervision and Regulation of Non-Financial Subjects, is a supervisory body created by Law 23 of 27 April 2015, which is currently developing its extra-situ and in-situ oversight programme. As a result, it has not yet initiated any specific sanctioning process. As its powers are not sufficiently tested in practice Panama is recommended to monitor their implementation to ensure that effective sanctions are applied in all cases

where resident agents are not in compliance with their AML requirements, e.g. do not hold detailed records of their clients, including those of final beneficiaries, for at least five years from the termination of the professional relationship in accordance with Panama's law.

Conclusion

245. Panamanian law provides for a number of enforcement provisions to support the legal and regulatory obligations which aim to ensure the availability of identity and ownership information in Panama. However, in many cases Panama was not able to provide statistical or practical information regarding established administrative or supervisory mechanisms for the supervision of compliance with these requirements during the period under review and the application of any resulting sanctions. It appears that enforcement provisions are not, or in any case not yet adequately, applied in practice and therefore these provisions generally may not sufficiently ensure that ownership information with regard to the relevant entities is available. Panama should therefore establish administrative or supervisory mechanisms for the monitoring and enforcement and the application of any resulting sanctions to ensure compliance with the legal requirements regarding the availability of identity and ownership information in Panama.

246. Panama introduced changes concerning its AML framework in August 2015, including a number of enforcement provisions. Although a positive step, these measures and related supervision activities are very recent and therefore remain to be sufficiently tested. Panama should therefore monitor implementation of the newly introduced rules and take measures to address any identified deficiencies.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The Foundations Law and the know-your-client rules established by Law No. 23 of 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.

Phase 2 rating	
Non-Compliant	
Factors underlying recommendations	**Recommendations**
There are approximately 486 000 SAs registered in Panama that are deemed to be inactive as well as 17000 foundations. In these cases the resident agent may have lost contact with the company or foundation and its owners. For this reason the availability of up-to date ownership information in Panama, including information on owners of bearer shares, cannot be sufficiently ensured.	Panama should modify its law and practices as appropriate and significantly reduce the substantially disproportionate number of deemed inactive companies and foundations in order to ensure availability of relevant information in respect of all legal entities that are registered in Panama.
There is some uncertainty as to whether all bearer shares have been immobilised with custodians or definitively suspended by 31 December 2015 as required by law. In practice, Panama was not able to provide ownership information in a number of cases after the custodial regime was implemented. The newly introduced legislation regarding bearer shares including its transitional provisions might not, therefore, ensure that information is available in practice on all holders of bearer shares in all cases.	Panama should modify its law and/or practice as appropriate to ensure that information regarding the owners of bearer shares is available in all cases.

Phase 2 rating	
Non-Compliant	
Factors underlying recommendations	**Recommendations**
Panama has not been able to provide statistical or practical information regarding any established administrative or supervisory mechanisms for the supervision of compliance with the requirements on entities to keep ownership and identity information concerning the period under review and the application of any resulting sanctions. It appears that enforcement provisions are not, or in any case not yet adequately, applied in practice and therefore these provisions generally may not sufficiently ensure that ownership information with regard to the relevant entities is available.	Panama should establish administrative or supervisory mechanisms for the monitoring and enforcement and the application of any resulting sanctions to ensure compliance with the legal requirements regarding the availability of identity and ownership information in Panama.
Panama introduced changes concerning its AML framework in August 2015, including a number of enforcement provisions. The AML framework is extended to also cover resident agents. Although a positive step, these measures and related supervision activities are very recent and therefore remain to be sufficiently tested.	Panama should monitor the implementation of the newly introduced AML legislation and take measures to address any identified deficiencies.

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)

247. The Panamanian Commercial Code provides that merchants are required to keep accounting records which show clearly and precisely their commercial operations, assets, liabilities and properties (Article 71 of the Commercial Code). This requirement applies irrespective of the type of entity

involved, e.g. company or partnership. It also applies to companies operating in free zones and other special economic zones.

248. With regard to free zone companies Article 105 of Executive Decree No. 170 of 1993 provides that individuals or entities operating in free zones must keep separate accounting records of their domestic and export operations. The tax authority has the power to review these accounting records.

249. The books that every merchant is required to keep pursuant to the Commercial Code are the General Ledger and General Journal. Commercial companies are also required to keep a Minute Registry Book and a Share and Shareholder Registry Book or a Registry of the Quotas or Contributions of Assets or Social Participation (Article 73 of the Commercial Code).

250. Penalties are provided for failing to maintain up to date records ranging from USD 100 to USD 500 for each month that the records are not updated. Accounting records are considered up to date if they are made monthly in the compulsory records, within sixty days of the corresponding month (Article 87 of the Commercial Code). The tax authorities are responsible for enforcing this requirement.

251. Local and foreign companies and partnerships that that undertake business in Panama have the obligation to keep their accounting records in Panama. A company or partnership organised under the laws of Panama that does not operate within the country and does not generate Panama source income is not subject to the Commercial Code and is, therefore, not bound by the Code's record keeping requirements. As such entities do not earn income from a source in Panama they are not subject to the record keeping requirements in the Fiscal Code either.

252. Trusts and foundations are not included in the scope of Article 73 unless they can be considered to be merchants. In this context the term "merchant" means a person with legal capacity who carries out acts of trade in an habitual and professional manner in his own name or the name of others (Article 28 of the Commercial Code). As foundations are prohibited from habitually engaging in commercial activities and trusts often just hold assets as opposed to engaging in commercial activities they will often be outside the scope of Article 73.

253. As regards trusts, however, Article 15 of Law 1 of 1984 establishes that the trust's assets constitute a separate estate from the personal assets of the trustee for all legal effects and Article 28 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. It follows that a trust instrument cannot provide that there is no requirement to keep accounting records.

254. Similarly, Article 19 of the Foundations Law provides for the establishment of a foundation board which, unless otherwise stated in the charter or rules, has as one of its general obligations "to inform the beneficiaries of the state of its assets, as laid down in its charter or rules". Article 20 of the Foundations Law provides that the Foundation Council must provide an accounting of its activities to the beneficiaries and the supervisory body, when applicable, unless otherwise provided for in the charter or regulations. If the Foundation charter or its regulations contain no provisions in this regard the rendering of accounts must be done annually. Contrary to case of trusts, however, it would appear that the foundations charter could provide that there is no requirement to keep accounting records.

Tax Law

255. The Fiscal Code does not create any separate requirements related to the maintenance of accounting records other than those described above. However, Resolution No. 201-1990 regulates the form of presentation of accounting and financial statement records.

256. In 2005, the Tax Code was amended to require that the tax authorities only accept tax declarations prepared on an accrual basis under IFRS (Article 699, Para. 3 of the Tax Code, as amended by Law 6 of 2005).

257. It can further be noted that Article 712 of the Tax Code provides that all companies with capital exceeding USD100 000 or with an annual sales volume of more than USD50 000 are required to have their financial statements attested by a certified public accountant according to generally accepted auditing standards in Panama.

258. An audit report must accompany these companies' tax returns. However, it follows from Panama's territorial tax system that this requirement only relates to companies that are subject to tax and must file an annual income tax return in Panama. It does not apply to companies and partnerships that are exclusively operating outside Panama. Similarly, the IFRS requirement imposed by DGI does not apply to these companies either, since they fall outside the scope of the tax net in Panama.

***Underlying documentation** (ToR A.2.2)*

259. There is no general requirement that merchants maintain particular underlying documentation (e.g. invoices, contracts) in support of the accounting records. However, the Commercial Code provides that accounting records must be kept with precision and clearness in a chronological order (Article 77) and that the accounting of every merchant must be undertaken by a licensed accountant or authorised Public Accountant (Article 87). Further,

Article 93 provides that the auxiliary records, receipts and documentation which support the mercantile operations must be kept until the running of the statute of limitation of every action which may arise there from.

260. The Trusts Law and Foundations Law are silent on the nature of the accounting records that require to be kept and there does not appear to be any requirement to maintain underlying documentation.

***5-year record retention standard** (ToR A.2.3)*

261. All merchants are required to retain their compulsory commercial account books throughout their professional life and for five years following the closure of their business (Article 93 of the Commercial Code). The accounting books or records, correspondence and other documents that merchants are required to retain are to be kept on their premises and available for examination by the relevant authorities.

262. The Trusts Law and Foundations Law are silent on the period for which records should be retained. In the case of trusts, however, where a trust corporation is used it must comply with due diligence requirements for anti-money laundering purposes towards its customers and their resources which includes developing a financial profile and determining the source and origin of funds contributed to the trust. Documents obtained through the due diligence process on the customer and his resources must be retained for not less than five years counted from the end of the contract relation with the customer (Article 7 of Agreement No. 12-2005 of the Superintendence of Banks) While significant these requirements are not the same as those required under the standard set out in A.2.1 and A.2.2 of the Terms of Reference.

In practice

263. Companies and partnerships that are subject to tax in Panama must file an annual income tax return. The tax base for corporate income tax purposes is determined based on the accounting records (Paragraph 3 of Article 699 of the Fiscal Code).

264. Panamanian companies, which do not derive Panamanian source income and do not operate in Panama, are not liable to tax in Panama, and are not required to file a tax return. An extension from this is that tax administration oversight regarding accounting requirements described below does not apply to these companies.

265. Compliance with the accounting requirements for companies operating within Panama is reviewed within the course of regular tax compliance activities, e.g. during a tax audit.

266. For entities and arrangements operating within Panama, but outside of Panama City accounting records as such would be specifically checked as part of the tax return filing process. In Panama City compliance with accounting requirements would only be checked during a tax audit.

267. If during a tax audit it is found that the records are not up-to-date, the company is fined an amount of USD 500. If the accounting records show more than 2 months arrears, the company would be fined an additional amount of USD 100 per month of arrears. If the records are not kept, or not kept in the authorised format, the fine is USD 500. These fines are part of the audit process. An assessment would also be made of the income and taxes due.

268. Although no statistics were available regarding the number of audits carried out by the tax authorities during the first 18 months of the period under review, no audits took place in the second half of 2014. This was due to a change of Government in Panama in July 2014 and a subsequent reorganisation within the government and the administration following that. The new tax administration wasn't set up until October 2014, and in this intermediate period no audits took place. Nevertheless, as of 2015, the number of audits carried by the DGI increased to a total of 412.

269. In practice in all cases where accounting information is requested, the tax authorities would first establish whether the operations of the company take place in Panama. In order to establish this, the tax authorities would check the tax database to see whether the company files taxes in Panama, and whether a company is active or not. In this respect they would check whether the company paid its annual franchise duties to the Ministry of Economy and Finance, and if not, the period of arrears.

270. Although this information would enable the tax authorities to conclude whether the company is deemed to be active or not, it would not in all cases reveal the company's activities and whether the company operates exclusively outside Panama. In such a case they would also contact the Resident Agent to get additional information regarding the status and the activities of the company involved.

271. Two major EOI partners noted delays in the processing of requests for accounting information. In this regard, Panama stated that in a number of cases it had not yet been determined whether a Panamanian taxpayer was involved or not. However, at the time of the onsite visit, these cases were already pending for a period between one and one and a half year.

272. Panama explained that the reason for the delay in processing these requests was purely related to a lack of resources in the EOI office. As will be discussed under element C.5 a significant backlog accrued in the second half of 2014, due to a change of Government in Panama and a reorganisation

within the government and the administration. In getting rid of the backlog in 2015, priority has been given to cases were the jurisdiction involved asked for a rapid treatment. However, given the lack of resources, this worked to the detriment of the requesting jurisdictions that had *not* indicated or requested for such treatment in their cases.

273. Over the period of review Panama has received in total 97 requests for information. From these requests 48 requests (50%) pertained to accounting information. Underlying accounting documentation was requested in all of these 48 cases. In all cases these requests related to companies.

274. The Panamanian authorities report that the requested information was provided in 8 cases (17%). In all these cases the company operated within Panama. Panama's EOI partners who report having asked for this type of accounting information have in general not reported any specific difficulties concerning these cases.

275. However, the vast majority of requests concern companies that do not operate within Panama. This situation came up in 40 out of the 48 cases and information could not be provided in any of these cases. Panama should therefore ensure that reliable accounting records, including underlying documentation, are kept by all relevant entities and arrangements for a period of at least five years.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
Only companies and partnerships operating in Panama are required to maintain accounting records.	The record keeping requirements in the Commercial Code should apply to all companies, limited partnerships and partnerships limited by shares registered in Panama irrespective of whether they carry on business in Panama.
The Trusts 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.

Phase 2 rating	
Non-Compliant	
Factors underlying recommendations	**Recommendations**
Issues related to the availability of accounting records had a significant impact on exchange of information in practice, since this type of information could not be obtained in 40 out 48 cases. All these cases related to companies operating outside Panama.	Panama should ensure that reliable accounting records, including underlying documentation, are being kept by all relevant entities and arrangements for a period of at least five years.

A.3. Banking information

Banking information should be available for all account-holders.

276. Access to banking information is of interest to the tax administration only if the bank has useful and reliable information about its customers' identity and the nature and amount of financial transactions.

277. No person is allowed to engage in banking business in Panama unless they hold a valid license for that purpose issued by the Superintendence of Banks of Panama (article 2 in combination with Chapter II of Executive Decree 52 dated 30 April 2008 (Banking Law). The Superintendence of Banks of Panama (SBP) is the regulatory and supervisory body for the banking industry. As at March 2016, a total of 91 banks were authorised to engage in banking business in or from Panama. This includes 49 banks with a General License, 27 banks with an International License as well as 15 Representative Offices of foreign banks. [21]

Record-keeping requirements (ToR A.3.1)

278. Banks must submit all AML relevant information, including records that must be kept under AML legislation, to the SBP in the circumstances stipulated by law and whenever the SBP may so require (Article 113 of the Banking Law).

21. These offices are established to act as a representative of Banks without operations in Panama. They cannot engage in the banking business in or from the Republic of Panama.

279. Under article 22 of Law No. 23 of 2015[22], banks are regarded as financial reporting entities and are required to observe minimum due diligence and final beneficiary verification requirements. The SBP further specified these requirements in respect of banks and trust companies in Agreement 10-2015.[23] This agreement sets out measures to prevent the improper use of banking and trust services in respect of AML/CFT. Following this agreement, banks must carry out customer due diligence and keep a specified set of documentation in respect of the customer for a period of at least five years from the date the contractual relationship with the customer was terminated. These documents include a signed set of the due diligence forms for individuals as well as the legal entities, a copy of the documents obtained through the due diligence process, the documents supporting the operation or transaction and any other document that will permit reconstructing the customers' individual operation or transaction, if necessary (article 25 Agreement 10-2015 as well as article 29 of Law No. 23 of 2015). Furthermore, customer and/or final beneficiary documents and data must be updated in accordance with their risk profile (article 9 of Agreement 10-2015).

280. Failure to carry out customer due diligence or to keep the documentation for at least five years can lead to a penalty of from five thousand balboas (PAB 5 000.00) to one million balboas (PAB 1 000 000.00), according to the seriousness or frequency of the fault (article 39 of Agreement 10-2015 in conjunction with article 60 of Law No. 23 of 2015).

281. The customer identification obligations and record keeping obligations on all transactions require banking information to be available in Panama for all account holders.

In practice

282. The SBP is responsible for supervision of the compliance with all the requirements stemming from the AML, including the record keeping requirements for banks. The SBP supervises compliance with these requirements, as a part of its general supervision, but also through targeted on-site inspections focused on AML issues. Within the SBP a specialised division of Control of Illicit Operations is responsible for banking supervision in respect of AML obligations. The number of supervision staff (28 officials at the start) was increased in 2015 with 23 staff members, including twelve prevention auditors, one special investigations manager, and one special investigation auditor. By

22. Article 73 of this law repealed and replaced the former AML law (Law No. 42 of 2000).
23. Article 41 of this Agreement repealed Agreement No. 12-2005 which dated from 12 December 2005 and complemented Law No. 42 of 2000 (the former AML law up until 2015).

1 July 2016 the number of supervision staff was further increased with another 14 supervisors, making 65 staff in total. The supervision and monitoring programme is similar for all entities that are regulated and supervised by the SBP.

283. The supervision model takes into account a combination of *in situ* (on-site) and *extra situ* (off-site) inspections.

284. Off-site supervision consists of an analysis of the documents and reports that are submitted by financial entities on a periodical basis as well as the specific issues that are flagged for review.

285. During on-site inspections the SBP checks selected institutions on their compliance with Panama's anti-money laundering laws, and evaluates the adequacy of customer due diligence (CDD) measures taken. It is further verified that documentation and information is kept updated in line with the customer's risk level. The files on terminated contractual relationships are also checked to ensure that they hold the required documentation on due diligence and instructions to support transactions, so that reconstructing the customers' individual operation or transaction is possible. All banks get a full scope inspection by the SBP at least once every two years, while the largest banks are visited each year.

286. As noted, as at March 2016, a total of 91 banks were authorised to engage in banking business in or from Panama. The SBP carried out around 60 on-site inspections annually relating to AML/CFT in financial institutions regarding the years 2013, 2014 and 2015, as demonstrated in the table below. The SBP reports that banks and financial institutions showed a high level of commitment to their record keeping obligations. The main deficiencies found during the onsite inspections related to (smaller) issues in respect of monitoring systems, CDD application (the minimum information to be present such as names, passport/ID information, et cetera), lack of training in respect of AML provisions, as well as deficiencies related to corporate governance.

287. Regarding the number of penalties imposed in relation to the breaching of AML/CFT requirements and the number of entities involved, the statistics provided by Panama show that the number of entities involved was around 7 annually during the last three years, and reached a peak in the year 2014 (9 entities sanctioned).

Number of onsite visits and financial fines that were imposed by the SBP to the subjected institutions in respect of AML/CFT

Year	On-site inspections	No. of banks fined	Gross amount of penalties
2013	63	5	30 2000.00
2014	53	9	55 000.00
2015	58	7	1 865 000.00

288. During the three-year review period, bank information was requested in approximately 25 cases. Two peers indicated that bank information was not provided in all the cases where they requested for that type of information. These cases are elaborated further under section B.1.4, as they concern access to information and not the availability of banking information as discussed under this element. Panama stated that it would not face any difficulties in obtaining this type of information from the banks in cases where the EOI request would have sufficient details to identify the bank as well as the person involved (either a name or an account number).

Conclusion

289. The customer identification obligations and record keeping obligations on all transactions require banking information to be available in Panama for all account holders. Compliance by banks in respect of these legal obligations is checked and supervised by the SBP. Through their inspections, it has been established that banks keep the required information on their clients and transactions.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

B. Access to information

Overview

290. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain 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 to the authorities access powers that cover the right types of persons and information and whether rights and safeguards are compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

291. Since 2010, Panama has enacted legislation to address potentially serious deficiencies in the Panamanian authorities' powers to obtain information for exchange purposes. The most serious of these was the prima facie existence of a domestic tax interest requirement. The presence of a domestic tax interest requirement can be a particularly significant impediment to exchange of information where a jurisdiction bases its income tax system on the territoriality principle because income arising from foreign sources is not taxable. An extension from this is that the jurisdiction's authorities have no domestic tax interest where a person or entity is only in receipt of foreign source income. In the case of Panama, a significant number of companies and private foundations are likely to be in this position. Panama enacted Law No. 33 of 30 June 2010 to expand its access powers to include the power to obtain information regardless of whether Panama needs the information for its own tax purposes. As a result, Panama can access information without regard to any domestic tax interest whether or not the information is considered confidential, subject to normal limits of the attorney-client privilege.

292. There was no case during the period under review where the requested information was covered or might have been covered by attorney-client privilege. Panama had limited its attorney-client privilege standard by Law No. 2 of 2011, which says that information obtained by an attorney pursuant to know your client measures is no longer protected. By virtue of

Law No. 33 of 30 June 2010 Panama has ensured that the competent authority will have access to information irrespective of any secrecy obligation on the information holder[24]. In addition, Panama's TIEAs incorporate the definition of Attorney-Client privilege in Article 7 of the OECD Model TIEA. In practice, peer input did not identify any issues regarding professional secrecy of lawyers.

293. Several peers indicated that the information received with respect their EOI requests was not sufficient to fulfil their request for assistance in situations where the request related to a company or foundation that had no operations in Panama. The Panamanian authorities explained that this was mainly caused by the practice during the three-year review period of only approaching the Resident Agent to obtain ownership information in respect of these companies. Accounting records and underlying documentation were not pursued at all.

294. Panama does not approach the entities concerned, even where they are obliged to keep the information sought as it does not consider this would be fruitful. Penalties have not been applied against these entities and may not effective, since there is nothing against which to apply them or anywhere to go in Panama to execute powers, e.g. of search and seizure or even to serve documents. This results in the Panamanian competent authority not always obtaining all of the information requested. The practice of only approaching the resident had a significant impact on exchange of information during the review period. Panama should therefore ensure that the access powers of its competent authority are fully utilised to obtain all information included in an EOI request from any person within their territorial jurisdiction that has possession or control of that information. Panama should ensure that the enforcement of these access powers is supported by adequate penalties for failure to provide information to the competent authority in a timely manner.

295. With regard to notification requirements and rights and safeguards, The Phase 1 report noted 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. However, Panama clarified that it does not notify the taxpayer in practice and that it amended Executive Decree No. 85 in 2012 to delete the discretion that gave it the possibility to decide whether or not to notify the taxpayer of the request for information. In practice no issues or difficulties were reported in this regard.

24. It can be noted that a similar provision was included in Law No. 24 of 2013.

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).

The competent authority

296. The Directorate General of Revenue (DGI) is the government agency in charge of administering the Fiscal Code and collecting taxes. Contact information for Panama's competent authority is fully identifiable on the Global Forum website. For EOI matters, the contact is established and maintained by the head of the Exchange of Information Unit. Moreover, Panama generally provides the contact information of its competent authority to treaty partners when finalising treaty negotiations and updates this information when needed.

297. The statutory powers of DGI to obtain information were of a general nature. The same generic power applied irrespective of who information was to be obtained from, e.g. individual, company, bank other governmental agency, whether the information sought requires to be kept or the nature of the information sought. Power to obtain information is conferred by Article 20 of Cabinet Decree 109 of 7 May, 1970 as modified in Article 26 of the Law No. 33 of 30 June 2010 by which the competent authority has access to information whether or not it is considered confidential, subject to normal limits of the attorney-client privilege.

298. Article 20 as amended clarified that the Tax Authority can

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

299. In April 2013, Panama shifted all the functions including all the powers that were originally attributed to the DGI to a newly established autonomous authority, the National Public Revenue Authority (*Autoridad Nacional de Ingresos Públicos, ANIP*). The idea behind this shift was that it would help improve tax collection and reduce tax evasion.

300. Law No. 24 of 2013 attributed the National Public Revenue Authority with all the powers originally available to the Directorate General of Revenue of the Ministry of Economy and Finance. This included the access power as mentioned above.[25] In essence, ANIP would maintain the same responsibilities, staff and structure.

301. However, on 11 August 2014, the Panamanian Supreme Court of Justice ruled that the creation of ANIP as an autonomous authority violated the provisions of the constitution that assign the responsibilities of tax collection and administration of public revenues to the President of Panama together with the Ministry of Economy and Finance.[26]

302. Shortly after this, Panama reinstated the DGI, i.e. the tax authorities within the regulatory framework of Decree No. 107 of 7 May 1970 in place prior to the establishment of ANIP, including the access powers as described above.

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

303. Panama has indicated that there are no restrictions on the tax authority's ability to obtain ownership or identity information from public and private entities or from third parties.

304. The identity of the subscribing shareholders in an SA, the quota holders in an SRL, the partners in a partnership and the members of foundation councils is a matter of public record.

305. Panama has the ability to obtain accounting information where it is relevant for its own tax purposes. The 2010 report noted that Panama had indicated that there was no legal basis to obtain information from persons that are not operating within Panama or generating Panamanian source income. However, as will be further elaborated in section B.1.3 below, the 2014 Supplementary Phase 1 Report noted that Panama has enacted laws to give effect to its EOI agreements, including Law No. 33 of 30 June 2010 and Law No. 24 of 2013, which remove the domestic tax interest requirement.

306. Executive Decree No. 85 regulates the procedures to request information from treaty partners and procedures to answer information requests. Article 5 of the Decree sets forth factors that the DGI must consider when requesting information from an internal or external source and before answering the request.

25. Article 5 (numeral 15) of Law No. 24 of 2013 is similar to article 20 after the modification in June 2010 (following the amendment of this provision by article 26 of the Law No. 33 of 30 June 2010).
26. Published in the Official Gazette No. 27633-A of 1 October 2014.

307. Article 11 of the decree sets out that individuals or legal entities of private sources that refuse to provide the information required by the DGI or that provide the information in an incomplete manner or in a term that exceeds the established period to provide it, shall be sanctioned in accordance with the Law.

Gathering information in practice

308. All EOI requests are received and handled by the DGI. In practice several methods of gathering information for EOI purposes may be used in order to provide a reply to one request, e.g. data from the tax authorities' database and information from third sources such as the resident agent, etc.

309. The main sources of information for the tax administration are:

- *Resident agent:* For most requests, information is obtained from service providers, usually the resident agent. In these cases the Competent Authority sends a registered letter requesting information to be provided within 14 days after deliverance of the letter. In the letter attention is drawn to the consequences, should the information not be provided within the deadline. The deadline may be reasonably extended by the Competent Authority upon specific request and only in justified cases;
- *The Public Registry of Panama Database*; Panamanian tax offices have direct access to a basic range of information (including initial registration, identity information on the legal entity's representative, as well as change of name and change of address). Other information available through the various databases includes business-related information such as franchise duties;
- *The tax databases* (DGI Database);These contain information obtained from taxpayers' tax returns. Other information available through the various databases includes information regarding payments of franchise duties by all companies and foundations registered in Panama as well as customs related information from the Customs Authority of Panama Database. Information from these sources can generally be obtained immediately;
- *Banks* (in respect of banking information); Banks provide information following receipt of a request note from the tax office. Generally they are asked to provide it within 10 to 45 business days, depending also on the amount and complexity of the information requested During the three-year review period, bank information was requested in approximately 25 cases. In the majority of cases this information was obtained directly from banks. This procedure is the same

regardless of whether the information is requested in criminal or civil tax matters;

- *Information held by other Panamanian governmental authorities*: When the information is in the hands of another governmental agency, the Competent Authority issues a note requesting the information. Panama states that these usually take some time to be responded to, as the documents submitted with the reply are generally authenticated by the receiving entity before answering. Therefore, these notes usually do not have a deadline implicit in the note. Nevertheless, Panama officials report that co-operation is usually good and there were no problems for the Competent Authority in practice to obtain the requested information. In general it takes up to 60 days to obtain information from such other governmental agencies in Panama.
- *The taxpayer's file at the local tax office*; This includes tax returns, financial reports, communication between the taxpayer and assessing officer and original documentation obtained from the taxpayer or audit reports;
- *The taxpayer* (where resident or active in Panama). The taxpayer may be contacted in cases where the information cannot be gathered from the internal databases or other information sources. The Competent Authority sends a request note to the taxpayer asking for the information to be provided (usually) within 10 days of receipt of the letter. This procedure was not used in practice yet.

310. In general the person subject to an EOI enquiry will not be an individual or company resident in Panama. Requests typically relate to taxpayers that are resident in the requesting jurisdiction but which have some kind of link with Panama through the use of a Panamanian entity.

311. Since most of these entities do not operate in Panama or receive income from sources in Panama, only limited information is directly available with the tax authorities. This mainly concerns information on franchise duties as these are payable by all persons registered in Panama.

312. The main source of information regarding these entities that do not operate in Panama or receive income from sources in Panama, is therefore the resident agent.

Gathering of ownership, accounting and bank information in practice

313. As discussed under element A.1 ownership information regarding SAs and foundations may be kept by the company itself or by its resident agent. However, as already explained, for a variety of reasons the availability

of identity and ownership information held by resident agents on these entities during the period under review was not ensured.

314. Peers indicated that the information received with respect their EOI requests was often not sufficient to fulfil their request for assistance. The Panamanian authorities explained that this was mainly caused by deficiencies in Law No. 2 of 2011. However, the practice of the tax authorities during the three-year review period was to approach only the Resident Agent to obtain ownership information. Where the Resident agent didn't have it, Panama did not seek the information from the companies and foundation concerned, even where they were obliged to keep the information sought. This resulted in the Panamanian competent authority not always obtaining all information.

315. One peer requested a regulation of a foundation in two separate cases and Panama was not able to obtain this information. Panama clarified that in both cases it contacted the relevant resident agent and asked for the documents. The resident agent involved stated that it didn't have the requested information. Although Panama has the power to request all relevant information – including the regulation of a foundation – from the resident agent – Panama did not approach the foundation in either of these cases.[27]

316. Similarly where other types of information are required such as accounting information, Panama has not been able to obtain it as the tax authorities do not ask entities operating outside Panama to provide it. The tax authorities tried (twice) to write to an offshore company directly, but this endeavour was not fruitful. As the approach was not shown to be effective they have stopped doing it.

317. Panama received 48 requests pertaining to accounting information of which most (40) related to companies which did not operate in Panama. Although the provisions in the Commercial Code do not apply in these cases (see element A.2), it can be expected that accounting records and underlying information will be kept by these companies for commercial reasons, reporting to the owners of the company, or by virtue of the laws of the jurisdictions where they operate. Nevertheless, Panama did not use its access powers against the companies.

318. Panama received requests for bank information in approximately 25 cases. As noted in section A.3.1 above, two peers indicated that bank information was not provided in 10 of the cases where they requested for this type of information. These cases primarily concern access to information

27. Both the resident agent; the council members and the founder can all be considered information holders for the purposes of Law No. 33 of 30 June 2010 as (reference can also be made to section A.1.5 above).

and not issues related to the availability of banking information as discussed under element A.

319. Panama has explained that most of these requests did not contain sufficient information to identify the name of the bank or a bank account number. However, in one case the request did include the name of the person under investigation in combination with a SWIFT code that was associated with a transaction by this person.

320. Based on this SWIFT code Panama was able to identify the bank. However, it turned out that a person did not have an account with this ban Panama sent a statement from the bank to the requesting jurisdiction stating that the person mentioned in the request did not have an account with the bank through which the transaction took place.

321. In the remaining nine cases all the requests followed a similar pattern and asked whether a specific tax payer from the requesting jurisdiction held a bank account in Panama ("has Mr X a bank account in Panama?"). Panama explained that it was not able to further process these requests since the requests did not include the bank account or an account number or any other details or further information that would enable Panama to identify the bank or bank account involved. Panama further notes that it was in contact with the peer on these cases and had a bilateral meeting to explain this situation and to clarify why it was not able to further process the requests in these cases.[28]

322. Panama stated that it would not face any difficulties in obtaining this type of information from the banks in cases where the EOI request would have sufficient details to identify the bank as well as the person involved (either a name or an account number).

323. In the assessment team's view Panama handled these cases in line with the standard. It appears that the requests did not contain sufficient information to enable Panama to identify the name of the bank or a bank account number.

324. Requests further involved other types of information, such as residence, property etc. (approximately 20 cases). In practice no issues or difficulties were reported regarding the availability or collection of these types of information.

28. As is the case in some other jurisdictions Panama does not have a central database with all bank accounts, and therefore it would at least need sufficient information to identify which of its 91 banks would be involved in order to be able to collect this type of information directly from that bank.

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

325. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. The 2010 report noted that Panama's information gathering powers specified that the DGI is empowered to obtain all information "necessary and inherent to the determination of tax obligations" (Article 20 of Cabinet Decree 109 of 7 May, 1970) and that "tax obligations" in this context referred to a Panamanian tax obligation.

326. Panama's territorial tax system is an important factor in making it a centre for international services. It also had the effect of excluding from the DGI's information gathering powers entities which are engaged in international services but which are only in receipt of foreign source income because there is no domestic "tax obligation" in such cases. This was a serious deficiency in the Panamanian authorities' powers to obtain information for exchange purposes.

327. In order to address this deficiency, Panama enacted Law No. 33 of 30 June 2010, which modified Article 20 of the Decree to give the DGI power to request and obtain tax information from any type of institution, public or private in order to comply with its international agreements. This is true without exception and without regard to a domestic tax interest. Significantly, it added the following to Article 20:

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

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

329. With respect to the period under review the Competent Authority reports that it did not encounter any practical difficulties with the application of access powers employed for EOI purposes. As noted, for most requests (51%), the Competent Authority obtained the information from the resident agent in Panama, as the taxpayer subject to the enquiry generally is not present in Panama. However, as already noted where the resident agent does not have the information as is often the case the Competent Authority does not

use its access powers against entities that do not operate in Panama or have income arising there.

Compulsory powers (ToR B.1.4)

330. The Tax Authority in Panama has powers to ensure access to information necessary to comply with treaty obligations. These powers are available in the Fiscal and Commercial Codes and can be used to answer EOI requests. Article 19 of Executive Decree 109 of 7 May 1970 provides for the use of more invasive powers such as the power to search for and remove records. Specifically it allows the DGI's audit staff to:

- Cite responsible taxpayers and third parties in general to answer under oath, either orally or in writing, within prudential limits set, all questions put to them on revenue, sales, income, expenses and in general on all the circumstances related to his assessment under applicable laws;
- Require, within the time specified therein, the presentation of vouchers, and other supporting elements related to the taxable event;
- Audit books, records, documents and inventories to certify and demonstrate the business and transactions of those responsible;
- Require, under its responsibility, the help of the police to the proper conduct of audit assignments;
- Carry out searches, seizures and temporary requisition.

331. Executive Decree 109 of 1970 provides for fines, closure of business and even arrest. There are also penalties in the Fiscal Code and the Commercial Code. The sanctions for non-compliance with a request to provide information seem not to distinguish between different circumstances or different types of entities. Article 756 of the Fiscal Code provides for penalties where the competent tax authority requires the submission of reports or documents of any kind related to the implementation of tax and these are not presented within a reasonable time. Without prejudice to other penalties, as appropriate, the penalties provided are a fine of USD 1 000 to USD 5 000 for the first time a request for information is refused, and USD 5 000 to USD 10 000 in case of re-occurrence. The establishment concerned may also be closed for 2 to 15 days, and definitive closure of the establishment may occur if a refusal to provide the information persists, in addition to sanctions in the Penal Code.

332. Article 756 makes a distinction between monetary penalties, closure of a business and sanctions provided for in the Penal Code. Taken together these appear to give the tax authority adequate sanctions to ensure access to

information for Panamanian tax purposes. However, in practice Panama has not applied these penalties for exchange of information purposes, e.g. in a situation where a company has no physical presence in Panama.

333. One reason for this appears to be that there is nothing against which to apply penalties and nowhere to go to impose them, since the company has no physical presence in Panama. Also the sanctions for non-compliance with a request to provide information apply against the company and not against any of the representatives of the company such as the directors of the company, the legal representative, who may also be outside Panama, or the resident agent. The possibility may also exist for private parties to interpret the provision as applying only to companies operating in Panama although that is not the DGI's understanding. Finally, it should be noted that the threshold between the various categories of penalties is unclear and it is not certain that the more extreme forms of penalty, e.g. definitive closure of a business would always be practical in the case of international businesses to which requests for exchange of information are more likely to relate. As a result, Panama does not use its compulsory powers to answer EOI requests if these requests pertain to companies and foundations that have no physical presence in Panama. Panama should review its compulsory powers and penalties in the regard. A more graduated system of monetary and other penalties tailored to specific circumstances, e.g. where a bank or service provider such as a resident agent, or a Panamanian entity, refuses to provide information requested could be considered.

334. The EOI Unit does not have the possibility to conduct a field audit to obtain the information or to ascertain the correctness of the information. It can, however, use search and seizure as an instrument to obtain the requested information, if necessary. There have been no cases in practice where the EOI Unit wanted to use these instruments to obtain the requested information or to ascertain the correctness of the information received.

Secrecy provisions *(ToR B.1.5)*

335. There are a number of provisions in Panamanian law relating to the secrecy of ownership, identity or accounting information. In the 2010 report the assessment team noted that it had difficulty obtaining clear and comprehensive information from Panama's officials about some of these.

336. First, the 2010 Report noted that article 170 of the Criminal Code contained a broad confidentiality provision that could impact all aspects of information exchange in Panama. The report noted that very late in the report writing process the assessment team was able to obtain a copy in Spanish of the Criminal Code which was revised in 2008. Its current Article 170 no longer deals with professional secrecy. Furthermore, the 2014 Supplementary

Report notes that Panama also enacted Law No. 2 of 2011, which sets forth some limitations on the attorney-client privilege standard in Panama. Law No. 2 of 2011 also repealed Executive Decree No. 468 in which explicit reference was made to Article 170 and for that reason the Phase1 report noted that article 170 was particularly relevant for Panama's review. As noted, however, this Executive Decree No. 468 was repealed in 2011 and article 170 of the Criminal Code no longer deals with professional secrecy.

337. Second, the 2010 Report noted that professional secrecy protects lawyers even when they are not acting as legal representatives. Lawyers play a leading role in the provision of international financial and wealth management services. Only lawyers admitted to practice in Panama may provide incorporation services and all corporations and private foundations must have a resident agent who must be a lawyer. Article 13 of the Code of Conduct of Lawyers in Panama provides that lawyers have a duty to keep the secrets and confidences of their clients, even after the contractual relationship has stopped. The Code does not distinguish between the various activities of lawyers. Furthermore the text clearly states that a lawyer cannot be forced to disclose information on a client, except with the agreement of this client.[29] A lawyer who breaches this secrecy duty is punishable by a private reprimand or a public reprimand.

338. The exceptions to professional secrecy described above are not relevant where a request under an exchange of information arrangement is made.

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

340. Panama has also enacted Law No. 2 of 2011, which sets forth some limitations on the attorney-client privilege standard in Panama. Specifically, it provides that although a lawyer is not required to submit any information or documents protected by attorney client privilege in response to a request from the competent authority, if the information requested is "limited strictly to that required by its obligations of the know your client measures", the lawyer cannot claim attorney-client privilege and is required to provide the

29. The other, marginal, exception is when a client sues a lawyer, who can then disclose information to defend him or herself.

information (Article 14). The law further provides that "[t]he supply of information upon request by a competent authority shall not be considered as a violation of the attorney-client privilege or a lack of professional ethic, as it is a superior interest for the Republic of Panama" (Article 16).

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

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

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

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

344. Regarding the second point, the resident agent may challenge the request by demonstrating and proving that the information was obtained illegitimately and the Competent Authority shall decide whether the challenge proceeds. Although the term "illegitimate means" is not defined in the provision, Panama advises that the intent is to ensure that Panama is not obligated to further the illegitimate acts of a foreign government.

345. It should be noted that the reference to "illegitimate means" is found only in Law No. 2 of 2011 and is not a general principle of the Panamanian legal framework. Law No. 2 of 2011 refers only to situations where the

resident agent is not obliged to provide the information. It does not cover other information holders like banks. In the context of Phase 1 it was noted that Panama continues to evaluate whether any amendment is required to Law No. 2 of 2011 to include a specific definition of "attorney-client privilege" for a clearer understanding of its effective application In practice there is no case yet where this issue has been brought up, i.e. resident agent has cited attorney client privilege as a reason for not giving information.[30]

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

347. Third, Article 37 of the Trusts Law requires that trustees, their representatives or employees, the State bodies legally authorised to carry out inspections or collect documents relating to trust operations and their respective officers and persons involved in such operations by reason of their profession or position, must maintain secrecy with regard to these operations. However, this duty does not override the obligation to provide information that must be disclosed to official authorities and the inspections they are required to carry out by law.

348. Fourth, Article 35 of the Foundations Law requires that the members of the foundation board and control bodies, if any, and public servants or private employees who have knowledge of the activities, transactions or operations of foundations shall maintain discretion and confidentiality in respect of them at all times. However, this duty does not override the obligation to provide information that must be disclosed to official authorities and the inspections they are required to carry out by law.

349. The tax authorities' information gathering powers permit it to obtain information from trusts and private foundations where it is relevant for the purposes of applying Panamanian tax law.

350. Panamanian law also recognises the principle of "banking reserve" or bank confidentiality (Chapter XIII of Decree Law No. 52 of 2008). The

30. In this respect it can also be noted that Law No. 2 of 2011 allowed resident agents a time period of 5 years to gather the relevant information. Nevertheless it can be noted that this time limit expired in February 2016.

basic principle underpinning the legislation is that banks are not permitted to disclose information on their clients save in the case of formal requests from competent authorities as prescribed by law (Article 111 to 113). Disclosure is permitted, accordingly, in any case in which a law authorises a government agency or administrative tribunal to gather information about a case. For example, confidentiality cannot be asserted, against the authorities, where a money laundering case (tax evasion is not a predicate offence) is being investigated. Information may also be disclosed to authorities such as The Superintendence of Banks for the purpose of exercising their legal and regulatory functions. Disclosure of suspicious transactions, to the Financial Analysis Unit, is required where money laundering is suspected. In this regard, Article 3 of Law No. 42 of 2 October 2000 (which was repealed and replaced by Law No. 23 of 2015, article 73) provides that "Any information communicated to the Financial Analysis Unit of the authorities of the Republic of Panama, in compliance with this law or its implementing provisions shall not constitute a breach in professional secrecy or of the restriction on disclosure of information due to confidentiality of a contractual nature or imposed by any law or regulation".

351. Similar provisions apply to investment advisors and investment managers under securities legislation (Decree Law No. 1 of 1999). Confidentiality provisions that apply in the case on other non-bank financial institutions e.g. insurance companies, collective investment funds, rely on Article 170 of the Criminal Code.

352. The tax authority has power to gather information from third parties (including banks) for the purpose of applying Panamanian tax law. The information is requested by letter based on the powers given under Article 20 of Cabinet Decree No. 109 of 7 May 1970.

Conclusion and practice

353. Several peers indicated that the information received with respect their EOI requests was not sufficient to fulfil their request for assistance in situations where the request related to a company or foundation that has no physical presence in Panama. Panamanian authorities explained that this was mainly caused by the practice during the three-year review period of only approaching the Resident Agent in order to obtain the requested ownership information. Accounting records and underlying documentation were not pursued at all, in respect of these companies, as Panama did not seek additional information from other potential information holders, in particular the companies concerned. Penalties have not been used and would not appear to be effective, in any case, against companies and foundations operating entirely outside Panama.

354. Taken together this resulted in the Panamanian competent authority not always obtaining all information needed to respond to requests even where this might otherwise have been available. Panama should therefore ensure that the access powers of its competent authority are fully utilised to obtain all information included in an EOI request from any person within their territorial jurisdiction that has possession or control of that information. Panama should ensure that the enforcement of these access powers is supported by adequate penalties for failure to provide information to the competent authority in a timely manner.

355. As indicated in section A.1.2 one major EOI partner of Panama received responses to 10 of its requests from Panama in March 2016 stating that Panama was not able to provide the requested ownership information *"as the capital is composed by bearer shares"*. All requests were made within the period under review. In six of these cases ownership information was provided at the second attempt in June 2016 after the peer's insistence that Panama provide this information following its initial failure to obtain and provide it. Panama reports that, in dealing with these cases, the DGI did use its powers to obtain information in situations where the resident agents didn't have the information, although they were required to have it. It notes that in these ten (10) cases it not only contacted the resident agent of the companies, but at the second attempt the professional client of the resident agent and succeeded in getting information in six cases. However, in a couple of cases the professional client was domiciled in a third country. In these cases the ownership information was not provided by Panama, but it did provide details of the professional intermediary to the requesting country. Although the DGI's intervention resulted in the information being provided in these cases, where the requesting jurisdiction subsequently approached the third country for ownership information regarding these shares, this should have been available with the resident agent and a custodian in Panama as of the beginning of 2016. Referring a query back to the requesting jurisdiction and asking them to contact a third jurisdiction in order to obtain information that should have been available to Panama's Competent Authority cannot be considered a satisfactory outcome. Panama reports that in cases where information was not obtained, the DGI proposed that sanctions be imposed on the resident agents based on the AML legislation. As these cases, as well as the AML legislation are very recent, the assessment team feels that it cannot sufficiently assess the effectiveness of these enforcement actions.

356. There was no case during the period under review where the requested information was covered or might have been covered by attorney-client privilege. Panama has limited its attorney-client privilege standard by Law No. 2 of 2011, which says that information obtained by an attorney pursuant to know your client measures is no longer protected. By virtue of Law No. 33 of 30 June 2010 and a similar provision in Law No. 24 of 2013 Panama

has ensured that the competent authority will have access to information irrespective of any secrecy obligation on the information holder. In addition, Panama's TIEAs incorporate the definition of Attorney-Client privilege in Article 7 of the OECD Model TIEA. In practice, peer input did not identify any issues regarding professional secrecy of lawyers.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Non-compliant	
Factors underlying recommendations	**Recommendations**
In the three-year review period, Panama's competent authority's practice was to request information only from the resident agent of companies or foundations operating entirely outside Panama regardless of whether the resident agent was obliged to keep the information sought. Information was not requested directly from the companies or foundations. This resulted in the competent authority not always obtaining all information.	Panama should ensure that the access powers of its competent authority are fully utilised to obtain all information included in an EOI request from any person within their territorial jurisdiction that has possession or control of that information.
Panama has not applied any penalties in the three-year review period, even where information should have been in the possession of the persons within its territorial jurisdiction and in practice the penalties available would not appear to be effective against entities that operate exclusively outside Panama.	Panama should review its penalty provisions to ensure its access powers are supported by adequate penalties for failure to provide information to the competent authority in a timely manner.

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)

357. Executive Decree No. 85 of 28 June 2011 sets forth the process by which effective exchange of information takes place. Further guidance is provided by means of Resolution No. 201-7257 of 12 July 2011, which adopted the Internal Manual for the Exchange of Information (*Manual de Procedimiento).*

358. The Phase 1 Report noted that, taken together, these documents provide for taxpayer notification with recognised exceptions, consistent with the international standard. In the course of Phase2 Panama clarified that it does not notify the taxpayer in practice and that it amended Executive Decree No. 85 in 2012 to delete the discretion cited below to decide whether or not to notify the taxpayer of the request for information.

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

> "It should be pointed out here that Panama reserves the right to notify the taxpayer that the Competent Authority of the other Contracting State or Party, to which there is an existing Convention for the Avoidance of Double Taxation or for Tax Cooperation and Information Exchange on Tax, is requesting information about the taxpayer, unless the authority of the State or the Requesting Party justify its reasons to avoid notifying the taxpayer: if it could harm the investigation it is being subject to. Even in the latter case, the Competent Authority of Panama has the discretion to decide whether or not to notify the taxpayer of the request for information that another State or Requesting Party shall make on such taxpayer" (Section I(K)).

360. As stated, Panama clarified that it does not notify the taxpayer in practice and that it amended Executive Decree No. 85 in March 2012 to delete the discretion cited above to decide whether or not to notify the taxpayer of the request for information. Panama confirmed that this modification would also serve to overrule the language in the *Manual de Procedimiento,* given

the hierarchy of sources of law and higher position of an Executive Decree compared with that of a manual.

361. In practice, at least two partners asked Panama to refrain from notifying the taxpayers. In response Panama clarified that it would not notify the taxpayer, but that it could not guarantee that the service provider or the bank involved would refrain from contacting the tax payer involved. In other words, Panama clarified that there was no anti-tipping off provision under Panamanian law. For completeness it can be noted that such a provision is not required under the standard.

362. The Protocol to some of Panama's DTCs includes a provision that generally states that the administrative procedure rules regarding a taxpayers' rights in a requested state remain applicable and that these procedural rules include notifying the person in regard to the request of information and granting the possibility for that person to file and present a case to the tax administration before it responds to the request. The administrative procedure rules that would apply in this situation refer to the Executive Decree and Manual. In practice no issues or difficulties were reported in this regard.

Conclusion and practice

363. Panama's domestic law and its treaties seem to provide for taxpayer notification with exceptions in certain cases. However, Panama clarified that it does not notify the taxpayer in practice and that it amended Executive Decree No. 85 in 2012 to delete the discretion that gave it the possibility to decide whether or not to notify the taxpayer of the request for information. In practice no issues or difficulties were reported in this regard.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C. Exchanging information

Overview

364. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Panama, the legal authority to exchange information derives from double tax conventions and TIEAs once these become part of the Panama's domestic law. 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.

365. In practice, no issues in respect of the interpretation of foreseeable relevance or restricting exchange of information on account of the residence or nationality of the person to whom the information relates or of the holder of the information arose during the review period. Furthermore, Panama has not declined a request because the information was held by a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest. There has been no case when Panama declined a request because of a dual criminality requirement.

366. Since 2010, Panama has worked to expand its exchange of information network, concluding 25 treaties, including a number of tax information exchange agreements (TIEAs). Panama's network of information exchange mechanisms encompasses a total of 25 exchange of information agreements (EOI agreements), including 16 DTCs and 9 TIEAs. These EOI agreements largely follow the OECD Model Tax Convention and Model TIEA and include sufficient provisions to protect confidentiality. However, in a few cases the Protocols to these treaties contain limitations on exchange of information, most significantly by requiring the name and address of a taxpayer in order to exchange information. Therefore, 21 of Panama's 25 agreements are to the standard.

367. Panama amended its domestic legislation to allow it to exchange information in accordance with the terms of a DTC. Panama subsequently enacted legislation that enables it to exchange information under TIEAs. It also enacted legislation that removed the domestic tax interest requirement from its previous laws.

368. Panama continues to work on expanding its network of information exchange mechanisms. It has concluded negotiation of a number of EOI agreements, including those with Australia, Austria, Bahrain, Germany, Japan and Viet Nam, which are now pending signature. Negotiations are ongoing with a number of other relevant jurisdictions. Nevertheless, at the time of the First and Second Supplementary Reports a large number of peers had expressed frustration with Panama's hesitancy to commence or advance the negotiation of EOI arrangements. One peer 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. For its part Panama 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. While no new agreements has been signed since August 2015 a number of EOI agreements are now ready to be signed and, importantly, in July 2016 Panama requested to join the Multilateral Convention. Once this is signed and ratified it will address the other gaps in Panama's EOI network and will be a very significant step forward It is emphasised however that Panama is still in the process of joining the Convention and given the concerns that peers have previously expressed it is encouraged – once formally invited – to sign and ratify the Convention quickly.

369. During the period under review Panama disclosed of the name of the taxpayer to third parties in cases where this was not necessary for gathering the requested information. This practice is not in accordance with the principle that information contained in an EOI request should be kept confidential. Although Panama stated that it would change its practice, it should be noted that it is very recent (March 2016) and so it remains to be seen whether this will operate in practice in conformity with the confidentiality requirements of the international standard. Panama should therefore monitor that a disclosure of details such as the name of the taxpayer in certain circumstances does not exceed the confidentiality requirements as provided for under the international standard.

370. The Panamanian competent authority has access to information irrespective of any secrecy obligation on the information holder. In practice there was no case where secrecy obligations, including attorney client privilege, have hindered exchange of information.

371. Although the recent disclosures of information regarding a Panamanian law firm did not take place during the period under review, Panama has confirmed that it will handle information requests arising out of the recent disclosures in line with its obligations under its EOI mechanisms and in accordance with the standard.

372. Panama did not systematically provide updates where it was not able to respond to a request within the 90 days period. Panama should therefore provide status updates to its EOI partners within 90 days where relevant.

373. The postal service in Panama does not ensure door-to-door delivery of regular mail and Panama will not accept requests by encrypted e-mail. This has given rise to communication problems and delays in responding to requests from one major EOI partner. Panama is recommended to communicate with its EOI partners about its processing requirements and consider the use of encrypted email for future EOI incoming and outgoing requests.

374. During the review period, governmental changes and changes in the set-up of the tax authorities impacted on the organisational structure and processes of the tax authorities including the EOI Unit. In 2014 this coincided with an increase in the number of incoming EOI requests and an understaffing of the EOI Unit. These circumstances led to EOI requests not being processed in a timely manner in the second half of the review period. Panama should therefore ensure that it has appropriate resources, organisational structures and processes in place to process and answer to EOI requests in a timely manner.

C.1. Exchange-of-information mechanisms

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

375. Since 2009, Panama has signed 25 EOI agreements of which 22 are in force. These agreements include 16 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 TIEAs with Canada, Denmark, Faroe Islands, Finland, Greenland, Iceland, Norway, Sweden and the United States.

Foreseeably relevant standard (*ToR C.1.1*)

376. The international standard for exchange of information envisages information exchange to the widest possible extent. Nevertheless it does not allow "fishing expeditions," i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in paragraph 1 of Article 26 of the OECD Model Taxation Convention set out below:

> "The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out of the provisions this Convention or to the administration or

> enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2."

377. The 2010 report noted that Panama seeks to include this paragraph in all of its DTCs. However, a protocol contained in the Panamanian Model Double Taxation Convention states, among other things, that the assistance provided for in Article 25 (Exchange of Information) "does not include *(i)* measures aimed only at the simple collection of pieces of evidence, or *(ii)* when it is improbable that the requested information will be relevant for controlling or administering tax matters of a given taxpayer in a Contracting State ("fishing expeditions")".Panama states that it has no intention to interpret these words different from the language under the standard. They further note that this issue has never come up in practice. However, they confirm that they would not interpret in a different way, if it would come up.

378. All of Panama's DTCs contain the equivalent of Article 26(1) of the OECD Model Tax Convention. However, some of its DTCs contain a Protocol that could limit the exchange of all foreseeably relevant information.

379. Although Panama has incorporated the language of Article 5 of the OECD Model TIEA in its DTCs, it has supplemented this with additional requirements that are more restrictive than the international standard in the following cases. Its Protocols to four DTCs (with Ireland, Luxembourg, the Netherlands and Qatar) say that the requesting state "shall provide" the name and address of the person under investigation. This restriction does not conform to the standard, as the international standard requires only that the jurisdiction provide "the *identity* of the person under examination or investigation" (emphasis added).

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

381. Panama has issued Executive Decree No. 85 of 28 June 2011 which sets forth the procedures the DGI must follow in requesting information and responding to a request from a treaty partner. The Decree requires that the request from the treaty partner meet a list of conditions, one of which is the provision of "[d]etailed information by the Requesting State or Party of

the identification data of the people under investigation, *according to what is established in the Protocol of the applicable Convention or Agreement*, such as: name, date of birth, marital status, tax identification number, date of incorporation and registration details (for legal entities), address and email" (emphasis added). Therefore, the Decree confirms the name and address requirements of the Protocols. However, as Panama has already commenced the process of bringing these agreements in line with the international standard, it is recommended that Panama continue its action to correct this in order to allow for exchange of all foreseeably relevant information.

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

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

384. Panama has reported that it has also entered into mutual agreement procedures with Portugal, Mexico and Barbados to clarify this matter. All these agreements concluded through MAPs contain provisions whereby the requested state waives the requirement of the name and address of any person believed to be in possession of the requested information, if they are not known.

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

Protocols to DTCs with Barbados, Korea, Luxembourg, Mexico, Qatar, Portugal, the Netherlands, Spain and Italy contain a provision that provides that exchange of information "does not include measures aimed only at the simple collection of pieces of evidence, when it is improbable that the requested information will be relevant for controlling or administering tax matters of a given taxpayer in a Contracting State". Most of these DTCs add "('fishing expeditions')" to the end of this sentence, although the DTCs with Luxembourg and United Arab Emirates only contain the first part of the sentence: "does not include measures aimed only at the simple collection of

pieces of evidence". It was noted in the Phase 1 Report that the DTC with Mexico contained this language and that it was unclear what effect this would have on exchange of information. Since the Phase 1 Report, Panama has continued to include this language in all but two of the Protocols to its DTCs.[31] This language is not included in its TIEA with the U.S. or its Protocol. Panama advises that the purpose of the language is to avoid fishing expeditions and that it believes that this language is consistent with the commentary on Article 26 of the OECD Model Convention, which provides that "…Contracting States are not at liberty to engage in 'fishing expeditions' or to request *information that is unlikely to be relevant to the tax affairs of a given taxpayer*" [emphasis added]. However, whether the "simple collection of pieces of evidence" necessarily means that such information would not be relevant is an open question. In addition, information that is "improbable that… [it] will be relevant…" could be more narrow than simply "relevant" information as contemplated in the Model. Panama states that it has no intention to interpret these phrases differently from the language under the standard and that this issue has never come up in practice. It confirms that it would not interpret these words in a different way, if the issue came up.

386. No requests for information received during the period under review were declined by Panama on the basis that the requested information was not foreseeably relevant, and no clarifications in this respect were asked for. Panama adds that where it asked for clarifications, these questions were related to the specifics of the information that was requested (in practice they would ask for such guidance for instance by way of an e-mail or phone call), and not related to the foreseeably relevance of the request itself. Furthermore, no issue in respect of the interpretation of the foreseeable relevance was reported by peers.

In respect of all persons (ToR C.1.2)

387. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard for exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

388. Panama's policy in this respect is not to limit exchange of information to information relating to the affairs of residents or nationals of the contracting parties. None of the EOI agreements negotiated and concluded by Panama is restricted to certain persons such as those considered resident

31. DTCs with Singapore and France.

in one of the states, or precludes the application of the exchange of information provisions with respect to certain types of entities. Therefore, all of Panama's EOI agreements allow for the exchange of information in respect of all persons.

389. In practice, no issues related to restricting exchange of information on account of the residence or nationality of the person to whom the information relates or of the holder of the information have been indicated by the Panamanian authorities or their peers.

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

390. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Convention and the Model Agreement on Exchange of Information, which are the authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

391. All of Panama's DTCs include paragraph 26(5) of the OECD Model Tax Convention or its equivalent, which provides that a contracting state may not to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. Panama's policy is to include Article 26(5) of the OECD Model Tax Convention in all of its EOI agreements. Its TIEA with the U.S. contains language that is equivalent to Article 5(4) of the OECD Model TIEA.

392. In practice, Panama has not declined a request because the information was held by a bank, other financial institution, nominees or persons acting in an agency or fiduciary capacity or because the information related to an ownership interest.

Absence of domestic tax interest *(ToR C.1.4)*

393. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use

their information gathering measures even though invoked solely to obtain and provide information to the other contracting party

394. Originally, there were prima facie restrictions in Panama's domestic laws which limited the DGI's powers to obtain information to situations where that the information is relevant to the determination of a tax obligation in Panama. These could have prevented the exchange of information in cases where the information was not publicly available or already in the possession of the Panamanian authorities. However, as discussed in section B.1, Panama has enacted Law No. 33 of 30 June 2010, which modified Article 20 of the Decree to give the DGI power to request and obtain tax information without regard to a domestic tax interest in order to comply with its international agreements.

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

Absence of dual criminality principles *(ToR C.1.5)*

396. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

397. None of the EOI agreements concluded by Panama apply the dual criminality principle to restrict the exchange of information. Panama's policy in this regard is to exchange information under its agreements irrespective of whether the conduct being investigated would constitute a crime in Panama. Accordingly, there has been no case when Panama declined a request because of a dual criminality requirement.

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

398. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not

limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

399. All of the EOI agreements concluded by Panama provide for the exchange of information in both civil and criminal tax matters. Panama's policy is to exchange information under its agreements in civil and criminal tax matters.

400. In practice, there has been no case where Panama declined a request because it related to a criminal tax matter, and no peers have raised any issues in this regard.

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

401. There are no restrictions in Panama's EOI agreements that would prevent it from providing information in a specific form so long as this is consistent with its own administrative practices. Its EOI agreements state that the information must be provided in the form specified by the competent authority of the requesting party, including depositions of witnesses and authenticated copies of original documents.

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

403. In practice, no particular problems were raised by peers regarding the form in which the information was exchanged. However, Panama reports that a number of requests were delayed by legal issues concerning affidavits from resident agents. Panama was able, in these cases, to send the remaining information that the EOI partners requested, although the cases could only be closed after the legal issues were solved and the affidavits had been provided. Separate from this, one peer noted that it sent two requests to Panama and Panama provided its answers in Spanish. In this respect, Panama explained that it basically answers requests in Spanish. However, in respect of these cases Panama states that it would have provided the answer in English, if the jurisdiction would have requested it. Apart from this issue regarding translation, it can be noted that the peer stated that Panama provided them with useful information, responded to all of their questions, and was accessible when the peer needed to communicate with them either by email or telephone.

In force (ToR C.1.8)

404. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where exchange of information agreements have been signed the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

405. 22 of Panama's 25 EOI agreements are currently in force[32]. Panama has ratified all of its signed agreements and is currently awaiting action from its treaty partners to bring the remaining agreements into force.

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

406. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement. Panama has enacted laws to give effect to its EOI agreements, including Law No. 33 of 30 June 2010 and a similar provision in Law No. 24 of 2013, which remove the domestic tax interest requirement in its previous laws. With regard to the period under review, there has been no case where any issue in this regard came up, and no peers have raised any issues in this regard either.

Determination and factors underlying recommendations

Phase 1 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.

Phase 2 rating
Compliant

32. Barbados, Canada, the Czech Republic, Faroe Islands, Finland, France, Greenland, Iceland, Ireland, Korea, Luxembourg, Mexico, Netherlands, Norway, Portugal, Qatar, Singapore, Spain, Sweden, the United Kingdom, the United Arab Emirates and the United States.

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

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

407. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If 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 it may indicate a lack of commitment to implement the standards.

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

409. Notwithstanding the progress that Panama has made in concluding EOI agreements with some of its relevant partners, the First and Second Supplementary Reports noted that a large number of peers reported that they had been unable to commence or advance negotiations with Panama despite their efforts. Some of these peers expressed frustration with Panama's hesitancy to conclude EOI agreements. More specifically at the time of the Second Supplementary Report, four peers 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 indicated that EOI negotiations with Panama had stalled, due to differences in positions taken by the negotiating parties with regard to specific issues or non-responsiveness by Panama. One peer (Argentina) indicated that Panama had not been receptive to several requests to engage in EOI negotiations with it, which could have been interpreted as a refusal to have an EOI agreement with that jurisdiction.

410. For its part Panama reiterated its commitment, at that time, to engage in EOI negotiations with all its relevant partners, meaning those partners who are interested in entering into an EOI agreement with it.

411. Panama reports that it agreed with India and Australia to continue negotiations for TIEAs via e-mail and other electronic means and that the TIEA with Australia, that includes a clause that allows for the exchange of CRS data, has been finalised. A TIEA with Japan, that also includes a similar article concerning the exchange of CRS data, has also been finalised. Additionally, Panama and Belgium have agreed to proceed with negotiation of a TIEA with an AEOI clause, instead of continuing with their DTA negotiation. Panama further states that it contacted Costa Rica, Chile, Guernsey and Turkey in order to continue or start negotiations and that it is in contact with South Africa following South Africa's requests from July and October 2015 to enter into a TIEA. Both South Africa and Chile reported that they received a letter from Panama in the second quarter of 2016 stating that Panama would like to enter into a DTA instead of a TIEA. Both jurisdictions stated that they are currently not interested in entering into a DTA with Panama.

412. Panama has also contacted Argentina's new government in order to discuss next steps regarding the bilateral fiscal matters. Negotiations over a DTC with Colombia – which will include an AEOI clause –, were finished in April 2016, and both jurisdictions announced publicly that they had reached an agreement on a DTC between them. Nevertheless, new issues arose afterwards and to date the DTC has not been finalised. Apart from this, agreements with Bahrain, Austria, Germany and Viet Nam are now ready to be signed.

413. Notwithstanding this progress, the pace of negotiations with many peers has been extremely slow, and no new EOI agreement has been signed since August 2015.

414. In July 2016, however, Panama took the important step of sending an official request to the OECD to be invited to sign the Multilateral Convention. Panama subsequently transmitted the confidentiality questionnaire and related background information to the Coordinating Body Secretariat on 5 August 2016. This information has been distributed by the Coordinating Body to its delegates, in accordance with the agreed Co-ordinating Body Process for Non-OECD/Council of Europe countries.

415. In this regard it is important to point out that Argentina and Colombia, with respect to which recommendations had been included in the First and Second Supplementary Reports, as well as the five other peers that previously reported in 2015 that they had been unable to commence or advance negotiations with Panama, are all signatories to the Multilateral Convention. Once Panama signs, ratifies and deposits the Convention it will be in a position to exchange information to the Standard with all of these peers. Panama is strongly encouraged to sign and ratify the Convention quickly.

416. In addition, Panama's request to be invited to sign the Multilateral Convention has created some uncertainty with regard to its bilateral negotiations

and it is now in the process of approaching all jurisdictions that have requested to enter into an EOI agreements with it to confirm their intention to initiate or continue bilateral negotiations.

417. While the request to join the Multilateral Convention is a very significant step forward for Panama it is emphasised that Panama has not actually signed or ratified the Convention or been formally invited to join it yet.

418. It is recommended, therefore, that Panama should enter into agreements for exchange of information (whether DTCs, TIEAs or multilateral instruments) expeditiously with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Panama still does not have EOI agreements with many relevant partners. While significant progress has been made over the last year, having regard in particular to Panama's request to sign the Multilateral Convention, no new agreements were signed during the last twelve months.	Panama should enter into agreements for exchange of information (whether DTCs, TIEAs or multilateral instruments) expeditiously with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.

Phase 2 rating
Partially Compliant

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)

419. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would

be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments countries with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

420. Panama seeks to include the terms of Article 26(2) of the OECD Model Convention set out below in all of its treaties to avoid double taxation and prevent tax evasion:

> "Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions."

421. Panama has included this language in all of its DTCs. Additionally, its TIEAs include the equivalent of Article 8 of the OECD Model TIEA. Once a treaty is signed by the President and is published in the Official Gazette it becomes part of Panamanian law.

422. Since 2010, Panama has also enacted legislation that includes confidentiality requirements for information exchanged pursuant to its agreements. Nothing in Panama's EOI agreements or its domestic laws suggest that its confidentiality rules would not apply to all types of information exchanged.

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

424. In addition, the *Manual de Procedimiento* contains a section entitled "Confidentiality of the Information Received". It mirrors the confidentiality provisions of the OECD Model Tax Convention and specifies that "the confidentiality provisions contained in the instruments for the exchange of

information are intended to take precedence over any national legislation which permits the disclosure of information, keeping in mind the delicate, sensitive and critical results of the dissemination of such information".

All other information exchanged (ToR C.3.2)

425. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

426. Article 722 of the Fiscal Code establishes the principle of confidentiality in fiscal matters. Furthermore, Article 21 of Cabinet Decree No. 109/70 provides that all officers and public servants in the service of the Director General of Revenue must keep confidential all information obtained while carrying out their duties.

In practice

427. All officials dealing with information on taxpayers are obliged to keep all the information confidential. The confidentiality rules are provided mainly in the Fiscal Code and Cabinet Decree No. 109/70, as well as in the provisions on confidentiality contained in bilateral agreements.

428. The requests received by the EOI office are registered in a database, which is accessible only by authorised officials. All EOI related information is kept separately and treated as confidential. Paper documents are safely stored in secure cabinets in the EOI Unit. Access to files is restricted to authorised officials only. Panama confirms that information obtained from a treaty partner, including the EOI request itself, is never disclosed to the resident agent or the taxpayer.

429. Entry to the premises of DGI is restricted and guarded. Information obtained in relation to requests kept in the respective taxpayer's file can be accessed only by the authorised assessing officer responsible for the respective taxpayer's assessment. It can be distinguished from information obtained from domestic sources and is clearly identifiable.

430. Information is sent by registered mail/package with a tracking number, and e-mail is only used for other correspondence. Panama notes that in practice all EOI partners sent their requests by registered mail or courier. However, in December 2013 one major EOI partner sent a considerable number of requests by regular mail. Panama states that it only became aware of these requests in May 2014, when the EOI partner involved contacted them and asked for an update on these requests. At that moment Panama contacted the postal office, and was able to trace two request letters that were found in

its post office mail box. Panamanian officials explained that Panama's postal services do not provide for door-to-door mail delivery, as Panama does not have a system with traditional (numbered) street addresses. Instead, the Panamanian post office (*Correos y Telegraphos*) provides for a PO mail box service. They further clarified that it is widely considered that most regular mail that is addressed to a home or business address in Panama will simply not arrive. This seems also to be the case with these requests. Panama has since been in contact with this treaty partner and all requests have been resent via diplomatic channel, and in the future this partner will use registered mail. The delay that can be associated with this issue will be further discussed under element C.5. During the processing of an EOI request, when communicating with other competent authorities, this is generally carried out via email in which no confidential details of the request will be shared.

431. Regarding the information that is provided to the holder of information when he/she is asked by DGI to provide the information which is requested by a treaty partner, Panama explains that this is limited to information such as the reason for request, reference to the relevant jurisdiction the date the request was received and the taxpayer involved as well as a description of the information requested. However, during the onsite visit it was established that the disclosure of the name of the taxpayer in the request note during the review period was not always necessary for gathering the requested information, and is therefore is not in accordance with the principle that information contained in an EOI request should be the minimum necessary to execute the request Panama stated that it was not aware of the impact of this issue, and that it would change it practice. One peer also noted that it has "some concerns about confidentiality issues, particularly with regard to the information provided by the Panamanian Authorities to the resident agents as third parties involved in the process of EOI". Panama is therefore recommended to monitor that details such as the name of the taxpayer are not routinely disclosed to information holders.

432. Apart from this concern no (other) issues regarding confidentiality of information have been raised by Panama's exchange of information partners.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
largely Compliant	
Factors underlying recommendations	**Recommendations**
The disclosure during the period under review to third parties of the name of the taxpayer in cases where this was not necessary for gathering the requested information is not in accordance with the principle that information contained in an EOI request should be kept confidential. Panama has changed its practice in this regard. However it should be noted that this change is very recent (March 2016) and so it remains to be seen whether this will operate in practice in conformity with the confidentiality requirements of the international standard.	Panama should monitor that a disclosure of details such as the name of the taxpayer in certain circumstances does not exceed the confidentiality requirements as provided for under the international standard.

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)

433. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney – client privilege is a feature of the legal systems of many countries.

434. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that, the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where attorney – client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a resident agent, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange

of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

435. Panama has stated that its treaty policy is to ensure that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney client privilege or information the disclosure of which would be contrary to public policy. Each of its16 DTCs contain a paragraph equivalent to Article 26(3)(c), which makes clear that the agreement does not oblige Panama to supply information which would disclose any trade, business, industrial, commercial or professional secret.

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

437. As discussed in section B.1.5 of this report, Panama has made improvements to its professional secrecy laws since 2010. In particular, it has limited its attorney-client privilege standard by Law No. 2 of 2011, which says that information obtained by an attorney pursuant to know your client measures is no longer protected. Further, through Law No. 33 of 30 June 2010 and a similar provision in Law No. 24 of 2013 Panama has ensured that the competent authority will have access to information irrespective of any secrecy obligation on the information holder. As noted in section B.1.5 in practice there was no case where this issue has been brought up, i.e. no resident agent has cited attorney client privilege as a reason for not giving information.

438. Although the recent leaks of information from a Panamanian law firm did not take place during the period under review, Panama has stated that that it will handle information requests arising out of the recent disclosures in line with its obligations under its EOI mechanisms and in accordance with the standard.

Determination and factors underlying recommendations

Determination
The element is in place.

Phase 2 Rating
Compliant

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)*

439. In order for exchange of information to be effective it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

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

441. As part of its restructuring, the Ministry of Economy and Finance also issued Executive Decree No. 85 of 28 June 2011 and its amendment through Executive Decree 194 of 5 May 2012, which sets forth procedures to request information and to answer information requests, and which also adopted and authorised the Form for the Request of Tax Information. It also adopted the *Manual de Procedimiento* by means of Resolution No. 201-7257 of 12 July 2011 which provides procedural guidelines for the DGI to follow.

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

443. There do not seem to be any specific legal or regulatory requirements in place which would prevent it from responding to a request for information by providing the information requested or providing a status update within

90 days of receipt of the request. Panama's EOI agreements do not contain any guidance on the timeliness of a response.

444. During the period of review that runs from 1 July 2012 to 30 June 2015 Panama received 97 requests for information. Including the time taken by the requesting jurisdiction to provide additional information, the requested information was provided within 90 days, 180 days and within one year in 19%, 33% and 39% of the time respectively.[33]

445. The following table shows the time taken to send the final response to incoming EOI requests including the time taken by the requesting jurisdiction to provide clarification (if asked) over the 3 year period from 1 July 2012 to 30 June 2015.

Response times for requests received during the three-year review period

	1 July-31 Dec 2012		2013		2014		1 Jan-30 June 2015		Total	
	num.	%	num.	%	num.	%	Num.	%	Num.	%
Total number of requests received	17	100%	15	100%	49	100%	16	100%	97	100%
Full response: ≤ 90 days	13	76%	4	27%			1	6%	18	19%
≤ 180 days (cumulative)	17	100%	10	67%	3	6%	2	12%	32	33%
≤ 1 year (cumulative)	17	100%	14	94%	4	8%	2	12%	37	38%
> 1 year					31	63%	-	-	31	32%
Declined for valid reasons			1	6	0	0	0	0%	1	1%
Failure to obtain and provide information requested	0	0	0	0	3*	6%	0	0%	3	3%
Requests still pending at date of review	0	0	0	0	11	22%	14	88%	25	26%

Notes: Panama regards a request as a single request, irrespective of the pieces of information requested or the number of taxpayers involved. Further requests of information are treated as separate requests.

The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

* This includes two withdrawals.

446. As the table shows the number of requests increased quite sharply from 15 in 2013 to 49 in 2014, but returned to 16 in the first half 2015 (being roughly the same level as at the start of the review period in the second half of 2012). The requests mainly originate from European countries, Mexico and North America.

447. The table further shows that the response times increased during the period under review. At the start of the review period response times

33. These figures are cumulative.

were relatively short. Panama was able to answer 76% of the requests within 90 days and 100% of the requests within 180 days. In 2013 response times generally increased, and a smaller percentage of cases was responded to within 90 days (27%) and 180 days (67%). Nevertheless, Panama was able to respond to 94% within one year, while 1 case had been declined. This slowdown continued in 2014, since Panama was only able to answer 8% of all cases within one year. It managed to answer 63% of all requests within a time period of more than one year. In 2014 in 3 cases there was a failure to obtain and to provide information. It can be noted, however, that two of these requests were withdrawn as the EOI partner involved had not received information in a timely manner (over a year) and the related cases had to be closed. In all 11 cases from 2014 were still pending at the date of the onsite visit. This pattern basically continued in the first half of 2015. In all, 2 cases (12%) were answered within one year, and the remaining 14 requests (88%) were pending at the date of the onsite visit.

448. Overall, Panama provided the requested information within 90 days for 19% of requests. Furthermore, an additional 14% of the requests were answered in the time period of three to six months. Panama officials have explained that cases where a response could not be provided within 90 days were mainly related to requests that involved bank information, due to the bulk nature of the information requested. Panama notes that it sent the requested information in parts, and as soon as it could be provided.

449. However, Panama explains that most of the delays are not related to a particular type of information, but rather to the organisation and restructuring of the competent authority and the tax administration. These issues coincided with a shortage of staff within the EOI office.

450. Up until April 2013 all EOI requests were received and handled by the Directorate General of Revenue of the Ministry of Economy and Finance (DGI). Within DGI all requests were processed and responded to by the EOI Unit of the International Taxation Department. They dealt with both the operational, administrative and investigative phases of the process.

451. In April 2013, however, Panama shifted all the functions including all the powers that were originally attributed to the DGI to a newly established autonomous authority, the National Public Revenue Authority (*Autoridad Nacional de Ingresos Públicos, ANIP*). The idea behind this shift was that it would help improve tax collection and reduce tax evasion.

452. Law No. 24 of 2013 attributed the National Public Revenue Authority (the Tax Authority) with all the powers originally available to the Directorate General of Revenue of the Ministry of Economy and Finance. In essence, ANIP would maintain the same responsibilities, staff and structure.

453. Panamanian officials, however, report that "problems started" with this restructuring, that moved the operational, administrative and investigative parts of the process regarding exchange of information away from the (former) DGI. Although staff started to work in this new structure in August 2013, officials explain that the Competent Authority function was not delegated until October 2013.

454. Panamanian officials further report that in practice all administrative functions had to be set up again, delaying the processing of requests further. At the same time, there was insufficient funding and budget available for the EOI Unit to operate properly e.g. to send replies by registered mail/courier. Panamanian officials report that for this reason in practice it has happened that the requested information was ready to be sent, but could not be sent because of a lack of funds to pay for the courier delivery service. Panama noted that further delays were caused by legal issues, primarily related to a number of requests asking for, among other things, affidavits from resident agents.[34] Around mid-2014 Panama experienced a change of government, and proposals were made around the same time to move the tax authorities, including the EOI Unit, back again to the Ministry of Economy and Finance.

455. However, on 11 August 2014, the Panamanian Supreme Court of Justice ruled that the creation of ANIP as an autonomous authority violated the provisions of the constitution that assign the responsibilities of tax collection and administration of public revenues to the President of Panama together with the Ministry of Economy and Finance.[35] Shortly after this, Panama reinstated the DGI (i.e. the tax authorities within the regulatory framework of Decree No. 107 of 7 May 1970 in place prior to the establishment of ANIP) replacing the National Public Revenue Authority (ANIP).[36]

456. A new Director General of Revenues was appointed on 1 October 2014. However, Panama notes that he was not delegated as Competent Authority until February 2015. This coincided with the increase in number of EOI requests in 2014 and 2015. In the meantime all requests that had been addressed to the previous Competent Authority were still pending and could not be responded to. The EOI office was not able to keep up with this increase as it had been

34. Panama reports that these requests got delayed by legal issues regarding the affidavits, although it noted that it was able in these cases to send the remaining information that the EOI partners requested. This led to partial responses and delays, since these cases could only be closed after the legal issues were solved and the affidavits had been provided.
35. Published in the Official Gazette No. 27633-A of 1 October 2014.
36. Decree No. 435 of 19 September 2014.

understaffed since 2013.[37] In Panama's view the main reason for the delays that occurred was purely related to a lack of resources in the EOI office.

457. Peer input reflects this increase in response times since 2014 and the consequent delays. One peer noted that it had to withdraw two cases (involving bank and accounting information) because the cases needed to be closed after waiting for responses for more than one year. Although Panama indicated that it kept its major EOI partners updated about these developments and the handling of their cases, this particular peer also flagged a decrease in communication with Panama.

458. Panama noted that it contacted its most important EOI Partners and established priority lists with them. Work began on the most urgent cases, most of them arriving in late 2014, early 2015, leaving the other requests pending. In practice, in getting rid of the backlog in 2015, priority has been given to cases were the jurisdiction involved asked for a rapid treatment. This approach obviously went to the detriment of some other jurisdictions that had not indicated any need for such a rapid treatment in their cases.

Pending cases

459. In all, around 26% (25 requests) of all requests received over the period under review were pending at the date of the on-site visit. In getting rid of the backlog in 2015, priority has now been given to cases were the jurisdiction involved asked for a rapid resolution These requests concern a variety of cases. Nevertheless, the following can be noted:

- at least nine cases concern to accounting information.
  - These requests were sent by two major EOI partners. Panama stated that it has not yet determined whether the Panamanian entity involved is operating in Panama or not. As discussed under element A.2 this distinction is relevant to the question of whether accounting information is required to be available in Panama. At the time of the onsite visit these cases were already pending for periods between one and one-and-a half years. However, Panama has clarified that a rapid resolution of six of these cases (related to one treaty partner) is now a priority. In the meantime responses in the remaining three cases (regarding a second EOI partner) will remain pending, as the requesting jurisdiction had not explicitly indicated or requested an expedited treatment in these cases.

37. Panama reports that it had an average response time of 64.63 days per request prior to June 2014. It reports that the average response time went up to 204.57 days per request after this date. Panama expects to once again be in the 60 plus days per request within the first semester of 2016.

- At least five cases relate to bank information. These cases are pending for more than one year.
- At least two cases relate to ownership information of companies. Both cases are pending for more than one year.

Declined requests

460. During the period under review there was one case where Panama declined to provide the requested information (around 1% of all received requests). Panama notes that in this case the request was not sent to the correct Competent Authority. Panama stated that it contacted its counterparts in the requesting jurisdiction and asked them to resend the request., More recently it stated that it responded to this respect.

Failure to obtain and provide information requested

461. Panama reports that there three cases during the period under review where it failed to obtain and to provide the requested information (around 3% of all received requests). All these cases related to the year 2014. In two cases this concerned a failure to obtain the regulations of a Panama foundation. These cases relate to the Panama's use of its access powers and have been discussed in more detail above in section B.1.1. [38]

462. The statistics show requests as answered which were, in fact, only partially answered as a result of the issues regarding availability of ownership and accounting information (as described in sections A.1 and A.2) and Panama practice in the three-year review period to request information only from the resident agent of companies or foundations operating entirely outside Panama regardless of whether the resident agent was obliged to keep the information sought. This has been described in section B.1 above. As noted in section B.1, information was not requested from the companies or foundations, and consequently the competent authority did not always obtain all the relevant information.

Updates

463. During the period under review Panama authorities report that they regularly provided updates on the status of the request where, for any reason,

38. Panama notes that these cases have been responded to but were partially answered. In respect of these requests they emphasise that these concerned requests for regulations of a foundation. Panama notes that this information is "private" according to the Private Interest Foundations Law.

Panama had not been able to obtain and provide the information requested within 90 days of receipt of the request.

464. Panama reports that in all cases where the 90 days were exceeded, the Panamanian EOI Unit has kept steady communication with its partners via email and telephone explaining the reasons of the delays.

465. Indeed one peer notes that it did regularly receive status updates from Panama. One of Panama's bigger EOI partner explains, that "early in the peer review period, there were regular communications on a case by case basis. Later in the peer review period, responses to request updates have become sporadic", and "Later in the peer review period, due to a lack of contact, and as all of our requests were still pending, we are unsure as to whether our requests are deficient." Nevertheless, two other major EOI Partners note that no updates have been provided where Panama has been unable to provide the information requested within 90 days.

466. Therefore the Panama did not systematically provide updates where it was not able to respond to a request within the 90 days period. Panama is recommended to provide status updates to its EOI partners within 90 days where relevant.

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

467. The Panamanian authorities have taken steps to organise the DGI in order to handle requests for exchange of information and have put processes in place, including the *Manual de Procedimiento,* in order to facilitate responses.

468. Within the International Taxation Department, the Exchange of Information Unit has the overall responsibility for handling exchange of information.

469. There are currently 2 persons involved in exchange of information, the head of the International Taxation Department, and the head of the exchange of information unit. However, in practice all the EOI requests are handled and processed by the EOI Unit. The EOI Unit is currently staffed with one person, and there's a vacancy for a second person.

470. All international requests for information are handled and processed by the EOI Unit. The EOI Unit is responsible for communication with the other competent authorities and for the administration of gathering the requested information. This includes checking whether the responses sent by the information holders include all the requested information and are in the requested format, and, if the requested information cannot be provided, ensuring that it provides an explanation as to why it was not able to provide all the requested information.

471. As noted, the Ministry of Economy and Finance also issued Executive Decree No. 85 of 28 June 2011 and its amendment through Executive Decree 194 of 5 May 2012, which sets forth procedures to request information and to answer information requests, and which also adopted and authorised the Form for the Request of Tax Information. It also adopted the *Manual de Procedimiento* by means of Resolution No. 201-7257 of 12 July 2011 which provides procedural guidelines for the DGI to follow (within the boundaries of said Executive Decrees) as well as good practices in relation to exchange of information.

Handling of EOI requests

472. Once an EOI request is received the request is first be stamped and registered. The Competent Authority maintains an internal registry and physical file for each EOI request. Each stage of the case is reflected in this file. The Competent Authority uses an excel file to log and track all EOI requests. It also uses an Outlook agenda to keep track of the timeliness regarding the request and the information requested. All EOI related information is kept separately and treated as confidential. Physical access to the files is restricted to officials within the EOI Unit only and appropriate security precautions are in place.

473. After registering and including the request in the internal registry, a follow-up number is assigned and a response via e-mail is provided to the requesting party. In this message he EOI Unit confirms receipt of the letter and informs the foreign Competent Authority that it will be examined.

474. As a next step, the EOI unit checks whether the request meets all legal and procedural requirements under the applicable EOI agreement and Executive Decree No. 85 of 28 June 2011 and its amendment through Executive Decree 194 of 5 May 2012. This examination is based on a standard checklist of the basic requirements which are included in articles 3 and 4 of the Executive Decree 85 of 2011, modified by Executive Decree 194 of 2012.

475. Executive Decree No.85 of 28 June 2011 states that, in order to begin the process of responding a request, the DGI shall verify that the "information is requested by written letter" (article 3). Based on this provision Panama states that it does not process requests that are made by other means, for instance by encrypted e-mail. It can provide updates by e-mail or phone, but not responses to the requests.

476. Panama notes that in practice all EOI partners send their requests by registered mail or courier. However, as discussed under element C.3 in December 2013 one major EOI partner sent a considerable number of requests by regular mail. Initially none of these requests arrived at the EOI

Unit. Panama states that it only became aware of these requests in May 2014, when the EOI partner involved contacted them and asked for an update on these requests.

477. At that moment Panama contacted the postal office, and was able to trace two request letters that were found in its post office mail box (PO mail box). However, it understood from the EOI partner that 17 letters were sent. Panamanian officials explained that Panama's postal services do not provide for door to door mail delivery, as Panama does not have a system with traditional (numbered) street addresses. Instead, the Panamanian post office (*Correos y Telegraphos)* provides for a PO mail box service. They further clarified that it is widely considered that most regular mail that is addressed to a home or business address in Panama will simply not arrive. This seems also to be the case with these requests.

478. The EOI partner involved resent all requests by encrypted e-mail. However, based on its internal procedures (discussed above) Panama refused to process these requests. As a consequence, the requests were sent again but eventually by using the diplomatic channel. The peer involved notes that all of these difficulties have generated delay in the response times. The requests eventually arrived at the Panama Competent Authority in October 2015, and Panama reports that it was only than that it understood that the total number of requests was not 17, as it had understood at an earlier stage, but 28 in total. In respect to all these 28 cases Panama reported at the time of the onsite visit that it had responded to 26 requests on 7 January 2016 and that 2 cases were pending and due in April 2016. [39]

479. Panama is recommended to communicate with its EOI partners about its processing requirements that effectively limit requests to written letters that have been sent via registered mail or courier. However, given the issues related to the postal service in Panama described above and the costs of international couriers, Panama is encouraged to consider the use of encrypted email for future EOI requests.

480. In cases where a request is unclear or incomplete, the EOI Unit seeks clarification or additional information from the requesting Competent Authority. Panama reports that the DGI's policy in such cases is to immediately establish contact with the requesting jurisdiction, either by email or by

39. In response the peer noted that by April 2016 it only considered 4 out of these 28 requests answered in a satisfactory manner. Additional responses in the remaining cases (including information on bearer shares as discussed under element A.1.2 above) were provided in June 2016 although only at the peer's insistence. Nevertheless, although not all requested information could be provided, the peer noted that it considered that the responses and the explanations provided in second instance by Panama were satisfactory.

phone to clarify and have all relevant details. If this clarification is successful, Panama will accept the request.

481. Panama indicated that it has has sought clarification in only few cases during the period under review. Panama adds that where it asked for clarifications, its questions were related to the specifics of the information that was requested (in practice they would ask for such guidance for instance by way of an e-mail or phone call), and not related to the foreseeably relevance of the request itself. Furthermore, no issues in this respect were reported by peers.

The actual processing of the request involves the following steps:

482. First the staff member in the EOI office assesses the request to see whether a reply to the request can be prepared on the basis of information that is available within the EOI Unit and/or the DGI. If the information is (partially) available with the DGI, it can be obtained immediately. If the information is (partially) available with another governmental authority, the EOI unit will issue a request note to ask for the information. This process will usually take some time, since all governmental authorities will authenticate these notes first. Panama states that for this reason these notes usually do not have a deadline attached to them. Receipt of the requested information usually takes between 30 to 45 days.

483. When the information is in the hands of the resident agent, the Competent Authority also sends a request note, requesting for the information to be provided within 10 days upon deliverance of the note. The same procedure will be followed when the information is to be collected from the tax payer, although this procedure has not yet been used in practice yet. For banks, a request note will be send requesting for the information to be provided within a range of 10 to 45 days, depending on the amount and complexity of the information requested. The EOI unit can consider extending the deadlines with an additional five working days if asked, or ten in the case of banks. If the EOI Unit does not receive a timely answer, the DGI issues a note reaffirming the initial request, with a substantial decrease in deadline and announcing penalties (article 11 Executive Decree 85 of 2011 in combination with article 756 of the Fiscal Code) Up to now, a reaffirmation note has proven to be effective to obtain the information.

484. After having received the requested information from the person in possession or control, the EOI unit verifies whether the information is responsive to the question asked in the request. As Panama further explains the EOI Unit does not have the possibility to conduct a field audit to obtain the information or to ascertain the correctness of the information. It can however use search and seizure as an instrument to obtain the requested information.

Nevertheless, Panama explains that there have been no cases where the EOI Unit needed to use any of these instruments to obtain the requested information or to ascertain the correctness of the information received.

485. After collecting the requested information and drafting the response by the EOI Unit, the DGI will send the information by registered mail to the requesting jurisdiction.

Internal deadlines

486. The Executive Decree No. 85 of 28 June 2011 and its amendment through Executive Decree 194 of 5 May 2012 does not prescribe a set deadline within which the EOI office is required to provide the requested information to the requesting jurisdiction. Instead the manual simply recommends that the Competent Authority or Requested Party seeks to provide the requested information within 90 days of receipt of the request. No time frames and deadlines are provided for the individual steps regarding handling of requests and obtaining information.

IT tools, monitoring, training

487. The EOI Unit uses an Excel file to register and track the requests and the Outlook calendar as reminder system. Panama's experience is that these tools have proven adequate given the number of request handled. Panama further states that the status of all requests received and processed can be seen at any time. Full access to both tools is basically limited to the EOI office.

488. The Competent Authority maintains a physical file for each EOI request. The file is continually kept up to date (from receiving a request until providing the information and therefore closing the case). Panama reports that it regularly monitors the number of requests handled by the EOI Unit, response times and quality of the work through statistics and regular meetings with the staff. Relevant issues, including pending cases, are discussed during a weekly meeting between the Competent Authority, the head of the International Taxation Department and the head of the EOI unit.

489. The officials involved in EOI are appropriately trained and educated. They are made aware of important changes or any other relevant news or update in the area of mutual assistance through regular internal meetings. Officials involved attend international meetings like the Global Forum Competent Authority Meetings where EOI matters are discussed. Country specific Competent Authority meetings have been held with a number of jurisdictions, including Spain and Mexico.

490. Financial resources (e.g. for legal opinions) are available in the form of the unit's annual budget of (currently) USD 67 200.00 (mainly salaries)

plus USD 6 000.00 on Couriers. The EOI Unit currently has one vacancy that it hopes to fill at short notice given the growing complexity and the expected further increase of requests.

491. Panama's internal processes are generally sufficient to ensure effective exchange of information. However, resources were lacking for most of the review period, leading to long delays in responding to requests. At the time of the on-site visit the EOI Unit was staffed with one person. In the light of the growing number and complexity of requests it recommended that additional resources are made available as a matter of urgency.

492. Panama has already started to address the lack of resources following the onsite visit and has very recently allocated extra budget to the EOI Unit. With this budget increase Panama has expanded the number of staff in the EOI Unit. To further enhance effectiveness of the Unit, Panama has also started to adapt and update its organisational structures and IT systems. More specifically the EOI unit, which was previously located within the International Taxation Department, has been upgraded to an independent department within the DGI. The staff of this new EOI Department currently holds positions for five (5) officials and this number is expected to increase further by the end of 2016. Panama reports that improvements have also been made regarding the use of the postal service in replying to EOI requests, and that the DGI has been authorised to hire private mailing services on an annual basis.

Absence of restrictive conditions on exchange of information (ToR C.5.3)

493. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Other than those matters identified earlier in this report, there are no further aspects of Panama's agreements or its laws that appear to impose additional restrictive conditions on the exchange of information.

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.

Phase 2 rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
During the review period, governmental changes and changes in the set-up of the tax authorities impacted on the organisational structure and processes of the tax authorities including the EOI Unit. In 2014 this coincided with an increase in the number of incoming EOI requests and an understaffing of the EOI Unit that existed throughout the review period. These circumstances led to EOI requests not being processed in a timely manner in the second half of the review period.	Panama should ensure that it has appropriate organisational structures and processes in place to process and answer to EOI requests in a timely manner. Panama should also endeavour to improve its resources to ensure that all EOI requests are responded to in a timely manner.
The postal service in Panama does not ensure door-to-door delivery of regular mail with the result that requests have not been received by the competent authority. Panama also does not accept requests by encrypted e-mail. This has led to confusion and delays in responding to requests from peers that are not familiar with the peculiarities of Panama's mail service.	Panama is recommended to communicate with its EOI partners about its processing requirements that effectively limit sending the requests to written letters that have been sent via registered mail or courier. Panama is encouraged to accept the use of encrypted e mail for future EOI incoming and outgoing requests.
Panama did not systematically provide updates where it was not able to respond to a request within the 90 days period.	Panama should provide status updates to its EOI partners within 90 days where relevant.

Summary of determinations and factors underlying recommendations

Overall Rating
NON-COMPLIANT

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1.)*		
Phase 1 determination: 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.
Phase 2 rating: Non-Compliant	There are approximately 486 000 SAs registered in Panama that are deemed to be inactive as well as 17 000 foundations. In these cases the resident agent may have lost contact with the company or foundation and its owners. For this reason the availability of up-to date ownership information in Panama, including information on owners of bearer shares, in these SAs and foundations cannot be sufficiently ensured.	Panama should modify its law and practices as appropriate and significantly reduce the substantially disproportionate number of deemed inactive companies in order to ensure availability of relevant information in respect of all legal entities that are registered in Panama.

Phase 2 rating: Non-Compliant *(continued)*	There is some uncertainty as to whether all bearer shares have been immobilised with custodians or definitively suspended by 31 December 2015 as required by law. In practice, Panama was not able to provide ownership information in a number of cases after the custodial regime was implemented. The newly introduced legislation regarding bearer shares including its transitional provisions might not, therefore, ensure that information is available in practice on all holders of bearer shares in all cases.	Panama should modify its law and/or practice as appropriate to ensure that information regarding the owners of bearer shares is available in all cases.
	Panama has not been able to provide statistical or practical information regarding any established administrative or supervisory mechanisms for the supervision of compliance with the requirements on entities to keep ownership and identity information concerning the period under review and the application of any resulting sanctions. It appears that enforcement provisions are not, or in any case not yet adequately, applied in practice and therefore these provisions generally may not sufficiently ensure that ownership information with regard to the relevant entities is available.	Panama should establish administrative or supervisory mechanisms for the monitoring and enforcement and the application of any resulting sanctions to ensure compliance with the legal requirements regarding the availability of identity and ownership information in Panama.

	Panama introduced changes concerning its AML framework in August 2015, including a number of enforcement provisions. The AML framework is extended to also cover resident agents. Although a positive step, these measures and related supervision activities are very recent and therefore remain to be sufficiently tested.	Panama should monitor the implementation of the newly introduced AML legislation and take measures to address any identified deficiencies.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2.)*		
Phase 1 determination: The element is not in place.	Only companies and partnerships operating in Panama are required to maintain accounting records.	The record keeping requirements in the Commercial Code should apply to all companies, limited partnerships and partnerships limited by shares registered in Panama irrespective of whether they carry on business in Panama.
	The Trusts 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.
Phase 2 rating: Non-Compliant	Issues related to the availability of accounting records had a significant impact on exchange of information in practice, since this type of information could not be obtained in 40 out 48 cases. All these cases related to companies operating outside Panama.	Panama should ensure that reliable accounting records, including underlying documentation, are being kept by all relevant entities and arrangements for a period of at least five years.
Banking information should be available for all account-holders. *(ToR A.3.)*		
Phase 1 determination: The element is in place.		

Phase 2 rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1.)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Non-Compliant	In the three-year review period, Panama's competent authority's practice was to request information only from the resident agent of companies or foundations operating entirely outside Panama regardless of whether the resident agent was obliged to keep the information sought. Information was not requested directly from the companies or foundations. This resulted in the competent authority not always obtaining all information.	Panama should ensure that the access powers of its competent authority are fully utilised to obtain all information included in an EOI request from any person within their territorial jurisdiction that has possession or control of that information.
	Panama has not applied any penalties in the three-year review period, even where information should have been in the possession of the persons within its territorial jurisdiction and in practice the penalties available would not appear to be effective against entities that operate exclusively outside Panama.	Panama should review its penalty provisions to ensure its access powers are supported by adequate penalties for failure to provide information to the competent authority in a timely manner.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2.)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1.)*		
Phase 1 determination: 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.
Phase 2 rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2.)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Panama still does not have EOI agreements with many relevant partners. While significant progress has been made over the last year, having regard in particular to Panama's request to sign the Multilateral Convention, no new agreements were signed during the last twelve months.	Panama should enter into agreements for exchange of information (whether DTCs, TIEAs or multilateral instruments) expeditiously with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it.
Phase 2 rating: Partially Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3.)*		
Phase 1 determination: The element is in place.		

Phase 2 rating: Largely Compliant	The disclosure during the period under review to third parties of the name of the taxpayer in cases where this was not necessary for gathering the requested information is not in accordance with the principle that information contained in an EOI request should be kept confidential. Panama has changed its practice in this regard. However it should be noted that this change is very recent (March 2016) and so it remains to be seen whether this will operate in practice in conformity with the confidentiality requirements of the international standard.	Panama should monitor that a disclosure of details such as the name of the taxpayer in certain circumstances does not exceed the confidentiality requirements as provided for under the international standard.
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4.)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5.)*		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		

Phase 2 rating: Partially Compliant	During the review period, governmental changes and changes in the set-up of the tax authorities impacted on the organisational structure and processes of the tax authorities including the EOI Unit. In 2014 this coincided with an increase in the number of incoming EOI requests and an understaffing of the EOI Unit that existed throughout the review period. These circumstances led to EOI requests not being processed in a timely manner in the second half of the review period.	Panama should ensure that it has appropriate organisational structures and processes in place to process and answer to EOI requests in a timely manner. Panama should also endeavour to improve its resources to ensure that all EOI requests are responded to in a timely manner.
	The postal service in Panama does not ensure door-to-door delivery of regular mail with the result that requests have not been received by the competent authority. Panama also does not accept requests by encrypted e-mail. This has led to confusion and delays in responding to requests from peers that are not familiar with the peculiarities of Panama's mail service.	Panama is recommended to communicate with its EOI partners about its processing requirements that effectively limit sending the requests to written letters that have been sent via registered mail or courier. Panama is encouraged to accept the use of encrypted e mail for future EOI incoming and outgoing requests.
	Panama did not systematically provide updates where it was not able to respond to a request within the 90 days period.	Panama should provide status updates to its EOI partners within 90 days where relevant.

Annex 1: Jurisdiction's response to the review report[40]

The Republic of Panama would like to express its gratitude to the members of the Peer Review Group for the hard work they have performed, its exchange of information partners for their valuable contributions to the review, and gratefully acknowledge the assistance given by the assessment team throughout the review process, as well as their support during the current review.

The Government of Panama has taken the recommendations resulting from the review period for Phase II, comprising the three years between July 2012 and June 2015, as a basis for significant legislative amendments to address the shortcomings identified in order to comply with the OECD standards on Exchange of Information.

As a result of its Phase I review, Panama undertook significant legislative improvements, including enhancing due diligence obligations and enacting the custodial regime for bearer shares. Under the new anti-money laundering rules, in three cases the DGI requested the Supervisory Agency for Non-Financial Subjects (*Intendencia de Sujetos Regulados No-Financieros*) to impose sanctions on resident agents and, as a result of these complaints, disciplinary proceedings were initiated.

The Government of Panama is duly aware that there is still room for improvement as part of its commitment to the implementation of the international tax transparency standards. In this sense, two important bills were recently approved in the National Assembly:

1. Bill through which the obligation to maintain accounting records is created, for entities whose operations are not perfected, consummated or take effect within the Republic of Panama and the effects of the suspension and dissolution of entities are regulated, among other provisions.

Extends the obligation to keep accounting records, which is currently applicable to entities operating in Panama, so that it is also applicable to any entity incorporated in our country, even if it operates outside of Panama. The aim is

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

that such information is accessible to the competent authorities of Panama as a tool in tax or criminal investigations and to provide responses to information requests received by Competent Authority (DGI) based on tax treaties.

Establishes a suspension (*strike-off)* process for entities in default for not paying their annual company fee, for not having a registered Resident Agent or being in default for lack of payment of any executed sanction imposed by the competent authority. It also establishes a definite dissolution process for entities suspended for a specific period and have neither applied for reactivation nor corrected the deficiencies which led to the suspension. The purpose of these measures is to clean up the Panamanian system of entities that are no longer operational and whose information (accounting, final beneficiaries, among others) is not available to the Competent Authority (DGI).

2. Bill establishing the regulatory framework for implementing the exchange of information for tax purposes and other provisions.

Sets out specific obligations for Panamanian financial institutions to report financial information for tax purposes to the DGI as the competent authority, in compliance with the commitments agreed upon in the IGA signed with the US and in the context of CRS. It gives powers to the DGI to supervise the compliance with the law and to impose sanctions for failure to comply.

Moreover, it enhances the powers of the DGI as the competent authority to access information from private parties and to apply penalties and fines, in order to comply with the commitments acquired in connection with exchange of information upon request.

In parallel, Panama has been making efforts to expand its international tax treaty network. In August of the current year, Panama signed its first CRS agreement and sent negotiating proposals to 19 jurisdictions, all of which are represented in the Global Forum. In addition, Panama has taken all necessary steps to join the Convention on Mutual Assistance Administrative and is expecting to sign it before the end of 2016.

Moreover, and in relation to the approval of the bill that regulates exchange of information, Panama is one of the countries that shows higher development in implementing the standard of automatic exchange of information, among those committed for 2018.

All of the above highlight Panama’s full commitment to implement the OECD standards despite the challenges which led, in part, to the shortcomings described in this report.

Finally, Panama takes this opportunity to confirm its commitment to the peer review process and to the tax transparency standards promoted by the Global Forum and wishes to emphasize that it will continue to take all the necessary steps to further strengthen its legislative and regulatory framework and improve its practice to facilitate exchange of information mechanisms in line with the recommendations made in the report.

Annex 2: List of all exchange of information mechanisms

List of EOI agreements signed by Panama as at 12 August 2016 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 3: List of all laws, regulations and other material received

Legislation pertaining to exchange of information on tax matters

Law No. 24 of 2013

Law No. 33 of 30 June 2010

Article 31 of Law No. 8 of 15 March 2010

Panama's Model Double Taxation Convention

Executive Decree No. 85 of 28 June 2011

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

Resolution No. 253-DS/AL of 28 December 2010

Resolution No. 201-7257 of 12 July 2011

Manual de Procedimiento (Manual for the Exchange of Information)

Form for the Request of Tax Information

Executive Decree No. 194 of 5 March 2012

Fiscal Legislation and Regulations[41]

Article 694 of the Fiscal Code of Panama (Taxable Income – Scope of Tax)

Article 710 of the Fiscal Code of Panama (filing returns and record keeping requirements for free zone entities)

Articles 718, 719, and 720 of the Fiscal Code of Panama (correcting returns)

41. The assessment team was not provided with a complete translation of Panama's Fiscal Code.

Article 756 of the Fiscal Code of Panama (penalties for non-compliance)

Articles 1323 and 1324 of the Fiscal Code of Panama (penalties for non-compliance)

Cabinet Decree No. 109 of 7 May 1970 (Articles 17, 19 and 20 in relation to access powers)

Law No. 8 of 15 March 2010 (extracts on withholding taxes)

Ministry of Economy and Finance General Revenue Department Resolution No. 201-1182 (Information to be Reported to the Director General)

Resolution No. 201-1182 of 18 April 2008 (reports to be provided to General Revenue Department)

Resolution No. 201-1183 of 18 April 2008 (reports by authorised non-profit institutions)

Commercial laws dealing with registration of entities and retention of information

Law No. 47 of 6 August 2013, as amended by Law No. 18 of 23 April 2015

Corporations Law of Panama, Law No. 32 of 1927

Law No. 4 of 2009 (new law on SRLs replacing Law No. 24 of 1996)

Law No. 24 of 1996 (original law creating and regulating SRLs)

Superintendence of Banks: Agreement No. 4-99 of 11 May 1999

Executive Decree No. 468 of 19 September, 1994 (Whereby obligations and responsibilities of the Registered or Resident Agent of corporations are determined)

Code of Commerce of the Republic of Panama,[42] as amended by Law No. 22 of 27 April 2015

Decree Law No. 5 of 2 July 1997, updating provisions of the Code of Commerce

Law No. 25 of 12 June 1995 Private Interest Foundation Law of Panama

Law No. 1 of 5 January 1984 by which Trusts are regulated in the Republic of Panama and other measures are adopted

Superintendence of Banks: Trust License Requirements

42. The assessment team was not provided with a complete translation of the Commercial Code.

Legislation and regulations for financial services and anti-money laundering/anti-terrorist financing measures

Law No. 2 of 1 February 2011

Law No. 23 of 27 April 2015

Executive Decree No. 363 of 13 August 2015

Law No. 14 of 8 May 2007

Superintendence of Banks: Agreement No. 12-2005 of 14 December 2005) "Prevention of the Improper Use of Banking and Trust Services"

Law No. 50 of 2 July 2003 (inclusion of terrorism offences in the Penal Code)

Superintendence of Banks: Agreement No. 1-2004 (Acquisition or Transfers of Shares)

Superintendence of Banks: Agreement No. 3-2001 of 5 September 2001 (Licensing Requirements)

Superintendence of Banks: Agreement No. 4-99 of 11 May 1999 (accounting standards)

Executive Decree No. 52 (of 30 April 2008): Whereby the Sole Text of Decree Law No. 9 of 26 February 1998, modified by Decree Law No. 2 of 22 February 2008 is adopted. (Decree Laws applying to banks)

Other Legislation

Law No. 9 of 1994 Which Regulates Legal Practice

Act No. 41 of 20 July 2004 (creating a special regime for the establishment and operation of the Panama-Pacific Special Economic Area)

Code of Conduct of Lawyers in Panama issued by the National Bar Association (Articles 13, 34 and 35)

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OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
(23 2016 46 1 P) ISBN 978-92-64-26615-5– 2016

Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: PANAMA

This report contains a "Phase 2: Implementation of the Standards in Practice" review, as well as revised version of the "Phase 1: Legal and Regulatory Framework review" already released for this country.

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 130 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the 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, which has been incorporated in 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 plus Phase 2 – reviews. 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.

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ISBN 978-92-64-26615-5
23 2016 46 1 P

9 789264 266155