



# Mutual Evaluation Report of the Republic of Panama



JANUARY 2018



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## MUTUAL EVALUATION REPORT OF THE REPUBLIC OF PANAMA

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## EXECUTIVE SUMMARY

1. This report summarizes the AML/CFT measures existing in the Republic of Panama, hereinafter Panama, as of the on-site visit made from May 15 to 26, 2017. It analyzes the compliance level with the 40 FATF Recommendations, as well as the effectiveness level of the Panamanian AML/CFT system, and it offers recommendations on how to strengthen this system.

### *Key Findings*

- Panama has carried out an NRA, in which it has identified that its main risks in ML are derived from illicit financial flows from abroad which may be placed in Panama and are associated with drug trafficking, other offenses related to organized crime, smuggling and other offenses related to international trade; with regard to internal threats, the crimes of drug trafficking, corruption, financial crimes and crimes against intellectual and industrial property were identified as the main offenses.
- One of the main risks the country currently experiences in terms of income from criminal activities is the receipt of funds or other financial assets resulting from tax crimes committed abroad. This risk has not been considered in the NRA as approved by the country and it is important to point out that tax crimes are not criminalized as a ML base or predicate offense, which significantly affects the possibilities for prevention and investigation of ML offenses, and prevents an adequate cooperation in the requests received from abroad, since there is no local predicate offense linked to the tax crime. The impossibility of investigating and prosecuting tax crimes as a ML predicate offense has a decisive negative effect on the efficiency of the confiscation process and seizing measures.
- Competent authorities are deemed to be cooperative and in charge of coordinating the proper development of policies and activities to prevent ML/TF and FPWMD, irrespective of the fact that limitations have been found in the scope of the National Strategy as approved by the country.
- Therefore, national policies and activities as implemented by the competent authorities are deemed not consistent with all the risks identified in the country. Beyond the fact that tax crimes are not comprised therein, it is considered that illicit funds derived from other threats, within or without the country, as identified by the NRA (drug, gun and human trafficking, smuggling, financial crimes, corruption, and the like) are not adequately faced due to the significant vulnerabilities disregarded by the Strategy in the main risk sectors (corporate services, free zones, real estate and financial sectors).
- In order to solve the existing weaknesses, Panama must adopt significant legislative measures and set forth rules affecting the current operative activities of the trade platform and services rendered in the country.
- The FIU is capable of communicating, both spontaneously and upon request, the results of its analysis, which is made through intelligence reports. It has access to a broad range of information and adds value to its reports. However, its contribution to the PPO in order to investigate and track assets derived from criminal activities related to ML, predicate offenses and TF is poor due to the low amount of disseminated works. In cases related to other competent



authorities, it has not been ratified if the contributions made by intelligence and technical assistance provided by the FIU have supported operative needs.

- A low registration of RIs has been detected in the FIU online reporting platform, especially for those identified as high risk by the NRA, mainly DNFBPs, thus the low level of STRs generated by sectors with high risk due to the local context is inconsistent, particularly in sectors of real estate and constructions, the Colon Free Zone and attorneys acting as resident agents.
- There have been no cases of suspicious transaction reports (STRs) or cash or quasi-cash transaction reports (CTRs) related to TF. Reporting institutions are aware of their obligation to submit them and receive lists from the UN Sanctions Committee through the FIU, but they do not show a high understanding of TF risk or a capacity to detect possible TF cases by their own means.
- The criminal procedure system is implementing a model change from a mixed inquisitive system to an accusatory system. For the country, this scenario generates a series of challenges in terms of how ML cases will be investigated and punished. The strengthening process must continue for the most relevant institutions of the system, such as the Police, the Prosecutor's Office, the Department of Seized Property and the Judges responsible for procedural safeguards and Criminal courts.
- Regarding the investigation of the ML offenses, there are evidences of the efforts of the authorities dedicated to the prosecution of ML from drug-related offenses and progressively they begin to see results in investigations with other preceding crimes, such as corruption and financial crimes.
- The number of reported convictions are mostly linked to ML from drug trafficking, but there is a progressive increase in sentences related to corruption investigations and some risk sectors within the framework of the effective implementation of Law No. 4 of 2017.
- The NRA determined that the TF risk is low because Panama does not have individuals or terrorist organizations and does not maintain relations with countries at greater risk of terrorism. There are mechanisms in place to prevent the use of the financial system for TF and to implement targeted financial sanctions related to TF and proliferation. However, the NRA evaluated mainly terrorism risk and not TF risk, and FIs and DNFBPs do not fully understand TF risks.
- Financial institutions have an adequate level of understanding of their risks and their AML obligations. The DNFBPs –despite the work of the Supervisory Body– show that they do not fully understand ML risks; this has a special impact on compliance with AML obligations. The mitigation measures in DNFBPs are in a more incipient stage of development.
- The four supervisors in the financial sector –SBP, SMV, SSRP and IPACOOOP– identify and understand ML risks in their sectors, even though they are at different stages of development in terms of risk matrices and risk-based monitoring processes.
- The Intendencia has prepared variables of sectoral risk matrices and is currently working in including the information that enables it to develop its supervision activities. At the moment of the on-site visit, it had focused in supervising those sectors that were identified as higher ML risk.



- The country presents an inherently high risk for the placement of assets from offenses committed abroad, for which purpose persons and legal arrangements may be used (especially corporations, private interest foundations and trusts).
- In recent years, the country has passed several laws and regulations with the aim of improving the transparency of Panamanian corporations, foundations and other legal arrangements. Notwithstanding the foregoing, there is no evidence on the effective availability and the adequate verification of the information on shareholders and beneficial owners of the entities, since there are no mechanisms securing the accuracy and updating of the available data. This is because the responsibility of resident agents is unclear, the monitoring of their activity is scarce and applied sanctions are not confirmed yet.
- Neither have control measures been adopted to prevent the misuse of the capacities of shareholders and nominal directors, services that are permitted by current legislation and are regularly provided by law firms operating in the country. Due to the above, the way in which its use affects the quality of the available data on the beneficial owners of the companies and legal arrangements is unknown.
- Panama has units specifically aimed at providing international cooperation among its different institutions related to the AML/CFT/CFPWMD system. It must be mentioned that the lack of criminalization of tax offences has a negative impact on providing formal cooperation, such as mutual legal assistance and extradition.

### ***Risk and General Situation***

2. In terms of threats, the entry of funds related to crimes committed abroad is the main threat regarding ML and TF in Panama, since important criminal groups or transnational criminal or terrorist activities have not been identified within the country. The financial flows from abroad find in Panama a solid financial system and a wide range of corporate services that are, although intended to facilitate legal business, vulnerable to be exploited to provide opacity and hide the origin or illegal linking of resources. In addition to the above, illicit drug trafficking is seen as the illicit activity committed in the Panamanian territory which is most related to ML.

3. The country has developed a legal and institutional framework to mitigate risks derived from ML crimes, its predicate offenses and TF. Through the legislation implemented and regulated since 2015, a number of non-financial reporting institutions were included that for the first time are subject to a regime of prevention and combating of ML/TF activities, highlighting those reporting institutions under the monitoring of the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions.

4. Notwithstanding the foregoing, it is important to note that Panama does not criminalize tax crimes as ML predicate offenses. This entails a number of difficulties, since it prevents the carrying out of domestic investigations and the capacity to provide international cooperation.

### ***General effectiveness and technical compliance level***

#### ***Risk assessment, coordination and application of policies (Chapter 2 – IO. 1; R. 1, R. 2, R. 33)***

5. As pointed out in the NRA, the main internal threats regarding ML are drug trafficking, corruption, financial crimes and crimes against intellectual property. On the other hand, the sectors identified with higher risk are free trade zones, real estate and banking. Regarding TF, the NRA qualifies risk as low because

Panama has no presence of groups or individuals linked to terrorist activities nor does it keep important relationships with countries at high risk of terrorism or TF.

6. In Panama, tax crimes are not criminalized as base or predicate offenses of ML and, in this sense, have not been considered in the NRA. The abovementioned significantly affects the possibilities for prevention and investigation of ML offenses, since it deters investigation and prevents an adequate cooperation in the requests received from abroad, since there is no local predicate offense linked to the tax crime. The absence of criminalization of tax crimes has an effect on the effective implementation of the legal framework because it limits its scope of application. The National Strategy, developed jointly by Panama and the International Monetary Fund (IMF), does include the criminalization of tax crimes as one of its lines of action.

#### *Financial intelligence, ML and confiscation (Chapter 3 - IO 6-8; R. 3, R. 4, R. 29-32)*

7. Panama has a Financial Intelligence Unit (FIU) that serves as the national center for receiving and analyzing Suspicious Transactions Reports (STRs) and Cash (and cash equivalents) Transactions Reports (CTRs), which are received through an electronic platform that allows interaction with the reporting institutions to offer feedback on the quality of STRs. The FIU issues financial intelligence reports with added value which are disseminated by the Public Prosecutor's Office. The Unit also provides technical assistance at the request of the PPO or other competent authorities. However, the use of financial intelligence produced to contribute to the investigation carried out by the competent authorities proves scarce in the light of the low amount of reports disseminated by the FIU and other competent authorities, as the case may be. Likewise, there are no verifications as to whether intelligence reports and technical assistance of the FIU have provided support to the operative needs of such authorities. Moreover, while efforts have been undergone to register as RIs all DNFBPs identified as high-risk in the NRA, this task have not been completed by far. On the other hand, there is a low STRs filing level in sectors with high vulnerability to ML/TF, as stated by the NRA of the country itself, such as the case of attorneys acting as resident agents, the real estate sector and ZLC subjects.

8. The criminal procedure system is implementing a model change from a mixed inquisitive system to an accusatory system. ML investigations carried out by the PPO are mainly associated with cases of drug trafficking, although in recent years certain investigations have been initiated for money laundering with other predicate offenses, such as corruption and financial crimes.

9. For the development of the relevant investigations, a Specialized Unit on Money Laundering and TF of the PPO has been created to support with analysts and appropriate technological tools the work carried out by prosecutors in cases of money laundering.

10. In general, the country has a normative framework that allows the seizing, administration and confiscation of assets linked to ML. It is important to note that regulations related to the administration and auctioning of confiscated property must be updated.

#### *TF and financing of proliferation (Chapter 4- IO. 9-11; R. 5-8)*

11. Panama has developed mechanisms to investigate and process TF activities and to share information between Panamanian and international authorities. The issue of TF has been added to the NRA, but focused on an analysis of terrorism risk and not on TF. Financial institutions and DNFBPs have not reached to a thorough or in-depth understanding of TF risks. Panama has developed its legal framework and has taken actions to monitor non-profit organizations; so far, no abuse has been identified for TF purposes.

12. With regard to proliferation, Panama has developed a case in the framework of the implementation of Resolution 1718, in close cooperation with the United Nations Security Council. Although it is important to clarify that the case did not directly involve activities of weapons of mass destruction, it showed that the legal scaffolding is prepared for the detection of these cases.

*Preventive measures (Chapter 5 - IO. 4; R. 9-23)*

13. Financial institutions have an adequate understanding of their risks and obligations in relation with ML/TF and have taken measures to control and mitigate their risks. As regards DNFBPs, they still have a limited understanding of their risks, which impacts on measures implemented and compliance with their obligations. In both cases it is considered that there is not an adequate understanding of the risks of TF, irrespective of the fact that RIs understand and fulfill their obligations.

14. In addition, in CDD processes, financial institutions apply measures appropriately, including those specific enhanced measures for the identification of PEPs, persons and entities listed by the UNSC and countries at greater risk. Although all RIs are aware of CDD measures, in the case of DNFBPs there are deficiencies in their application.

15. Financial institutions and casinos have consistently reported to the FIU; in the case of the rest of the DNFBPs, it has been detected that there are subjects that still do not have access to the "FIU online" platform, in addition to that the remission by this type of reporting institutions is still low.

*Monitoring (Chapter 6 - IO. 3; R. 26-28, R. 34-35)*

16. The four supervisors in the financial sector understand the risks of their sectors, even though they are at different stages of development in terms of risk matrices and risk-based monitoring processes.

17. The Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions has the complex mission of supervising sectors with quite different risks. For such purpose, it carried out a sectoral evaluation, which addresses risks in a very general way; the analysis does not go deeper into the types of institutions and the risks inherent in each one of them.

18. Financial supervisors have developed risk matrices to monitor their supervised entities; on the other hand, the Intendencia is in the process of developing monitoring matrices.

19. All supervisors keep a close relationship with the FIU, accessing statistical and quality data of the reports sent by the reporting institutions, with constant feedback and support in training efforts.

*Transparency of legal persons and arrangements (Chapter 7 - IO. 5; R. 24-25)*

20. The country presents an inherently high risk for the placement of assets from offenses committed abroad, for which purpose using persons and legal arrangements (especially corporations, private interest foundations and trusts). On the other hand, the NRA has identified as a significant risk the use of Panamanian entities with the purpose of carrying out ML arising from illegal activities abroad.

21. In recent years, the country has passed several laws and regulations with the aim of improving the transparency of Panamanian corporations, foundations and other legal arrangements, ensuring the proper identification of beneficial owners and allowing investigative and other relevant authorities access to information in a timely, updated and complete fashion, both for the development of local investigations and for handling requests for international cooperation.

22. However, there are doubts on the effective availability and the adequate verification of the information on shareholders and beneficial owners of the entities, since there are no mechanisms securing the accuracy and updating of the available data. It is important to note in this regard that monitoring of resident agents is perceived as low and final (definitive) sanctions have not yet been applied.

#### *International cooperation (Chapter 8 - IO. 2; R. 36-40)*

23. Panama has several instruments that allow it to request and provide international cooperation at the level of different authorities to act in various areas. In this regard, it should be noted that, in accordance with the experiences of several countries, there has been an improvement in the quality and response times of information requested from Panama, despite the fact that the number of applications has also increased.

24. The Prosecutor's Office has mentioned that, while they are well aware that the lack of criminalization of tax offences impacts their possibility to provide formal cooperation, they have aimed at a proactive approach and to jointly work with countries to provide assistance, with the potential link to other types of crimes under which they can actually provide assistance. However, this approach is not entirely shared by all relevant authorities.

#### ***Priority actions***

- Specifically, the country is urged to criminalize tax crimes and to establish them as ML predicate offenses.
- Measures should be taken to strengthen the control of the operation of the corporate services sector, especially with regard to the accuracy and updating of the information on the beneficial owner and the continuous monitoring of the activity of legal persons. Likewise, mechanisms should be developed to effectively address ML/TF risks of the legal arrangements incorporated in Panama and receiving funds arising from tax crimes from abroad.
- It is fundamental to pay special attention to the free zones sector to prevent measures of improper invoicing of goods or other illegal foreign trade operations, without prejudice to the strengthening of Customs as provided for in the National Strategy. Moreover, measures must be taken to control the use of cash in free zones, real estate and construction sectors.
- Although the risk of TF is lower than that of ML, it is considered necessary to pay greater attention to TF/CFPWMD risks related to the laundering of money into the Panamanian financial system, as well as the risks of misuse of corporate vehicles, both aspects identified in the NRA. Likewise, RIs awareness efforts should be continued and expanded in relation to TF risks.
- It is important to continue and enhance training activities, development of manuals, dissemination of guidelines and organization of feedback sessions with RIs to improve the quality and levels of STR sending of high-risk sectors and increase the number of inscriptions of DNFBPs.
- In order to increase the contribution of FIU intelligence reports to the competent authorities, adequate technological tools must be incorporated to prepare more reports, to foster the beginning of investigations or the contributions to ongoing investigations of ML, predicate offenses and TF. This will also allow for the increase of the preparation of strategic analyses disseminating typologies and warnings to improve alert management and STRs sending.
- It is important to strengthen actions for awareness and training of RIs, especially DNFBPs identified as a high risk in the NRA, the development of manuals, the dissemination of guides

and the scheduling of feedback meetings with RIs to increase the number of registrations and increase significantly the levels of sending of STRs in high-risk sectors.

- It is recommended to implement an inter-institutional training model that allows the different actors in the criminal prosecution system to understand how a ML investigation is conducted in an accusatory criminal system.
- It is recommended to strengthen statistics, generating a work process between the different institutions that comprise such system in order to generate inter-institutional statistical reports that render clear information.
- The preventive measures of the vulnerable sectors recognized in the NRA, such as free zones, real estate and construction, banking and corporate sectors, should be strengthened. It is also necessary to intensify the monitoring of these sectors by the Intendencia.
- A greater focus on investigations related to other predicate offenses and vulnerable sectors identified in the NRA is recommended.
- Seizing and confiscation measures resulting from investigations related to the main risks identified and in the sectors considered most vulnerable must be enforced.
- The Police must be strengthened and trained (especially the DIJ) in order to increase the effectiveness of the identification, seizing and confiscation of assets in the recently implemented accusatory criminal justice system.
- Mechanisms or instructions must be generated in the Specialized Prosecutor's Office in order to apply the rules allowing the criminal responsibility to be attributed to legal persons.
- Clear procedures must be adopted regarding how to initiate an investigation of property and funds aimed at obtaining the confiscation of assets resulting from ML.
- Training must be provided continuously as well as it has been so far to reporting institutions, particularly those newly incorporated, on their obligations to review the lists of natural and legal persons designated in accordance with United Nations Resolutions and to apply the preventive freeze when a match is found.
- The Intendencia must receive greater resources, both human and technological, to exercise a greater level of monitoring over RIs thus preventing and detecting possible cases of ML/TF/FPWMD.
- The Intendencia must end the process of development of its risk matrices in order to be able to know the risks of each of its supervised sectors. In addition, the Intendencia, in collaboration with the FIU, should improve their approaches with the DNFBPs sectors to ensure that they complete their obligation of reporting institutions data update (ADSO) and are registered to submit reports through the "FIU online".
- Risk must be evaluated to define specific measures of control to prevent the misuse of the figure of the shareholders and nominal directors, when these services are rendered by lawyers or firms of lawyers operating in the country.

2018

*Effectiveness and technical compliance ratings**Effectiveness Ratings*

<b>IO. 1</b> Risk, policy and coordination	<b>IO. 2</b> International Cooperation	<b>IO. 3</b> Monitoring	<b>IO. 4</b> Preventive measures	<b>IO. 5</b> Legal persons and arrangements	<b>IO. 6</b> Financial intelligence
<b>Low</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Low</b>	<b>Low</b>
<b>IO. 7</b> ML investigation and prosecution	<b>IO. 8</b> Confiscation	<b>IO. 9</b> TF investigation and prosecution	<b>IO. 10</b> TF preventive measures and financial sanctions	<b>IO. 11</b> FP financial sanctions	
<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Substantial</b>	<b>Substantial</b>	

*Technical Compliance Ratings*

## AML/CFT Policies and Coordination

<b>R. 1</b>	<b>R. 2</b>
<b>LC</b>	<b>LC</b>

## ML and Confiscation

<b>R. 3</b>	<b>R. 4</b>
<b>PC</b>	<b>C</b>

## TF and financing of proliferation

<b>R. 5</b>	<b>R. 6</b>	<b>R. 7</b>	<b>R. 8</b>
<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>

Preventive measures

<b>R. 9</b>	<b>R. 10</b>	<b>R. 11</b>	<b>R. 12</b>	<b>R. 13</b>	<b>R. 14</b>
C	LC	LC	C	C	PC
<b>R. 15</b>	<b>R. 16</b>	<b>R. 17</b>	<b>R. 18</b>	<b>R. 19</b>	<b>R. 20</b>
C	LC	LC	C	PC	PC
<b>R. 21</b>	<b>R. 22</b>	<b>R. 23</b>			
C	LC	LC			

Transparency and beneficial ownership of legal persons and arrangements

<b>R. 24</b>	<b>R. 25</b>
NC	PC

Powers and responsibilities of competent authorities and other institutional measures

<b>R. 26</b>	<b>R. 27</b>	<b>R. 28</b>	<b>R. 29</b>	<b>R. 30</b>	<b>R. 31</b>
LC	LC	LC	C	PC	LC
<b>R. 32</b>	<b>R. 33</b>	<b>R. 34</b>	<b>R. 35</b>		
LC	PC	C	LC		

International Cooperation

<b>R. 36</b>	<b>R. 37</b>	<b>R. 38</b>	<b>R. 39</b>	<b>R. 40</b>
C	LC	LC	LC	LC



## ACRONYMS

<b>ADSO</b>	FIU's reporting institutions data update
<b>AML/CFT</b>	Anti-Money Laundering/Combating Terrorism Financing
<b>AMERIPOL</b>	Comunidad de Policías de América
<b>ANA</b>	National Customs Authority (Autoridad Nacional de Aduanas)
<b>DNFBP</b>	Designated Non-Financial Businesses and Professions
<b>Art.</b>	Article
<b>CICAD/OEA</b>	Inter-American Commission for the Control of Drug Abuse, of the Organization of American States
<b>CNBC</b>	National Council against ML/FT/FPWMD (Consejo Nacional Contra el Blanqueo de Capitales, Financiamiento del Terrorismo, y de la Proliferación de Armas de Destrucción Masiva)
<b>CNS</b>	National Security Council
<b>COMALEP</b>	Multilateral Customs Agreement for Latin America, Spain and Portugal
<b>CDD</b>	Customer Due Diligence
<b>CTR</b>	Cash Transaction Report
<b>DGI</b>	General Directorate of Revenue (Dirección General de Ingresos)
<b>DIJ</b>	Judicial Investigation Directorate (Dirección de Investigación Judicial)
<b>DNFBPs</b>	Designated Non Financial Businesses and Professionals
<b>FATF</b>	Financial Action Task Force
<b>FIU</b>	Financial Intelligence Unit
<b>GAFILAT</b>	Financial Action Task Force of Latin America
<b>Intendencia</b>	Supervisor and regulator of non-financial reporting institutions and activities (Intendencia de Supervisión y Regulación de Sujetos Obligados No Financieros)
<b>INTERPOL</b>	International Criminal Police Organization
<b>IPACOOOP</b>	Panamanian Autonomous Cooperative Institute (Instituto Panameño Autónomo Cooperativo)
<b>MEF</b>	Ministry of Economy and Finance (Ministerio de Economía y Finanzas)
<b>MICI</b>	Ministry of Trade and Industry (Ministerio de Comercio e Industria)
<b>MINGOB</b>	Ministry of Government (Ministerio de Gobierno)
<b>MIRE</b>	Ministry of Foreign Affairs (Ministerio de Relaciones Exteriores)
<b>ML</b>	Money laundering
<b>MOU</b>	Memorandum of Understanding
<b>MUSBER</b>	Unified Risk-based supervision handbook (Manual Único de Supervisión Basado en Riesgo)
<b>NPO</b>	Non-profit organization
<b>NFRI</b>	Non-financial reporting institutions
<b>NRA</b>	ML/TF National Risk Assessment
<b>PEP</b>	Politically Exposed Person
<b>PGN</b>	Office of the Attorney General of the Nation (Procuraduría General de la Nación)
<b>PR</b>	Public Registry
<b>PWMD</b>	Proliferation of Weapons of Mass Destruction

<b>R.</b>	Recommendation
<b>RBA</b>	Risk-based approach
<b>Resolución JD</b>	Directors Board Resolution
<b>RI</b>	Reporting Institutions
<b>RRAG</b>	GAFILAT Aset Recovery Network (Red de Recuperación de Activos de GAFILAT)
<b>S.A.</b>	Corporation (Sociedad Anónima)
<b>SBP</b>	Bank supervisor of Panama (Superintendencia de Banco de Panamá)
<b>SENAFRONT</b>	National Border Control Service (Servicio Nacional de Frontera)
<b>SMV</b>	Supervisor of the Securities Market (Superintendencia del Mercado de Valores)
<b>SSRP</b>	Panama Supervisor of Insurance and Reinsurance (Superintendencia de Seguros y Reaseguros de Panamá)
<b>STR</b>	Suspicious Transaction Report
<b>TF</b>	Terrorist Financing
<b>UN</b>	United Nations
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>UNSCR</b>	United Nations Security Council Resolution
<b>ZLC</b>	Colon Free Zone

**MUTUAL EVALUATION REPORT OF THE REPUBLIC OF PANAMA*****Introduction***

25. This report summarizes the AML/CFT/CFPWMD measures existing in Panama as of the date of the on-site visit. It analyzes the level of compliance with the 40 FATF Recommendations, and the level of effectiveness of the AML/CFT/CFPWMD system, and it offers recommendations on how to strengthen this system.

26. This evaluation was based on the 2012 FATF Recommendations (with all updates approved as at the end of the on-site visit) and was prepared using the 2013 Assessment methodology. This evaluation was based on the information provided by the country, external sources and international organizations, and on the information obtained by the evaluation team during the on-site visit to the country made from 15 to 26 May 2017.

27. The evaluation was conducted by an evaluation team comprised by: María Eugenia Talerico of the Financial Intelligence Unit of Argentina (operative expert), Julio dos Santos Rodríguez of the Central Bank of Brazil (financial expert), Marcelo Contreras Rojas of the Chilean Prosecutor's Office (legal expert), Luis Marroquin of the Financial Intelligence Unit of Ecuador (operative expert), Rodolfo Valle of the Financial Intelligence Unit of Honduras (financial expert), Daniel Espinosa of the National Secretariat for the Countering of ML and TF of Uruguay (financial expert) and Gabrielle Soltys of the United States Department of the Treasury (legal expert), with the support of Marconi Melo, Executive Secretary, Luna Montes and Guillermo Alejandro Hernández, Technical Experts of the GAFILAT Secretariat. This report was reviewed by Maricarmen Meléndez of the Mexican Financial Intelligence Unit; Leonardo Pupperto of the Treasury of the French Republic; Yara Esquivel, of the International Monetary Fund (IMF); and Francesco Positano from the Secretariat of the Financial Action Task Force (FATF).

28. Panama was previously subject to a mutual evaluation of the FATF in February 2014 by the IMF, conducted pursuant to the FATF Methodology 2004. The 2014 evaluation is available at <https://www.imf.org/external/pubs/ft/scr/2014/cr1454.pdf>

29. The abovementioned report concluded that the country complied with 1 Recommendation; mostly complied with 3 Recommendations; partially complied with 26 Recommendations; and did not comply with 19 Recommendations. Panama did not receive a compliant or largely compliant rating in none of the 16 Principal and Fundamental Recommendations.

30. Based on the abovementioned report, the FATF placed Panama in the process of the International Cooperation Review Group (ICRG), published in February 2015 after having substantially complied with the agreed Action Plan between the ICRG and the country. GAFILAT also placed Panama under an enhanced follow-up process, from which it has already been removed as well, taking into account the actions taken to comply with the Action Plan and to remedy the technical deficiencies identified in the aforementioned report.

## CHAPTER 1. ML/TF RISKS AND CONTEXT

31. Panama is located in the center of the Western Hemisphere, southeast of Central America, with a surface of 75,517 km<sup>2</sup>. Panama forms a link between Central and South America; bordered to the north by the Caribbean Sea, to the east by Colombia (339 km border), to the south by the Pacific Ocean and to the west by Costa Rica (348 km border). The territory is divided into 10 Provinces and 5 Counties, which in turn are divided into 79 Districts. The total population is 4,036,177 inhabitants.

32. According to the National Constitution, the Panamanian nation has a unitary, republican, democratic and representative government. Public power is exercised through the legislative, executive and judicial bodies, acting in a separate and collaborative manner. The executive body is vested in the President and Vice President of the Republic of Panama, both elected by direct popular vote for a period of 5 years, as well as by the Ministers of State designated by the President of the Republic. The legislative body is composed of the National Assembly of Panama, made up of 71 deputies elected by direct popular vote and covering a period of 5 years of office. The Judiciary is represented by the Supreme Court of Justice consisting of nine judges appointed for a term of ten years.

### *ML/TF Risks and scope of higher-risk problems*

#### *Overview of ML/TF Risks*

33. The analysis carried out by the evaluation team was based on the information provided by the country, including the NRA, information from external sources and international organizations, and information extracted during the on-site visit. In that context, the following paragraphs list the most important identified risks, considering the significance they may have in the Panama AML/CFT system:

34. The National Risk Assessment (NRA) presented by Panama points out that the main external threat in relation with money laundering (ML) is the flow of resources related to illegal activities committed abroad, with products which could be placed in Panama. In such sense, one of the main risks the country currently experiences in terms of income from criminal activities is the receipt of funds or other financial assets resulting from tax crimes committed abroad. This risk has not been considered in the NRA as approved by the country. In Panama, tax crimes are not criminalized as a ML base or predicate offense, which significantly affects the possibilities for prevention and investigation of ML offenses, and prevents an adequate cooperation in the requests received from abroad, since there is no local predicate offense linked to the tax crime. The National Strategy has addressed the need to incorporate it as a ML predicate offense.

35. In some cases, the use of DNFBPs was observed for the creation in Panama of certain legal arrangements vulnerable to be used to launder assets arising from offenses committed abroad. The country presents an inherently high risk for the placement of assets from offenses committed abroad, particularly in the banking and real estate sectors, using persons and legal arrangements (especially corporations, private interest foundations and trusts). On the other hand, the NRA has identified as a significant risk the use of Panamanian entities with the purpose of carrying out ML arising from illegal activities abroad.

36. In relation with the preceding paragraph, there was a need to increase controls for the operation of the corporate services sector, especially regarding the quality of the information on the beneficial owner and the continuous monitoring of activities to mitigate risks associated with the operations of corporations and Panamanian private interest foundations, especially in the offshore sector. On the other hand, there is a large number of resident agents who have not registered to send electronic reports to the FIU.

37. According to the NRA, based on the importance of free trade zones in the country, as well as the country's geographical location, Panama presents risks for the commission of crimes related to international

trade, which involve crimes of smuggling, against intellectual and industrial property and other illicit behaviors linked to foreign trade. It has been identified that there are non-financial institutions, especially in the ZLC (ZLC) where identified DNFBPs of high risk operate, pending access to the FIU online platform.

38. The NRA also states that one of the main internal threats regarding ML derives from drug trafficking. Due to its geographical location, Panama presents risks for the use of its territory for the transit of drugs, mainly cocaine, on its route from South America to North America and European countries.

39. As regards terrorism and terrorist financing (TF), the NRA does not identify the presence in the country of radicalized terrorist groups or individuals or terrorist training sites. In addition, no specific cases were identified regarding terrorist groups or individuals in the country. The NRA indicates that the threat in terms of terrorism and its financing would mainly come from abroad.

40. In addition, the NRA indicates that the financial and non-financial sectors have limited relations with countries or territories identified as being at high risk for terrorism and that internal funding by non-profit organizations (NPOs) is also limited for activities abroad. The NRA notes that NPOs operating in the country focus primarily on receiving resources to carry out activities within the country and that there would not be a subset of the sector that was particularly considered as high-risk. As per the evaluation of the team, Panama has developed a legal framework and has taken actions to monitor NPOs and so far, no abuse has been identified for TF purposes.

#### *Risk assessment and scope of the country's higher-risk issues*

41. In January 2017, the document "NRA of Money Laundering and TF of Panama" (NRA) developed by the National Commission against Money Laundering, TF and Financing the Proliferation of Weapons of Mass Destruction (hereinafter referred to as the "National Commission") of Panama was introduced.

42. As reported by the Panamanian authorities, the development of the NRA entailed three stages: at the first stage, several workshops were held, and the participating authorities were divided into four working groups: 1) group of national threats and vulnerabilities, 2) group of vulnerability of economic sectors, 3) group of vulnerability of legal persons and 4) group of vulnerability of non-profit organizations. The second stage entailed the collection and consolidation of information directly from public entities by way of a request for information; and finally, at the third stage, information was collected from open sources and reports from international organizations to further develop and validate the document.

43. The document points out that the main external threat regarding ML is the flow of resources related to illegal activities committed abroad, whose products may be placed in Panama, which indicates such main threat may come from abroad. As also pointed out in the NRA, the main internal threats regarding ML are drug trafficking, corruption, financial crimes and crimes against industrial and intellectual property.

44. A high level of participation of the different competent authorities in the development of NRA and in the subsequent discussion and approval of the National Strategy on ML and TF has been observed, which demonstrates the degree of commitment of the country to face the risks of ML/TF.

45. For the identification of priority issues, the NRA of Panama and the National Strategy were reviewed, as well as additional documents provided and external sources relevant to the country's AML/CFT risk. The most important risks have been identified as a starting point for the Mutual Evaluation, and other elements that require special attention, considering the implication and the impact they may have on the AML/CFT system in Panama.

46. During the on-site visit, and in this Mutual Evaluation Report (MER), it was given special attention to the following matters considered of higher risk:

47. The country has an inherently high risk for the placement of assets from offenses committed abroad, particularly in the banking and real estate sectors, using persons and legal arrangements (especially corporations, private interest foundations and trusts). Based on this, the evaluation focused on the use of the figure of resident agents (lawyers and law firms) who provide corporate services for the creation and administration of individuals and legal arrangements. In addition, due to the significant volume of non-resident funds managed in the Panamanian financial market, a special focus was given to the application of AML/CFT preventive measures in the Panamanian banking system.

48. In connection with the foregoing, it was a priority to analyze the proper application of measures aimed at identifying the beneficial owner of legal persons and other legal arrangements incorporated in Panama. We analyzed how investigative authorities and other relevant authorities have access to information in a timely, updated and comprehensive manner.

49. Considering that Panama has not criminalized tax crimes, neither as a basic offense nor as a predicate offense of ML, it was analyzed how such limitations affect the investigation and domestic persecution of the conduct and the impact on the AML/CFT system of Panama derived from the possible reception of financial assets from tax crimes committed abroad. The consequences of the absence of criminalization of tax crimes in the international cooperation that the country provides in the orders received from abroad were verified, whose predicate offense is configured in the category of tax crime.

50. Given the importance of Panama in international trade and the existence of free trade zones, the processes of control, monitoring and supervision of free trade zones were verified, as well as measures for the identification and control of transboundary movement of cash and negotiable instruments related to activities in these areas, domestic cooperation between agencies and investigative authorities.

51. Considering that the use of the Panamanian financial system for the placement of proceeds from abroad is a significant risk, it was necessary to focus on the sectors that receive a greater amount of external investments, especially the activities of the real estate sector. In this sense, it was necessary to know the risks of this sector, the mitigating measures, as well as the way in which the authorities supervise the fulfillment of the obligations.

52. Regarding TF, although the NRA indicates that the risk is low, considering the risk inherent in the volume of resources coming from abroad and the geographical position of Panama, the preventive measures of both the public and private sectors were analyzed as a matter of priority, including the understanding of risks, monitoring, regulation and supervision of obligations for CFT/CFPWMD.

### ***Materiality***

53. According to the statistical information issued by the Ministry of Economy and Finance (MEF) and the Office of Comptroller General of the Republic, GDP for the third quarter of 2016 was USD 27,567.4 million and growth of 4.9% when compared with the same period in 2015. In addition, Panama's GDP per capita in 2015 was USD 13,268.10<sup>1</sup>, with annual GDP growth of 5.8%<sup>2</sup>. According to World Bank indicators, Panama is considered a medium-high-income country. It is important to note that the attributions of the

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<sup>1</sup> GDP per capita.

<sup>2</sup> GDP growth (annual %) (in Spanish),

<http://datos.bancomundial.org/indicador/NY.GDP.MKTP.KD.ZG?locations=PA>, consulted 7 March 2017.



National Bank of Panama, which performs the functions of a central bank, are limited in terms of monetary policy, since the legal currency to carry out all types of operations is the US dollar<sup>3</sup>.

54. Banks occupy the first position in importance in the financial system, accounting for 92.51% of the total of this financial structure with total assets amounting to USD 118,945 million. Insurance companies are in the second place, accounting for 2.02%, followed by securities firms and pension funds with 1.86%. Cooperatives are the fourth largest, accounting for 1.53%, financial firms accounting for 1.04%, and the rest are smaller financial institutions, among which are development banks, leasing companies and savings and credit associations for housing, which account for 1.59% as a whole.

55. Currently, 93 bank-licensed banks operate, of which 43 are generally licensed, authorized to carry out domestic and foreign banking transactions. Out of these, 29 are foreign, from countries such as the United States, Canada, China, South Korea, Taiwan, Colombia, Brazil, Costa Rica and Guatemala, among other countries. The rest of the generally licensed banks are Panamanian capital banks, including two domestic banks. On the other hand, there are 28 internationally licensed banks, all from foreign jurisdictions such as Switzerland, Spain, Andorra, Colombia, Brazil, Peru, Dominican Republic, Colombia and Cayman, which authorize them to carry out transactions exclusively in foreign markets. Finally, the system also comprises 16 representative offices. In addition, there are 78 trustee companies, 38 leasing companies, 57 factoring companies and 132 financial companies.

56. The international operation accounts for about 48% of the total assets, while the domestic operation accounts for 52% of the assets of the system. The total assets of the International Banking Center, which includes generally and internationally licensed banks operating in Panama, amounts to USD 118,652 million, which is about 2.2 times the size of Panama's GDP.

57. As of March 31, 2017, 73 Trust companies operate in the market, out of which 39 (53.4%) correspond to the trustee business carried out by banks and companies which are subsidiaries of banks. The other important segments are related to companies related with law firms, as well as other Trust companies. The size of the trustee market as of June 2016 is USD 21,914 million.

58. The trust business is developed in Panama mainly oriented as a vehicle for loan guarantee operations, especially in the consumer banking segment (auto loan market); creation of guarantees in structured corporate financing; either fixed-income market or syndicated loans and, to a lesser extent, guarantees of residential mortgage financing in high-income segments. The guarantee trust business represents 58.5% of the total trust business in the Republic of Panama, which is managed 77.8% by banks and subsidiary companies of Banks. Therefore, the main risk through this segment is associated with the risks evaluated in the banking market, i.e., the integration and layering of illegal money.

59. The securities market is made up of 93 securities companies, which are classified as 11.23% as banks with a brokerage license, 17.98% and 70.79% as subsidiaries of banks and independent trading companies, respectively, 61 investment advisers, 31 investment companies.

60. There are 28 insurance companies, 8 reinsurance companies and 10 captive insurers. The Economic and Social Report published by the MEF of Panama in January 2016 shows how the sector is in relation with 2015, where the insurance industry issued an average of 1,322,740 policies (190,665 or 16.8% more) and premium income reached PAB 133.5 million (10.2 million or 8.4% additional). 45% of the total premiums (PAB 60 million) were subscribed in the top following categories: automobile (17.9%), health (16.1%) and

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<sup>3</sup> Although Panamanian legislation, for the purpose of imposing sanctions, states that the legal tender is the "Balboa", this is done only for public accounting purposes; there is not an actual issuance of this currency. The Balboa's parity in relation to the US dollar is of exact equivalence (1:1).



group life insurance (11.1%) which grew most due to commercial practice or new working conditions. Law 23 of 2015 included insurance brokers as RIs.

61. The Panamanian Cooperative Sector is made up of 497 cooperatives of various types; however, in accordance with Law 23 of 2015, only Savings and Credit Cooperatives, Cooperatives of Multiple or Integral Services that develop the activity of savings and credit and any other Cooperative Organization that carries out the activity of financial intermediation, are considered reporting institutions. In this sense, the total of cooperatives that are reporting institutions of financial nature are 182, classified as follows: 130 Savings and Credit Cooperatives, 47 Multiple or Integral Services Cooperatives, 4 Ancillary Organizations and one Transport Cooperative. The cooperative market in Panama is a sector limited mainly to its associates.

62. At the moment, in Panama, the statistic reflects a total of 10 of money exchange houses performing transactions at the national level; regarding pawnshops, the sum amounts to a total of 288 authorized by the General Directorate for Financial Companies of the MICI. It is important to note that, for purposes of compliance with the AML/CFT/CFPWMD regime, until their incorporation as subjects supervised by the SBP, they were considered as non-financial reporting institutions.

63. The statistics presented by the Department of Financial Companies of the MICI reflect that the money sent to other countries amounted in 2015 to PAB 478.7 million and that the amount of PAB 233 million was received in remittances from abroad, that is to say, at least in 2015, the foreign currency that left Panama exceeded the amount received. The countries to which the largest amount of remittances are sent are: Colombia, Nicaragua, China and the Dominican Republic. It should be noted that, as of November 2, 2016, the General Directorate for Financial Companies registered 18 Remittance Houses in Panama.

64. The non-financial reporting institutions provided by in Law 23 of 2015, Article 23, are the following:

- Companies of the ZLC, companies established in the Panama-Pacific Agency, Baru Free Zone, the Diamond Exchange of Panama and other Free Zones.
- Money remittance companies, whether this is their main activity or not<sup>4</sup>.
- Casinos, gambling and organization of betting systems, and other physical or telematic establishments that develop these businesses through Internet.
- Promoters, real estate agents and brokers, when they are involved in transactions for a client concerning the buying and selling of real estate.
- Companies dedicated to the field of construction: general and specialized contractors.
- Securities transport companies.
- Pawnshops.
- Dealers in precious metals and dealers in precious stones, in any of its forms, either by physical delivery or purchase of futures contracts.
- Charitable National Lottery.
- National Post Offices and Telegraphs of Panama.
- Savings and housing loan corporations.
- Money exchange houses, in any of its forms, either by physical delivery or purchase of futures contracts, whether this is their main activity or not.
- Companies dedicated to buying and selling new and used cars.
- The Agricultural Development Bank.
- The National Bank of Mortgages.
- Those activities performed by professionals as described in Article 24 of Law No. 23 of 2015.

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<sup>4</sup> By means of Law 21 of May 2017, the remittance and currency exchange sector will now be supervised by the SBP. A week before the onsite visit, the authority in charge of such supervision was the Intendencia.

65. The activities carried out by lawyers, authorized certified public accountants and notaries public, or other professionals and activities that are included by law, will only be subject to monitoring of the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions when, in the performance of the professional activity, they carry out on behalf of a client or for a client the following activities (Article 21 of Law No. 23 of 2015):

- Sales of property.
- Administration of money, market capitalization or other assets of the customer.
- Management of bank, savings or securities accounts.
- Organization of inputs or contributions for the creation, operation or management of companies.
- Creation, operation or management of legal persons or legal arrangements, such as: private interest foundations, corporations, trusts and others.
- Sale of legal persons or legal arrangements.
- Performing or arranging for a person paid by the lawyer or law firm, to act as proxy director of a company or a similar position in relation to other legal persons.
- Provide a registered office, business address or physical space, correspondence or administrative address for a company, corporation or any other legal person or structure that is not of his property.
- Perform or arrange for a person, paid by the lawyer or law firm, to act as a front man shareholder for another person.
- Perform or arrange for a person, paid by the lawyer or law firm, to act as a member of an express trust or perform an equivalent function for another form of legal structure; and
- Those of Resident Agent of legal entities incorporated or existing under the laws of the Republic of Panama.

66. In the case of DNFBPs, through the database program currently implemented by the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions, such authority requests all reporting institutions and professionals performing activities subject to monitoring to update the information contained in such database by way of the sending of the corresponding reporting institutions data update (ADSO) form and that in such form they report if they perform the activities subject to monitoring as indicated in Article 24 of Law No. 23 of 2015.

67. The Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions has informed as of March 2017 the number of reporting institutions (RIs) registered. In the real estate and construction sector, there are a total of 3,235 RIs, Foreign Trade Free Zones 3,712 RIs, Casinos and Gambling 55 RIs, State Activities 8, Non-Banking Financial 318 and Professional Activities 4,299 (3,905 physical persons resident agents, 311 law firms' resident agents, 24 notaries public, 59 CPAs). In total they reach 11,627 RIs.<sup>5</sup>

68. Foreign trade is one of the pillars of the Panamanian economy. The ZLC is the country's fastest growing commercial zone. By 2016, the commercial movement of this free zone reached USD 19,655 million. Of this amount, imports totaled USD 9,238 million while reexports about USD 10,417 million.

69. According to the information provided by the Public Registry of Panama, the number of legal persons active (as of May 2017) amounts to 734,419, distributed as follows: 675,624 corporations, 2,132 foreign companies, 2,492 limited liability companies and 54,171 private interest foundations. No information was made available on the number of collective companies or limited partnerships that are currently operating in Panama.

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<sup>5</sup> Number reported as part of the on-site visit. Subsequently, it was reported that the number of reporting institutions amounts to 12,173.

### *Structural elements*

70. Law No. 23 of 2015 reformed the AML/CFT/CFPWMD regime, and its provisions were deepened through several Executive Decrees regulating various sectors. The legal and regulatory framework of the system was modified, including activities and professions that were previously not considered reporting institutions. Sixteen (16) new types of reporting institutions were incorporated, which represent for the country an important part of the economy and have contributed to the national growth. In addition, Panama has strengthened the institutional framework for preventing and combating ML/TF by providing its institutions, mainly the Financial Intelligence Unit (FIU), with greater resources and powers.

71. As noted above, in February 2016, the Financial Action Task Force's (FATF) International Cooperation Review Group (ICRG) indicated that Panama had substantially complied with the Action Plan agreed upon in June 2014 after the International Monetary Fund (IMF) report on Panama's AML/CFT system was issued in the framework of the third round of mutual assessments.

72. As a result of the FATF's inclusion in the above-mentioned follow-up process, the country's relationship with the Organization for Economic Co-operation and Development's (OECD) Global Fiscal Transparency Forum and data filtering of the case named "Papers", has affected the country's reputation internationally in recent years. As a result, Panama has adopted a very proactive attitude and has faced the situation, significantly strengthening its legal and institutional framework, which includes the creation of an Intendencia for the monitoring of non-financial entities subject to the AML/CFT regime.

73. Despite the political commitment shown by the authorities and the great progress made in all aspects of the system of prevention and combating ML/TF/PWMD, it is considered that the preventive system still requires a maturation period in some of its areas, mainly to consolidate its operation and obtain better results. This is notorious in several areas of the non-financial sector, which previously lacked regulation in the matter and, therefore, require a period that allows reporting institutions to internalize the new approved rules, so that they can be properly applied.

74. Since September 2016 the law implementing the accusatory criminal system has been introduced throughout the territory. Although since that month all new cases must be processed under the accusatory system, all processes opened up to that date must be terminated with the inquisitive system.

75. The last update of the ML criminal type was in 2014 and included several crimes that were not ML predicate offenses, as is the case of theft, falsification of documents in general, counterfeiting of currency and other securities, piracy, trafficking and reception of proceeds from the crime of smuggling and customs fraud. However, this regulation did not incorporate tax crimes, which is a serious concern given its impact on the investigation of ML crimes, as well as the cooperation that the country provides in the orders received from abroad.

### *Background and other contextual factors*

76. Panama is a global logistics focus and is close to the countries in the region, as well as with other countries in the world. It also offers a wide variety of transportation channels and services for people and goods. For example, only about 15 million people pass through Tocumen International Airport every year, although most do not enter the country. These factors could imply a higher level of risk because criminals could take advantage of the country's connectivity.

77. In addition, the country maintains transport relations and connections with countries that have been targeted by terrorist attacks, which could also influence the country's risk for TF. Panama has not identified any terrorist organizations or individuals in its territory, even though there have been cases of members of

terrorist organizations or persons related to said organizations present in Panamanian territory. The National Security Council (CSN) affirmed that it maintains links with the Muslim community in the country, approximately three percent of the population (3%), to raise more awareness of radicalism indicators. This population has been established in Panama for a century and is mainly engaged in trade in the ZLC. No cases of terrorism or TF have been identified in relation to this community.

78. Panama is also an important center for attracting investments from the most diverse countries and regions, since it has traditionally acted as a platform for corporate and financial services. For both sectors it has a great offer of highly trained entities and professionals who can provide sophisticated services and guarantee conditions of confidentiality and security. The real estate sector, which has shown great dynamism and investment opportunities, is also a sector that attracts many capitals, both local and foreign.

### *Overview of the AML/CFT strategy*

79. Based on the NRA, the Panamanian authorities, with the assistance and advice of IMF experts, developed the "National Strategy for the countering against money laundering, TF and the proliferation of weapons of mass destruction", which was formally submitted in May 2017. This document was prepared by the National Commission against ML/TF/PWMD, based on the results of the NRA and with the technical support of the International Monetary Fund (IMF), and establishes the strategic priorities of the country divided into five pillars: transversal, institutional, prevention component, component of detection and intelligence and component of investigation and criminal justice. Based on these pillars, the so-called Action Plan was developed, which establishes various objectives and actions to be developed by December 2020, designating the responsible agencies and expected implementation dates in each case.

80. A high level of participation of the different competent authorities in the development of NRA and in the subsequent discussion and approval of the National Strategy on ML and TF has been observed. In addition, another important element introduced in the National Strategy was the incorporation of an objective intended for tax crimes to be set as a criminal offense and ML predicate offense, a topic that was not previously described in the NRA. However, it is noted that the aforementioned document establishes this obligation in a generic way, without the precise definition of a deadline for its effective incorporation into the Panamanian legal regime.

### *Overview of the legal and institutional framework*

81. In April 2015, through Law No. 23, as well as through various executive decrees regulating various sectors, the legal and regulatory framework of the system for preventing and combating ML, TF and the financing of the proliferation of weapons of mass destruction was reformed, including activities and professions that previously were not considered as reporting institutions, mainly non-financial entities.

82. It is pointed out that Panama has a National Commission against Money Laundering, Terrorist Financing and the Financing of the Proliferation of Weapons of Mass Destruction (hereinafter, National Commission), which is composed of the following national authorities and represented by the head of the institutions themselves:

- a. Ministry of Foreign Relations.
- b. Ministry of Economy and Finance.
- c. Ministry of the Presidency.
- d. Attorney General's Office.
- e. Superintendence of Banks of the Republic of Panama.
- f. Financial Intelligence Unit.
- g. Committee on Economy and Finance of the National Assembly, and

## h. National Security Council.

*Overview of the financial sector and DNFBPs*

83. The structure of Panama's financial system is comprised of the following institutions: banks, securities companies, pension funds, insurance companies, cooperatives, financial companies, development banks, leasing and savings and credit associations for housing. These have different natural regulators that monitor and supervise specific matters.

84. The total assets of the financial system amount to USD 129,285 million as of December 2015. Banks are ranked first in importance, accounting for 92.51% of the total of this financial structure with total assets in the order of USD 118,945 million. Insurance companies are in the second place, accounting for 2.02%, followed by securities firms and pension funds with 1.86%. Cooperatives are the fourth largest, accounting for 1.53%, financial firms accounting for 1.04%, and the rest are smaller financial institutions, among which are development banks, leasing companies and savings and credit associations for housing, which account for 1.59% as a whole.

85. One of the main characteristics of the Panamanian economy is its monetary banking system based on the use of the dollar as legal tender and the existence of a banking system connected to the rest of the world. The system operates without a central bank or any authority in charge of controlling money supply, monetary policy or exchange policy in the country.

86. Within the financial sector, the banking sector represents the higher risk, particularly because of its high exposure to foreign funds whose origin may be illegal activities, its greater relation with the outside world and its impact on the national economy.

87. In the DNFBPs sector, according to the data of March 2017 provided by the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions, the non-financial subjects were the following:

Sectors	Total RIs <sup>6</sup>
Real Estate and Construction	3235
ZLC and other Free Zones	3712
Casinos and Gambling	55
Non-Banking Financial	318
State Entities	8
Notaries Public	24
Resident agents (natural person)	3905
Resident agents (law firms)	311
CPAs	59

<sup>6</sup> As of the date of the on-site visit. Subsequently, a number of 12,173 RIs was reported.

<b>Total</b>	<b>11,627</b>
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*Source: Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions*

### *Overview of preventive measures*

88. By means of Law No. 23 of 2015, the obligation has been imposed for the multiple reporting institutions to carry out a CDD, which must be adjusted based on the risk; to take the necessary and pertinent measures to identify beneficial owners, to understand the nature of their client's account use, and to issue suspicious transaction reports. Likewise, reporting institutions have been required to know the risks to which they are exposed in relation to ML/TF based on their products, customers, distribution channels and other factors.

89. The various financial institutions (banks, insurance companies, securities and others) have taken steps to control and mitigate these risks, with a sound regulatory framework and the support of their natural regulators and supervisors.

90. With regard to DNFBPs, it is considered necessary to strengthen the implemented measures of CDD to know the information of the client and the beneficial owner, especially those that provide services on a continuous basis, as in the case of resident agents.

### *Overview of legal persons and arrangements*

91. Legal persons that, according to the risk analysis, are more likely to be used for ML/TF activities are corporations and private interest foundations, which may be incorporated within Panama, but carry out operations abroad. These characteristics make them especially vulnerable to their misuse for the commission of ML/TF crimes, especially in cases where predicate offenses are committed abroad.

92. In recent years, the country has passed several laws and regulations with the aim of improving the transparency of Panamanian corporations, foundations and other legal arrangements, ensuring the proper identification of beneficial owners and allowing investigative and other relevant authorities access to information in a timely, updated and complete fashion, both for the development of local investigations and for handling requests for international cooperation. However, current legislation does not include measures that allow an adequate control of Panamanian entities that carry out their activities abroad, making it difficult to detect and report suspicious transactions.

### *Overview of monitoring agreements*

93. The SMV has reported on the signing of 13 Multilateral Memoranda of Understanding signed with its peers from other countries.

94. The SBP may enter into cooperation agreements with state entities and similar foreign authorities that facilitate monitoring functions. Therefore, the SBP has signed 26 cooperation agreements with international financial supervisors. In relation with the SSRP, they have the power to enter into MOU, although no information on the agreements was provided. The IPACCOP, being from the local sector, is not authorized to enter into agreements with similar foreign authorities, although it does have agreements with local authorities, such as the FIU.

95. Regarding DNFBPs, the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions has signed Inter-Institutional Cooperation Agreements, with the following governmental entities: General Revenue Office (DGI), Gambling Control Board (JCJ), Financial Intelligence Unit for the



Prevention of Money Laundering and TF (FIU), Administration of ZLC (ZLC), National Customs Authority (ANA) the Public Registry and the Ministry of Commerce and Industry (MICI). No information is available on agreements signed with international supervisors.

96. With regard to the creation and registration of legal persons, according to the Commercial Code, for a commercial legal person to have effects against third parties must be registered in the Public Registry. The document by which such companies are registered must include the type of pertinent company, the name of the company, who form its board of directors (the quantity and quality of the person will depend on the type of company), the resident agent, the main characteristics of the company and to inform subsequently the changes that are made to all these elements.

97. According to the Commercial Code of the Republic of Panama, two or more natural or legal persons may form a company of any kind. Companies regulated in the Commercial Code are the following: 1. general partnership, 2. limited partnerships (simple or by shares), 3. Corporation, 4. Limited liability company. Another type of legal person recognized in the Panamanian law is the private interest foundation.

98. In terms of legal arrangements, the trust market is carried out by a variety of companies including banks, banking subsidiaries, companies linked to law firms, as well as other trust companies. As of March 2017, 73 trust companies operate in the market, which in their largest proportion (53.4%) correspond to the fiduciary business carried out by banks and bank subsidiaries. The other important segments are related to companies related with law firms, as well as other trustee companies.

#### *Overview of international cooperation*

99. As identified by Panama in the NRA, the main threat in the ML/TF of the country is the income of resources resulting from illegal activities committed abroad that enter the Panamanian economy. Due to its geographical position, Panama has intensified its collaboration efforts at different levels with Colombia, a country with which it has a land border to the East. It also highlights the collaboration that the Panamanian authorities have with the United States of America, which has enabled them to carry out various initiatives such as the acquisition of control and training systems for customs, police and monitoring authorities, among others.

100. Panama has units dedicated to providing international cooperation within the different institutions linked to the AML/CFT/CFPWMD system, which in some cases have even increased the number of dedicated personnel, in order to face the increasing requests and needs of international cooperation. This has allowed them to reduce the times and improve the quality of cooperation granted to counterparts. The Prosecutor's Office is the central authority in various multilateral cooperation instruments of which Panama is a part, although in some of the cases the requests must be processed by the Ministry of Foreign Relations or by the Supreme Court.

101. Considering that one of the main risks in Panama is the ML from crimes committed abroad, a factor that negatively affects the country is the very possibility that assets derived from tax crimes committed abroad are placed in Panama. Thus, in cases of tax crimes practiced abroad where cooperation is needed in Panama, limitations are found in the tools available for effective and adequate cooperation.



## CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### *Key findings and recommended actions*

#### ***Key Findings***

- Panama has carried out an NRA, in which it has identified that its main risks in ML are derived from illicit financial flows from abroad which are associated with drug trafficking, other offenses related to organized crime, smuggling, and others related to foreign trade; with regard to internal threats, the crimes of corruption, financial crimes and crimes against intellectual and industrial property were identified as the main offenses. The process of developing the NRA involved the participation of all relevant authorities and the resulting document was disseminated to the general public. This led to the NRA being a very general document, which has not been the basis for the design and implementation of mitigation measures.
- One of the main risks the country currently experiences in terms of income from criminal activities is the receipt of funds or other financial assets resulting from tax crimes committed abroad. This risk has not been considered in the NRA as approved by the country and it is important to point out that tax crimes are not criminalized as a ML base or predicate offense, which significantly affects the possibilities for prevention and investigation of ML offenses, and prevents an adequate cooperation in the requests received from abroad, since there is no local predicate offense linked to the tax crime.
- The country has developed, approved and disseminated a National Strategy against ML/TF, and, unlike the NRA, the Strategy does consider as a measure the criminalization of tax crimes as predicate offenses of ML.
- It is considered that the competent authorities cooperate and coordinate adequately the development of policies and activities to prevent ML/TF and FPWMD, without prejudice to the observations made in this chapter regarding limitations on the scope of the National Strategy.
- Therefore, national policies and activities as implemented by the competent authorities are deemed not consistent with all the risks identified in the country. Beyond the fact that tax crimes are not comprised therein, it is considered that illicit funds derived from other threats, within or without the country, as identified by the NRA (drug, gun and human trafficking, smuggling, financial crimes, corruption, and the like) are not adequately faced due to the significant vulnerabilities disregarded by the Strategy in the main risk sectors (corporate services, free zones, real estate and financial sectors).
- In order to solve the existing weaknesses, Panama must adopt significant legislative measures and set forth rules affecting the current operative activities of the trade platform and services rendered in the country.
- Regarding TF, the risks analyzed were terrorism risks instead of terrorist financing risks, thus negatively affecting knowledge and understanding of this risk and adoption of necessary mitigating measures.

#### ***Recommended actions***

- The country must continue and, to the extent possible, expedite the implementation of the National Strategy against ML/TF that was developed with the advice of the IMF and take other additional

actions aimed at mitigating the risks detected in the NRA. Specifically, the category of tax crimes and predicate offenses of ML must be criminalized.

- Measures should be taken to strengthen the control of the operation of the corporate services sector, especially with regard to the quality of information on the beneficial owner and the continuous monitoring of the activity of legal persons in order to mitigate risks associated with the activity of corporations and private interest foundations.
- It is fundamental to pay special attention to the free zones sector to prevent measures of improper invoicing of goods, or other illegal foreign trade operations, without prejudice to the strengthening of Customs as provided for in the National Strategy. Moreover, measures must be taken to control the use of cash in free zones, real estate and construction sectors.
- Although the risk of TF is lower than that of ML, it is considered necessary to pay greater attention to TF/FPWMD risks related to the laundering of money into the Panamanian financial system, as well as the risks of misuse of corporate vehicles, both aspects identified in the NRA. Authorities must pay more attention to TF risk analysis in detail rather than focusing on terrorism risks.

102. The relevant Immediate Outcome considered and assessed in this chapter is the IO. 1. The relevant recommendations for the effectiveness assessment under this section are the R. 1-2.

### ***Immediate Outcome 1 (risk, policy and coordination)***

#### *Understanding of the country's ML/TF risks*

103. The Panamanian authorities and reporting institutions bound by the ML/TF regime do not comprehensively understand the ML/TF risks they face and require a deeper analysis of the risks of the most vulnerable sectors. In January 2017, Panama publicly presented the document "NRA of Money Laundering and TF of Panama" (NRA) which points out that the main external threat regarding ML is the flow of resources related to illegal activities committed abroad, whose products may be placed in Panama. Therefore, it depicts a situation where the main threat of the country is external and not related to any domestic criminal scenario.

104. The main internal threats regarding ML as stated therein are drug trafficking, corruption, financial crimes and crimes against industrial and intellectual property. With regard to corruption, it is highlighted that the investigations carried out in the last two years identified cases related to crimes against the public administration, including cases of corruption of public servants, embezzlement and unjustified enrichment.

105. Based on the importance of free trade zones in the country, as well as the country's geographical location, Panama represents a great significance for international trade, which may extend the vulnerabilities of the country regarding the crimes of smuggling, crimes against intellectual and industrial property and other illicit behaviors linked to foreign trade. Additionally, in some cases, the use of DNFBPs was observed for the creation in Panama of certain legal arrangements vulnerable to be used to launder assets arising from offenses committed abroad. Other sectors of higher risk are the real estate sector, due to its volume and cash operations, and the banking system due to its large size and the significant volume of non-resident funds handled in the Panamanian financial market.

106. The NRA classified the risk of terrorist financing in Panama as low, because the country determined that it does not have terrorist groups or terrorist individuals operating inside the country, and does not maintain close connections with countries with a higher incidence of terrorism, so no large

remittances are sent to these countries. In general, the NRA placed greater emphasis on the analysis of the risk of terrorism or terrorist activities in the country instead of the risk of terrorist financing and disregarded the country's profile as a transportation hub and international financial center as risk aggravating factors.

107. Notwithstanding the shared risks as identified in the NRA, one of the main risks the country currently experiences in terms of income from criminal activities is the receipt of funds or other financial assets resulting from tax crimes committed abroad. This risk has not been considered in the NRA as approved by the country, despite authorities have stated they acknowledge its importance. In Panama, tax crimes are not criminalized as a ML base or predicate offense, which significantly affects the possibilities for prevention and investigation of ML offenses at the domestic level, and prevents an adequate cooperation in the requests received from abroad, since there is no local predicate offense linked to the tax crime.

108. On the other hand, it is considered that the NRA does not go deep enough in analyzing the risks in each of the different sectors of activity that have been identified as most vulnerable (lawyers, free zones, real estate, etc.) for the purpose of adopting appropriate mitigation measures for each sector. In the light of the abovementioned, it is considered that the authorities do not have an adequate understanding of ML/TF risks in key sectors and, for this reason, they have not adopted the necessary mitigating measures to address them.

109. In this regard, the example of the lawyer sector and the offer of Panamanian companies is significant. In order to measure the importance of this sector, it should be considered that there are 4,216 registered agents and that, according to information from the Public Registry of Panama, the number of legal persons in force as of May 2017 amounts to 734,535 companies, which are distributed as follows: 675,624 corporations, 2,132 foreign companies, 2,492 limited liability companies, 54,171 private interest foundations, 17 general partnerships, 50 simple limited partnerships and 49 limited partnerships by shares. In this regard, it is further stated that there are 209,015 legal persons in default of the payment of the "single rate" equal or superior to 10 years, those that have their corporate rights suspended and will be dissolved in case of not making the payment in the term of three years. In addition, it is reported that 24,725 companies have been suspended for not having a resident agent for a period greater than 90 days.

110. The NRA dedicates Chapter IV to evaluate the risks of companies that are used for illegal purposes, concluding that the sector of corporate services is vulnerable and considered of high risk. The analysis includes the role of the resident agent (lawyers), registration processes and a general analysis by each type of company, including corporations and private interest foundations. In particular, the NRA conclusions establish on page 70 that there is *"a vulnerability for companies without activities in the Republic of Panama to be used in other countries for money laundering or TF purposes."*<sup>7</sup> However, the NRA does not go further in the analysis of the activity and concrete risks of the sector activity rendering corporate services, neither does it quantify the importance of the risks derived from such operation nor its impact at the national and international level, to define the adequate mitigating factors.

111. In sum, by adding corporations and private interest foundations, it is possible to affirm that, according to NRA criteria, as of May 2017, there are 729,795 Panamanian companies considered as high risk, of which 500,679 are active, while 209,015 have their corporate rights suspended and will be dissolved if they do not pay the corresponding rate in the next three years. In addition, 24,725 companies have been suspended for not having a resident agent for a period greater than 90 days. There were no global risk studies filed in this regard and, considering the lack of monitoring obligations over financial statements for the following up of their business, it is not possible to know in which countries they operate nor the activity that

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<sup>7</sup> *NRA of money laundering and terrorist financing of Panama*, National Commission against Money Laundering, Terrorist Financing and Financing the Proliferation of Weapons of Mass Destruction, 2017, Chapter VI, p. 70.

they develop. Neither were there studies or controls related to the volume of assets or funds they manage, so it is not possible to adequately assess their risks and define appropriate measures to mitigate them.

112. On the other hand, as already explained, Annex V of the NRA classified the risk of terrorist financing in Panama as low because the country determined that it does not have terrorist groups or terrorist individuals operating inside the country, and it does not maintain close connections with countries with a higher incidence of terrorism, so no large remittances are sent to these countries. Although the evaluation team understands that the risk of TF is lower than that of the ML crime, it is considered necessary to extend preventive measures, including understanding first of all TF (and not terrorism) risks, as well as monitoring, regulating and supervising CFT obligations. In particular, greater attention should be paid to the risk of TF in relation with the incorporation of resources into the Panamanian financial system, as well as the risks of misuse of corporate vehicles (both aspects identified in the NRA), considering the significant participation of Panama in foreign trade and the international financial system.

#### *National policies to address the identified ML/TF risks*

113. Although the country has developed a National Strategy against ML/TF, there are risks that have not been duly considered in said document and the definition of additional mitigation measures is required, especially in the most vulnerable sectors.

114. In May 2017, Panama passed the "National Strategy for the countering against money laundering, TF and the proliferation of weapons of mass destruction", which was formally submitted on 10 May 2017. This document was prepared by the National Commission against ML/TF/PWMD, based on the results of the NRA and with the technical support of the International Monetary Fund (IMF). The document sets forth the Strategic Priorities of the country divided into five pillars –transversal, institutional, prevention component, component of detection and intelligence and component of investigation and criminal justice–. Based on these pillars, the so-called Action Plan was developed, which establishes various objectives and actions to be developed by December 2020, designating the responsible agencies and expected implementation dates in each case. The different authorities involved have started the implementation of the Strategy, having already completed some of the planned actions.

115. A high level of participation of the different competent authorities in the development of NRA and in the subsequent discussion and approval of the National Strategy on ML/TF has been observed, which demonstrates the degree of commitment of the country to face the risks of ML/TF. However, and as it will be explained below, there are some fundamental aspects that should be considered in order to adapt the Panamanian regulatory framework to the current standards and mitigate the risks identified in some sectors.

116. In this sense, it is highlighted that the absence of criminalization of the tax crime represents a risk not identified by the NRA. Although the National Strategy has reflected the need to incorporate it as a predicate offense of ML, it is considered that subsequent measures should be taken for the adequate incorporation of the criminal type to the Panamanian legal regime as soon as possible, which is not adequately contemplated in the Strategy, since the obligation is established in a generic way and without the precise definition of a term for its incorporation as a predicate offense, since it will report to the National Assembly.

117. In this regard, the Institutional Strategic Priority 9 of the Strategy establishes the following objective: *"To set as a criminal offense a range of serious tax crimes (related to direct and indirect taxes)*

and designate them as an illicit activity predicate of money laundering<sup>8</sup>. The planned actions contemplate the performance of a comparative law study on the subject, a subsequent national debate to achieve citizen participation on the result of the study and finally the preparation of a bill and its presentation before the National Assembly. The agencies responsible for these actions are the Ministry of Economy and Finance (MEF), the Public Prosecutor's Office, the FIU, the Ministry of Foreign Relations and the Judiciary. The deadline for these actions expires in June 2018; moreover, the Action Plan does not include a commitment regarding the term in which the aforementioned bill could be passed and the subsequent entry into force of the criminalization in the Panamanian legal system.

118. The lack of criminalization of tax crimes is a significant threat, as deemed by the evaluation team, but it is not the only threat considered in the analysis. Indeed, it is considered that illicit funds derived from other threats, within or without the country, as identified by the NRA (drug, gun and human trafficking, smuggling, financial crimes, corruption, and the like) are not adequately faced due to the significant vulnerabilities disregarded by the Strategy in the main risk sectors (corporate services, free zones, real estate and financial sectors) as stated below:

119. The mitigating actions not included in the National Strategy for the four highest risk sectors, as identified by the NRA, are the following:

- a. Rendering of corporate services: measures should be taken to strengthen the control of the operation of the corporate services sector, especially with regard to the quality of information on beneficial ownership and the continuous monitoring of the activity of legal persons in order to mitigate risks associated with the activity of corporations and private interest foundations.

Control measures should also be adopted regarding the use of nominal directors and shareholders, especially in the highest risk commercial companies.

- b. Free Zones: it is fundamental to pay special attention to the free zones sector to prevent measures of improper invoicing of goods, without prejudice to the strengthening of Customs as provided for in the National Strategy.

The NRA identifies the sector as a high-risk sector, among other reasons, due to the weaknesses in the procedures used to register the operations of the users of the ZLC on the platform called the Electronic Commercial Movement system (DMCE), foreseeing an action in that sense in the strategy. However, there are two aspects of fundamental importance that are not addressed by the National Strategy:

- Use of cash in the sector (highlighted in the NRA itself), which is not consistent with the activity carried out and favors anonymity in transactions. No measures are foreseen in this regard.
- On the other hand, the rules of the Colon free zone and other free trade zones allow the performance of off-shore foreign trade operations, that is to say, without the merchandise circulating in the country, which facilitates the realization of fictional foreign trade operations (triangulations, as well as of merchandise under-billing or over-billing).

- c. Real estate sector and construction companies: the NRA emphasizes that commercial practices handle high levels of cash in the sector for the payment of payrolls and suppliers, which makes

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<sup>8</sup> *National Strategy for the countering against money laundering, TF and the proliferation of weapons of mass destruction*, National Commission against Money Laundering, Terrorist Financing and Financing the Proliferation of Weapons of Mass Destruction, 2017, Chapter VI, p. 20.

it highly vulnerable to ML. However, no adequate mitigating measures have been adopted to limit or control the use of cash in the sector. On the other hand, the difficulties to identify beneficial ownership of investment projects have not been addressed in the Strategy because they depend to a large extent on the solution of the problems existing in the corporate sector.

- d. Financial Sector (Banks and Trust companies): in this sector there are risks related to the integration of resources into the Panamanian financial system through the misuse of corporate vehicles, especially due to the lack of control measures over nominal directors and shareholders of commercial companies at greater risk.

### *Exemptions, reinforced and simplified measures*

120. There are no exceptions to the implementation of the recommendations established for financial reporting institutions. Conversely, in the case of non-financial reporting institutions and the activities of professionals subject to monitoring, Law No. 23 is not explicit in its wording and could enable certain limitations in the CDD measures –basic CDD, knowledge and monitoring of the activity of the client– that would not be properly supported in a risk analysis of the activity, especially in the case of resident agents.

121. Current legislation establishes that financial and non-financial reporting institutions as well as professionals who are subject to AML/CFT supervision must implement the risk-based approach "[...] aimed at identifying, assessing, monitoring, managing and mitigating risks related to money laundering, TF and financing the proliferation of weapons of mass destruction. To that purpose, they shall implement basic, simplified or enhanced CDD processes and measures, depending on the risk level to which they could be exposed." (In accordance with Article 3 of Executive Decree No. 363 of 2015).

122. In addition, the corresponding supervisors and the FIU have issued alert signs and typologies to reporting institutions for the management and mitigation of risks, in line with the NRA. However, to the extent that the risk assessments of the different non-financial sectors have not been deepened, especially considering that the inclusion of reporting institutions beyond the standard was given prior to the realization of the NRA, they have not clearly identified situations of greater risk that provide grounds for the application of enhanced CDD measures.

### *Objectives and activities of competent authorities*

123. The purposes and goals of the competent authorities are not consistent with all the risks identified in the country. The National Strategy against ML/TF/PWMD provides for several objectives and actions to be developed by the different national competent authorities in the matter as from the NRA. However, the measures provided for in the action plan do not satisfactorily address the risks faced by the country, specifically those arising from the lack of criminalization of tax crimes and the activity of vulnerable sectors. Therefore, it is considered necessary to set tax crimes as a predicate offense and to adopt measures to strengthen the control of the activity of companies, the real estate sector and free zones.

### *National coordination and cooperation*

124. Without prejudice to the observations made in this chapter regarding limitations on the scope of the National Strategy, it is considered that the competent authorities cooperate and coordinate adequately the development of policies and activities to prevent ML/TF and FPWMD. In accordance with the provisions of Article 5 of Law No. 23 of 2015, the National Coordination System for the Prevention of ML, TF and FPWMD was created. The National Commission, responsible for the coordination of the system, is made up of the following authorities:



- a. Minister of Economy and Finance (who acts as President and it is replaced by the Vice Minister in case of absence).
- b. Minister of Foreign Relations.
- c. Minister of the Presidency.
- d. Superintendence of Banks of the Republic of Panama (in his capacity as President of the Council for Financial Coordination).
- e. Public Prosecutor.
- f. Director of the FIU and
- g. President of the Commission on Economy and Finance of the National Assembly.
- h. The FIU for the Prevention of the Crime of Money Laundering, and
- i. supervisory entities.

125. By way of this Coordination System, the competent authorities cooperate and coordinate the development of policies and implementation of policies and activities to prevent ML/TF and FPWMD. In particular, it is noted that the Commission operates periodically and has a Technical Secretariat, reporting to the MEF, with the following main functions: a) to approve national risk strategies for ML/TF/PWMD offenses, in order to take the necessary measures to mitigate national risks and effectively manage available resources, b) to follow up on the AML/CFT/PWMD National Risk Assessment Plan and c) to establish policies for the prevention of ML/TF/PWMD offenses.

#### *Risk awareness from the private sector*

126. The authorities have disseminated the results of the NRA through various means, although the information available is of a very general nature and does not allow the reporting institutions to adopt adequate mitigation measures, especially in the most vulnerable sectors of the non-financial sector. As mentioned above, the NRA was published on the MEF website and is available to any person or entity to consult and download. Due to this, and considering the work done in the various working groups, the authorities disseminated to financial institutions, DNFBPs and other related sectors about the national risks in terms of ML/TF identified in the NRA. The abovementioned was carried out through the publication of the NRA open to all audiences, as well as in a general presentation of it, addressed to authorities and the private sector.

127. In addition, the respective supervisors and the FIU have issued guidelines of warning signs and typologies for reporting institutions, for the management and mitigation of risks in line with the NRA. However, the NRA does not provide an analysis thorough enough on existing risks in each of the different activity sectors identified as vulnerable (attorneys, free zones, realtors, etc.). Later on, the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions performed a risk assessment analysis by sector, but in a generic fashion. The information available is regarded as of a very general nature and does not allow the reporting institutions to adopt adequate mitigation measures for each sector. Therefore, it is considered necessary for the authorities to move on in the analysis and dissemination of sectoral risks in order to collaborate with the reporting institutions in the design of the necessary measures to satisfactorily face their risks.

#### *Conclusions of Immediate Outcome 1*

128. It is possible to conclude that the Panamanian authorities and the reporting institutions bound by the ML/TF regime do not comprehensively understand the ML/TF risks they face and require a deeper analysis of the risks of the most vulnerable sectors, as well as the definition of appropriate mitigating measures, particularly in the sector of corporate services, free zones and real estate.



129. The lack of criminalization of the tax crimes is a considerable threat, as deemed by the evaluation team, but it is not the only threat considered in the analysis. Indeed, it is considered that illicit funds derived from other threats, within or without the country, as identified by the NRA (drug, gun and human trafficking, smuggling, financial crimes, corruption, and the like) are not adequately faced due to the significant vulnerabilities disregarded by the Strategy in the main risk sectors (corporate services, free zones, real estate and financial sectors). In order to solve the existing weaknesses, Panama must adopt significant legislative measures and set forth rules affecting the current operative activities of the trade platform and services rendered in the country.

130. Based on the aforementioned, it is considered that **Panama presents a low level of effectiveness in the Immediate Outcome 1.**

### CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

#### *Key findings and recommended actions*

##### ***Key Findings***

##### ***Immediate Outcome 6***

- The FIU is capable of communicating, both spontaneously and upon request, the results of its analysis, which is made through intelligence reports. It has access to a broad range of information and adds value to its reports. However, its contribution to the competent authorities in order to investigate and track assets derived from criminal activities related to ML, predicate offenses and TF is poor due to the low amount of disseminated works.
- Until the end of 2015, the FIU received the STRs printed on paper by the reporting institutions; since 2016, all STRs and CTRs are received in an online format and all the exchange with the RIs is done through the "FIU online" platform.
- A low registration level to access STRs reporting platform "FIU online" by NRA identified high-risk RIs has been detected, mainly in the case of DNFBPs. Only 51.1% of all subjects identified had a user and password and were able to report.
- Likewise, there is concern on the lack of consistency evidenced by the low level of STRs detected in high-risk sectors deemed as such due to the context of the country: the Colon free zone, real estate sector and attorneys acting as resident agents.
- The FIU has an area responsible for the development of strategic analysis; however, it should still be strengthened, as identified in the national risk strategy.

##### ***Immediate Outcome 7***

- The criminal procedure system is implementing a model change from a mixed inquisitive system to an accusatory system. For the country, this scenario generates a series of challenges in terms of how ML cases will be investigated and punished. The strengthening process must continue for the most relevant institutions of the system, such as the Police, the Prosecutor's Office, the Department of Seized Property and the Judges responsible for procedural safeguards and Criminal courts.
- Regarding the legal system, it is worth highlighting the significant progress that Panama has made with the enactment of a series of laws and regulations which allowed for the update of its legislation. However, some significant modifications are still pending in order to adapt the law to international standards, such as the incorporation of tax crimes within the categories of ML predicate offenses.
- Regarding the investigation of the ML offenses, there are evidences of the efforts of the authorities dedicated to the prosecution of ML from drug-related offenses and progressively they begin to see results in investigations with other preceding crimes, such as corruption and financial crimes.
- On a positive remark, the Money Laundering and Terrorist Financing Specialized Unit was created in 2016, which strengthens the work of prosecutors regarding investigation of property.
- The progressive incorporation of other higher risk sectors into the investigations is highlighted, but they are still at a preliminary stage. Cases linked to vulnerable sectors recognized in the NRA, such as free zones, real estate and construction, banking and corporate sectors, are still limited.
- The significant increase in the number of investigations in recent years, after the creation of the ML and TF Specialized Unit of the DIJ has resulted in an increase in parallel financial investigations. However, at the time of the on-site visit, they had not yet been reflected in the number of convictions.
- The number of reported convictions are mostly linked to ML from drug trafficking, but there is a progressive increase in sentences related to corruption investigations and some risk sectors within the framework of the effective implementation of Law No. 4 of 2017.

***Immediate Outcome 8***

- In general, the country has a normative framework that allows the seizing, administration and confiscation of assets linked to ML. It is important to note that regulations related to the administration and auctioning of confiscated property must be updated.
- The confiscation has been linked mainly to illicit drug trafficking operations. Due to the fact that financial investigations for predicate offenses other than drug trafficking have barely begun to be developed, assets related to these illicit behaviors have not yet been seized.
- It was verified that the PPO has an internalized policy in the institutions in order to confiscate assets related or linked to ML cases. Irrespective of the abovementioned, in the light of the accountability of the Police authorities to assist the PPO in the identification of property and verification of information at any possible legal proceedings, the Police must be strengthened and trained (especially the DIJ) in order to increase the effectiveness of the identification, seizing and confiscation of assets in the recently implemented accusatory criminal justice system.
- The impossibility of investigating and prosecuting tax crimes as a ML predicate offense has a decisive negative effect on the efficiency of the confiscation process and seizing measures. The absence of a legal basis deters competent authorities from identifying such cases, rendering seizing and confiscating property not viable. On the other hand, it also prevents the adoption of legal measures for the seizure and confiscation of assets resulting from tax crimes committed abroad and limits the possibility of assistance in requests for international legal cooperation.

***Recommended actions******Immediate Outcome 6***

- It is deemed necessary to substantially increase the reports produced by the FIU regarding the filing of cases with the courts, seizing of assets and property, and the impact of the collaborations within the framework of the technical assistance provided by the FIU.
- Outreach efforts with the RIs must continue and be enhanced, specifically with DNFBPs, so that they complete the necessary requirements to have access to the online FIU platform and for them to have the tools to send reports.
- It is important to continue and enhance training activities, development of manuals, dissemination of guidelines and organization of feedback sessions with RIs to improve the quality and levels of STR sending of high-risk sectors and increase the number of inscriptions of DNFBPs.
- It is considered important to strengthen the capacities of the strategic analysis area for the development of typologies and warning signs.

***Immediate Outcome 7***

- It is recommended to generate concrete programs or policies that allow for an increase in parallel financial and equity investigations in ML and follow-up on the investigations coming from the FIU intelligence reports.
- The criminalization of the tax crime as a predicate offense of ML is recommended in order to adopt mechanisms to effectively address ML/TF risks of the legal arrangements incorporated in Panama and receiving funds arising from tax crimes from abroad.
- It is recommended the adoption of protocols for the ML and TF Specialized Unit and for the Department of Judicial Investigation of the Police to speed up cases and the consequent greater number of ML convictions, including the use of Law No. 4 of 2017, fostering and increasing parallel financial investigations.
- A greater focus on investigations related to other predicate offenses and vulnerable sectors identified in the NRA is recommended (economic and financial crimes, crimes against intellectual property, smuggling).

- It is recommended the development of action protocols regarding vulnerable sectors linked to investigations of predicate offenses, such as free zones, the real estate sector and the banking and corporate sector.

#### ***Immediate Outcome 8***

- The development of the Panamanian coercive system must be promoted to increase patrimonial investigations resulting in seizures and confiscations not directly related to drug trafficking operations.
- Seizing and confiscation measures resulting from investigations related to the main risks identified and in the sectors considered most vulnerable must be enforced.
- All investigation and judicial instrumentalities must implement a policy with the purpose of confiscating assets related to or linked to ML cases.
- The process to strengthen and train the Police (especially the DIJ) must be enhanced to increase the effectiveness of the identification, seizing and confiscation of assets in the recently implemented accusatory criminal justice system.
- Clear procedures must be adopted regarding how to initiate an investigation of property and funds aimed at obtaining the confiscation of assets resulting from ML.
- Tax crimes must be correctly criminalized, since the absence of a legal basis deters competent authorities from identifying such cases, rendering seizing and confiscating property not viable.

131. The relevant Immediate Outcomes considered and assessed in this chapter are the IOs 6-8. The relevant Recommendations for the effectiveness evaluation under this section are the R. 3, R. 4 and R. 29-32.

#### ***Immediate Outcome 6 (ML/TF financial intelligence)***

##### *Use of financial intelligence and other information*

132. The Financial Intelligence Unit (FIU) of Panama was created through Executive Decree No. 136 of 1995, at the time ascribed to the Council of Public Security and National Defense. Law No. 23 of 2015 provides for its operational independence and specifically determines that it is the national center for the collection and analysis of financial information related to ML/TF/PWMD crimes. Based on the above, the FIU receives, in a centralized manner and at a national level, information on the reporting institutions (RIs) on transactions potentially linked to ML/TF/PWMD behaviors and analyzes said information in order to communicate its results and provide technical assistance to the competent national authorities.

133. Among the information that the FIU receives are the STRs potentially linked to ML/TF/PWMD activities, as well as the cash and quasi-cash transaction reports<sup>9</sup> (CTRs) for more than ten thousand US dollars that the financial RIs send, as well as non-financial RIs and activities subject to monitoring. Likewise, it receives information from the National Customs Administration (ANA) on the travelers' declarations related to the transportation of money, securities or documents for more than ten thousand US dollars or its equivalent in another currency.

134. STRs are received through the "FIU online" system and entered into the database if they meet the minimum quality standards established by the system manual; otherwise, the system itself indicates the deficiency to the RI, which receives a communication from the FIU to correct the form. Since the

<sup>9</sup> According to Art. 4 of Law No. 23, within the definition of quasi-cash we find: cashier checks, traveler's checks or money orders issued to the bearer, with multiple endorsements, with blank endorsement and other negotiable instruments incorporated through regulations of the various supervisory entities.

implementation of the system in January 2016 and until May 2017, 53 STRs of the banking sector were rejected, essentially because they did not include supporting documentation on the reason for which the STRs are sent. In the same period, 58 STRs were rejected from the securities sector for the same reason, and 10 STRs from free zones and lawyers for lack of description of the reasons that motivated the STR and for not accompanying CDD documentation, respectively.

135. In addition to the above, it is important to note that the FIU has disseminated manuals and guides to guide RIs in the issuance of reports. Additionally, we have worked on the design and delivery of trainings, both in person and through the "Virtual Academy" found on the FIU website, as well as in programs that are developed in conjunction with the supervisors. The FIU and the supervisors have disseminated catalogs of typologies and warning signs and have issued resolutions on this aspect, including a catalog of warning signs and typologies.

136. The STRs rejection system, which has been implemented through the "FIU online" system, allows feedback, both immediate and periodic, that has improved the quality of STRs. The RI knows the inconsistency and, after receiving the rejection and feedback on the quality of the STRs, returns to send the report correcting the situation. Likewise, the reporting institution may also know about the assessment of the report issued, whether it has been subject to further analysis or has been filed.

137. For purposes of conducting the intelligence analysis that is disseminated to the relevant authorities, the STRs are classified by means of the risk matrix and by the members of the STRs Reception Committee, formed within the FIU, composed of the Head of the Department of Analysis, the person in charge of the Operational Analysis Section and the person in charge of the Strategic Analysis Section, or whoever they designate to participate in said review. The STRs that are weighted at a Medium or High-level pass for the analysis. The process is complemented through the Procedures Administration System (SAT), once the STR is assigned for analysis. This system allows managing the allocation and monitoring of the corresponding report analysis.

138. To carry out its analysis, the FIU has access to various databases, some directly and others through inter-institutional agreements or upon request to the authorities that have the information which integrates their own information. On the one hand, there is direct access to the identification base of natural persons and family tree (Civil Registry of the Electoral Court), vehicle registrations (Unique Registry of Motor Vehicles), credit references (Panamanian Credit Association), records of driving licenses (SERTRACEN), declaration of movement of customs (National Customs Authority), migratory movements (National Migration Service). On the other hand, the information can also be accessed through login and password to the bases of the records of real estate, aircraft and records of companies and foundations (Public Registry of Panama, Ministry of Commerce and Industry), registration of ships (Maritime Authority of Panama), national and international criminal and judicial records (National Police and Interpol), national and regional intelligence information (National Security Council and Ministry of Public Security). Regarding the tax information available to the General Revenue Office, the FIU only has access to the registration information, but cannot obtain tax information for its investigations or to respond to international requirements.

139. Additionally, the FIU has the authority to request additional information from the RIs to complement its analysis. As an example, in 2016, the FIU required additional information for its analysis in the following way: to the banks in 86% of the cases, lawyers (resident agents of the Panamanian companies and foundations) were requested 3% of information and the real estate sector, high-risk sector in the field of ML, has not been asked in the year. According to the information provided, 72 requests were made in 2015, 358 in 2016 and 436 in May 2017 (these were taken either for FIU analysis needs, for judicial investigations, or to provide answers to similar foreign authorities). It is also highlighted that the FIU receives the CTR

from the real estate sector and that it can consult the database of the Panamanian Credit Association (APC), where the loans granted by a Bank are registered, with a mortgage guarantee to acquire real estate.

**Requirements served by the FIU (2012-2016)**

Sectors	2012	2013	2014	2015	2016	Total
Banks	52	37	231	289	369	978
Remittances	0	0	7	16	2	25
Cooperatives	0	0	0	2	5	7
Financial	0	0	0	2	0	2
Insurances	0	0	0	1	1	2
Lawyers	0	0	0	1	14	15
Superintendence	0	0	0	3	11	14
Car Agencies	0	0	0	5	2	7
Real estate agents	0	0	0	2	0	2
Prosecutor's Office	0	0	0	10	21	31
Trust companies	0	0	0	0	1	1
Intendencia	0	0	0	0	4	4
Security Council	0	0	0	0	1	1
<b>TOTAL</b>	<b>52</b>	<b>37</b>	<b>238</b>	<b>331</b>	<b>431</b>	<b>1,089</b>

*Source: Financial Intelligence Unit (FIU)*

140. Once the analysis is completed, an intelligence report is prepared in which it can be proposed to send the document to the file or to submit it to the Prosecutor's Office (PPO). Said report is evaluated by the Committee, together with the assigned analyst and then it is submitted to the General Director of the FIU, who can decide whether to deepen the study of the case or communicate the results of the analysis to the PPO, for the pertinent purposes.

141. Intelligence reports produced by the FIU contain an analysis of the financial information found in the STRs and CTRs, adding value from the information added from other databases accessed according to the needs of the analyst or of the investigation. The evaluation team had access to several sanitized reports presented by the country to prove the added value of reports to the analysis.

142. Despite the existence of a FIU operating as indicated to prepare financial intelligence reports, it is evidenced that access and use by competent authorities in investigation of the online platform has been limited due to the lack of reports prepared by the said Unit.

143. Finally, it should be stressed that, in relation with the functions of strategic analysis of the FIU, there is an area specialized in the development of typologies, warning signs and other types of strategic studies. Additionally, as mentioned, the FIU disseminates alert signal catalogs and typologies among the RIs to guide them in the detection of operations that may be linked to ML/TF/PWMD. However, it is expected that the strategic analysis unit will be strengthened with respect to the processing capacity of the available information and dissemination of the results of said strategic analysis, in accordance with what was identified

in the National Risk Strategy. Out of the published analysis works, only one of them has information arising from the CTR base of the FIU, in addition to data provided by other competent authorities.<sup>10</sup>

### *STRs received and requested by competent authorities*

144. As mentioned above, since 2016, the FIU receives STRs and CTRs from the RIs through an electronic platform called "FIU online", which provides the STRs filling format and allows to attach digital documentation of support on the operation that motivates the report and sends it directly to the systems of the FIU. This platform is a secure means of communication and transfer of information, as it has recognized security certificates for the encrypted transmission of information between the RIs and the FIU.

145. Previously, the STRs and its corresponding support documentation were sent printed on paper and stored in physical files within the facilities of the FIU. Currently, the online FIU system is the only means of receiving STRs and those previously received have already been digitized and incorporated into the FIU database. At the date of the on-site visit, there was a 63% advance in the digitization of STRs support documents submitted on paper.

146. In relation with the volume of STRs received from the RIs, although there is an increase in the number of STRs received each year, it is considered essential to increase the remission of the same by the high-risk sectors. Indeed, a significant deficiency in the context and risks of Panama turns out to be the scarce information received by the FIU of high-risk sectors identified as such by the NRA.

**Suspicious Transactions Report(s) received by the FIU, 2012-2016**

Rating <sup>11</sup>	Sectors	Total	2012	2013	2014	2015	2016
Financial	Banks	<b>4,637</b>	512	636	771	1,358	1,360
Financial	Cooperatives	<b>25</b>	3	6	4	4	8
Financial	Trust companies	<b>30</b>	0	0	0	3	27
Financial	Financial	<b>19</b>	0	0	1	9	9
Financial	Insurances	<b>322</b>	32	5	10	114	161
Financial	Securities Institutions	<b>140</b>	1	11	33	42	53
Non Financial	Lawyers	<b>111</b>	0	0	0	5	106
Non Financial	Panama Pacific Agency	<b>2</b>	0	0	0	0	2
Non Financial	Real estate	<b>8</b>	0	0	0	3	5
Non Financial	Exchange	<b>3</b>	0	0	0	1	2
Non Financial	Gambling	<b>177</b>	74	57	25	13	8
Non Financial	Remittances	<b>919</b>	176	183	158	163	239

<sup>10</sup> "Pagador Fiel" case, which was presented in the Biennial Exercise of Typologies of GAFILAT carried out in 2016 and that is available in the compilation of typologies corresponding to the aforementioned exercise.

<sup>11</sup> As it has been mentioned earlier, Law 21 of may 2017 establishes that remittance and currency exchange businesses will be now supervised by the SBP. Nevertheless, in accordance with the Panamanian legal framework in force at the time of the on-site visit, the currency exchange businesses and the remittance businesses were considered as non-financial sectors, which is why, despite the fact that the standard considers them as "financial activities", they are included as "non-financial" in the table.



2018

Rating <sup>11</sup>	Sectors	Total	2012	2013	2014	2015	2016
Non Financial	Sale of Automobiles	17	0	0	0	11	6
Non Financial	Baru Free Zone	1	0	0	0	0	1
Non Financial	ZLC	4	0	0	0	0	4
Non Financial	Processing areas	3	0	0	0	0	3
Non Financial	Other	1	0	0	0	0	1
Other	Supervisors	15	3	1	3	8	0
	<b>TOTAL</b>	<b>6,434</b>	<b>801</b>	<b>899</b>	<b>1,005</b>	<b>1,734</b>	<b>1,995</b>
	<b>Increase</b>			<b>12%</b>	<b>12%</b>	<b>73%</b>	<b>15%</b>

Source: Financial Intelligence Unit

147. In fact, the reports issued by the non-financial sectors and that were identified as high risk by the NRA, such as the ZLC, the real estate and construction activity (three sectors from which CTRs are received since 2000)<sup>12</sup>, and the sector of lawyers who provide corporate services and act as resident agents is not consistent with the identified risks and hinders the FIU from obtaining relevant information for making its analysis and preparing reports to contribute to detect and investigate ML/TF and other predicate offenses cases.

148. Regarding lawyers acting as resident agents, the event of the leaking of the "Papers" case, which has highlighted the vulnerability of certain activities related to the creation and monitoring of the legal entities and legal arrangements created in Panama that can be misused abroad. On the other hand, the lawyers and law firms acting as resident agents of said legal arrangements have been identified as a high-risk sector in the NRA and as per Law No. 23 of April 2015 the sector is obliged to report the FIU on suspicious operations of ML/TF.

149. According to the information provided by the Public Registry of Panama, the number of legal persons active (as of May 2017) amounts to 734,419, out of which 675,624 are corporations and 54,171 are private interest foundations, companies which have been identified as possible vehicles for ML/TF<sup>13</sup> purposes. Irrespective of the scale of said corporate universe, the number of STRs received by the FIU is low, with a total of 119 STRs up to May 2017, 106 STRs in 2016 and 5 in 2015.

150. In relation with the ZLC, and as stated in the NRA, it is regarded as the zone with the highest commercial activity of the country and the most representative. It has the greatest economic significance since the activity of foreign trade is one of the pillars of the Panamanian economy. This Zone was identified by the NRA as high-risk zone in terms of ML/TF because of the importance it has at the regional level. If the abovementioned is taken into account, it is not considered consistent with the risks identified that the total STRs received by the 1,360 registered RIs that operate within the ZLC is 9 in the first half of 2017, 4 in the year 2016 and that none have been sent in 2015, that is, only 13 since the entry into force of Law No. 23 of 2015.

<sup>12</sup> As per Law No. 23 of April 27, 2015, they were incorporated as RIs with the obligation to issue STRs.

<sup>13</sup> Regarding these numbers, there are 209,015 legal persons that have outstanding obligations in the payment of the "tasa única" tax equal or higher to 10 years; this means that their corporate rights are currently suspended and will be liquidated should they fail to pay within three years. Additionally, 24,725 companies have been suspended under the grounds of not having a resident agent for a period beyond 90 days.

151. Moreover, the real estate and construction activity is a sector that has had a considerable performance in the economy of Panama. According to the Economic and Social Report of the Ministry of Economy and Finance of January 2016, construction increased by 164.5% and between 2014 and 2016 construction permits valued at approximately 450 million dollars were processed, according to the National Institute of Statistics and Census (INEC). If the high growth rates of the activity and the important development of the sector are taken into account, it is inconsistent that 3 STRs were received up to May 2017, 5 during 2016 and 3 STRs in 2015.

152. Regarding STRs received from the banking sector by the FIU, they were 1358 in 2015, 1360 in 2016 and 665 during the first half of 2017. If the importance of the Panamanian banking system<sup>14</sup> is taken into account, the fact that it is a financial center at a regional level with 82 banks registered as RIs before the FIU, as well as the exposure to ML risks for the level of integration within the international financial system<sup>15</sup> and for being a dollarized economy, it is considered that even though the number of STRs of this sector has increased annually<sup>16</sup>, this volume can still be improved paired with the significance and exposure of the banking sector.

153. Finally, regarding the registration of RIs, it is important to note that the registered financial RIs cover most of the institutions. However, the situation is critical in the case of DNFBPs (many of which have been integrated into the regime since April 2015) which, at the date of the on-site visit, only 51.1% of identified subjects were registered, with updated information and able to report online (a system which is in force since 2016). Out of the 11,627 RIs identified, 5954 non-financial reporting institutions had a user and password in the FIU online platform. This evidences a huge gap in the number of subjects enrolled.

154. It is important to stress that the sectors corresponding to the ZLC and the real estate sector and construction have the obligation to carry out CTRs since 2000 as per Law No. 42 and are duly identified in the FIU. By virtue of the entry into force of Law No. 23 of 2015, which designates them as RIs to present STRs, since May 2016 the FIU has initiated a process to promote the updating of data (ADSO), which also aims to enroll them in the "FIU online" platform to access the system for the remission of digital STRs. This process is more expedite as from May 2017 with the introduction of the "ADSO online" system<sup>17</sup>.

#### *Operational needs supported by the analysis and dissemination of the FIU*

155. To carry out its work, the FIU has a staff of 73 officials, out of whom 29 are in the area of information analysis, both operational and strategic, which makes it the area with more officials. Secondly, there is the area of technologies with 11 officials and in third place the area of national coordination and cooperation, with 7 officials as of May 2017. It is important to point out that, with the implementation of the

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<sup>14</sup> There are 92 licenses granted by the SBP. Banks with a General License (all kinds of transactions with local and foreign impact) are 50. Those with International License are 29 (they do not carry out transactions with local impact) and those with Representing Licenses (only a foreign bank representation office in Panama) are 13.

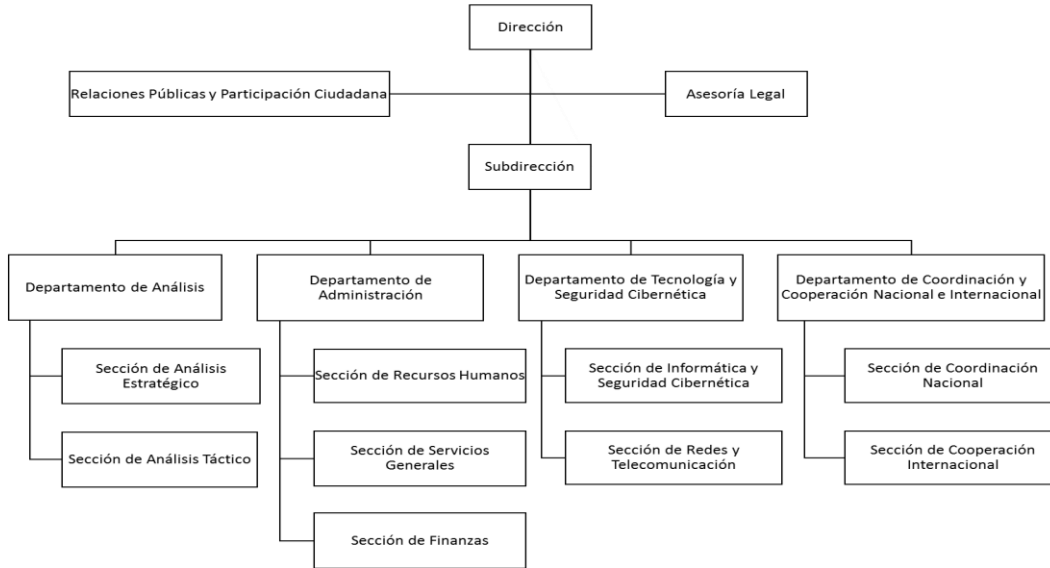
<sup>15</sup> As stated in the NRA: "[t]his sector can be highly vulnerated since it receives large amounts of money from abroad and then places such amounts as loans in non-financial sectors which can be vulnerated in turn for the stage of integration in the economy, such as foreign trade represented chiefly by free zones (for instance, the Color Free Zone) and the real estate and construction sectors".

<sup>16</sup> STRs received during 2012 (512), 2013 (636) and 2014 (771).

<sup>17</sup> As of September 2017, at the face-to-face meeting between the evaluation team and the country under evaluation, it was reported that the update of data and registration online of a total of 9887, hence, the number of RIs amounted to 12,125.

"FIU online" system, the Data Processing area has been restructured and its officials have gone on to perform other functions, mainly strategic analysis.

**Organization chart of FIU staff**



Source: Financial Intelligence Unit (FIU)

FIU Form						
Department	Year					
	2012	2013	2014	2015	2016	2017
<b>Directorate</b>	1	1	1	1	1	1
<b>Sub Directorate</b>	1	1	0	1	0	1
<b>Secretariat</b>	2	1	1	1	1	2
<b>Messenger service</b>	2	2	1	1	1	2
<b>Analysis</b>	8	8	9	17	16	29
<b>Legal advice</b>	3	3	4	2	2	3
<b>Data processing</b>	3	2	4	0	0	0
<b>Administration</b>	4	4	3	8	7	7
<b>Filing</b>	1	1	1	1	1	1
<b>Cooperation and C. Nac. and Inter.</b>	0	0	0	5	5	7
<b>P R</b>	0	0	0	3	3	3
<b>Technology</b>	2	2	2	4	4	11
<b>General services</b>	2	2	2	2	2	3

2018

FIU Form						
Department	Year					
<b>Operative security</b>	0	0	0	0	0	3
	<b>29</b>	<b>27</b>	<b>28</b>	<b>46</b>	<b>43</b>	<b>73</b>

Source: Financial Intelligence Unit (FIU)

156. It should be observed that, according to the 2014 Management Report, 86% of expenditures within the FIU go to staff related expenses (salaries, benefits, insurances, etc.) with only 14% remaining for all other aspects, which may prove the need to strengthen the FI financially in order to focus more in operational matters and therefore fulfill its provided mandate<sup>18</sup>.

157. The FIU can spontaneously communicate the result of its analysis through its intelligence reports to the PPO and other criminal investigation agents or jurisdictional authorities<sup>19</sup> when there are reasons to suspect that ML/TF/PWMD activities have been or are being carried out. Moreover, the FIU can provide technical assistance in response to requests from the PPO, the ANA and the different intelligence and security bodies, including the CSN, to assist in criminal or administrative investigations of the acts and crimes related to ML/TF/PWMD.

158. The mode of dissemination of financial intelligence reports by the FIU is through meetings and working groups. In this framework, the information is transmitted and the task is guided, trying to optimize the needs of investigators with relation to the contribution that the FIU can make. As evidenced by the on-site visit, a working group between the FIU and the PPO implies the beginning of an investigation or a procedure for ML/TF, since this is the method by which the FIU reports to the PPO on its analysis for the initiation of cases.

159. At working groups, the FIU presents the results of its analysis, directly explaining the most relevant findings, transmitting graphs and networks of links of the detected unusual activities and answering the questions that the authorities responsible for the investigation may have. The working groups work at the highest level and have been rated as very positive, both by the FIU and by the different participating authorities.

160. However, it is important to point out that this working methodology is feasible to the extent that disseminations performed are not abundant so as to complicate the increase of disseminations of intelligence reports in a larger number.

161. In this sense, it could be evidenced that the judicial cases initiated by the PPO from FIU intelligence reports are scarce. Moreover, technical assistances of the FIU to current PPO investigations are considered low.

162. Between 2012 and 2016, that is to say, in a five-year term, 75 intelligence reports were disseminated to the PPO, which involved the analysis of 296 STRs, as shown in the attached table. In 2015 7 reports were disseminated and 13 reports were disseminated in 2016. The evaluation team had no access

<sup>18</sup> <http://www.uaf.gob.pa/tmp/file/86/Gestion%202014%20-Memoria%20UAF-Web.pdf>

<sup>19</sup> While the deputies of the Republic do not have immunity and they can be investigated and judged by the Supreme Court of Justice, the FIU, in that framework, can share information in these investigations. In the case of the Magistrates of the Supreme Court of Justice, they will be investigated and judged by the National Assembly of Deputies, which is constituted with judicial functions. Faced with this situation, the FIU can also collaborate with these authorities by making available the financial intelligence report.

to statistics of new intelligence reports disseminated to competent authorities between January and March 2017, date of the on-site visit.

**Comparison between intelligence reports and STRs received by the FIU**

Year	Reports	Number of STRs
2012	32	175
2013	7	25
2014	16	38
2015	7	30
2016	13	28
<b>Total</b>	<b>75</b>	<b>296</b>

*Source: Financial Intelligence Unit*

163. Under the modality of technical assistances from the FIU to the PPO, 2 have been developed in 2016, 15 in 2015 and 8 until May 2017, date of the on-site visit.

164. The low level of preparation of FIU reports to contribute to the investigations has its correlation and is consistent with the findings of the IO7, where there are essentially convictions for drug trafficking, with a low level of cases of other predicate offenses identified as internal threats of ML such as the crime of corruption, financial crimes, crimes against intellectual property and smuggling.

165. In relation with the content or usefulness of intelligence information as prepared by the FIU, this is evidenced in four cases named respectively "*Petrolero Estatal*" (State Tanker), "*Proveedor Vacuno Gourmet*" (Gourmet Livestock Supplier), "*Pepito, el Representante Potentado*" (Pepito, the Millionaire Representative) and "*Remittances*". With regard to its weighing, the evaluation team emphasizes that the information provided corresponds to the declarations of the sanitized cases, without any figures involved or dates in which they would have occurred; in all cases reference is made to the reference to the PPO for investigation; in the context of the interviews with representatives of the PPO, although they did not provide details related to the relevance of these reports for the investigations, the existence of investigations in process was mentioned. One of the cases presented in the face-to-face meeting was associated with one of the judicial issues referred to in footnote number 27, contained in the analysis of the IO7.

**Case 1: "*El Petrolero Estatal*" (The State Tanker)**

**Reason for the Report:** The FIU received a STR from the banking sector where, due to negative news in the press, a company linked to a PEP from another jurisdiction is reported. The individual PEP was the president of a State-owned company who was being investigated by alleged unjustified private illicit enrichment.

An exchange was generated through the Egmont Secure Web System, sending and receiving intelligence information from the homologous FIU about the accounts and the people involved. The investigation in the foreign jurisdiction was confirmed, as well as the arrest of the PEP under analysis.

**Analysis carried out:** The analysis makes it possible to identify the reception of international transfers from other banks, as well as the sending of funds to other companies equally linked to

the analyzed person. The analysis was extended by requesting the bank accounts of the companies identified in other banks, then identifying the receipt of time deposits.

Once the analysis of the reported accounts was carried out, the financial intelligence report was prepared and sent to the Public Prosecutor's Office.

### **Case 2: "*Provedor Vacuno Gourmet*" (Gourmet Livestock Supplier)**

**Reason for the Report:** The client was reported to the FIU by a bank due to the existence of negative news appearing in international communications media, where they referred to the deprivation of liberty of two businessmen for illicitly marketing more than 100,000 cattle owned by the State.

**Analysis carried out:** The analysis requested additional information to the RI and identified the reception of international transfers and transfers of funds between own accounts in the same bank; it was possible to identify that the funds came from the accounts of companies in banks located in a country with a high index of corruption, matching information with what was identified in open news sources. Transfers were also received from companies dedicated to the food or restaurant activity. The funds, once received, were placed in time deposits. It was identified that the companies analyzed kept the same address.

Information requirements were made via Egmont. The FIU generated the financial intelligence report and shared it with the PPO, which requested account documentation and the freezing of funds. The case generated international cooperation with a number of countries and formal investigation is currently underway.

### **Case 3: "*Pepito, el Representante Potentado*" (Pepito, the Millionaire Representative)**

**Reason for the Report:** A bank issued a STR to the client for presenting unusual movements, considering that its source of income is not consistent with its work profile, the nature of its business and the conversion of these funds into acquisition of real and personal property.

**Analysis carried out:** During the period under analysis, the receipt of constant cash deposits was identified for amounts exceeding client's transactional profile, the outflow of funds was perceived through management checks. Then the closing of its accounts was ordered and the transfer of funds to another bank, where the same behavior is reported. In addition, accounts are identified in the name of the client's mother where the client is constituted as a signatory; moreover, companies are identified, and when they are consulted about beneficial ownership, it is confirmed that the beneficiary is the owner of such companies. During the same period, funds deposited were converted into movable assets (vehicles) with total expenses amounting to USD 119,855.00, 5 vehicles were acquired that were placed in the name of client's mother and then transferred to his property, information that was obtained through public and private databases.

The FIU disseminated an intelligence report to the PPO.

**Case 4: Remittances**

**Reason for the Report:** The FIU received a STR from a remittance company, which indicated the names of people who were receiving remittances from different countries for no apparent reason, and had not been able to justify the origin of the money.

**Analysis carried out:** It was analyzed that other people who had been reported by the remittance company shared the same addresses and telephone numbers, so the cases were consolidated. Most reported persons had no relationship with financial institutions.

Requirements were sent to other countries.

It was considered that the scheme had several elements to be sent to the PPO.

166. Regarding the technical assistances that the FIU provides to other competent authorities in criminal or administrative investigations for ML/TF/FPWMD<sup>20</sup>, it is perceived that the greatest number of assistance is made to the CSN without being able to assess their usefulness due to the legal role of this agency, consulting organism and advisory body of the President of the Republic on public security and national defense matters. The CSN was created by Executive Decree No. 263 of the year 2010. Within its scope, specialized intelligence areas on terrorism and its financing operate, as well as for the investigation of corruption, organized crime, drug trafficking and migrant smuggling.<sup>21</sup> Although it is not evident from the regulations that the Security Council is a competent authority to carry out criminal or administrative investigations of the acts and crimes related to ML/TF/FPWMD, it can be interpreted that, due to its attributions (intelligence development) it is within the definition of Competent Authorities of the FATF Glossary.

**Number of Intelligence Reports disseminated by the Authority between 2015 and 2016**

Year	Entities	Number of disseminations
2015	Public Prosecutor's Office (prosecutors)	15
2015	Supreme Court of Justice	9
2015	National Security Council	22
2015	Panama National Police	5
2015	Ministry of Security	1
2015	Superintendency of Securities Market	1
Total		53

<sup>20</sup> Article 11, para. 11 of Law No. 23.

<sup>21</sup> Executive Decree No. 290 of the year 2016 creates the Inter-institutional Anticorruption Group (GIA) to promote preventive actions towards an organizational unit front against acts of corruption and organized crime, within the internal sphere of public security organizations. It reports to the Executive Secretariat of the National Security Council (Article 3). It is in charge of an Official specialized in investigation or intelligence tasks appointed by the President of the Nation. The faculties of the GIA are in Art. 7. Executive Decree No. 324 of the year 2016 creates in this area the Department of Terrorism and its financing.



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Year	Entities	Number of disseminations
2016	National Security Council	57
2016	Public Prosecutor's Office (prosecutors)	2
2016	Panama National Police	2
Total		61

*Source: Financial Intelligence Unit*

167. To the data presented in the technical assistance tables for the years 2015 and 2016, we highlight that, as of the date of the on-site visit, May 2017, 29 assistances had been provided to the CSN and 2 to the National Police.

168. There is a lack of technical assistance to the ANA, in spite of the fact that smuggling has been evidenced in the NRA and the crimes against intellectual property that occur within the jurisdiction of the ANA, as one of the internal threats which are ML predicate offenses.

169. From all of the above, it can be concluded that access and use of financial intelligence by the PPO is very low. Regarding other competent authorities (CSN, Supreme Court or National Police) there is no evidence of support of operative needs by intelligence contributions and technical assistance.

170. It is considered appropriate to mention that the role of the FIU officials is limited to the reception and analysis of information and their participation in the working groups for the potential development of cases and dissemination of intelligence products. The case in which FIU analysts are cited as part of the legal proceedings derived from a ML/TF case is not contemplated, nor is the intelligence report used as evidence in legal proceedings. The information entered in the procedures with evidentiary character must be compiled by the DIJ of the National Police in support of the work of the PPO.

### *Cooperation and exchange of information/financial intelligence*

171. Law No. 23 of 2015 created the National Coordination System for the Prevention of Money Laundering, TF and the Proliferation of Weapons of Mass Destruction of the Republic of Panama. The above institutionalizes the permanent articulation between the competent authorities to direct, organize and coordinate the measures and actions necessary to mitigate the risks identified in the NRA and comply with the National Strategy.

172. Likewise, the FIU coordinates its actions within the framework of the technical assistance provided to the judicial, security and intelligence investigation agencies of Panama, and cooperates and exchanges information with the Supervisory Entities, such as:

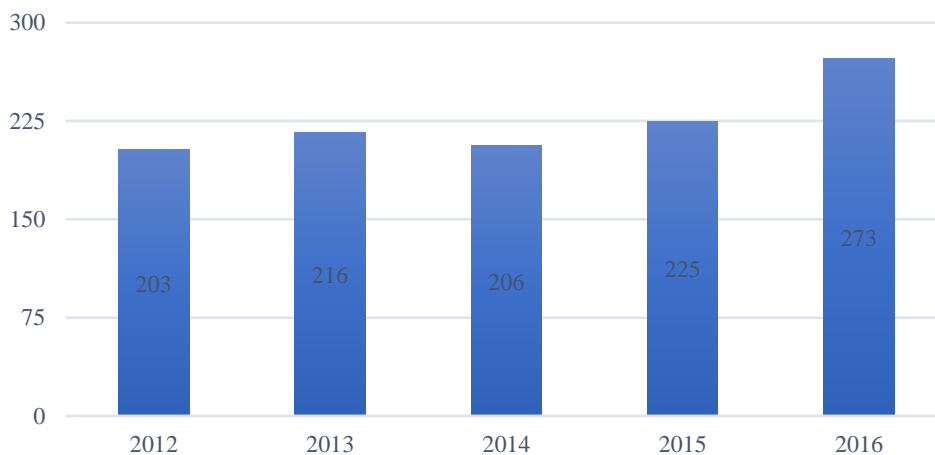
- Superintendence of Banks of the Republic of Panama.
- Superintendence of Insurance and Reinsurance of Panama.
- Superintendence of Securities Market.
- Panamanian Autonomous Cooperative Institute.
- Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions.

173. There is good feedback between the Supervisory entities and the FIU in order to improve the quality of the reports, with joint working groups and joint training for the sectors.

174. For purposes of collaborating with both the country's authorities and its similar foreign authorities, the FIU has a Department of National and International Coordination and Cooperation, created in 2014. Beyond the task of inter-institutional coordination at the national level, it is in charge of processing and responding to the international requirements made by its counterparts within the framework of the Egmont Group and other cooperation agreements that they have signed, as well as making requests for information to its foreign counterparts, according to the needs of the cases. For this, it has procedural manuals that include the principles for the adequate exchange of information sent or received through Egmont's Secure Web System (ESW). According to the information provided, although there has been a significant increase in requests for information to the FIU, some of them motivated by cases of international relevance such as the disclosure of the "Papers" case documents, the increase in personnel, as described above, has allowed to comply in a more timely and complete way with the requests received.

175. According to the information provided by the FIU and the countries consulted, the exchange of information and cooperation have improved in quality and response times. Up to May 2017, at the time of the on-site visit, 93 of the 96 requirements received had been answered.

**Requests to the FIU via the Egmont's Secure Web System (ESW)  
2012 – 2016**



*Source: Financial Intelligence Unit*

### *Conclusions of Immediate Outcome 6*

176. From all of the above, it is evidenced that the use of financial intelligence by the competent authorities to investigate and track criminal assets related to ML, predicate offenses and TF cannot be separated from the low amount of reports prepared by the FIU to initiate legal investigations.

177. The FIU also provided technical assistance to collaborate with administrative or judicial investigations, which were considered low. Regarding the use, effectiveness for investigation and conviction could not be assessed.

178. The number of RIs that have access to the FIU online platform and are able to submit STRs, identified as a high risk in the NRA, mainly DNFBPs, and the low level of STRs generated by high risk sectors due to the context of the country, such as real estate and construction sectors, the ZLC and lawyers acting as resident agents, negatively affect the results of this outcome, since the FIU and other competent

authorities are deprived of relevant and precise information for the development of investigations on ML and TF.

179. In accordance with the abovementioned, **Panama presents a low level of effectiveness in the Immediate Outcome 6.**

### *Immediate Outcome 7 (ML investigation and prosecution)*

#### *ML identification and investigation*

180. As of 2016, Panama made significant changes in its legal, regulatory and institutional framework, seeking to improve its system for investigating, prosecuting and punishing ML/TF. Specialized units have been incorporated into the system both in the PPO (Attorney General's Office) and in the National Police (Department of Judicial Investigation) aimed at increasing financial investigations, since those teams incorporated financial analysts to support the work of prosecutors. Moreover, since September 2016, an accusatory criminal system has been implemented which allows greater speed in judicial proceedings (although since September 2016 all new cases must be processed under the accusatory system, all the previous processes are based on the previous inquisitive system).

181. In general, the immediate outcome is complied only regarding certain type of investigations, since the majority of them only refer to ML investigations with drug trafficking as predicate offense, although since 2015 up to this date there is evidence of cases related to corruption, financial crimes and crimes against intellectual property. Convictions are still related to drug trafficking, even though, due to a legal amendment, there are currently convictions negotiated for cases of the inquisitive system which have been related to public corruption crimes.

182. By way of Resolution No. 25 of 2016, the Office of the Attorney General created the ML/TF Specialized Unit to support prosecutors in complex financial investigations, developing heritage research and assisting with ML criminal investigation strategy. The ML/TF Specialized Unit of the PPO has 34 officials, including financial, accounting and IT analysts who collaborate with the financial analysis. The Department of Judicial Investigation of the National Police collaborates with the advice for the development of the investigations in financial matters, and prepares the Report of Financial Performance. The ML/TF Specialized Unit is a recent creation designed so that, within its attributions, it develops investigative techniques to provide effective information for the identification and documentation of money movements and/or location of suspects, witnesses or victims or other circumstances evidencing the commission of criminal activities in the context of ML/TF and/or predicate offenses.

183. The PPO works with the support of the Department of Judicial Investigation (DIJ) of the National Police. This Department is dedicated to investigating ML/TF, providing advice to the different prosecutor's offices for the development of financial investigations, for which it draws up a "Financial Action Report" and attends hearings when required. Currently, this division is made up of 21 officials. Bearing in mind specially the challenges faced by the accusatory system, we believe the abovementioned units must be reinforced as to the number of staff, technological tools and trained personnel to be capable of providing adequate support to the increasing investigations in the country.

184. The number of parallel financial investigations reported by the specialized police and by the PPO's money laundering unit is small and not related with the number of investigations for predicate offenses nor with the number of ML investigations.

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185. According to the information provided by the PPO, the number of investigations for ML between the years 2012/2017 (up to May 2017) amounts to 299 cases initiated in the various specialized PPOs, according to the table below:

**Number of investigations of the crime of money laundering with its predicate offense<sup>22</sup>**

PREDICATE OFFENSE	TOTAL	2012	2013	2014	2015	2016	2017
<b>Total</b>	<b>299</b>	<b>29</b>	<b>35</b>	<b>27</b>	<b>91</b>	<b>86</b>	<b>31</b>
Crimes related to Drugs	232	25	34	26	68	55	24
Organized crime							
Financial crimes	3	0			1	1	1
Crimes related to Drugs	1		0	1		0	
Omission or falsehood in the customs declaration of the traveler regarding monies or negotiable documents	10			0	6	3	1
Falsification of documents in general	2			0		1	1
Ganging	0			0		0	
Racketeering	1			0			1
Corruption of public servants	9				1	6	2
Organized crime	2				1	1	
Illicit enrichment	1				1		
Kidnapping	1					1	
International bribery	1					1	
Crimes against public administration	1						1
Industrial property	2					2	
Financial crimes	15	3	1		6	5	
Contract killings	1	1					
Corruption of public servants	14				5	9	
Corruption	1					1	
Embezzlement	2			0	2		

*Source: Center of Studies of the Prosecutor's Office*

186. The majority of the investigations for the crime of ML has drug trafficking as a predicate offense. Out of the total number of investigations, that is, 299 cases, 232 of them were carried out by the Prosecutor's Office for drug-related crimes; 32 by the Specialized Prosecutor's Office for organized crime; 15 by the Prosecutor's Office for financial crimes; 17 by the Anti-Corruption Prosecutor's Office and 2 by the Prosecutor's office of intellectual property and information security.

187. Regarding the process of identification of possible ML cases by the intelligence reports sent by the FIU, the existence of a good coordination between the FIU and the PPO was verified, the latter being the entity responsible for receiving the financial intelligence reports. As described in the IO 6, the mode of dissemination of financial intelligence reports by the FIU, whether spontaneous or at the request of the

<sup>22</sup> It refers to preliminary data.

authorities, is through meetings and working groups, seeking to optimize the needs of investigators with relation to the information provided by the FIU. The mechanism for the use of working groups for the dissemination of intelligence reports was positively qualified by the PPO.

188. Although this dissemination mechanism presents strengths, there is a clear limitation in the number of intelligence reports disseminated. From the information provided by the PPO in the period from 2012 to 2016, only 75 Financial Intelligence Reports were received from the FIU. From this total, 52 investigations were initiated based on Intelligence Reports disseminated by the FIU. Considering the large number of reporting institutions and the structural conditions of the Panamanian financial economic system, it is noted that the number of reports disseminated and the number of investigations initiated based on the financial intelligence reports is significantly low.

### *Coherence of ML investigations and prosecutions with threats and risk profile, and national AML policies*

189. The NRA establishes that, within the main internal risks for ML, there appear the predicate offenses from drug trafficking cases, corruption and financial crimes. From the data provided by the country's authorities, it appears that, out of the 299 cases investigated, 232 are related to the predicate offense of drug trafficking. That is to say that 77.59% of all ML investigations have drug trafficking as a predicate offense, which is related to the identified internal risks. In relation to ML cases related to financial crimes and corruption, a significantly smaller number of cases were reported, 15 and 17 investigations, respectively.

190. On the other hand, the NRA determines that the Panamanian system is vulnerable to receive the proceeds obtained from predicate offenses committed abroad and that the legal services and legal arrangements created in Panama may be misused abroad for ML. On this specific issue, the Prosecutor's Office informed the investigation of two macro investigations, among which the case of a law firm related to the "Papers" case and the case related to a Brazilian construction company for alleged ML and corruption, in several jurisdictions in the region are highlighted. The PPO reports that, in these investigations, charges have been filed against six (6) lawyers, nine banking operatives and an accountant. Likewise, a description of the case called "Urrego" was presented, which began with an investigation for an illicit drug trafficking abroad predicate offense (Colombia).

191. In these macro investigations international collaboration has been requested to several countries (Germany, Guatemala, Ecuador, Bahamas, Ukraine, Mexico and Uruguay) to obtain relevant information regarding the predicate offenses and meetings have been held to approach with multiple countries including members of the EUROJUST, the United States, Bolivia, Ecuador, Guatemala, Malta, among others.

192. It should be noted that, despite these being important cases of international significance, in sectors considered to be at higher risk, it is verified that these processes have not reached any convictions yet.<sup>23</sup>

193. Besides, as per the IO 1, the impossibility of prosecuting tax crimes as a ML predicate offense has a negative impact on the effectiveness of the investigation process, since the absence of a legal basis prevents investigative authorities from prosecuting tax crimes committed abroad, with the possible result of the

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<sup>23</sup> It should be noted that after the on-site visit, in the face-to-face meeting held in Buenos Aires, the country provided relevant information regarding cases in which a sentence and conviction have been obtained with significant amounts of confiscated property. The abovementioned happened due to the application of Article 24 of Law No. 4 dated 17 February 2017, which reforms the judicial code, the criminal code and the criminal procedure code, on measures that prevent overcrowding in prisons and provides for other dispositions. This rule allows plea bargaining through which conviction has been achieved for cases of money laundering with international bribery as a predicate offense.

placing of illegal proceeds in the real estate and financial systems of Panama, and with other limitations as well, such as in the capabilities of collaborating in requests for international legal cooperation, as provided for in the Immediate Outcome 2.

194. Regarding investigations that involve the economic sectors identified in the NRA as being at higher risk, such as the real estate, banking and free zones sectors, few cases are reported. However, the Prosecutor's Office reported the existence of an investigation into the alleged commission of an offense related to drugs in the form of drug trafficking and a ML case linked to a businessman operating in the ZLC to give appearance of legality to large sums of cash from drug trafficking in Mexico and Central America. Additionally, five (5) cases against bank agents were reported, three (3) of which are advanced under the procedural rules of the mixed inquisitive system and two (2) under the procedural rules of the accusatory court system.<sup>24</sup>

195. In sum, the immediate outcome is complied only regarding certain type of investigations, where there is a partial relation with internal threats identified, since they refer mainly to drug trafficking. It is also highlighted the progressive incorporation of investigation in other sectors considered to be at greater risk, but still at an incipient stage, with a restricted number of investigations (17 for corruption, 15 for financial crimes and 2 for intellectual property), without any convictions in the matter.

#### *Types of ML cases prosecuted*

196. According to the statistical information provided by the Judiciary, out of the total of 351 cases investigated, 157 cases were admitted to the criminal circuit and judicial accusatory criminal system offices; as evidenced by the table below, the number of investigations has been increasing:

**Cases entered for ML at the offices of the criminal circuit and in the accusatory criminal system  
2012 -2016**

Year	ML cases
2012	31
2013	33
2014	21
2015	15
2016	57
<b>TOTAL</b>	<b>157</b>

*Source: Judicial Statistics Center. Judiciary.*

197. According to the information obtained by the Judicial Statistics Center of the Judiciary, the number of persons charged for ML between the years of 2012 and 2016 was 286 individuals.

<sup>24</sup> In the face-to-face meeting, the country also provided disaggregated information on cases that had ended after the on-site visit as a result of the use of Law No. 4. In these cases (two investigations), it was reported that 68 legal persons were linked, 78 bank accounts, 36 banks, 11 jurisdictions, confiscations for PAB 5,926,677, 15 people convicted in the modality of laundering by third parties and 16 in self laundering.

**Cases entered for ML at the offices of the criminal circuit and in the accusatory criminal system, per number of charged persons  
2012 – 2016**

Entered between 2012 and 2016	Cases	Charged
Total	157	286

*Source: Judicial Statistics Center. Judiciary.*

198. Only in recent years have criminal charges started to be generated linked to cases of public corruption and financial or property crimes. The vast majority of the charges are related to ML cases linked to illicit drug trafficking.

199. The country has reported its efforts in obtaining criminal charges related to risk sectors identified as those linked to lawyers and corporate vehicles and corruption of public servants.

200. These initiatives are important steps to increase the prosecution of ML crimes, especially considering the country's risk profile. However, it is verified that these cases are still recent, without their completion in the judicial stage.<sup>25</sup>

201. Regarding the investigation and conviction of ML by third parties, it should be noted that the Panamanian code considers such third parties authors or primary accomplices (Art. 43 and Art. 44 of the Criminal Code), for this reason there is no information or statistics that allows us to differentiate the investigations made by this type of ML. However, in the interviews with the members of the Judiciary, a series of cases in which these conducts have been sanctioned were outlined.

202. On the other hand, it should be noted once again that the lack of incorporation of tax crimes as predicate offenses of ML results in Panama not being able to investigate, charge and assist in cases related to the sending of proceeds derived from tax crimes committed abroad.

### *Effectiveness, proportionality and deterrence of sanctions*

203. With regard to the sanctions that apply in terms of ML, it should be noted that, according to the statistics of the Judiciary, the penalties of deprivation of liberty on average are 5 years. To date, the minor punishment imposed by ML has been 1 year and the maximum punishment is 9 years.

204. In general terms, they seem proportional, dissuasive and effective penalties according to the catalog of punishments of the Criminal Code. However, considering the risks identified by the country in the NRA, when analyzing the ML sanctions, it is noted that the sanctions are mainly related to a certain number of cases related to drug trafficking. The foregoing, we consider, is because the legislation and the paradigm shift in the field of investigation is relatively recent. At present, there are investigations that involve other risk sectors as mentioned above.

205. According to data of the Judiciary, 115 cases related to ML were resolved. Out of this total, a total of 29 convictions and 12 acquittals were reported within the period from 2012 to 2016. To these data it must be added that there are reportedly eight (8) mixed sentences, that is to say, some people were convicted, and

<sup>25</sup> It should be noted that after the on-site visit, in the face-to-face meeting, the country provided relevant information regarding cases in which a sentence and conviction have been obtained with significant amounts of confiscated property within the frame of plea bargains with large amounts of confiscated property, in the case related to a Brazilian construction company for ML and corruption.



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others acquitted. It is also important to stress that there is a high number of provisional acquittals regarding ML which is higher than convictions and final acquittals.

**ML cases solved at the offices of the criminal circuit and in the accusatory criminal system  
2012 – 2016**

Year	ML cases solved
2012	34
2013	30
2014	18
2015	19
2016	14
<b>TOTAL</b>	<b>115</b>

*Source: Judicial Statistics Center. Judiciary.*

**Cases for ML solved at the offices of the criminal circuit  
and in the accusatory criminal system per type of decision  
2012 – 2016**

Decision	ML
Conviction	29
Acquittal	12
Termination of criminal prosecution	1
Inhibitory	2
Mixed	8
Final acquittal	3
Provisional acquittal	59
<b>Total</b>	<b>115</b>

*Source: Judicial Statistics Center. Judiciary.*

206. In the 29 convictions reported between 2012-2016 related to drug trafficking predicate offenses, 49 people were convicted, as expressed in the following table:

**Number of defendants with cases resolved in the criminal circuit  
and accusatory penal system, per type of decision  
2012 – 2016**

Decision - ML	Number of defendants
Conviction	49
Acquittal	26
Termination of criminal prosecution	1

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Decision - ML	Number of defendants
Inhibitory	1
Mixed	42
Final acquittal	18
Provisional acquittal	61
<b>Total</b>	<b>199</b>

Source: Judicial Statistics Center. Judiciary.

207. In addition to the above-mentioned sentences, 18 convictions obtained through settlements were subsequently attached to the on-site visit, resulting from the application of Law No. 4 of 2017, related to processes included in the total number of ML investigations presented in the previous paragraphs, with an average between 50 and 62 months for each sentence (between four and five years)<sup>26</sup>.

208. Finally, another aspect to point out is that which refers to the application of convictions to legal persons. The authorities interviewed indicated that there were no ML cases in which criminal penalties were applied to legal persons, even though Article 51 of the Criminal Code allows punishments such as cancellation or suspension of license, fines, loss of tax benefits, disqualification to contract with the State or dissolution of the company.

#### *Alternative measures used when a ML conviction is not possible*

209. No information was obtained regarding alternative measures applicable when a sentence for ML is not possible.

#### *Conclusions of Immediate Outcome 7*

210. The efforts of the authorities dedicated to the persecution of ML from drug-related crimes are evident and progressively we begin to see results in investigations with other predicate offenses such as corruption and financial crime.

211. Panama strengthened its internal legislation to face the new realities and challenges involved in the investigation and sanction of ML. The PPO strengthened its structure through the creation of the Money Laundering and Terrorist Financing Specialized Unit in 2016.

212. Panama is in the process of improving its capabilities to conduct parallel financial investigations, with the creation of specialized units in the PPO and Police. There have been some investigations for a predicate offense committed abroad. However, the cases, despite being in a growing number, still represent a small number when compared to the volume of existing predicate offenses, with a limited number of convictions. The significant increase in the number of investigations in recent years, after the creation of the PO ML and TF Specialized Unit and the DIJ which is beginning to be reflected in the amount of convictions.

213. Criminal investigations and prosecutions are related to internal threats identified mainly in relation to drug trafficking, although progressively they are developing and ending in conviction for ML cases connected with other predicate offenses. On the other hand, it is also highlighted the progressive incorporation of other sectors considered to be at greater risk, but still at an incipient stage, with a number

<sup>26</sup> However, it should be noted that only two of these convictions were issued before the end of the on-site visit.

of restricted cases, many of which without any judicial culmination. A progressive orientation to the repressive system prioritization is highlighted for these sectors.

214. Despite the existence of some important cases, the analysis of cash flows coming from abroad must be improved, and investigations that have an international connection and whose predicate offense takes place outside the jurisdiction of Panama should be strengthened and encouraged.

215. The lack of criminalization of tax crimes as predicate offenses of ML affects both the possibility of domestic investigation and the possibility of carrying out joint investigations with other jurisdictions, especially considering the country risk profile that identifies the possibility of placing assets from illicit activities carried out abroad.

216. The number of reported convictions is mainly related to ML from drug trafficking, and the number of completed cases related to other crimes identified in the country's risk profile must be deepened and increased, as well as the application of dissuasive sanctions to legal persons. However, within the framework of the creation of the specialized units in the Prosecutor's Office and Police, there has been a progressive increase in convictions linked to corruption investigations and some risk sectors, including within the framework of the effective implementation of Law No. 4 of 2017.

217. In accordance with the abovementioned, Panama presents a **moderate level of effectiveness in the Immediate Outcome 7.**

### ***Immediate Outcome 8 (confiscation)***

#### *Confiscation of proceeds, instruments and property of equivalent value as the purpose of a policy*

218. The Prosecutor's Office is the body in charge of requesting or declaring real precautionary measures on property, instruments or securities derived from, or related directly or indirectly to, the crime of ML, the acceptance of such measures must be ordered by the competent court.

219. The Prosecutor's Office asks the court for the seizing and subsequent confiscation of the property. Law No. 34 of 2010 (applicable to cases that are still governed by the inquisitorial procedure) set forth to provisionally seize movable and immovable property, securities and products derived from or related to the commission of crimes against the Public Administration, ML, TF, drug trafficking and related crimes and will be under the orders of the Ministry of Economy and Finance until the final judicial decision.

220. Additionally, Article 35 of Law No. 34 of 2010 establishes that when the confiscation of property, instruments, money or securities that have been used or come from the commission of some of the crimes mentioned in the Law has been judicially ordered, the judge will order in the judgment that these be made available to the Ministry of Economy and Finance, for its auction or award.

221. The Department of Administration of Seized Property, which reports to the Ministry of Economy and Finance, is the body responsible for delivering the property to the judicial depository in accordance with the official letter received, through the application of Law No. 34 of 2010 on Seized property, Executive Decrees No. 64 of 2011 and No. 24 of 2015 that regulate their creation. On the other hand, property considered evidence is kept under the custody of the PPO.

222. According to the information provided by the Department of Administration of Seized Property, the auction or adjudication of assets is carried out for cases that are easy to execute, such as vehicles, but are more complex in the case of real estate.

223. On the other hand, in the accusatory procedure, Law No. 121 of 2013 and Article 252 of the Criminal Procedure Code regulates the provisional seizure. Also, Article 253 of the Criminal Procedure Code

provides that all money and securities, while temporarily seized, will remain deposited in the bank or financial institution of securities or trust company where they are and continue to accrue interest agreed upon. The maintenance and preservation of seized and confiscated property is in charge of the Directorate of Administration of Seized Property of the Ministry of Economy and Finance.

224. Regarding the Department of Seized Property, it was possible to observe its performance for the maintenance of assets temporarily seized, but the need to enhance its operation was verified, since this structure is limited to face the responsibilities of managing the amount of property, the management of complex assets (companies, for example) and the new challenges involved in the incorporation of the accusatory system throughout the country, which is expected to allow an increase in seizures and confiscations.

225. In any case, it is necessary to emphasize that the Directorate of Administration of Seized Property is strengthening its administrative and operative structure, being a department created in 2015 and managing to put divisions into operation in other parts of the country, such as a hangar for the custody of the vehicles in the Province of Colon (Atlantic Zone) and in Panama in the Clayton area.

226. Article 78 of the Criminal Procedure Code states that the police authorities carry out their procedures under the direction of the PPO and in the accusatory criminal system are in charge of initiating a patrimonial investigation for the identification of property for the subsequent request for seizing and confiscation by the Prosecutor's Office.

227. Although Panama has procedural regulations referring to confiscation and provisional measures, at this stage of development of the Panamanian system the great majority of the seizing and confiscation procedures were carried out for causes related to drug trafficking.

228. From the interviews to investigative authorities and the analysis of available information, despite a progressive improvement in areas related to parallel financial investigations and except for the case of the PPO, it was not possible to verify that there is an internalized policy in the institutions in order to confiscate assets related or linked to ML and predicate offenses.

229. The police in charge of carrying out the financial investigations under the newly implemented accusatory criminal system still need to enhance their capacities in order to increase the effectiveness in the identification, seizing and confiscation of property, with the adoption of protocols and operative procedures aimed at increasing patrimonial investigations.

230. According to the data provided by the PPO, the seizing of ML assets was significant in terms of their quantity, but the cases are mainly linked to illicit drug trafficking operations and public corruption crimes.

YEAR	MONEY SEIZED	PREDICATE OFFENSES	
2012	5,628,776.64	Crimes related to Drugs	
2013	3,054,130.97	Crimes related to Drugs	
2014	18,157,658.70	Crimes related to Drugs	10,670,172.02
		Embezzlement and corruption	7,487,486.68
2015	25,562,914.17	Crimes related to Drugs	5,374,120.64
		Corruption of public servants	20,000,000.00
		Falsification of documents in general	188,793.53
2016	17,843,786.60	Crimes related to Drugs	11,312,202.14
		Omission or falsehood in the customs declaration of the traveler regarding monies or negotiable documents	140,000.00
		Falsification of documents in general	
		Unjustified enrichment, international bribery	75,000.00

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		Corruption	382,922.14
			5,933,662.32
<b>2017</b>	405,319.00	Crimes related to Drugs	
<b>Total</b>	<b>70,652,586.08</b>		

Source: Prosecutor's Office

231. However, the information provided by Panama verifies the existence of five (5) cases in which there may have occurred seizures of assets whose predicate offense is not illicit drug trafficking.<sup>27</sup>

**Asset seizing for crimes other than drug trafficking between 2014 and 2016**

Entry date	Predicate offense	Amount
September 25, 2014	Financial crime	PAB 5,000,000.00
January 20, 2015	Aggravated racketeering	PAB 1,492,579.00
February 23, 2015	Financial crimes	PAB 294,433.90
June 17, 2015	Financial crimes	No amount
September 4, 2015	Financial crimes	PAB 5,000,000.00

Source: Prosecutor's Office

232. In relation with the confiscation of assets for convictions in ML cases, between 2012 and 2016 a total value of PAB 4,936,159.46 (same value in US dollars) was confiscated, mostly related to ML linked to drug trafficking crimes. For the year of 2017 (until June 2017), Panama reports a total amount of PAB 471,902.55 (same value in US dollars).

**Amounts confiscated that ended with convictions and mixed sentences in ML cases in the criminal circuit and accusatory penal system courts  
2012 – June 2017.**

Year	Amount
2012	PAB 860,321.11
2013	PAB 537,695.11
2014	PAB 2,593,239.63
2015	PAB 398,913.66
2016	PAB 545,989.95
2017	PAB 471,902.55
Total	PAB 5,408,062.01

Source: Prosecutor's Office

<sup>27</sup> It should be noted that, at the face-to-face meeting, new information was delivered regarding the agreements reached by the prosecution in ML cases with a predicate offense mainly linked to cases of corruption, information that was incorporated in table 222.

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233. Besides the values presented, after the on-site visit, the Prosecutor's Office presented the confiscation data related to settlements as per Law No. 4 of 2017 (which allows collaboration agreements) of 13 confiscations of assets (from investigations that were in progress during the on-site visit). There follow those whose decision of confiscation was issued prior to the end of the on-site visit:

ML settlements as per Law No. 4 of 2017					
Instruction agencies	Predicate offense	Type of settlement	Conviction	Confiscation	Date
	1. International bribery and corruption	Collaboration	Suspension	PAB 10,000,000.00	May 23, 2017.
Organized crime Prosecutor's Office	2. Against public order	Conviction	60 months	PAB 103,675.98	May 5, 2017

*Source: Prosecutor's Office*

234. In addition to the values presented, prior to the on-site visit, the Prosecutor's Office, within the framework of Law No. 4 of 2017, according to the table above, achieved the additional sum seized of PAB 10,103,675.98.<sup>28</sup> The results show the importance of the incorporation of Law No. 4 of 2017 into the system for the completion of complex criminal proceedings and for the recovery of assets.

235. It should be noted that the absence of criminalization in Panama of tax crimes and, therefore, not being these predicate offenses of ML, results in restrictions on the possibility of confiscation and application of provisional measures, including tax crimes committed abroad when the proceeds have been sent to the Panamanian financial and real estate system.

#### *Confiscation of the proceeds of national and international predicate offenses and proceeds located abroad*

236. Regarding the effectiveness of the authorities to confiscate the assets and instruments of the crime, most of the cases have been linked to ML cases that have drug trafficking as a base crime.

237. In relation with the other predicate offenses and the search for assets abroad, despite recent examples of cases not associated with drug trafficking that aim for the improvement of the system in the medium term, the situation still deserves substantial developments since there is an important need to broaden the specific focus in parallel patrimonial investigations in cases not associated with drug trafficking, especially aimed at sectors considered of high risk.

#### *Confiscation of false or undeclared cross-border bearer negotiable instruments (BNIs) operations*

238. In relation with the controls for cross-border transportation of cash and bearer negotiable instruments, the National Customs Authority delivered the withholding and confiscation information of money not declared in cash:

<sup>28</sup> The aforementioned 13 confiscations of assets made under Law No. 4 of 2017, stemming from investigations that were ongoing during the on-site visit, amounted to PAB 234,044,156.98 (same value in US dollars). Only in one settlement with a transnational company, within the framework of a criminal prosecution for corruption, the Prosecutor's Office obtained the confiscation of PAB 220,000,000.00.

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**Undeclared money confiscation**

Year	Value
2012	PAB 2,563,777.00
2013	PAB 1,954,565.00
2014	PAB 1,468,744.00
2015	PAB 704,827.00
Total	PAB 6,691,913.00

Source: National Customs Authority (ANA)

239. The withholdings are justified in the regulations on smuggling and customs fraud, Law No. 30 of 1984, as amended by Law No. 49 of 2009. According to this law, money falls within the concept of merchandise, allowing both the confiscation of money as well as of the vehicle used for the illicit activity. The crime of smuggling contemplates the concealment of money, negotiable instruments or other securities convertible into money or a combination of these, in merchandise or cargo at any customs destination.

240. On the other hand, customs fraud includes the non-declaration or false declaration made under oath by travelers at the time of entry into the customs territory, entailing money, negotiable instruments and other convertible securities in amounts greater than ten thousand balboas (PAB 10,000.00), or its equivalent amount in foreign currency.

241. Finally, Article 27 of the aforementioned Law states that confiscation will be applied to all goods affected by smuggling or customs fraud and also to vehicles, livestock, utensils, machinery or devices used in the commission of customs offenses whenever they belong to the smuggler or fraudster or whenever they are used with the authorization or knowledge of the owner or his legal representative.

242. Regarding the withholdings of money, it is not clear that ML investigations have been initiated with the purpose of linking the facts with a criminal organization of a transnational nature.

243. There follows the data provided by Customs authorities in relation with the entry declaration and exit of cross-border monies and securities.

**Entry and exit travelers' declarations of cash and securities**

Year	Total amount declared in USD
2012	250,155,538.88
2013	189,289,162.15
2014	167,038,472.51
2015	678,038,825.50 <sup>29</sup>
2016	57,930,737.90

Source: National Customs Authority (ANA)

<sup>29</sup> It is worth noting that in the year 2015 there was a very significant increase in terms of money entry declarations that was dramatically reversed in 2016, and this is due to the fact that in 2015 a Colombian citizen declared 500,000,000 million Euro, which was reported to be transported in digital money. However, there is no information as to what happened with the entry of such digital money, nor regarding the measures adopted to identify the origin of these assets.



*Consistency of confiscation results with ML/TF risks, national AML/CFT policies and priorities*

244. Considering the risks of ML/TF identified, it is observed that the seizures and confiscations of assets are mainly related to the ML linked to the predicate offense of drug trafficking, one of the main internal threats indicated in the NRA.

245. However, regarding the other risks identified in the NRA, it is verified that other risky sectors and activities, such as the risk of placing illicit assets of crimes committed abroad into the Panamanian system, the use of corporate vehicles, and the sector of foreign trade and real estate have little relevance in the volume of seized and confiscated assets.

246. Besides, the absence of criminalization of tax crimes in Panama affects the efficiency of the confiscation process and seizing measures, since the absence of a legal basis prevents investigative authorities from identifying such cases, rendering seizing and confiscating property not viable. In addition, it prevents the adoption of legal measures for the seizure and confiscation of assets resulting from tax crimes committed abroad and limits the possibility of assistance in requests for international legal cooperation.

247. Moreover, bearing in mind the high incidence of the banking system and the large range of financial services offered, we believe that investigations leading to seizure and confiscation of assets linked to the financial sector should be encouraged, as well as others that refer to the other vulnerable economic sectors, especially linked to free zones and the real estate sector.

*Conclusions of Immediate Outcome 8*

248. In general, the country has an internal regulatory framework that allows the seizing, administration and confiscation of assets linked to ML. The efforts of the authorities dedicated to the seizing and confiscation of property linked to drug-related crimes are evident and progressively we begin to see results in seizing within the framework of investigations with other predicate offenses such as corruption and financial crime.

249. The country has managed to seize and confiscate assets in considerable amounts, mostly linked to illicit drug trafficking and corruption transactions, which is related to the internal risks identified in the NRA, but with limited connection with the external risks detected. The importance of the beginning of the effective implementation of Law No. 4 of 2017 was also evidenced in order to allow a considerable increase in the process of seizure, confiscation and recovery of assets.

250. From the interviews to investigative authorities and the analysis of available information, it was verified that the PPO has an internalized policy in the institutions in order to confiscate assets related or linked to ML cases.

251. In the light of the accountability of the Police authorities to assist the PPO in the identification of property and, after that, in the verification of information at any possible legal proceedings, the Police must be strengthened and trained (especially the DIJ) in order to increase the effectiveness of the identification, seizing and confiscation of assets in the recently implemented accusatory criminal justice system.

252. The impossibility of prosecuting tax crimes as a predicate offense of ML has a negative effect on the efficiency of the confiscation process and seizing measures, since the absence of a legal basis prevents investigative authorities from identifying such cases, rendering seizing and confiscating the proceeds of tax crimes committed abroad not viable, besides limiting the assistance in international legal cooperation requests. In this scenario, it is noted that the country has great challenges in terms of the use of its rules and procedures to generate ML investigations in furtherance of the confiscation of assets linked to identified risks and to most vulnerable sectors.

253. In accordance with the abovementioned, **Panama presents a moderate level of effectiveness in the Immediate Outcome 8.**

## CHAPTER 4. TF AND FINANCING OF PROLIFERATION

### *Key findings and recommended actions*

#### ***Key Findings***

- The NRA determined that the TF risk is low because Panama does not have individuals or terrorist organizations and does not maintain relations with countries at greater risk of terrorism. However, the NRA evaluates the risk of TF as compared with other crimes and misunderstands terrorism risk with TF risk, disregarding TF risk, when it is an international financial center receiving funds from all over the world and it is a world transportation hub.
- Panama developed mechanisms to investigate, prosecute and punish cases of TF and proliferation. TF offense was criminalized in its Criminal Code as per the International Convention for the Suppression of the Financing of Terrorism. These mechanisms are not in place since they are relatively new, which will allow for a deeper analysis of its effectiveness to combat TF.
- There are mechanisms in place to prevent the use of the financial system for TF and to implement targeted financial sanctions related to TF and proliferation.
- Panama has not identified any TF case and has not had any investigations, prosecutions or convictions for TF crimes, which is not consistent with the country's risk level.
- The country has provided assistance to other countries within its efforts to investigate terrorist activities and proliferation.
- Panama has developed mechanisms and processes to supervise the NPO sector and mitigate the risks of use for TF purposes.
- Challenges in identifying the beneficial owner of legal arrangements in the country hamper the process of determining whether such structures have been misused for purposes of financing terrorism or proliferation abroad.

#### ***Recommended actions***

- TF risk must be re-evaluated based on the profile of the country as an international financial center and transportation hub.
- An in-depth analysis must be performed on TF methods and typologies, it must be determined if RIs have detected these activities within their operations and open a formal investigation if this is the case.
- Training must be provided continuously as well as it has been so far to reporting institutions, particularly those newly incorporated, on their obligations to review the lists of natural and legal persons designated in accordance with United Nations Resolutions and to apply the preventive freeze when a match is found.
- At the same time, TF preventive measures must be broadened, training RIs on risks, methods and typologies of TF and not only on their obligations to check UN lists and report findings.
- The Intendencia must receive greater resources to exercise a greater level of monitoring over reporting institutions thus preventing and detecting possible cases of TF and proliferation.
- Legal arrangements in the country must be supervised to verify they are not used to hide criminal activities (for example, the financing of proliferation) by improving and strengthening the procedures to verify the beneficial owner.

254. The relevant Immediate Outcomes considered and assessed in this chapter are the IOs 9-11. The relevant recommendations for the effectiveness evaluation under this section are the R. 5-8.

### *Immediate Outcome 9 (TF investigation and prosecution)*

#### *Processing/conviction of TF activity types consistent with country risk profile*

255. According to the NRA, Panama determined that the risk of terrorist financing (TF) is low because the authorities have not identified individuals or terrorist organizations recognized by the United Nations operating in the country. In addition to the above, it does not maintain close relations with countries that have a higher risk of terrorism or TF, or the presence of terrorist organizations. The NRA, as a consequence, determined that the TF risk is mainly external and lower compared to the risk of other crimes in the country. However, the fact of not having any terrorist groups in the country or commercial relationships with countries with a greater rate of terrorism does not mean there are not any TF risks or operations. The NRA focuses on terrorism risk which is different from TF, thus impacting negatively on the level of knowledge of this risk by the authorities and RIs.

256. The NRA did not present an analysis of the elements which could affect the country's risk level and its special vulnerability since it is an international financial center, which implies a higher risk. Though Panama does not keep relations with countries with a higher terrorism rate, the possibility of funds being deposited or invested in Panama having arrived at the country from other countries was disregarded.

257. Likewise, there was no analysis on the methods and typologies of TF to which RIs of the country may be vulnerable, nor was there any investigation whether these institutions have complied with TF operations based on this analysis to determine if the funds from different countries may have TF as a purpose, even if they have low terrorism rates.

258. The NRA considered in a general way the possibility that terrorists could abuse Panamanian legal arrangements abroad to finance terrorism. It was concluded that, if it were the case, the money would not necessarily enter the Panamanian financial system, so the crime of TF in the country is not configured. However, the NRA did not enter into more details about which legal arrangements would be more vulnerable or susceptible to TF activities, nor did it consider the TF risk presented by its commercial relationships with countries that have experienced significant flows related to TF, focusing mainly in its commercial and financial relations with countries of great terrorist influence.

259. The authorities denoted the presence of a Muslim community that sends money to relatives and other acquaintances in their countries of origin, including some conflict areas. Although the population is relatively small and has been established in the country for several generations, the authorities did not take into account the presence of a migrant community linked to some countries in conflict as a potential risk for TF, noting that the authorities know this population and have programs to approach it. In the NRA, the risk of TF was presented through remittances in a very general way.

260. Panama does not have investigations, processes or convictions for the crime of TF, which is not consistent with its high risk and profile of international financial center and transportation hub. Despite this, Panama has developed mechanisms and a legal framework to deal with possible cases of TF, which include the criminalization of TF in Art. 294 of the Criminal Code and its inclusion within the scope of Law No. 23 of 2015. Article 294 of the Criminal Code establishes that the offense of TF shall apply to all persons acting with knowledge to finance, subsidize, hide or transfer money, goods or other financial resources to be used in the commission of the crime of terrorism, which is defined as any act that has the purpose of disturbing the public peace, causing panic, terror or fear in the population or a sector of it. The crime of TF was extended by the amendments to the Criminal Code materialized in Law No. 10 of 2015, which indicates that it will be applied to persons who, individually or in a group, and directly or indirectly, organize or collect funds of legal or illegal origin to be used in the commission of terrorist acts. Panama also ratified in December 2003

the Inter-American Convention against Terrorism of the OAS and the International Convention for the Suppression of the Financing of Terrorism of the United Nations in July 2012.

261. Additionally, Panama created the Counter-Terrorism Department and the Prevention Committee against Terrorism and its Financing in the Executive Secretariat of the National Security Council (CSN). The Department's main function is to perform intelligence tasks on natural or legal persons possibly related to terrorism, TF or the proliferation of weapons of mass destruction. It also requires and collects information from public entities and generates intelligence reports for the consideration of the Prevention Committee against Terrorism.

262. The Prevention Committee against Terrorism, made up of several representatives of the CSN, the FIU, the Ministry of the Presidency, the Prosecutor's Office and other state entities, reviews intelligence reports, develops investigation reports, generates recommendations for decision making of the CSN and evaluates requests for inclusion in the lists of the United Nations Security Council. It also exchanges information with the state institutions about possible cases of TF.

263. Similarly, there are specialized departments or people dedicated to TF in the FIU, the Prosecutor's Office and the Department of Judicial Investigation (DIJ) of the National Police, among other authorities.

264. In sum, despite mechanisms developed by Panama to process and punish TF, there is not a single proceeding nor conviction for these crimes and the country's risk analysis is focused mainly in terrorism in general and not TF risk, thereby impacting on the efforts of authorities and reporting institutions to mitigate it.

#### *TF identification and investigation*

265. Panama has a legal and institutional framework to prevent, investigate and condemn the TF offense.

266. At the time of the on-site visit, the authorities have not identified nor opened any investigation for TF offenses. There was not any case of travel financing for purposes of terrorist acts by Panamanians or foreigners.

267. The Panamanian authorities are empowered to review a variety of sources to identify possible cases of TF, including intelligence reports, requests for mutual assistance and regular commitments with foreign authorities. Moreover, the Panamanian AML/CFT regime obliges reporting institutions to recognize and report to the FIU any fact, transaction or suspicious transaction that could be related to terrorism and TF, by means of a STR. This is done through the "FIU online" platform. During the period covered by this evaluation, the FIU did not receive any STRs related to TF. However, the FIU treated several STRs as possible cases of TF, although they were not identified as such by the reporting institutions, due to the reference of several geographic areas considered as high risk. In these cases, the FIU extended its analysis to investigate the bank accounts involved, the links between senders and beneficiaries, the sources of income of these people and other factors, and concluded that the activity in each case was not TF. In addition, the Panamanian authorities indicated that they provided assistance through the Egmont's Secure Web System (ESW) in terms of TF in response to requirements from other countries seven times during the last four years.<sup>30</sup>

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<sup>30</sup> The FIU provided information in response to 5 additional requests for assistance after the on-site visit.

268. The FIU participates in a project through the Egmont Group to study typologies of TF and share confidential information so that ESW users are able to identify possible connections with persons or entities listed by the UNSC.<sup>31</sup>

269. The PPO is the competent body for the investigation of terrorist offenses and their financing, which have no specific statute of limitations. It works with the DIJ, the unit responsible for collecting TF evidence and which receives information from the FIU and the CSN for its investigation.

270. The CSN is in charge of establishing the state's security and defense policy and strategy to detect, prevent and combat terrorism and TF. The Counter Terrorism Department of the CSN is dedicated to carrying out intelligence tasks on individuals or legal persons that are suspected of being related to terrorism and TF. Additionally, it collects information from more than 30 State institutions through periodic meetings and develops reports with the results of its analysis for the consideration of the Prevention Committee against Terrorism and its Financing. It can share information with the Prosecutor's Office about possible cases of TF for its investigation, and also provides international cooperation on terrorism matters. In 2016, the CSN indicated that it responded to six information requests on terrorism from the United States of America, two from Chile and one from Argentina. Likewise, it provided assistance to the United States to investigate five people from countries outside the region, possibly linked to terrorist organizations that were passing the country in their way to the United States.

271. In addition to these examples, the CSN provided assistance to a US investigation into an attempted terrorist act in which two members of the Hezbollah organization developed plans for an attack against the Panama Canal and the US and Israeli embassies in Panama. The work of the CSN in this case did not reveal any terrorist financing activity in Panamanian territory. Although the operations of these individuals in Panama occurred in 2011 and 2012 –before this evaluation– the investigation continued until the individuals were arrested in the United States in June 2017. Panama did not open a separate investigation in this case.

272. The State security organs confirmed that they had received constant training in matters of prevention and combating terrorism and its financing by various authorities such as the FIU, the CSN and the Embassy of the United States. Based on the foregoing, they reported being able to identify a case of TF if it were to be filed.

273. The FIU and the financial and non-financial supervisors also reported having organized a massive training process after the approval of Law No. 23 of 2015 to train all reporting institutions, including those newly incorporated, in matters of ML, TF and proliferation, in order to train the financial sector and the DNFBPs in the identification and detection of possible cash flows dedicated to finance terrorism. In 2015, five training courses were held for the authorities and/or reporting institutions together with experts from UNODC, OAS and the Embassy of the United States on ML/TF/PWMD, and in 2016, three were specially held on the subject of terrorism or TF.

274. No reporting institution claimed having identified any transaction related to TF. Regarding banks, it was reported that all international transfers to and from the country pass through the filters of the persons listed by the United Nations, the countries listed by the FATF and the persons and countries listed by the Office of Foreign Assets Control (OFAC) of the US government. This common practice allows to be acquainted with the movement and destination of funds. Although reporting institutions comply with their obligations regarding prevention and countering TF and are trained on the subject, there is not a manifest

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<sup>31</sup> Panama reported that after the on-site visit it received information on five people residing in the country who might have connections with persons or entities listed by the UNSC. A review of STR, CTR, financial information and of the beneficial owner, among other matters, did not find significant results to suggest that these people are linked to TF activities.



deep understanding of the TF risks, methods and typologies which will allow them to detect possible terrorist funds independently.

### *Integrated TF investigation supported by national strategies*

275. Panama has mechanisms to coordinate among state public entities and to share information about the TF. Among them, it can be pointed out the abovementioned CSN and the National Commission against Money Laundering, Terrorist Financing and Financing the Proliferation of Weapons of Mass Destruction.

276. As part of its work, the National Commission integrated the TF into the National Strategy for the fight against ML/TF/PWMD, establishing strategic priorities, some of which deal specifically with TF and others are broader and more systematic. For example, the new National Strategy seeks to: a) strengthen inter-institutional cooperation between the Department of Counterterrorism of the Executive Secretary of the CSN and the Committee for the Prevention of Terrorism and its Financing; b) strengthen preventive measures to prevent abuse of NPOs for TF and proliferation purposes; c) strengthen the system of cooperation and judicial assistance in the framework of criminal investigations of TF and the proliferation of weapons of mass destruction; and d) strengthen international cooperation among entities similar to the FIU, all of which will strengthen Panama's capabilities in the fight against TF.

277. Panama looks for opportunities to share information with other countries on TF, including Colombia and Costa Rica, countries with which it has land borders, as well as the United States of America and other countries with which the FIU has memoranda of understanding. The country participates in initiatives such as the global Container Control Program (CCP) of the United Nations; the Ship and Port Facility Security Code of the International Maritime Organization (IMO); the Business Alliance for Secure Commerce (BASC); and the Container Security Initiative, a program of the US Customs and Border Protection (CBP) of the Department of Homeland Security of the United States of America. Additionally, it is the only Latin American country in the Coalition of Countries of the International Community against the Islamic State Group and currently holds the Presidency of the Inter-American Committee against Terrorism (CICTE) of the Organization of American States (OAS). Panama, through the FIU, has also participated in several Egmont Group projects related to TF typologies. Due to all of the above, it is possible to demonstrate the country's commitment to join international efforts to combat terrorism and its financing.

### *Effectiveness, proportionality and deterrence of sanctions*

278. In the case of natural persons, the crime of TF is punishable by twenty-five (25) to thirty (30) years of imprisonment according to Art. 294 of the Criminal Code, regardless of whether the commission of the terrorist act was achieved or if a person participated only as an accomplice. When a legal person is used to commit the offense of TF, a range of administrative or civil sanctions may be applied, as detailed thoroughly in the Technical Compliance Annex. Punishment available for the offense of TF is considered proportional and dissuasive, as well as consistent with the requirements set forth by the International Convention for the Suppression of the Financing of Terrorism. Since there are no proceedings or convictions for TF, the authorities did not sanction TF, which prove crime countering effective.

### *Alternative measures used when a ML conviction is not possible*

279. Panama has several alternative measures to prevent access to funds destined for terrorism when a conviction for this crime is not possible. In the first place, according to the stipulations of the Criminal Code and the Criminal Procedure Code, the instruments used, or that were tried to be used, in the commission of an act of terrorism can be confiscated, even though a conviction was not obtained in a criminal proceeding.



280. As will be explained in more detail in the next section, Panama can also use the designation in the national list independently or based on the decision of the United Nations Security Council or at the request of another country as an alternative measure to prevent access to funds destined for terrorism without relying on criminal proceedings.

### *Conclusions of Immediate Outcome 9*

281. At the time of the on-site visit, Panama has not had any investigations, prosecutions or convictions for TF crimes. Nor has any TF case been identified. However, the Panamanian authorities provide cooperation and technical assistance in response to requests from other countries in relation with their investigations. Likewise, it has been studied to initiate parallel investigations with authorities and experts in other countries to investigate suspicious activity in Panama that could be linked to terrorism or TF.

282. Although the NRA determined that the risk of TF is low, it did not present a detailed and in-depth analysis of the various elements that could impact the level of risk in the country and assessed the risk of TF in comparison with other crimes. These elements include the economic and commercial relations that they maintain with countries that have detected important financial flows of TF, their role as transport focus (both by air and sea, of people and goods), the great connectivity of their financial sector with all the world and the possible abuse of legal arrangements created in Panama, but without activity in the country, to finance terrorism abroad. As detailed below in Chapter 7, challenges in identifying the beneficial owner of legal arrangements in the country also hamper the process of determining whether such structures have been misused for purposes of financing crimes abroad, including terrorism.

283. In recent years, Panama has devoted resources to develop mechanisms and processes to deal with possible cases of TF, should any of them arise. In this regard, the country has established a system of sanctions for natural and legal persons who commit this crime and units to investigate the matter in the Prosecutor's Office, the FIU and CSN. It also exchanges information between the national and international authorities on the topics of terrorism and TF and provides training to the reporting institutions to inform them about the indicators of TF and procedures to be followed if they detect a possible case of TF. The efforts to train authorities and reporting institutions have not generated results in the identification of possible suspicious flows related to TF.

284. In general, the mechanisms and processes to deal with possible cases of TF are quite new and Panama has not had the opportunity to put them into practice until now, which would demonstrate its effectiveness in the fight against TF. In accordance with the abovementioned, **Panama presents a moderate level of effectiveness in the Immediate Outcome 9.**

### *Immediate Outcome 10 (TF preventive measures and financial sanctions)*

#### *Implementation of financial sanctions applied without delay for TF*

285. Panama has regulations to implement financial sanctions related to the TF in accordance with Resolutions 1267/1989, 1988, 1373 and subsequent resolutions. Law No. 23 of 2015 and Executive Decree No. 587 of 2016 establish measures for the preventive freezing without delay of funds, property or assets of natural or legal persons in accordance with these Resolutions. Executive Decree No. 587 also establishes the designation criteria for natural and legal persons, based on Resolutions 1267/1988 and 1373, and identifies the mechanism to cease the freezing.

286. Additionally, Executive Decree No. 324 of July 2016, created the Counter-Terrorism Department within the CSN and established specific mechanisms to allow national and foreign competent authorities to

request the designation of persons and entities in the national list, based on in Resolution No. 1373. The national list consists of persons and entities investigated and designated pursuant to Resolution No. 1373 by the Prevention Committee against Terrorism and its Financing, at the request of Panamanian or foreign authorities. It establishes criteria for the designation, among which include any individual or entity committing or attempting to commit terrorist acts, or that is involved in or facilitating the commission of terrorist acts; and persons or entities that belong or are directly or indirectly controlled, or that act on behalf of or under the direction of, a designated person or entity.

287. The Ministry of Foreign Relations is the institution in charge of receiving the lists of updated appointments of Committees 1267/1989/1988 and requests for designation from other countries in accordance with Resolution No. 1373. They are communicated to the CSN for review, which sends them to the FIU to distribute to all the reporting institutions, who must suspend the transactions "*immediately*" and carry out a preventive freezing on the funds, property or assets of the natural or legal persons designated. Should these authorities find them, the reporting institutions must notify the FIU without delay about the preventive freezing, which will be communicated to the Prosecutor's Office to submit it to the control of the Second Criminal Chamber of the Supreme Court of Justice.

288. During the period of this evaluation, Panama did not send any designation request pursuant to Resolutions 1267/1989/1988 to the corresponding United Nations Sanctions Committees. Nor did the country send any request for appointment under Resolution 1373 to another country for not having identified any case. Consistent with the foregoing, it did not request the removal of any natural or legal person from the United Nations lists. Panama may request the removal of a person from the national list based on the decision of the United Nations to exclude the name of its list, the death of the person or an acquittal of the Judiciary.

<b>EMBLEMATIC CASES OF THE WORK OF PANAMA TO SUPPORT THE APPOINTMENTS PURSUANT TO RESOLUTION No. 1373</b>	
September 2015	Panama sent a letter to support, as a member of the Global Coalition against the Islamic State, the application for the designation of the United States of America of six people linked to the terrorist group "Islamic State" (IS) so that they could be submitted to the regime of sanctions 1267/1989 of the United Nations Security Council. These people provided logistical, economic or military assistance to the terrorist activities of the IS.
May 2017	Panama received, through diplomatic channels, a request for inclusion in the national list pursuant to Resolution No. 1373 from the United States of America in the case of four persons related to Al Qaeda, Hezbollah and the Islamic State. It is alleged that individuals provide financial support to these groups or occupy leadership positions. Upon receiving the diplomatic note from the Embassy of the United States of America, Panama acted quickly, convening the Fourth Meeting of the Prevention Committee against Terrorism and its Financing. The Committee verified the identities of the four persons for whom the appointment was requested and unanimously concluded that they met the designation criteria, preparing a report with their recommendation for the review of the Executive Secretary of the CSN. Based on the recommendations of the CSN, the President of the Republic signed Resolution No. CSN-SE-CPTF-01-2017 of 24 May 2017, authorizing

	its inclusion in the national list based on Resolution No. 1373 and ordering the freezing preventive of all its funds or assets in the country, among other measures. Because these authorities did not identify any property related to these four people, they did not realize any freezing in this case. Panama managed to include these individuals in the national list in less than 48 hours after its due evaluation.
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289. The reporting institutions confirmed the reception of the lists of persons and entities designated by the United Nations through electronic communications to the FIU each time the lists are updated. In addition, the FIU, together with other Panamanian authorities, publishes them in its social networks and on its website. In this way, reporting institutions can enter the FIU website to review the updated lists and verify that they do not have coincidences among their clients. As of the date of writing of this report, there have been no coincidences in the revision of the lists. However, the reporting institutions have received training in the procedures that should be followed in case of finding a match and demonstrated their knowledge with them. One weakness that the system presents is the significant number of entities from risk sectors that are not yet registered in the FIU's reporting institutions data update (ADSO) system and, therefore, do not receive directly the communications they send to reporting institutions and cannot use the "FIU online" platform. Although the reporting institutions of which the authorities are aware receive information via secure email, the evaluators consider that some new reporting institutions still remain outside the system without having completed the ADSO process and, therefore, do not have a way to receive the updated information in a timely manner.

*Directed focus, scope and monitoring of non-profit organizations at risk*

290. The NRA broadly analyzed the vulnerability of the 1,677 non-profit organizations (NPOs) in Panama and determined that funds are generally used at the local level to develop sports or charitable activities. It was concluded that the risk of this sector being used for TF is low and Panama has not identified any subset of NPOs with a higher risk of being misused for TF.

291. The NPOs are not reporting institutions according to Law No. 23 of 2015; however, they must be registered with the Ministry of Government (MINGOB), the Panamanian Sports Institute (PANDEPORTES), the Ministry of Environment or the Ministry of Agricultural Development and are subject to a legal framework that limits the possibility of their being used for the TF. NPOs also have to submit an annual donation report to the General Revenue Office in order to deduct them from taxes.

292. Executive Decree No. 62 of 2017 assigns to the MINGOB the power to grant and suspend the legal status of NPOs. The MINGOB keeps an updated list of all NPOs, requires them to keep records of funds received and have a bank account in a financial institution to receive public funds. The inclusion into the banking system effectively allows the State to have greater knowledge in the activities and financial statements of the NPOs, and thus be in a greater capacity to monitor them. Executive Decree No. 62 also establishes that NPOs that send money abroad are required to submit a report to MINGOB with information about their address, board of directors and balance sheet, which also increases the state monitoring capacity. Likewise, NPOs that receive funds or assets from the State are subject to the oversight of the Comptroller's Office, which carries out the audits if necessary.

293. The MINGOB Supervision, Monitoring and Evaluation Department is responsible for verifying the legal status of most NPOs and supervising them based on risk, through off-site supervision or on-site visits. During on-site visits, the Department verifies the documentation of the NPO (for example, its records

and bylaws) and makes recommendations on improvements or revisions that should be implemented in its internal structures or policies, which could include recommendations on the management of foreign funds or funds destined abroad. If there is any irregularity in the off-site monitoring or on-site visits, the Department can report it to the FIU, the General Revenue Office or the Prosecutor's Office for follow-up.

294. From July 2016 to March 2017, the MINGOB made four on-site visits to NPOs. These were chosen based on the risk they present, taking into account some factors such as their connections with subsidiaries abroad and whether they receive or send money abroad. The authorities did not find any indication of TF. Likewise, the MINGOB suspended the legal status of two (2) NPOs during that period for infractions not related to TF.<sup>32</sup>

295. The MINGOB offered five training courses to NPOs from July 2016 to March 2017 to raise awareness of TF indicators. Training courses were carried out taking into account the different categories of NPOs filed with the MINGOB and their particular risks.

296. PANDEPORTES regulates and grants legal status to NPOs related to sports activities. It also conducts on-site monitoring and audits of NPOs that receive public funds. It is noted that among these NPOs there have also been no signs of TF.

297. During the interviews with the evaluation team, some of the NPOs that receive funds from abroad explained that they receive them through bank accounts in Panama and that they submit annual reports to the General Revenue Office to request the corresponding tax exemptions. It was pointed out that the Panamanian regulations should be followed, as well as the regulations in place for their offices outside of Panama. These NPOs also confirmed that they keep internal donor records and some of them publish annual reports with information on their activities.

298. According to the information provided by the authorities, the NPOs have received on-site visits from the MINGOB and PANDEPORTES and have participated in the training courses on AML/CFT.

299. Without unnecessarily disrupting the activities of NPOs in the country, the Panamanian authorities have developed a monitoring and supervision system, which increases transparency in the sector, for which reason the monitoring visit plan should continue to be implemented on-site and increase the number of visits based on risk in the near future. Additionally, the country has mechanisms to punish NPOs that do not comply with regulations. Administrative sanctions are limited by the current law to suspend legal status. Judicial authorities can also apply criminal sanctions when NPOs commit certain crimes detailed in the Criminal Code. Similarly, the General Revenue Office may impose monetary sanctions on NPOs for non-compliance with its rules.

300. In general, the system seems appropriate for the context in which NPOs operate in Panama, but it could be more effective if the number of off-site and on-site supervisions is increased.

### *TF assets and instruments confiscation*

301. Panama has a system for the confiscation of assets and instruments of crime, covering cases of terrorism and TF and in a preventive manner as well, in accordance with the Criminal Procedure Code. The Ministry of Economy and Finance (MEF) is in charge of preserving assets and instruments while awaiting the decision of a competent court. In a case of TF in which amounts of money related to the TF offense are identified and property is temporarily seized, the authorities in the Department of Administration of Seized

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<sup>32</sup> After the on-site visit, the MINGOB conducted 6 trainings on ML/TF/PWMD issues and worked on 11 feedback requests with NPOs related to these issues. Also between July and September 2017, following up on its annual calendar of on-site monitoring visits, 24 visits were made to NPOs chosen based on risk.

Property of the MEF are in charge of depositing the money in an account of the National Bank of Panama for custody. It remains there until a competent court orders the release of funds or other measures, such as confiscation.

302. During the period under evaluation, Panama did not have any case of TF, nor were goods or instruments of persons designated for terrorism or TF identified by the United Nations Security Council. Therefore, no confiscation of goods or instruments related to TF was made.

#### *Consistency of measures with the overall TF risk profile*

303. Panama has developed mechanisms to prevent the use of its financial system for TF, to implement targeted financial sanctions related to terrorism and TF, to propose the designation of natural and legal persons to the United Nations Security Council, to share information on possible cases of terrorism and TF among its authorities and to respond to requests for cooperation from other countries.

304. During the period under evaluation, Panama did not send any designation request pursuant to Resolutions 1267/1989 or 1988 to the corresponding United Nations Sanctions Committees. As a member of the Global Coalition against the Islamic State, the country supported a request for the designation of the government of the United States of America for six persons in accordance with Resolutions 1267/1989. The country did not send any request for designation under Resolution 1373 to any other country.

305. During the evaluation period, Panama received a request pursuant to Resolution 1373 requesting the inclusion of four people on the national list, which it made using the procedures indicated in Executive Decrees No. 587 of 2015 and No. 324 of July 2016. As of the date of this report, these people remain on the national list and it is noted that no funds were frozen in Panamanian institutions, due to the fact that no matches were found between the client lists and the designations.

306. As in the case of Immediate Outcome 9, the challenges in identifying the beneficial owner of a legal arrangement using updated and accurate information could also complicate the work of the authorities in implementing the targeted financial sanctions related to terrorism and TF. Panama should focus on developing systems and mechanisms to ensure the accuracy of these data.

307. The NRA determined that the risk of NPOs being misused for TF is low and there are controls that allow the State to have access to information about its activities, funds and donors. The legal framework and procedures established to supervise the sector in general are adequate considering the few TF risks presented by the sector. Panama provides training in prevention of ML/TF/PWMD for NPOs. It should continue to conduct on-site and off-site monitoring visits of the NPO sector, in accordance with a risk-based approach, and increase the number of visits in the coming years.

308. In accordance with the abovementioned, **Panama presents a substantial level of effectiveness regarding the Immediate Outcome 10.**

#### *Immediate Outcome 11 (FP financial sanctions)*

##### *Implementation of financial sanctions applied without delay for proliferation*

309. Panama has mechanisms in place to implement targeted financial sanctions related to FP and its financing in accordance with Resolutions 1718 and 1737 of the United Nations Security Council.

310. As in the case of TF, Title VI of Law No. 23 of 2015 instructs the reporting institutions to preventively freeze the funds, property or assets of natural or legal persons included in the lists of the United



Nations Security Council related with proliferation and Executive Decree No. 587 establishes the procedures for preventive freezing.

311. The Counter-Terrorism Department of the Executive Secretariat of the National Security Council (CSN), established by Executive Decree No. 324 of 2016, collects information on individuals and legal persons related to proliferation financing indicators, evaluates requests from national authorities for the designation and generates reports on their findings. That same decree establishes that the procedures of inclusion and exclusion of the lists of the United Nations Security Council regarding terrorism and TF will be applicable in the same way for cases of proliferation.

312. The Counter-Terrorism Department exchanges information with other Panamanian authorities (such as the Prosecutor's Office and the FIU) and international authorities on proliferation financing issues.

313. As in the case of targeted financial sanctions related to terrorism and TF, the Ministry of Foreign Relations receives the updated lists of the United Nations Security Council referring to natural or legal persons designated for proliferation, these are communicated to the CSN and the FIU for its distribution to the reporting institutions.

314. The reporting institutions have the responsibility to review the lists of designations related to proliferation and to notify the FIU of any coincidence should they find a case. In addition, they are obliged to carry out, without delay, a preventive freeze on the funds, property and assets of the person or entity designated. The FIU will notify the Prosecutor's Office of the cases of preventive freezing so that it can submit them to the control of a competent judge. As indicated in relation with Immediate Outcome 10, the evaluators consider a weakness the significant number of reporting institutions of risk sectors that are not yet up to date in complying with their ADSO of the FIU and, therefore, not they receive their communications directly.

315. It is the responsibility of the supervisory authorities to verify compliance with the preventive freezing obligations of Resolutions 1718 and 1737 and to punish the reporting institutions should they find infractions.

316. During the period under evaluation, Panama did not send any request for designation related to the financing of proliferation to the United Nations Security Council for its consideration. Nor was the removal of any natural or legal person requested.

#### **EXAMPLE OF THE WORK OF PANAMA TO TAKE PREVENTIVE MEASURES REGARDING PROLIFERATION**

In 2013, Panama detected and prevented the movement of a North Korean vessel through the Panama Canal. During a ship inspection, Panama discovered nearly 240 tons of illicit weapons on board and other prohibited materials that were not declared and that were hidden under sacks of sugar. In this case, Panama notified Committee 1718 of the UNSC. Although the shipment did not include weapons of mass destruction or materials for enrichment of radioactive materials, the UNSC determined that the shipment and transaction violated the provisions of Resolutions 1718, 1874 and 2094. As a result of its investigation, Panama arrested three members of the ship's crew and sentenced them to 10 years in prison for gun trafficking. It also confiscated the weapons and related materials found on the ship. Although it was not a case in which materials for the production of weapons of mass destruction or materials were detected, the actions taken by the Panamanian authorities show that there are mechanisms to deal with a future case, if it should arise, and that the authorities have the knowledge, capacity and experience in its implementation.

*Identification of assets and funds held by designated persons or entities and prohibitions*

317. The reporting institutions interviewed confirmed that they receive the lists of persons and entities designated for proliferation activities electronically from the FIU and that they review them through the "FIU online" platform to verify that there are no coincidences between the lists and their customers. The FIU also communicates with them through social networks and electronic media. In the same way, the Supervisory Body and the Ministry of Foreign Relations publish the lists.

318. The reporting institutions have never sent any STRs or other communication to the FIU to inform them of suspicious activities potentially related to proliferation. The reporting institutions confirmed never having identified any case that could be related to proliferation financing activities. In the same way, the judicial authorities have only identified and prosecuted a case of proliferation: the Chong Chon Gang.

319. A challenge for the identification of assets and funds of persons and entities designated by proliferation and its financing is the general use of legal arrangements by proliferation networks to hide their activities. Due to the fact that people involved in proliferation activities often use front men to constitute companies, even legitimate companies that carry out proliferation activities on the one hand and mix illicit and licit funds on the other, access to reliable information on the beneficial owner is extremely important. In the context of Panama, it is questioned the ease with which the authorities have access to up-to-date and accurate information to assist in the identification of the beneficial owner of these structures, as detailed in more detail in Chapter 7. This is a vulnerability for Panama, given the large number of legal arrangements in the country, its openness to the world economy, the novelty of obligations against proliferation by some reporting institutions and the limited resources available to for an adequate monitoring of all reporting institutions in the country.

*Understanding by FIs and DNFBPs of obligations and compliance with them*

320. It was verified and ascertained that the FIU sends the lists of persons and designated entities related to proliferation to the reporting institutions, although, as mentioned above, it must be taken into account that a large percentage of RIs has not yet been registered in the ADSO system of the FIU. In turn, the reporting institutions interviewed informed that they review the lists when they receive them and have shown to know the procedures to follow if they find a coincidence. Many reported using computer listings of private providers or other CDD systems to make the comparison between the lists and their clients and to make sure before accepting a new client that is not on the designation lists. It was also pointed out that all transactions are passed from and to the outside by filters that allow to have more visibility on the activities of their clients and reduce their vulnerability to abuse for purposes of TF or proliferation.

321. Several reporting institutions confirmed their participation in the training programs of the FIU, both in training seminars and through the "FIU online" platform. Some specifically mentioned the typologies brochures they receive from the FIU. Existing reporting institutions were also included, as well as the new and sometimes representatives of the private sector in a massive training process, conducting training with experts from the Executive Secretariat of the National Security Council (National Crisis Coordination Center) as well as the UNODC, OAS and the Embassy of the United States on ML/TF/PWMD issues, out of which nine were specialized in issues related to the proliferation of weapons of mass destruction.

*Competent authorities that guarantee and monitor compliance*

322. Although the FIU provides the lists of persons and entities designated for proliferation, and is in charge of receiving STRs related to this issue, it is the responsibility of the supervisory authorities to



guarantee and monitor the compliance of the reporting institutions with these obligations. They have the power to impose sanctions in cases of non-compliance.

323. However, given the large number of new reporting institutions, the deficit of resources in the Supervisory Body (which is the supervisor for many of the new reporting institutions) in the case of non-financial reporting institutions and the typology of using legal arrangements to conceal illicit activities in general, including those potentially related to proliferation, the effectiveness of the monitoring to prevent and detect cases of proliferation financing is not clear.

#### *Conclusions of Immediate Outcome 11*

324. Panama has regulations and procedures developed to deal with possible cases of proliferation and its financing. Likewise, the country already has experience in the investigation of a case related to the proliferation issue, where the successful prosecution of several persons related to the case was achieved, penalties were applied for the violation of domestic and international norms, and illicit materials were confiscated. In addition, the country has taken actions to prevent the abuse of ships with Panamanian flag by canceling 88 records of ships linked with North Korean people or companies.

325. The challenges to obtain updated and accurate information about the beneficial owner of legal arrangements is a vulnerability and has an impact on the country's effectiveness in terms of the implementation of financial sanctions related to proliferation and its efforts to combat proliferation. The country is encouraged to increase the resources devoted to the monitoring of the DNFBP sector in particular so that a case of proliferation financing can be detected efficiently if one were to emerge.

326. In accordance with the abovementioned, **Panama presents a substantial level of effectiveness regarding the Immediate Outcome 11.**

## CHAPTER 5. PREVENTIVE MEASURES

### *Key findings and recommended actions*

#### ***Key Findings***

- Financial institutions have an adequate level of understanding of their risks and their AML obligations. The DNFBPs –despite the work of the Supervisory Body– show that they do not fully understand the risks; this has a special impact on compliance with AML obligations.
- Financial institutions and DNFBPs do not adequately understand TF risks because, at interviews, they stated that, there are no terrorist events and the NRA has considered that there is no exposure to TF in the country. Without prejudice to this, they know the obligations and apply the measures required by the legislation.
- Financial institutions apply mitigation measures according to the risks they have identified. The mitigation measures in DNFBPs are in a more incipient stage of development.
- In the case of DNFBPs, there are deficiencies in the application of CDD and in the identification of beneficial owners. In fact, the great majority of sanctioning processes in progress in high-risk sectors (lawyers, casinos and real estate agencies) take this non-compliance into consideration.
- The RIs know and apply RDD measures related to PEP, higher risk countries identified by the FATF and foreign entities in general. Financial institutions also apply specific measures regarding the transfer of funds and the SBP has issued guidance for its regulators to conduct a risk assessment of new products and technologies.
- Although the RIs must verify the lists of targeted financial sanctions, there have been no positive coincidences. In the case of DNFBPs there are deficiencies in the identification of PEPs, especially in the case of lawyers and casinos.
- Considering the dimensions of the sectors and the risk thereof, the filing of STRs by the DNFBPs is still low. In addition, there are non-financial RIs not registered in the online FIU platform. The financial sectors and casinos (forced to report as from Law No. 42 of 2000), have filed reports in a consistent manner.
- Financial institutions apply internal controls and procedures to ensure compliance with AML/CFT requirements, including at the group level. There are no legal requirements that prevent the application of such controls and procedures. DNFBPs present some vulnerabilities in their internal controls, particularly in high-risk sectors (real estate, free zones and lawyers).
- The securities remittance agencies do not have procedures to monitor their clients and transactions beyond the initial CDD.

#### ***Recommended actions***

- A deeper sense of awareness must be raised in relation with TF risks for all reporting institutions.
- More training and development events must be promoted in order to broaden risk understanding by DNFBPs, particularly those at high risk, aiming at improving their internal controls and CDD procedures.
- The registration of DNFBPs in the online FIU platform must be encouraged.
- Awareness must be raised among DNFBPs regarding the importance of issuing reports: STRs or CTRs.

- Specific CDD procedures and continuous monitoring, particularly for foreign transactions must be developed with securities remittance companies.

327. The relevant Immediate Outcome considered and evaluated in this Chapter is the IO 4. Relevant recommendations for the evaluation of effectiveness in this section are R. 9-23.

### *Immediate Outcome 4 (preventive measures)*

#### *Understanding ML/TF risks and AML/CFT obligations*

328. Panama has published its NRA and its National AML/CFT Strategy and disseminated these documents to all sectors. Financial institutions have participated directly in the process of preparing the NRA. The DNFBPs have participated, generally, through information gathered by their supervisor; however, they know the results of the NRA and the National Strategy.

329. The Financial Intelligence Unit (FIU) and the regulators (Superintendence of Banks, Superintendence of Insurance and Reinsurance, Superintendence of Securities, Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions and the IPACCOP) promote training activities in person and by electronic media (e-learning), seeking to keep the RIs updated with respect to their obligations and best practices in their sectors.

330. Financial institutions and DNFBPs do not adequately understand TF risks because, at interviews, they stated that there are no terrorist events and the NRA has considered there is a low risk, so the RIs believe there is no exposure to TF in the country. Without prejudice to this, they know the obligations and apply the measures required by the legislation.

#### *a. Financial Institutions*

331. The RIs of the banking sector, indicated as the sector with the largest risk in the NRA, have demonstrated a fairly uniform level of knowledge of their risks and obligations. The other members of the financial sector (securities, insurance and cooperatives) have also demonstrated a good level of understanding of the risks and knowledge of their obligations.

332. The fact that tax crimes are not a predicate offense of ML is a determining factor in the application of mitigation measures. This particularly affects the banks that make up the financial system, which is even more relevant taking into account that international operations represent 47% of their assets.

#### *b. DNFBPs*

333. The DNFBPs, despite the efforts of the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions, still have a limited understanding of their risks and some difficulties in complying with obligations (specifically CDD, RDD and identification of beneficial owners). In addition, of the 11,627 non-financial RIs identified by the Intendencia<sup>33</sup>, at the time of the on-site visit only 5,954 were registered with the FIU, and there were deficiencies in the sending of STRs.

334. The real estate sector, considered as a high-risk sector by the NRA, does not agree with the NRA, especially regarding the declaration that it would be vulnerable to the use of cash for the payment of payroll: the companies in the sector deny that the practice targeted by the NRA is common in the sector.

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<sup>33</sup> Information submitted as part of the on-site visit. Subsequently, the Intendencia reported on the existence of a total of 12,173 non-financial RIs.

335. It is highlighted that the absence of criminalization of tax crimes as a predicate offense of ML affects the understanding of risk and therefore the possible implementation of mitigating measures in DNFBPs that have a preponderant role in the offer of services, such as lawyers, law firms and accountants.

### *Implementation of measures for risk mitigation*

#### *a. Financial Institutions*

336. Financial institutions (banks, securities companies, insurance companies and cooperatives) apply mitigation measures pro rata to their risks, they have computerized monitoring systems capable of issuing alerts to detect unusual transactions, such as verifications related to the client's transactional movement not related to their profile, linkage between clients, division of transactions or movement of significant amounts, relationship with territories of greater risk.

337. Among these mitigation measures, there are the PEP clients lists or lists of clients with greater risk for the implementation of reinforced or extended due diligence; regular proceedings of revision of risks in clients and products; monitoring transactions to check if they are consistent with the professional or commercial activity of the client; verification of lists and other sources of data and reliable information, at the national and international levels, regarding money laundering and review of alerts for possible follow-up.

338. They apply CDD measures at the beginning of the commercial relationship through the use of forms prepared for this purpose and according to their procedures the information is updated during the course of the relationship with the client. Likewise, it is required by affidavit that the client reports who is the beneficial owner. In the particular case of the insurance sector, CDD measures must be adopted for the contracting and/or insured parties and for the beneficiary of the insurance, be it a natural or legal person.

339. Weaknesses have been detected in the processes of CDD measures and monitoring of transactions in the remittance sector, a sector that is under the monitoring of the SBP as of the promulgation of Law No. 21 of 10 May 2017. Since the enactment of Law No. 23 of 2015, the remittance agencies were under the monitoring of the Intendencia, which in that period developed 4 supervisions to this sector. It is emphasized that it will be necessary to establish a regulation for them and once the breaches to the prevention regime are detected, the corresponding sanctions must be applied.<sup>34</sup>

340. Banks have reported that, although tax crimes are not criminalized in Panama as autonomous or predicate offenses of ML, banks have carried out controls related to them when transactions involve correspondent banking. However, this is insufficient for the purpose of mitigating this type of crime.

#### *b. DNFBPs*

341. Law No. 23 of 2015 has incorporated 16 new sectors of RIs and through this law AML/CFT obligations for DNFBPs are imposed. It should be noted that this is a recent incorporation, which is why the mitigation measures implemented by non-financial reporting institutions are at an incipient stage.

342. During the on-site visit it has been verified that the DNFBPs have compliance manuals, compliance officials, procedures for hiring personnel, training programs for their employees and external audits of their processes.

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<sup>34</sup> The SBP approved Agreement No. 008-2017 of 19 September 2017, "By means of which Article 1 of Agreement No. 005-2015, on prevention of misuse of the services provided by other reporting institutions under the monitoring of the Superintendency of Banks of Panama ", which will be applicable to the remittance agencies and the money exchange houses for purposes of client CDD and prevention.

343. Regarding CDD procedures, all compliance manuals explain the CDD procedures, they have forms to identify the client that include elements to identify PEPs, natural persons, legal persons and seek to achieve beneficial ownership identification.

344. During the on-site visit, casinos have stated that they supervise the transactions of their regular customers mainly by requiring their passport or identity card. In addition, they reported that they perform a spatial examination of clients with a high volume of transactions in the gaming venues, that they apply CDD and develop a transactional profile, in which transaction volumes and amounts are analyzed.

345. One of the main risks identified by the NRA has been in the real estate sector, based on the fact that it is a vulnerable sector due to the viability of receiving cash payments, the high impact on the country's economy and the reception of financing by foreign investors. This sector has been included as a top priority in the on-site monitoring of the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions. In addition, the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions collaborated actively with the FIU in the preparation of the list of warning signals of this Sector and the Board of Directors of the Intendencia, issued Resolution JD-001-015 of 2015, providing for the risk factors that have as a consequence the extended CDD application in this sector and which are the specific measures. Additionally, in the construction sector, more than 20 training events have been carried out at the national level with the purpose of raising awareness in RIs.

346. Another sector identified in the NRA as high risk are companies that operate in the ZLC and other free zones, in the first it has been detected that large amounts of cash circulate. These are areas exposed to the commission of crimes of smuggling, customs fraud and copyright crimes, all of which are predicate offenses of ML since 2014. Considering the level of risk determined by the NRA to the ZLC, out of 100% of the supervisions carried out by the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions, 36% have been carried out to companies in the ZLC. However, it has been verified that, despite this, the RIs do not adequately apply AML/CFT measures pro rata to the risks identified by the country itself.

347. Finally, in the lawyers' sector, identified in the NRA as high risk, there are diverse vulnerabilities in their performance as resident agents of legal arrangements. The sector has not presented proportional risk mitigation measures, nor adequate controls related to the verification of the beneficial owner of legal arrangements and their use abroad. On the other hand, out of the 4,216 resident agents authorized at the time of the on-site visit, only 522 had registered with the FIU, representing 12% of the total. Although the National Strategy affirms that the impact of the sector's vulnerabilities is low, recent events, particularly the "Papers" case, indicate the opposite.

348. A highlighted point at the interviews was that mitigation measures have been implemented by DNFBPs mainly in accordance with the requirements imposed by their Intendencia. By having a limited understanding of the risks to which they are exposed, the mitigating measures are not sufficiently effective.

#### *Implementation of specific or reinforced CDD and record-keeping requirements*

349. Articles 26 and 27 of Law No. 23 of 2015 provide for basic measures of CDD, both for natural and legal persons. Additionally, Article 28 of Law No. 23 of 2015 determines that in the event that it is not possible for the RI to perform the CDD, it should not initiate the commercial relationship and may send a STR to the FIU if applicable (pursuant to Art. 36 of Law No. 23).

350. All reporting institutions have stated that the records of the CDD information and documentation obtained during the contractual relationship with the client must be safeguarded for a minimum period of five years from the end of the commercial relationship.

## a) Financial Institutions

351. During the on-site visit, it has been observed that FIs have policies and procedures to address relations with correspondent banks and countries at high-risk countries, identification and reinforced measures for PEP clients, criteria regarding new technologies according to standards, and that, in general terms, these are included in the compliance manuals.

352. The monitoring manuals in general provide that in cases where it is not possible to identify the client, the commercial relationship or the transaction (in the case of remittances and change) should not be carried out. Out of the results of the on-site visit, it could be verified that remittance agencies do not contemplate in their internal policies all the criteria related to electronic transfers. Additionally, from the findings of the monitoring reports, it appears that there are shortcomings regarding the identification and verification of both sender and ordering clients.

353. Based on the low risk of certain products offered by the insurance sector, a simplified CDD is allowed for compulsory insurance, where the amount of premium paid by the insured is low. It also establishes that in case there is a change in the client's profile, the new risk will determine the need to update the CDD.

354. In the case of economic groups, the different legal persons that make up the group can share information related to the CDD of their clients.

## b) DNFBPs

355. DNFBPs also presented their CDD procedures, with special attention to clients considered high risk such as PEPs and from countries listed by the FATF or other international organizations.

356. In line with Law No. 23, in the course of the interviews they reported that they do not initiate or maintain commercial relations when CDD is not complete, however no real cases were presented where there is a rejection of the client when the CDD is incomplete.

357. Although during the interviews of the on-site visit the lawyers informed that they know exactly the beneficial owners, from the monitoring reports it is noted that in the great majority there is a breach by the lawyers acting as resident agents in attending the CDD and the identification of the beneficial owner.

*Implementation of RDD measures*

358. All supervisors, both financial supervisors and the Intendencia, have determined that RIs must implement a reinforced CDD (RDD) in situations of higher risk. Article 4 of Law 23, which establishes the concept of extended or enhanced CDD as the "(...) *set of more stringent rules, policies, procedures and processes, reasonably designed to intensify the knowledge of the customer, depending on the results of the identification, evaluation and diagnosis of the risks applied by the entity (...)*." In addition, Executive Decree No. 363 of 2015 regulates RDD measures in Article 11.

359. The supervisors keep available to the reporting institutions, in their web pages, the list of non-cooperative and high-risk countries, for which a strengthened CDD must be applied, both to customers whose nationality is from those countries and to the transactions or operations that are carried out from and to those countries.

360. In cases where it is not possible to identify the beneficial owner of the client, all RIs should not initiate or maintain a commercial relationship with it. Likewise, when dealing with persons or legal arrangements, the RIs have the obligation to verify the beneficial owner, for this purpose, they require an affidavit.



## a) Financial Institutions

361. The SBP has issued Agreements 05-2015 and 10-2015 where it defines the concepts of CDD and RDD and indicates to its regulators how to apply them. The same is performed by the SMV through Agreement 06-2015, SSRP in Agreement 03 of 2015, IPACOOOP with Resolution JD/no. 11/2015 and the Intendencia with its Resolutions JD-001-2015 until JD-014-2015.

362. Financial institutions apply RDD measures when the client is a national or foreign PEP; persons and entities listed by the UNSC, countries with higher risk and the type of business developed by the client are also considered risk factors –particularly in the case of legal arrangements represented by resident agents. As reported by the banking entities interviewed, since 2009 no accounts have been opened to corporations with bearer shares.

363. During the on-site visit it has been observed that financial institutions use a form of affidavit where the client must state the beneficial owner and, in order to verify that the information is true, financial institutions alleged that the presentation of the share certificate issued by the Public Registry of Panama and the book of shareholders are also required.

364. Regarding new technologies, all supervisors have established that RIs should make a risk assessment of new products and technologies, and apply "*appropriate measures to manage and mitigate*" the risks encountered. In the interviews, it was verified that at different levels of development, they were updating the internal risk assessment to improve the administration and mitigation of their risks.

365. Agreement 02-2017 of the SBP updates the provisions on transfers of funds, indicating the minimum parameters of information required and establishing that these products and their controls must be part of the risk management process and follow the determinations of other regulations on CDD, in line with Law No. 23 of 2015 and the FATF Recommendations.

## b) DNFBPs

366. Non-financial reporting institutions stated that according to current legislation, DNFBPs are obliged to apply enhanced or reinforced CDD measures when they meet the PEP status, whether foreign or national, and for the purpose of initiating or continuing the commercial relationship with these clients they must obtain the approval of top management of the reporting institution. Likewise, they recognize that RDD measures must be applied for all foreign entities. However, the reporting institutions have stated during the on-site visit it is impossible for them to verify if clients are PEPs or not given that there are no official elements for such verification.

367. The identification and reinforced measures for PEP customers are not met by some casinos as shown by the evidence of monitoring reports.

*Reporting and tipping-off obligations*

368. All RIs must communicate to the FIU any fact, transaction or operation that is suspected to be related to ML/TF offenses, regardless of the amount, and that cannot be justified or proved. Likewise, they must report failures in their controls within 15 calendar days from the detection, within the framework of the monitoring processes that are performed.

369. The RIs regularly send suspicious transaction reports through the "FIU online" tool ([www.uafenlinea.gob.pa](http://www.uafenlinea.gob.pa)), where they complete the STRs form and include all the supporting documentation.



Supervisors have issued guides to their RIs with alerts aimed at encouraging the presentation of reports and improving their quality. For more detail regarding the amount of STRs per RI see IO 6.

370. The STR is absolutely confidential, whoever realizes it is covered by the exoneration of responsibility. Article 56 of Law No. 23 of 2015 provides that RIs will not be subject to criminal and civil liability for the presentation of STRs. The same Law, in Title III, determines that the information must be handled with strict confidentiality and that it can only be disclosed to the PPO, criminal investigation agents and judicial authorities.

a) Financial Institutions

371. The financial sector and the casinos, then regulated by the Gambling Control Board, are RIs, since Law No. 42 of 2000 and were institution which filed most reports.

372. During the on-site visit it has been observed that financial institutions have policies that allow the review of complex transactions and unusual operations.

373. From the interviews, it appears that the STRs generally contain complete and accurate information regarding the suspicious transactions reported, and if not, the FIU refers them to the purpose of perfecting the missing information. As indicated by the FIs, this feedback has been very positive to improve the quality of the STRs.

b) DNFBPs

374. From the information provided by the FIU it is noted that most of the DNFBPs began issuing STRs after the publication of Law No. 23 in 2015.

375. There was a significant increase of reports filed by lawyers in the months of April and May of 2016 where they registered 34 and 42 STRs respectively, which could be justified by the public knowledge of the "Papers" case.

376. There are DNFBPs not registered in the FIU online platform; the lack of registration with the FIU implies that there are RIs that cannot access the platform for sending STRs, if applicable.

377. During the interviews, those RIs that had submitted STRs reported that the feedback regarding the quality of STRs had been positive.

*Imminent implementation of internal controls and legal/regulatory requirements*

378. In the prevention manuals of all RIs, it must be determined how the Internal Auditing Committee operates and the functions performed by it, which must complement the CDD processes carried out by the compliance officer to verify that all policies of the financial group or entity in AML/CFT matters are being complied with.

a) Financial Institutions

379. The banking regulatory framework incorporated the obligation of banks and trusts companies to have a Money Laundering Prevention Committee, made up of members of the Board of Directors, in order to strengthen the ML/TF prevention culture with the majority participation of directors of the Bank or trust company. In practice, the reporting institutions have implemented the functioning of said Committees.

380. In general, financial groups apply controls and procedures at the group level to ensure compliance with AML/CFT measures. In fact, the authorities were informed that the SBP have carried out, from 2015 to August 2017, 17 cross-border inspections to the main regional financial conglomerates, 4 inspections to subsidiaries of local banking groups in 2017, in which compliance is verified of corporate AML/CFT

policies. Similarly, since 2015, 7 regulatory meetings have been held in the regional conglomerates, where, together with the reporting institution and the regional supervisors, certain topics are evaluated, including the main findings regarding AML/CFT and the plans of reinforcing policies and risk controls.

381. The reporting institutions are aware that financial institutions must establish procedures at the AML/CFT group level and during the interviews they stated that the SBP is authorized to request any necessary information in the inspections to verify that the institution is complying with current regulations.

b) DNFBPs

382. During the interviews, DNFBPs have shown that they know they must carry out and apply internal controls and policies with a risk-based approach, to ensure compliance with current regulations, including the possibility of retaining compliance companies, since they are part of the same economic group. However, vulnerabilities have been detected in their internal controls and CDD procedures, particularly in high-risk sectors (real estate, free zones and lawyers).

*Conclusions of Immediate Outcome 4*

383. Financial institutions have an adequate level of understanding of risk and their AML/CFT obligations. The DNFBPs—despite the work of the Supervisory Body—show that they do not fully understand the risks; this has a special impact on compliance with AML/CFT obligations.

384. Financial institutions and DNFBPs do not adequately understand TF risks because, at interviews, they stated that, there are no terrorist events and the NRA has considered that there is no exposure to TF in the country. Without prejudice to this, they know the obligations and apply the measures required by the legislation.

385. Financial institutions apply mitigation measures according to the risks they have identified. The mitigation measures in DNFBPs are in a more incipient stage of development.

386. Both financial institutions and DNFBPs are aware of CDD measures and, in general, they apply them through the use of predetermined forms. Notwithstanding the foregoing, the Intendencia monitoring reports show deficiencies in the application of CDD and in the identification of beneficial owners, in fact, the majority of the sanctioning processes in progress show this failure.

387. The financial reporting institutions apply RDD measures related to PEPs, higher risk countries identified by the FATF and foreign entities in general. The financial sector also applies specific measures regarding the transfer of funds and the SBP has issued guidance for its regulated parties to conduct a risk assessment of new products and technologies. Although the reporting institutions must verify the lists of targeted financial sanctions, there have been no positive coincidences.

388. Likewise, shortcomings have been detected regarding the monitoring of clients of securities remittance operations, a sector also supervised by the SBP, and which has a high degree of risk exposure, particularly with regard to the identification of beneficial owners in international transfers.

389. The issuance of STRs by DNFBPs is still low, considering the dimensions of the sectors involved. There are non-financial RIs that have not been registered with the FIU. The financial sectors and casinos (forced to report as from Law No. 42 of 2000), have filed reports in a consistent manner. The reports are confidential and there is the exoneration of civil and criminal liability of the person presenting them.

390. The financial reporting institutions apply internal controls and procedures to ensure compliance with AML/CFT requirements, even at the group level. There are no legal requirements that prevent the application of such controls and procedures. DNFBPs present some vulnerabilities in their internal controls.

391. Taking into account the need for improvements of the DNFBPs, as well as the level of development of the financial sector, the evaluation team understands that **Panama presents a moderate level of effectiveness in the Immediate Outcome 4.**

## CHAPTER 6. MONITORING

### *Key findings and recommended actions*

#### ***Key Findings***

- Licensing procedures are sufficiently solid, with suitability verifications, which include the financial capacity of those involved, except in the case of cooperatives. However, the operation of remittance agencies without a license has still been identified.
- The four supervisors in the financial sector –SBP, SMV, SSRP and IPACOOOP– identify and understand the risks of their sectors, even though they are at different stages of development in terms of risk matrices and risk-based monitoring processes.
- The Intendencia has prepared a sectoral risk assessment that, coincidentally, reflects the sectors of greatest risk. However, this analysis is very general and does not allow the reporting institutions to adopt adequate mitigation measures for each sector. During the on-site visit, it was determined that the authorities, particularly the Intendencia, do not have an adequate understanding of ML/TF risks in each type of institution of the different sectors, and, for this reason, they have not adopted the necessary mitigating measures to address them.
- The Intendencia has elaborated the variables of the sectoral risk matrices and is currently working on the incorporation of the information that allows it to develop its monitoring activities. At the time of the on-site visit, it had focused on the monitoring of those sectors that were identified as having a higher risk of ML.
- There is a range of administrative sanctions, which have been applied only in the financial sector. The Intendencia has initiated fifteen (15) sanctioning processes, although only two have applied monetary sanctions, which have been appealed. Although the dissuasive nature of the publication of sanctions is recognized and the limit of PAB 1 million is adequate for the size of the Panamanian economy, it is a low figure for the largest financial institutions, which reduces their deterrent power.
- The institutions of the financial sector are monitored by supervisors on the basis of risk matrices. The Intendencia is in the process of preparing monitoring matrices, given the heterogeneity and diversity of sectors and the recent creation time. Supervisors have implemented risk-based monitoring at different stages of implementation.
- All the supervisors have completed training plans with their reporting institutions and have a sustained program of training of their personnel and feedback to the reporting institutions. Since the promulgation of Law No. 23, 25,118 people have been trained.
- The remedial actions of the banking supervisor have led to changes in the Senior Management of Corporate Governance in a systemic institution with recently disclosed sanctions. The Intendencia requires action plans to the RIs that have been supervised, in order to remedy the deficiencies detected. There is little evidence of effectiveness in relation with the impact of supervisions on compliance by non-financial reporting institutions, which may be due to the recent creation of the Intendencia.

***Recommended actions***

- More effective action on the activity of remittances exercised without a license is necessary, with the possibility of initiating an administrative action in addition to the report to the investigative and criminal authorities.
- The Intendencia needs to identify in detail the risks by sectors and types of institutions.
- The Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions needs a more robust structure and powers, as well as equating its instructions to the reporting institutions with the aspects to be supervised defined in its Supervision Manual.
- The country needs to assess the proportionality of its sanctions and try to make them more dissuasive. For example, sanctions could be calculated based on the values of transactions or the assets of the RIs.
- The development and compilation of more consistent statistics regarding the impact of monitoring of RIs compliance is necessary.

392. The relevant Immediate Outcome considered and assessed in this chapter is the IO. 3. The relevant Recommendations for the effectiveness evaluation under this section are the R. 26-28, R. 34 and 35.

***Immediate Outcome 3 (monitoring)******License, registration and controls that prevent criminals and their associates from entering the market***a) Financial Supervisors

393. Panama's financial institutions are authorized to operate by their regulators: the SBP grants authorization to banks and companies with trust licenses. The Ministry of Commerce and Industry (MICI) is the authority that grants licenses to financial companies, leasing companies and factoring companies. However, it is important to mention that in the risk national strategy there is an action plan so that the licensing of these reporting institutions can be in charge of the Superintendence of Banks. The SMV grants licenses to the securities companies, investment companies, advisors and investment managers, the SSRP to the insurance and reinsurance companies and the IPACOOOP grant legal status to the cooperatives.

394. Evidence has been obtained that the licensing processes of financial institutions seek to identify the actual beneficial owners of the RIs, the licensing processes review the moral solvency of those who have participation in the entities, their judicial background, the persons' financial capacity and their suitability. For the financial sector, the three Superintendencies –Banking, Insurance and Securities– have powers to grant licenses and, if necessary, revoke them, they have monitoring procedures to prevent criminals from controlling the entities they supervise.

395. The SBP performs the review of the stock structure and of changes in the book of shareholders as part of the supervisory process that must be completed in the verification of the identity of the real beneficial owners of the supervised reporting institutions.

396. The IPACOOOP is empowered to grant the legal status of the cooperatives and, if necessary, to intervene and liquidate them for breach of AML/CFT regulations. Before granting legal status, it performs the review, analysis and preliminary qualification of the documentation requested to the group in formation.

It was verified that there is no requirement whatsoever regarding the suitability of the members and directors of the cooperative.

397. Additionally, the SSRP requires submitting resumes, bank reference letters, a copy of the ID and any other document required by the SSRP before any change in the members of the board of directors, general manager, changes in the articles of incorporation and any change in the ownership of shares. The SBP establishes that transfers of shares of banks and economic groups of which banks are a part will require prior authorization from the Superintendent, when the purchaser or other individuals or legal entities act individually or in concert as a result of said transfer, they will have an interference significant, with 25% or more of the shares. In the framework of the SMV, after the granting of the license authorization, any change of controlling beneficial ownership requires prior authorization and the change of non-controlling beneficiary must be notified for review and update of information, as required in the regulations that regulate each type of license granted by this superintendence. However, no violations of the licensing and registration requirements have been detected.

398. The securities transportation companies, in order to operate, are required to be registered in the Registry of Companies of Security of the Ministry of Government and Justice.

399. Remittance houses and savings and housing loan corporations, which recently became supervised by the SBP, are authorized by the Ministry of Commerce and Industry, which also has the power to cancel licenses granted, including by request of the SBP. It should be noted that the NRA has already identified that a high percentage of people act in the activity of remittances without a license and there is no clarity in the procedures necessary to close the remittance houses. The NRA emphasizes that, since the operation of remittances without a license is a criminal offense, they must report them to the Prosecutor's Office. This fact forces to review and strengthen the licensing processes and the respective sanctions.

b) DNFBPs

400. All DNFBPs have an authority that registers them or that grant an activity permit. Without such registration or permission, it is not possible for DNFBPs to develop their activity. The Intendencia has memoranda of understanding with all the entities that register or authorize the operation of the DNFBPs.<sup>35</sup>

401. In Panama, the Ministry of Commerce and Industry of the Republic of Panama is in charge of issuing the compulsory operation notice so that a natural or legal person can operate. It has been verified that the Gambling Control Board (JCJ) grants the registers of casinos and other games of chance. Up to the creation of the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions, the JCJ performed monitoring of this sector.

402. The ZLC Administration (ZLC) grants the records of its users, who are effectively the reporting institutions under the Intendencia. The MICI is also responsible for authorizing persons in charge of pawnshops, financial leasing (also supervised by the SBP), real estate brokers and technical board for the cases of construction companies. The Technical Board of Certified Public Accountants keeps the register of accountants and the Supreme Court of Justice grants the registration to the lawyers.

403. The Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions has a database department that has fully identified the 12,173 non-financial reporting institutions that operate in the country. Besides, Resolution No. I-REG-003-017 was issued, by which the Off-site Evaluation Form is established, which allows to obtain relevant information regarding the ML/TF prevention measures of the non-financial reporting institutions, which will allow an adequate monitoring strategy and supervisory

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<sup>35</sup> The Intendencia has signed MOUs with the Administration of ZLC, the Gambling Control Board, the Ministry of Commerce and Industry, the National Customs Authority and the Public Registry.

planning with a risk-based approach. According to the authorities, the monitoring of the non-financial reporting institutions will be reinforced through the implementation of the off-site form.

404. Financial supervisors, in their regular monitoring procedures, supervise in order to prevent criminals and accomplices from being beneficial owners or having a significant share in said entities. The review of the stock structure and changes in the book of shareholders as part of the supervisory process that must be completed in the verification of the identity of the real beneficial owners of the supervised reporting institutions, as well as the periodicity of their risk assessments.

405. In cases of maximum severity, the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions may request the corresponding Intendencia the restriction, suspension, cancellation or removal of licenses, suitability and other authorizations for the exercise of activities or operations carried out by the non-financial reporting institutions; at the date of the on-site visit there were no specific cases. The same applies for the SBP as regards its reporting institutions licensed by the MICI (remittance agencies).

#### *Understanding and identification of ML/TF risks by supervisors*

406. All natural supervisors have made efforts to improve the understanding of ML/TF risks, they have participated in the preparation of the NRA and are aware of the National Strategy, therefore, they know the general risks identified for each of their sectors, although with different levels of depth.

##### a) Financial Supervisors

407. The four supervisors in the financial sector –SBP, SMV, SSRP and IPACOO– identify and understand the risks of their sectors.

##### b) DNFBPs

408. As stated before, it is considered that the NRA does not go deep enough in analyzing the risks in each of the different non-financial sectors and professional activities that have been identified as most vulnerable (lawyers, free zones, real estate, etc.) for the purpose of adopting appropriate mitigation measures for each sector.

409. The Intendencia has prepared a sectoral risk assessment prior to the NRA that coincides in a way that reflects the sectors of greatest risk. From the document presented, it can be seen that the analysis is of a very general nature and does not take into consideration the main external threat identified in the NRA, nor does it analyze risks by type of institution that make up the sectors evaluated.

410. Therefore, it is considered necessary for the authorities to advance in the analysis of sectoral risks by identifying the intrinsic characteristics of the reporting institutions that are located in the ZLC. Additionally, the sectoral evaluation and 37 supervisions carried out in this sector are focused only on the ZLC, while according to the NRA and the sectoral analysis there are other free zones and the Panama Pacifico Agency, in which no supervision was carried out.

411. Regarding the real estate sector, it is highlighted that there is no detailed risk analysis by the supervisor, that is, the Intendencia, with a detailed analysis of the ML/TF risks of: 1) construction companies; 2) promoter companies; 3) real estate agents and 4) real estate brokers. Additionally, according to the information provided by the country, the supervisions were conducted only to 5 real estate companies.

412. On the other hand, it is considered necessary to adopt measures to strengthen the control of the operation of the corporate services sector, a reference is made to the existence of weaknesses in CDD controls and in the identification of the beneficial owner in legal arrangements, regarding specifically the activities of the resident agent.



413. Moreover, the sectoral evaluation itself recognizes that there are weaknesses in the identification of accountants who perform some of the activities subject to monitoring by the Intendencia. However, the Intendencia has not presented measures to address this weakness, which makes it difficult to supervise this sector, which to date has not been supervised yet.

414. Although it is true that the Intendencia has prioritized the supervision in the sectors that have been generically identified by the NRA as more risky, it is necessary that this authority identifies with greater precision within these sectors those agents or companies and/or products or services offered they have greater risk, in order to have a greater understanding of the risks not only sectorial but also of the reporting institutions that compose them, in order to comprehensively understand the ML/TF risks they face and to improve the scope of the supervisions.

415. Finally, the absence of criminalization of tax crimes as predicate offenses of ML has an impact on sectoral evaluations. In fact, in the framework of the interviews conducted, the supervisors have recognized it is importance for tax crimes to be set as a criminal offense and as predicate of ML. However, they have not implemented specific mitigating measures for this.

### *Risk-based monitoring of compliance with AML/CFT requirements*

416. The SBP, SMV, SSRP, IPACOOOP and the Intendencia currently have monitoring manuals with a risk-based approach.

#### a) Financial Supervisors

417. Based on the development of their risk matrices, the SBP, SMV, SSRP and IPACOOOP have an annual monitoring plan that prioritizes the institutions that must be inspected on site, in addition to off-site processes. Likewise, it has been verified that financial supervisors monitor their RIs compliance. The risk monitoring methodology of financial supervisors relies on the analysis of information that is periodically received by the financial reporting institutions, information on the risk factors of the client, products and services, distribution channels and geographical area. The financial supervisors have an ML/TF risk management system, which provides us the risk profile of the reporting institutions, entailing five elements: i) Amount of risk; ii) Quality of Risk Management; iii) Residual risk; iv) Residual risk management and v) Banking group risk (in the case of banks).

418. The following table reflects the on-site and off-site inspections carried out by the financial supervisors in the period from 2012 to May 2017:

		2012	2013	2014	2015	2016	2017
<b>IPACOOOP</b>	On-site	34	29	29	27	29	6*
	Off-site	186	186	186	185	183	178*
<b>SBP</b>	On-site			3	9	6	1*
	Off-site	56	47	67	62	72	26*
<b>SMV</b>	On-site	22	34	33	18	9	4*
	Off-site	28	41	28	21		
<b>SBP</b>	On-site	64	85	67	58	81	48**
	Special	12	22	5	15	21	5**
<b>SSRP</b>	On-site			3	9	6	1*
	Off-site	56	47	67	62	72	

\* Until May 2017.

\*\* Forecast

Source: Preparation of the Assessment Team with information provided by the SBP, SMV, SSRP and IPACOOOP.

MUTUAL EVALUATION REPORT OF THE REPUBLIC OF PANAMA

2018

	2012	2013	2014	2015	2016	2017
<b>Ipacoop</b>						
On-site	34	29	29	27	29	6*
Off-site	186	186	186	185	183	178*
<b>Insurances</b>						
On-site			3	9	6	1*
Off-site	56	47	67	62	72	26*
<b>Securities</b>						
On-site						
Securities Companies	21	28	30	14	11	4*
Investment advisors		4	3	2	3	
Investment companies						
Investment managers	1	1	1	2	3	
Mutual funds administrators	1	1	1	1	1	
On-site (total)	23	34	35	19	18	4*
Off-site						
Securities Companies	27	40	26	17	10	
Investment advisors		1	1	3	2	
Investment companies	36	38	36	36	30	
Investment managers	2	3	5	1	1	
Mutual funds administrators		1	1	1	1	
Off-site (total)	65	83	69	58	44	
<b>SBP</b>						
On-site (comprehensive and follow-up)						
Banks	50	63	53	40	45	48**
Trust companies	14	22	14	12	18	25**
New RIs (Leasing, Factoring and Financial)				6	18	26**
On-site (total)	64	85	67	58	81	99**
Special						
Banks	12		5	14	15	5**
Trust companies		3		1	6	
New RIs (Leasing, Factoring and Financial)						

2018

Special (total)	12	3	5	15	21	5**
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Source: Preparation of the Assessment Team with information provided by the SBP, SMV, SSRP and IPACOOOP.

419. In addition to the on-site/off-site monitoring plan based on risks, the financial supervisors (Banks, Securities, Insurance) have carried out since the year 2017, five (5) supervisions coordinated to financial groups operating in the 3 markets.

420. Financial institutions representing a higher risk are monitored more frequently. The systemic banks (with a larger structure) are also supervised; together with the observations of the evaluations, they are permanently monitored by the supervisor until they are corrected. In the case of the SBP, for example, the reporting institutions that were classified as being at higher risk should be visited annually as indicated in the Uniform Risk-Based Supervision Manual. The institutions with intermediate levels in their net risk must be supervised within the following two years, in the mixed modality of off-site requirements, in order to deepen in the identification and management of the risk. Based on the results of this process, it is determined if the RIs are going to be visited in situ or if they are maintained in the semi-annual monitoring. The reporting institutions that are kept at the lowest levels of net risk will be monitored based on the inherent risk information capture formats.

b) DNFBPs

421. The Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions has the complex mission of supervising sectors with different risks. Although specific regulations were issued for each sector, the process is at the implementation stage. Despite the efforts made by the authorities of the Intendencia to carry out an adequate monitoring to verify compliance with prevention and detection obligations, its recent creation and the lack of technological tools make it difficult to reach a reasonable level of effectiveness. Therefore, it is necessary to continue the institutional strengthening process of the Intendencia to adequately supervise its more than 11 thousand RIs.

422. In order to determine the on-site monitoring plan, the Intendencia made an analysis using the information provided by the primary supervisor where information was used such as the volume of transactions, capacity to carry out transactions, income, number of companies in which it acts as resident agent, as well as other relevant information. Another criterion used was the requests received from the FIU, from the DGI and from notorious facts (for example, the "Papers" case).

423. The Intendencia has prepared the variables of the sectoral risk matrices to guide the monitoring and supervision process. However, the risk matrices did not have, at the date of the on-site visit, all the information to be analyzed, since the internal controls of the reporting institutions have not yet been evaluated. Thus, the matrices of the Intendencia only counted on the inherent risks of their supervised sectors. In addition, the matrices of the Intendencia have considered monitoring actions as control/mitigation measures, which constitutes a methodological error given that the risk assessment must consider the internal controls carried out by the reporting institutions themselves.

424. The Intendencia issued Resolution No. I-REG-003-017, by which the Off-site Evaluation Form is established, which allows to obtain relevant information regarding the ML/TF prevention measures of the non-financial RIs. This information will allow the development of an adequate strategy and monitoring plan with a risk-based approach. Regardless of the result of the off-site evaluation, the Intendencia has already begun to inspect the institutions that, according to the sectoral evaluation carried out, present the greatest inherent risk.

425. The following table reflects the inspections carried out by the non-financial supervisor in the period 2012-May 2017:

2018

	2012	2013	2014	2015	2016	2017
<b>Intendencia</b>	-	-	-	31	35	26*

\* Until May 2017.

\*\* Forecast

Source: Preparation of the Assessment Team with information provided by the Intendencia.

426. The following table reflects the inspections carried out by each sector in the period 2012-May 2017:

	2012	2013	2014	2015	2016	2017
<b>Intendencia</b>						
Lawyers and Law Firms				10	15	12*
Remittance companies				1	3	1*
ZLC				20	11	6*
Real Estate-Construction					2	3*
Casinos					2	2*
State Entities (The National Bank of Mortgages and the Agricultural Bank)					2	2*
<b>TOTAL</b>	-	-	-	31	35	26*

Source: Preparation of the Assessment Team with information provided by the Intendencia.

### *Effective, proportionate and dissuasive corrective actions and penalties*

427. The supervisors immediately apply remedial actions after their evaluation, requesting the regulated party an action plan on the findings found with the corrective processes, those responsible and the dates of application of the correction, evaluate the reiteration of the weakness and proceed to punish when applicable.

428. Supervisors have the ability to publish their sanctions, once these are exhausted all steps within the sanctioning process. This is done in the respective web pages, with an important dissuasive effect.

#### a) Financial Supervisors

429. The three Superintendencies, the IPACOOOP and the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions are empowered to apply sanctions. From the information provided it is verified that said powers have been exercised.

430. The range of sanctioning measures includes calls for attention or memoranda, monetary fines and even the cancellation of the license. Law No. 23 of 2015 establishes as general sanctions fines of 5 thousand to 1 million PAB/USD. Law No. 23 also determines that regulators should regulate a scale of specific sanctions, of a monetary nature or not. However, the maximum fine that may be applied is 1 million PAB/USD, which is not a deterrent for large institutions, such as some banks.

431. The following table reflects the calls for attention (CFA), action plans (AP) and instructions (I) given by the financial sector to the reporting institutions inspected:

2018

Sector	2012			2013			2014			2015			2016			Total		
	CFA	AP	I	CFA	AP	I	CFA	AP	I	CFA	AP	I	CFA	AP	I	CFA	AP	I
Securities Institutions	1	8	8	1	113	113	4	72	72	5	40	40	16	141	141	27	374	374
Insurances												17			60			77
Cooperatives	167	34	15	154	29	15	61	29	15	52	27	15	90	29	15	524	148	15
Banks	26	26	26	37	37	37	36	64	36	23	269	23	28	717	28	150	1,113	150
Trust companies	14	14	14	8	22	8	12	11	12	12	99	12	18	151	18	64	297	64
Financial	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2	23	2	5	166	5	7	189	7
Factoring	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2	21	2	5	5	5	7	26	7
Leasing	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1	9	1	3	3	3	4	12	4
Total	208	82	63	200	201	173	113	176	114	97	509	112	165	1212	275	783	2159	698

Source: Preparation of the Country with information provided by the SBP, SMV, SSRP and IPACOOP.

432. The SBP reported a takeover and reorganization process and 2 forced liquidation processes and also published through its website sanctions for the period 2015-2016 in the administrative branch against 9 banks of the system totaling USD 2.9 million.

433. The SSRP has applied from 2012 to 2016 fines exclusively for breaches in the delivery to the FIU of the cash and quasi-cash transaction report, in the amount of 5 thousand PAB/USD. It is emphasized that they are of effective payment, the sanctions presented have already gone through all the appeals processes. In 2017, 3 fines were applied, all of them for late filing of updated Procedural Manuals in values around 15 thousand PAB/USD.

434. The IPACOOP has applied several non-monetary sanctions, particularly calls for attention and suspension of certifications. According to what was reported up to 2016, the amount of the fines applied was 5 thousand PAB/USD, given the limited financial capacity of the cooperatives, in general, to pay higher fines. In 2017, for the first time, the IPACOOP has sanctioned a reporting institution with an amount greater than the minimum: 125 thousand PAB/USD.

435. The following table shows the total amounts of fines applied per year in each financial sector:

Sector	2012	2013	2014	2015	2016
Securities Institutions	15,000.00	130,900.00	50,000.00	190,500.00	39,000.00
Insurances	55,000.00	90,000.00	50,000.00	85,000.00	45,000.00
Cooperatives	20,000.00	25,000.00	0	5,000.00	0
Banks	50,000.00	30,200.00	50,000.00	2,135,000.00	226,750.00
Trust companies	-	24,000.00	75,000.00	45,000.00	-

Source: Preparation of the Country with information provided by the SBP, SMV, SSRP and IPACOOP.

#### b) DNFBPs

436. The Supervision Unit of the Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions, once the inspection process of a non-financial RI has been completed, issues a monitoring report that contains observations that the RI must attend through an action plan.

437. The following table reflects the action plans presented by the reporting institutions to the Intendencia:

2018

	2015	2016	2017	Total
<b>Sector</b>	<b>AP</b>	<b>AP</b>	<b>AP</b>	<b>AP</b>
<b>Lawyers</b>	10			10
<b>ZLC</b>	20			20
<b>State Entities</b>		2	2	4
<b>Real estate agents</b>		2	1	3
<b>Remittances</b>	1	2		3
<b>Total</b>	31	6	3	40

Source: Elaboration of the country with information from the Intendencia.

438. If there are breaches of the ML/TF prevention regulations in the findings report, the file is sent to the Regulatory Unit in order to determine if sufficient merit exists to initiate a sanctioning process.

439. The Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions Regulatory Unit, as of May 2017, had initiated 18 administrative processes (15 for lawyers, 2 for casinos, 1 for a remittance company). Once the sanctions imposed have been determined, they will be published on the website of the Ministry of Economy and Finance. In the case of DNFBPs, the supervisor has only applied monetary sanctions.

440. The following table reflects the total amounts of fines applied by the Intendencia:

Reporting institution	2012	2013	2014	2015	2016	2017	Observations
<b>Professionals (Lawyers)</b>						300,000	The sanction is not firm because they have filed a Reconsideration Appeal.
<b>Professionals (Lawyers)</b>						30,000	The sanction is not firm because they have filed a Reconsideration Appeal.

Source: Elaboration of the country with information from the Intendencia.

### Impact of monitoring actions on compliance

#### a) Financial Supervisors

441. Supervisors of the financial sector have reported that their inspections result in findings that become action plans for compliance and improvement of regulated entities. The action plans of the reporting institutions have strengthened their compliance processes regarding AML/CFT by regulated entities.

442. The IPACOOOP, after the cooperatives are supervised within fifteen (15) days, must present the action plan to improve the findings. Subsequently, the IPACOOOP schedules follow-up monitoring to determine compliance with the action plan. Based on the aforementioned, improvements in AML/CFT are evident.

443. The results of SBP inspections in the area of AML/CFT also include changes in the Corporate Governance structure with modifications in the Senior Management structure. As an example of the effectiveness of the supervisory process of prevention of AML/CFT in the case of the banking sector, a case was evidenced in which the remedial actions also generated the modification of the structure of Senior Management.

b) DNFBPs

444. The Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions has presented information about its follow-up supervisions in which they include the request and verification of documents to determine that they have complied with the suggested actions and action plans presented.

*Promoting a clear understanding of AML/CFT obligations and ML/TF risks*a) Financial Supervisors

445. Financial supervisors promote various training activities with their regulated entities, in which the strengthening of the capacities and the understanding of the obligations and identified risks are sought. Likewise, feedback activities are carried out to regulate AML/CFT issues and carry out public consultation processes on draft agreements or resolutions issued in the matter.

446. In the last three years the financial supervisors have given the following training to the financial reporting institutions:

Sector/Institution	Trainings	Trained entities
Superintendence of Banks	27	3,753
Superintendence of Securities	10	1,122
Superintendence of Insurance and Reinsurance	22	1,838
IPACOOOP	104	3,565

*Source: Preparation of the Country with information provided by the SBP, SMV, SSRP and IPACOOOP*

447. In the case of financial institutions, at the end of the monitoring, the inspectors hold a meeting to discuss the weaknesses found during an inspection. According to the information provided by the reporting institutions in the interviews, this improves the understanding of the deficiencies detected.

448. The SBP has inside its information system, the banking support electronic address through which daily inquiries are received from the reporting institutions and also allows the supervisor to request explanations about items or situations that call attention to them in the case of their reporting institutions.

449. The SMV also has the computerized means to receive inquiries from the RIs through a specific e-mail, through which it requests clarifications, makes technical consults (which constitutes an open channel of support to the market) and also allows requesting information clarifications that must be sent through the Electronic System for Information Referral, called SERI.

450. The following chart reflects the communications to the RIs with guidelines and recommendations for a better implementation of AML/CFT programs in the financial section:

Supervisor/Year	2012	2013	2014	2015	2016	2017
SMV	6	11	14	22	24	
SSRP	0	0	0	17	60	
IPACOOOP	3	2	1	4	7	
SBP	43	60	86	158	44	
Trust companies	N/A	N/A	2	18	7	
Financial	N/A	N/A	N/A	19	10	
Leasing	N/A	N/A	N/A	19	10	
Factoring	N/A	N/A	N/A	19	10	
Remittances	N/A	N/A	N/A	N/A	N/A	
Change	N/A	N/A	N/A	N/A	N/A	

*Source: Preparation of the Country with information provided by the SBP, SMV, SSRP and IPACOOOP.*



b) DNFBPs

451. The Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions has worked in the promotion and understanding of DNFBPs obligations. According to the information provided, in the last three years, a total of 238 trainings have been given.

Sector/Institution	Trainings	Trained entities
Intendencia	238	14,840

*Source: Elaboration of the country with information from the Intendencia.*

452. The Intendencia has disseminated the risks identified by the sectoral evaluation and the NRA, although the information available is of a very general nature and does not allow the reporting institutions to adopt adequate mitigation measures, especially in the most vulnerable sectors of the non-financial sector.

453. The Intendencia has promoted days of mass registration in the form of reporting institutions data update (ADSO), in order to obtain updated data. In addition, supervisors provide training to the regulated sector to guide them in the proper application of standards and regulations.

454. The following chart reflects the communications to the RIs with guidelines and recommendations for a better implementation of AML/CFT programs in the non-financial sector:

Supervisor/Year	2012	2013	2014	2015	2016	2017
Intendencia				3	23	7

### *Conclusions of Immediate Outcome 3*

455. Licensing procedures are sufficiently solid, with suitability verifications, which include the financial capacity of those involved. However, the operation of remittance agencies without a license has still been verified.

456. The four supervisors in the financial sector –SBP, SMV, SSRP and IPACOOOP– identify and understand the risks of their sectors, even though they are at different stages of development in terms of risk matrices and risk-based monitoring processes. The Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions has prepared a sectoral risk assessment that reflects the sectors of greatest risk. However, the said document is very general and does not allow the reporting institutions to adopt adequate mitigation measures for each sector.

457. Panama has a range of administrative sanctions, which have been applied only in the financial sector. Although the dissuasive nature of the publication of sanctions is recognized and the limit of PAB 1 million is adequate for the size of the Panamanian economy, it is a low figure for the largest financial institutions, which reduces their deterrent power. On the other hand, the number of sanctions applied to DNFBPs is very limited.

458. The institutions of the financial sector are monitored by supervisors on the basis of risk matrices. The Intendencia of Supervision and Regulation for Non-Financial Reporting Institutions is in the process of preparing monitoring matrices, given the heterogeneity and diversity of sectors and the recent creation time. Supervisors have implemented risk-based monitoring at different stages of implementation.

459. The supervisors recognize the importance of the criminalization of tax crimes, but no mitigating measures have been reported by the supervisors.

460. The supervisors have completed training plans with their reporting institutions and have a sustained program of training of their personnel and feedback to the reporting institutions. Since the promulgation of Law No. 23, supervisors have trained 25,118 people.

461. The remedial actions of the banking supervisor have led to changes in the Senior Management of Corporate Governance in a systemic institution with recently disclosed sanctions. However, there is little evidence of effectiveness in relation with the impact of supervisions on compliance by non-financial reporting institutions.

462. Bearing in mind these vulnerabilities and in the relative impacts of all sectors, **Panama presents a moderate level of effectiveness in the Immediate Outcome 3.**

## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### *Key findings and recommended actions*

#### ***Key Findings***

- The Panamanian NRA evaluates the risks of companies used for illegal purposes, concluding that this sector is vulnerable and considered of high risk. In addition, according to the findings of the NRA report, corporations, private interest foundations and trust companies are the most widely used entities for improper purposes.
- The country presents an inherently high risk for the placement of assets from offenses committed abroad, for which purpose persons and legal arrangements may be used (especially corporations, private interest foundations and trusts).
- Moreover, the NRA establishes that there is a vulnerability for companies without activities in Panama to be used in other countries for ML/TF purposes. However, despite of the importance of this sector, such document does not go further in the analysis of the activity and concrete risks in the analysis of the activity nor does it quantify the importance of the operations nor its impact at the national and international level.
- In sum, adding corporations and private interest foundations, entities considered to be at greater risk in the NRA, it is possible to affirm that there are currently at least 500,679 Panamanian companies considered high-risk companies that are operational, and there are no studies to assess the risks of their activity, nor any appropriate measures to mitigate them.
- In recent years, the country has passed several laws and regulations with the aim of improving the transparency of Panamanian corporations, foundations and other legal arrangements.
- Notwithstanding the foregoing, there is no evidence on the effective availability and the adequate verification of the information on shareholders and beneficial owners of the entities, since there are no mechanisms securing the accuracy and updating of the available data. This is because the responsibility of resident agents is unclear, the monitoring of their activity is scarce and applied sanctions are not confirmed yet.
- Of the 4,216 resident agents authorized, only 522 are registered to use the FIU online platform (12%), which represents a weakness of the system and explains the small amount of STRs filed by this sector.
- Neither have control measures been adopted to prevent the misuse of the capacities of shareholders and nominal directors, services that are permitted by current legislation and are regularly provided by law firms operating in the country. Due to the above, the way in which its use affects the quality of the available data on the beneficial owners of the companies and legal arrangements is unknown.

#### ***Recommended actions***

- The analysis of the activity and concrete risks of the corporate sector must be deepened to quantify the importance of the risks derived from such operation or its impact at the national and international level, in order for the authorities to define the adequate mitigating factors and to avoid misuse.
- Current legislation must be modified to extend the CDD obligations of the resident agent, in order for them to perform an adequate follow-up of the business activity carried out by their clients and allow

the adoption of measures to prevent their improper use. Modifications must include measures that allow an adequate control of Panamanian companies that carry out their activities abroad.

- Risk must be analyzed to define specific measures of control to prevent the misuse of the figure of the shareholders and nominal directors, when these services are rendered by lawyers or firms of lawyers operating in the country.
- Supervisory actions of the of Supervision and Regulation for Non-Financial Reporting Institutions in the sector of lawyers and law firms must be reinforced to ensure the adequate application of the regulations by said reporting institutions and to promote the registration of resident agents before the FIU in order to integrate them into the suspicious transaction reporting system.

463. The relevant Immediate Outcome considered and assessed in this chapter is the IO. 5. The relevant Recommendations for the effectiveness evaluation under this section are R. 24 and 25.

### ***Immediate Outcome 5 (legal persons and arrangements)***

#### *Public availability of information on the creation and types of legal persons and arrangements*

464. According to the Commercial Code of the Republic of Panama, two or more natural or legal persons may form a company of any kind. In the case of all companies that can be created in Panama, it is essential for them to be registered in a public registry - which includes the Company Register, as established in Article 1754 of the Civil Code - for purposes of having legal personality. Also, the Civil Code of the Republic of Panama, in its Article 1753, states that one of the objectives of the Public Registry is to "[...] *establish in a reliable manner everything related to the capacity of natural persons, to the constitution, transformation or extinction of legal persons, to all kinds of general mandates and to all legal representations [...]*".

465. The document by which such companies are registered must include the type of company, the name of the company, who form its board of directors, the resident agent and the main characteristics of the company. This information must be updated when changes occur, because otherwise, these changes would have no effect on third parties.

466. Likewise, Law No. 2 of 2011, defines the Resident Agent as "*the lawyer or law firm that provides services as such and that must keep the records required by this law for legal persons constituted in accordance with the laws of the Republic of Panama and with which maintains a professional relationship in the present.*"

467. The information existing in the Public Registry can be consulted freely by any person, as indicated in Art. 1755 of the Code. Currently, this consultation can be done virtually and without cost through the website, so, in general terms, it can be said that the basic information on Panamanian companies and legal arrangements is publicly available.

#### *Identification, evaluation and understanding of ML/TF risks and vulnerabilities of legal entities*

468. In order to measure the importance of this sector, it should be considered that there are 4,216 registered agents and that, according to information from the Public Registry of Panama, the number of legal persons in force as of May 2017 amounts to 734,535 companies, which are distributed as follows: 675,624 corporations, 2,132 foreign companies, 2,492 limited liability companies, 54,171 private interest foundations, 17 general partnerships, 50 simple limited partnerships and 49 limited partnerships by shares.

In this regard, it is further stated that there are 209,015 legal persons in default of the payment of the "single rate" equal or superior to 10 years, those that have their corporate rights suspended and will be dissolved in case of not making the payment in the term of three years. In addition, it is reported that 24,725 companies have been suspended for not having a resident agent for a period greater than 90 days.

469. Of the aforementioned corporations, it is reported that 2,282 filed for custody of bearer shares as of March 31, 2017. This custody regime applicable to the bearer shares issued was incorporated by Law No. 47 of 2013 and establishes that all the owners of issued bearer shares must designate an authorized custodian, including those issued prior to the publication of the Law. The owner must provide the authorized custodian with the full name and physical address of the custodian, as well as the details of a contact person (telephone number, fax number and e-mail address). Corporations with bearer shares that, as of December 31, 2015, did not benefit from this custody regime, had to modify their articles of incorporation and become companies with registered shares. Regarding the risk of misuse of this type of company with bearer shares, it is considered to be similar to that of corporations with registered shares and observations regarding the generality of the risk analysis carried out in the NRA as well as the problems in the update of the information and the monitoring of their activity are similar, so that all mention of corporations that is made in this chapter refers to both types.

470. The trust market consists of 73 companies as of March 31, 2017, including banks, bank subsidiaries, companies associated with law firms, insurance companies and other trust companies. The number of trusts is 129,498 and their net worth is USD 21,914 million. The largest volume of funds is managed by banks and related companies (39 entities that manage USD 14,258 million), followed by Other Trust Companies (16 entities and USD 4,079 million) and Companies linked to law firms (17 entities and USD 3,576 million).

471. Chapter IV of the Panamanian NRA evaluates the risks of companies used for illegal purposes, concluding that this sector is vulnerable and considered of high risk. According to the conclusions of the diagnosis made in the aforementioned document, simple limited partnerships and limited partnerships with issued shares are no longer used, while corporations are the most widely used. Regarding corporations, private interest foundations and trust companies, these are the companies that could be used most widely for such purposes.

472. In particular, the NRA establishes that there is *"a vulnerability for companies without activities in the Republic of Panama to be used in other countries for money laundering or TF purposes."* However, the NRA does not go further in the analysis of the activity and concrete risks, it does not quantify the importance of the risks derived from such operation or its impact at the national and international level, to define the adequate mitigating factors.

473. In fact, Panamanian authorities have not prepared detailed studies related to the activity developed by Panamanian companies abroad. The volume of assets or funds they manage is not under any control, so it is not possible to adequately assess their risks and define appropriate measures to mitigate them. In this regard, it is noteworthy that these entities have been obliged to prepare financial statements based on Law No. 52 of 2016, but no mechanism has been foreseen to allow the authorities to monitor their businesses or obligate resident agents to do it.

474. In sum, adding corporations and private interest foundations, entities considered to be at greater risk in the NRA approved by the country, it is possible to affirm that there are currently at least 500,679 Panamanian companies considered high-risk companies that are operational, but, beyond the generic conclusion on the high risk detailed in the NRA, it is not possible to conclude the authorities identify, evaluate or understand the risks faced by the country in this regard, since there is no analysis on the matter. This is a task that the authorities must face in the future.

*Mitigation measures to prevent misuse of legal persons and arrangements*

475. One of the measures that the legislation has foreseen as a mitigating risk in the sector is the activity of the resident agent, establishing that all companies and foundations must have an authorized resident agent. The article 6 of Law No. 2 of 2011, which regulates the measures to know the client for resident agents of existing legal entities in accordance with the laws of the Republic of Panama, indicates that "*any resident agent is obliged to apply the measures to know the client, for which it will require the client to provide satisfactory evidence of his identity; when the client acts on behalf of a third party, he will have to provide satisfactory evidence of the identity of said third party; and, when the share certificates that represent the property title on the legal entity are issued to the bearer, he will have to provide satisfactory evidence of the identity of the holders of the shares*".

476. Article 3 of Law No. 2 of 2011 establishes that the resident agent must: 1) identify the client, 2) obtain information about the purpose for which the legal entity is created, and 3) provide the competent authorities with the required information, in the terms established in this Law, to combat ML/TF and any other illegal activity.

477. However, for purposes of para. 2), it is established that "*in the application of the measures to know the client, the resident agent shall not be obliged to perform any proactive action or verification of the information provided by the client on the activity the legal entity will be dedicated to, and it will comply with its obligation, established by this Law, to obtain the information of the client at the time of starting the provision of its services*." This provision may constitute a limitation of importance in relation to the quality of the CDD measures applied by resident agents, since what has been declared may not be adequately verified.

478. On the other hand, Law No. 23 of 2015, which was subsequently approved and complements the obligations of non-financial reporting institutions, is not clear as to the resident agent's obligation to perform a subsequent follow-up of the client's activity that could allow him to detect possible changes in the information initially provided on the beneficial owner of the companies, so that the proper update is not ensured.

479. In effect, Articles 27, 28 and 29, which establish the basic CDD and the obligation of updating and safeguarding the information, are not clear with respect to the obligation of the non-financial reporting institutions to monitor the activity and update the client's information, which does not ensure adequate CDD, especially in the case of resident agents.

480. According to Law No. 23 of 2015, resident agents are obliged to report suspicious transactions to the FIU in order to prevent ML/TF/PWMD. However, STRs submitted by this sector are very scarce, and as of the date of the visit only 522 agents were registered with the FIU (12% of a total of 4,216 authorized agents), which shows that sector requires the adoption of measures to significantly improve compliance with the current legislation.

481. Finally, it is emphasized that according to article 7 of Law No. 2 the resident agent will not require obtaining information from the third party on behalf of which the client acts, when it is certain that this is a legal person that belongs to a professional body whose conduct or practices require it to adopt and maintain professional and ethical standards for the prevention and detection of ML/TF and any other illegal activity in terms not inferior to those required in compliance with this Law, such as law firms, banks, trustee companies, insurers, securities companies and authorized public accountants. In these cases, and in compliance with the provisions of this Law, the resident agent will limit himself to obtaining and maintaining in his files, certain minimum data about the client that the company acquires. Para. 13 of the aforementioned article establishes that, when required by the resident agent, "*... the client shall make available the*



*information concerning the identity of the client on which behalf he acts, according to the requirements and procedures established in the laws of the jurisdiction where he performs his operations."*

482. Obligation to keep accounting records: with regard to Panama offshore companies, it is noted that, as from the recent approval of the Law No. 52, 2016, the legal persons which do not conduct transactions that are executed, performed or become enforceable within Panama, shall be bound to keep accounting records and to maintain their supporting documentation within Panama or abroad, as determined by their administration entities.

483. In the event that the accounting records and supporting documentation are kept in a place that is not the office of the resident agent, the legal person shall be required to provide the agent, the physical address of the place where they will be kept, and the contact information of the person who will keep them under its custody, and they shall be available at the request of the competent authorities in a term not greater than fifteen business days.

484. In the end, this obligation of keeping accounting records is a measure aimed at securing the availability of the accounting information only to enable international cooperation, when required by such countries where the legal person operates, or to allow access of local authorities, if so required; but this measure does not pursue any additional objective of ML/TF risk mitigation or control derived from the activities of these offshore entities. In fact, this law does not provide any obligation of preventive control from the resident agent or the Panamanian authorities regarding accounting records, that allows evaluating the risks of the activities developed by a specific company, and the adoption of measures to avoid their misuse.

485. No control measures have been adopted to prevent the misuse by shareholders and appointed directors, services which are permitted under the current legislation, and that are often rendered by law firms acting within the country.

486. Trust companies, on their part, are financial reporting institutions supervised by the SBP, and as set forth by Law No. 23, 2015, they shall take CDD measures to prevent their activities from being used for ML/TF, and shall monitor their customers' activities. These CDD measures include the obligation to know, identify and verify the identity of the settlor and the beneficial owner in a trust, and the regulation remarks that the DD will prolong until getting to know the natural person who is the beneficial owner.

*Timely access to basic adequate, precise, updated, on beneficial ownership information related to legal persons*

487. Article 29 of the Law No. 29, 2015, provides the obligation of updating and maintaining records for financial reporting institutions. Instead, for non-financial reporting institutions, and for professional activities subject to supervision, the rule is not clear, since it only contemplates the obligation of maintaining information and documentation of customers, but does not expressly provide the periodic updating of such information.

488. In addition, Article 8 of the Executive Decree No. 363, 2015, provides that in the identification and verification process of the beneficial owner' identity, in the event of legal persons and other legal arrangements, reasonable measures shall be taken by supervisory entities for compliance of these duties, within the scope of their jurisdiction, which shall be of ten percent (10%) or more than their ownership interest for financial reporting institutions, and of 25% or more of their ownership interest for non-financial reporting institutions, and such professionals conducting activities subject to supervision.



489. This rule establishes that in such cases where the beneficial owners cannot be identified by their shareholding “...a certificate of authentication or affidavit listing the beneficial owners, duly signed by its representatives or authorized persons, will be required.”

490. Ultimately, the current legislation establishes that the information on the beneficial owner must be obtained through the resident agent of each company, who shall be bound to furnish it to the authorities, when so required, under the legal formalities provided. Notwithstanding the foregoing, there is uncertainty on the availability of the information, and its accuracy and updating as well, considering that the obligation of the FB identification is relatively new, that the legislation is not clear regarding the CDD that the resident agent must conduct, and that supervision activities are still at their initial stages (while acknowledging that the Intendency is applying an adequate risk approach in their proceedings). On the other hand, it has not been evaluated the risk that the information available on shareholders and the beneficial owner is not accurate or duly updated due to the misuse by shareholders and appointed directors, services which may be professionally rendered within the country and for which there is no specific control established.

*Timely access to basic adequate, precise, updated, on beneficial ownership information related to legal arrangements*

491. For legal arrangements, the current legislation contemplates, in general terms, the criteria provided by the Recommendation 25, thereby establishing the obligation of obtaining basic beneficial ownership information, which must be provided to the authorities upon request. However, it has not been evaluated the risk that the information available on shareholders and the beneficial owner is not accurate or duly updated due to the misuse by shareholders and appointed directors, services which may be professionally rendered within the country and for which there is no specific control established. For this reason, at the discretion of the evaluation team, it would be desirable a higher number of supervision proceedings conducted by the SBP, to verify compliance with the legal requirements and to detect this type of situations, while no specific controls are established on this activity. In 2014, the SBP conducted 14 on-site proceedings in Trust companies, 12 in 2015, 18 in 2016, and 4 in 2017. During such period, no off-site, or any other proceeding, were conducted.

492. Between 2014 and 2017, the only sanctions applied to Trust Companies were for breaches in the delivery date of the Cash Transactions Report (CTR) to the UIAF, and no sanctions have been applied for breaches detected in the CDD of customers, or other ML/TF preventive measures.

*Effectiveness, proportionality and deterrence of sanctions*

493. The supervision activity on resident agents is incipient, and has not reached an adequate coverage level from the sector. From a registered total of 4,216 resident agents, since 2015 up to the present date, the Intendency of Supervision and Regulation of Non-Financial Institutions has conducted a total of 48 supervision proceedings in Attorneys and Law firms (10 in 2015, 15 in 2016, and 23 in 2017, being 40 on-site and 8 off-site). 15 sanctioning proceedings have been started, but no sanctions have been applied to any case up to the date. Also, no sanctions have been applied for breach in the registration obligation with the FIU, which reaches the 88% of the resident agents.

494. On the other hand, the sanctions provided for these professionals, under Article 20 of the Law No. 2, 2011, do not seem to be proportional or dissuasive enough. However, this situation is reverted when considering sanctions provided for in Article 60 of the Law No. 23, 2015, since resident agents may be object of a variety of sanctions ranging from a warning, the application of fines of up to PAB 1,000,000, or the

withdrawal, restriction or suspension of the license of reporting institutions. Furthermore, breaches from Trust companies may also be sanctioned by the SBP, according to the Law No. 23, 2015.

### *Conclusions of Immediate Outcome 5*

495. The NRA dedicates Chapter IV to evaluate the risks of commercial persons that are used for illegal purposes, concluding that the sector of corporate services is vulnerable and considered of high risk. However, the NRA does not go further in the analysis of the activity and concrete risks of the sector activity, and does not quantify the importance of the risks derived from such operation or its impact at the national and international level, to define adequate mitigating factors.

496. In the analysis performed, it was not verified the effective availability and the adequate verification of the information on shareholders and beneficial owners of the entities, since there are no mechanisms securing the accuracy and updating of the available data, and this is because the responsibility of resident agents is not clear, and the monitoring of the activity of the related legal person is not specifically contemplated. It has to be added that the supervision activity on resident agents is scarce, and although there are some ongoing processes, no sanctions have been applied to any case up to the date.

497. Additionally, it is remarked that the number of STRs submitted by resident agents is very scarce, and as of the date of the visit, only 522 agents were registered with the FIU (12% of a total of 4,216 authorized agents), which shows that sector requires the adoption of measures to significantly improve compliance with the current legislation.

498. The risk has not been evaluated and no control measures have been adopted to prevent the misuse by shareholders and appointed directors, services which are permitted by the current legislation, and that are often rendered by the law firms acting within the country, which may affect the quality and accuracy of the data managed by companies and legal arrangements. In relation to legal arrangements, the country has a legal framework aimed at making them transparent, but for all the above mentioned, there is still some uncertainty on the quality and accuracy of the available information regarding the beneficial owners controlling these entities. Based on the latter, it is considered that **Panama has a low level of effectiveness in the Immediate Outcome 5.**

## CHAPTER 8. INTERNATIONAL COOPERATION

### *Key findings and recommended actions*

#### ***Key findings***

- Panama has units specifically aimed at providing international cooperation among its different institutions related to the AML/CFT/CFPWMD system. Among them, the role of the FIU is distinguished, since it has increased the number of personnel and resources to give answer to the inquiries received. The largest number of requests for cooperation were made with the purpose of gathering data on beneficial ownership.
- Also, the PPO acts as a central authority as set forth by several international treaties referred to the matter, coordinated with the Foreign Office's team, with the purpose of providing timely assistance to the requirements of similar authorities. There are several requests for international criminal assistance pending from 2013.
- The country has provided mutual legal assistance regarding extradition in 108 cases, out of which 67 have been delivered, 17 have been refused and others are pending. The main predicate offense for which extraditions have been requested is drug trafficking.
- The authorities mentioned they were aware that the lack of criminalization of tax crimes impacts on its possibility of providing formal cooperation, such as mutual legal assistance and extradition. In any case, it is recognized that the country has a constructive view on international cooperation translated in searching and using alternative mechanisms to collaborate in cases related to tax crimes committed abroad. In this respect, it is sought to extend the analysis of the offenses involved in the requests for cooperation that may be associated to tax crime, and linking this to other offenses. However, this view is not shared by all the authorities and entails the adaptation of the country making a request.
- Between 2012 and 2016, the country has made requests for international legal assistance in 357 situations.
- The FIU has also sought to cooperate with the requests from other countries in relation with the identification of beneficial ownership. The possibility of exchange of information between tax authorities is also underlined, which could subsequently be requested by the PPO of the requesting country, with the authorization of the General Revenue Office (DGI) as well as the cooperation provided by the Customs authorities, the Superintendency of Securities Market and the SSR.

#### ***Recommended actions***

- The country must improve the systematization process of cases or requests of Mutual Legal Assistance annually received, with the purpose of enhancing human, technical and financial resources from the several units that provide international cooperation.
- It is recommended to accelerate the executive and legislative proceedings that allow incorporating tax crimes as autonomous and ML predicate offenses, with the aim of having a solid legal basis for providing international cooperation. Even when the search of different possibilities to provide assistance is appreciated, this deficiency must be dealt with to facilitate the cooperation in cases of ML crimes linked to tax crime.
- Enhance and increase the number of international criminal assistance requested by Panama in ML/TF investigations.

- Clearly define the manner in which the countries must request mutual legal assistance in matters of provisional measures and property confiscation. Also, it is suggested to generate training programs addressed to the several system stakeholders.
- Develop a work process allowing to generate spontaneous collaborations with such countries which have contributed to the entry of suspicious flow of money.
- Finally, it is recommended to have an inter-institutional statistical basis in matters of international cooperation and mutual legal assistance, involving information from several national authorities that may provide this kind of support.

499. The relevant Immediate Outcome considered and assessed in this chapter is the IO. 2. The relevant recommendations for the effectiveness evaluation under this section are the R. 36-40.

### *Immediate Outcome 2 (International cooperation)*

500. First, to evaluate the importance of the international cooperation in the Panama case, we consider that its geographical context must be taken into account, since it has enabled Panama to constitute itself as a transit port for several neighboring countries, but also for countries from the most diverse world regions. The high demand of financial services and the creation of specific types of legal persons or legal arrangements must also be considered. Finally, the country itself has identified within its NRA that its main risk comes from abroad. With this background, it is evident the importance of international cooperation for the Panamanian system and for the different world countries.

#### *Mutual Legal Assistance (MLA) and extradition*

501. Panama is capable of providing a wide range of formal international cooperation, both in mutual legal assistance (MLA) and in extradition matters, for such acts set as criminal offenses. Regarding the way in which the immediate outcome is complied, we can state that Panama provides cooperation from a constructive perspective, which can be evidenced in the methods it has searched to provide international cooperation in cases of money laundering where the preceding crime has been a tax crime, which is not a predicate offense in Panama. In any case, it is recognized that an extradition could not be granted in this type of investigations.

502. Panama has established several central authorities according to the nature of the offense and the convention subscribed, to provide legal assistance in criminal matters, and in some cases the responsibility lies on the Ministry of Government, prior delivery to the PPO, and in other cases on the Foreign Office.

503. In this scenario, the PPO indicated that the number of legal assistances received in the same period (2012 to April 2017) was 187, of which a 27% is related to actions on financial offenses, a 23% to offenses against the public administration; a 31% of the requests that were received are mentioned with the offenses “to be determined”.

504. In extradition matters, it can be noted that between 2012 and 2017, 108 extradition requests were received, of which a 62% was granted, and around 15.74% was denied<sup>36</sup>, being 16 requests for extradition

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<sup>36</sup> Some requests are still in process since some requiring parties have not been arrested, or others have some remedies in their favor at other instances; likewise, in other cases, they are serving sentences in Panama for reasons different to those requested. Besides, some requiring authorities have withdrawn their extradition requests since the offenders were arrested in other countries.

2018

still pending resolution. The main offense for which extraditions were received and delivered is drug trafficking, which is consistent with the conclusion of the NRA that establishes such offense as one of the main threats in ML matters. The figures as of February 2017 are exhibited below:

Year	Requests received	Requests granted	Requests denied
2012	18	10	2
2013	12	10	0
2014	17	6	3
2015	19	15	0
2016	27	24	10
2017	11	2	2
<b>Total</b>	<b>108</b>	<b>67</b>	<b>17</b>

*Source: Public Prosecutor's Office*

505. As it has been mentioned in several sections of the present report, Panama does not have tax crimes set as autonomous criminal offenses or as ML predicate offenses, so the scope of action that the authorities have in relation to the referred conducts is limited. In this respect, it is consistent with the fact that the statistics on extraditions and MLA do not exhibit data on requests based on such offense.

506. In line with the abovementioned, an aspect highlighted by the authorities is that, although they are not capable of providing MLA, or of granting extraditions based on tax crimes, since it is not set as a criminal offense in Panama, upon reception of requests for cooperation, contact is made with the requesting party, and an alternative is sought to be able to provide the necessary cooperation, analyzing if the offense pursued may be framed within the grounds of a conduct set as a criminal offense in Panama, for example, offenses of falsification, organized crime, racketeering, criminal association, among other ML predicate offenses, based on which the assistance may be justified. In this respect, the Prosecutor's Office noted that in MLA and extradition processes, there may exist other offenses linked to the case in which assistance and an eventual extradition would be granted.

#### Passive MLA requests involving tax evasion

Year	Requests
2012	0
2013	0
2014	1
2015	3
2016	0
2017	5
<b>Total</b>	<b>9</b>

*Source: General Prosecutor's Office of International Affairs*

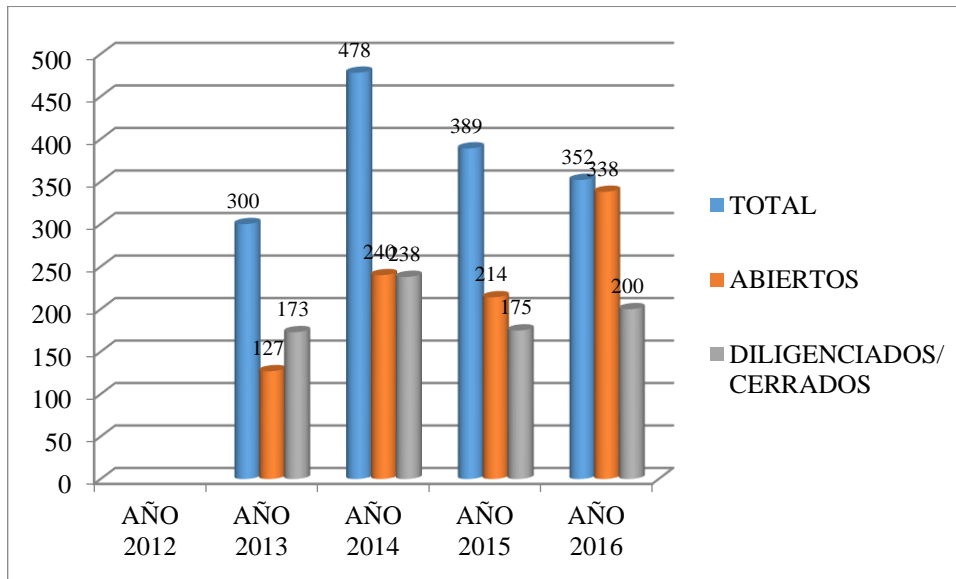
507. In addition, Panama submitted some mitigating factors to facilitate cooperation upon the absence of criminalization, such as the possibility of providing international cooperation through the DGI within the framework of bilateral and multilateral agreements, by means of the FIU, and by means of informal networks, such as the GAFILAT Asset Recovery Network (RRAG).

508. Despite the alternative possibilities submitted, members of the Judicial Branch interviewed have repeated that it would not be possible to grant MLA and extradition, upon lack of the requirement of dual criminality, understanding that the predicate offense is a fundamental element within the typical structure of the ML offense.

509. In any case, the country must solve out the limitation that may affect international cooperation due to the fact that tax crimes are not set as criminal offenses, and; therefore, it must incorporate them as soon as possible, as established in the National Strategy jointly drafted with the IMF. It is hereby recorded that Panama has not received as of this date, extradition requests for tax crimes, and in the case of requests in tax, intelligence or mutual legal assistance matters received for this offense by Panama, the country has sought the specific formula to mitigate the deficiency, and to search for mechanisms aimed at providing assistance.

510. Regarding requests received and processed by Panama, we can ascertain from the table below there are several requests received from years 2012 to 2016 which are still opened, a fact that must be improved in order for the cooperation to be timely carried out. Regarding the quality of assistance, it is important to stress that most requests dealt with beneficial ownership information, financial information, corporate data, criminal background and information from the trade and property public registries. In this case, it is relevant to take into account the comments made for IO 5 and Recommendations 24 and 25, since the deficiencies with regard to beneficial ownership impact in the quality of answers.

**Requests received and processed by Panama:**



*Search for timely legal assistance to combat federal ML, associated predicate offenses and TF cases with transnational elements*

511. In relation to the legal assistance or the cooperation that Panama has requested to other countries for the development of internally investigated cases, the PPO reported having made, between 2012 and April 2017, 168 requests for legal assistance to several countries, mainly from America and Europe, and a significant number of cases of countries from Southeast Asia, and one from Middle East (United Arab Emirates).

512. The number of extraditions that Panama has requested to other countries is 16 for the 2012-2017 period, among which there are two extraditions requested to a same country, in 2016 and 2017, for ML offenses.<sup>37</sup>

*Search for other means of international cooperation with AML/CFT purposes*

513. With respect to the FIU, it is important to remember, that in the last years, a specialized area was formed to deal with, and make requests to similar foreign authorities. As mentioned in the analysis of the Technical Compliance of the Recommendation 29, the FIU may exchange financial intelligence information with such countries whose FIU is member of the Egmont Group, or with such countries with which it has signed a memorandum of understanding; in relation to the latter, it has been a policy of the FIU Directorate to extend the range of memorandums of understanding (MOU), even with members of the Egmont Group, to be able to cooperate with countries requiring one, according to their legislation. The FIU has subscribed 84 MOU with the countries detailed in table below. The FIU may exchange financial intelligence information, as established in Article 11, paras. 8, 9 and 10 of the Law No. 23, 2015, prior subscription of the MOU or other Cooperation Agreements; with jurisdictions where no agreement has been subscribed before, provided they are from the Egmont Group, and by reciprocity.

**List of Memorandums of Understanding (MOU) subscribed by the FIU**

1. Albania	2. Germany	3. Netherlands Antilles	4. Argentina
5. Armenia	6. Aruba	7. Australia	8. Bahamas
9. Bangladesh	10. Barbados	11. Belgium	12. Bermuda
13. Bolivia	14. Brazil	15. Bulgaria	16. Canada
17. Chile	18. Colombia	19. Costa Rica	20. Croatia
21. Curacao	22. Cyprus	23. Denmark	24. Ecuador
25. Egypt	26. El Salvador	27. The Vatican	28. Slovenia
29. Spain	30. United States of America	31. France	32. Georgia
33. Ghana	34. Gibraltar	35. Greece	36. Guatemala
37. Equatorial Guinea	38. Haiti	39. Honduras	40. Hong Kong
41. Hungary	42. Cayman Islands	43. Isle of Man	44. Israel
45. Italy	46. Japan	47. Kazakhstan	48. Kirgizstan
49. Latvia	50. Lebanon	51. Liechtenstein	52. Luxembourg
53. Malta	54. Mexico	55. Monaco	56. Montenegro
57. Nicaragua	58. Nigeria	59. Netherlands	60. Paraguay
61. Peru	62. Poland	63. Portugal	64. United Kingdom
65. Czech Republic	66. Dominican Republic	67. Romania	68. Russia
69. San Marino	70. Saint Martin	71. Saint Vincent and the Grenadines	72. Saint Lucia
73. Serbia	74. Seychelles	75. Sri Lanka	76. South Africa
77. Sweden	78. Thailand	79. Taiwan	80. Togo

<sup>37</sup> Regarding the status of the extradition requests made by Panama to other countries, Panama indicated that they are in process in the required State, and that they could not be closed, since despite the requested persons have been arrested, they have filed remedies against the main proceeding.



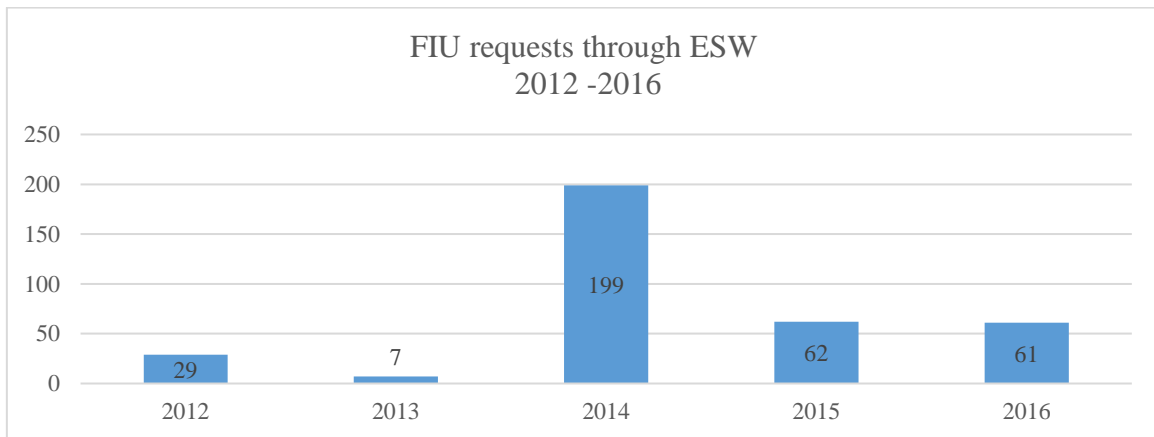
<b>81.</b> Trinidad and Tobago	<b>82.</b> Tunisia	<b>83.</b> Ukraine	<b>84.</b> Venezuela
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Source: Financial Intelligence Unit

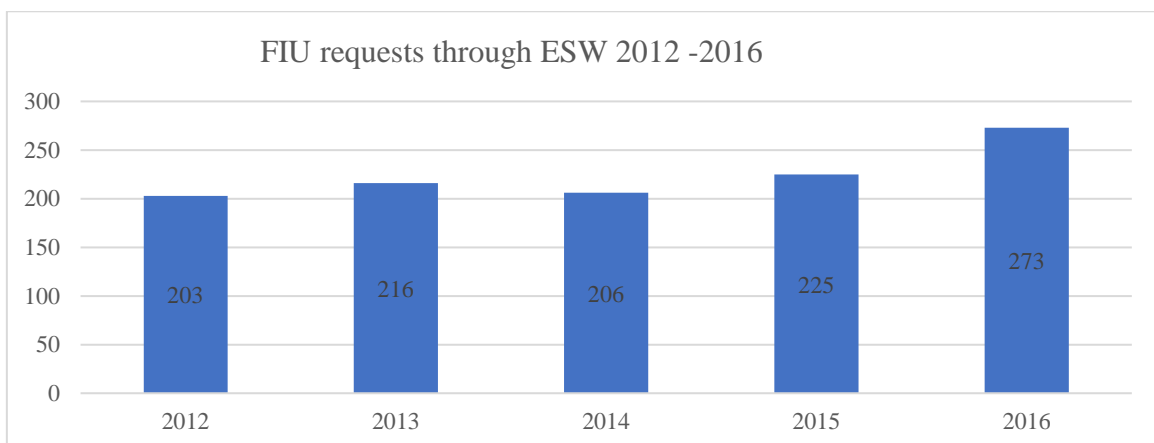
514. The FIU has also subscribed the Regional MOU for combating ML and the TF among the different Financial Intelligence Units of Central America, Colombia and Dominican Republic, as well as the MOU of financial intelligence units from GAFILAT.

515. Likewise, at the beginning of 2017, the FIU subscribed a MOU with the Financial Follow-Up Unit from the Palestinian State regarding cooperation in TF matters, and within the framework of the Coalition objectives against the Islamic State.

516. In the 2012-2016 period, the FIU received 1,123 information requests from similar foreign authorities; during the same period of analysis, the country made 357 requests to similar foreign authorities. From the reports received, it is remarked that 12 has terrorist financing as a predicate offense. In addition, it can be outlined the Subscription of the Memorandum of Understanding with the Financial Follow-Up Unit from the Palestinian State, and the fact that within the Egmont Group, it forms part of the ISIL Project, phase I and II, where documents, such as the typologies study, are developed.



Source: Financial Intelligence Unit



Source: Financial Intelligence Unit

517. Consulting with the FATF Global Network, most of the countries that have provided information on exchange and cooperation with Panama coincide in that the quality and times of response by the FIU have

significantly improved as from 2015, which is attributed to the allocation of personnel specifically dedicated to international cooperation matters, as it was mentioned in the analysis of Immediate Outcome 6. Likewise, it was mentioned that the quality of requests made as from 2015 has increased in relation to the quality of previous requests, which shows that the area dedicated to international cooperation had a positive impact in the manner in which cooperation is sought and provided.

518. In customs matters, the most intensive cooperation of Panama is with Colombia, mainly, and with Costa Rica, countries sharing land borders. Colombia is the country in which a greater exchange and coordination is verified, and this was confirmed by one of the several authorities that works jointly at border crossings, that is the National Border Service (SENAFRONT).

519. In addition to the collaboration among these two neighboring countries, the country has also a cooperation program with United States, mainly aimed at revising such containers and merchandise in transit at the Panamanian ports, and that have such country as final destination. Through such collaboration, United States has provided assistance and support for the acquisition of equipment that allows conducting non-intrusive inspections of shipments to detect radioactive materials, but it is not clear if this applies to all shipments in transit at the Panamanian ports. The Republic of Panama, through the National Customs Authority (ANA), establishes controls for those shipments in transit at the ports. By means of profiles and risk analysis, it is determined those shipments through which, according to risk indicators and the respective profiles, the shipment programming is established at the different ports. Customs is provided with scanners placed at all maritime ports in which non-intrusive inspections of containers are conducted, through warning signs and risk profiles.

520. From the statistical information provided, it is also noted that the ANA only deals with requests received from other countries, while no requests for collaboration have been made.

521. On the other hand, according to the information provided by the customs authority, it is also noted that the country receives a high flow of requests for cooperation, of which, in general, only 50% are answered. In this context, even when the different stakeholders have reinforced their technological and human capabilities to better deal with international cooperation cases, this is still insufficient. The abovementioned can be observed from the requests reported by the ANA in respect to the National Directorate of Taxes and Customs of Colombia, or from the answers given in the framework of the Multilateral Agreement on Customs of Latin America, Spain and Portugal (COMALEP), as well as from the mutual legal assistance treaties.

**Disaggregation of requests and answers per year**

Year	2012	2013	2014	2015	2016
<b>Total requests</b>	376	430	688	807	441
<b>Total answers</b>	243	333	500	460	180
<b>Total requests in process</b>	133				
<b>% of answer</b>	65%	77%	73%	57%	41%

**Total assistances per year through the COMALEP and with the DIAN**

YEAR	COMALEP			DIAN		
	REQUESTS	ANSWERS	IN PROCESS	REQUESTS	ANSWERS	IN PROCESS
2012				376	243	133
2013	6	5	1	430	333	97

2018

2014	16	10	6	688	500	188
2015	46	19	27	807	460	347
2016	20	1	19	441	180	261

522. In the search for other manners of international cooperation, an active participation in maintained at the international level, through the several international forums, such as GAFILAT. Within the framework of this entity, the FIU has organized, between 2015 and 2016, five (5) training courses to keep updated on international standards, and to be able to offer the competent authorities training courses on ML/TF matters. As to the Egmont Group of Financial Intelligence Units, Panama came into this group in 1997, and up to the date, it maintains eighty-four (84) Memorandums of Understanding, and in 2015, participated in two training courses organized by the Egmont Group related to the FIU maturity analysis and strategical analysis.

523. In addition, the country participates in the Expert Group for ML Control (GELAVEX) of the OAS and in the Coalition against the Islamic State (IS), where it has been participating since 2015 in two work commissions that seek to block the possibilities and the access to financing of this terrorist group.

524. As to the cooperation between supervisors, the SMV provided information in relation to the supervision agreements subscribed with similar foreign authorities, which is detailed in the analysis of the respective chapter, and also information on cooperation statistics with similar foreign authorities, where it is noted that, between 2012 and 2017, it provided cooperation to several supervisory entities of the securities market in their respective countries. There is no information in relation to the international collaboration or cooperation that the SMV has requested to its counter parties.

525. The SSRP has subscribed Memorandums of Understanding with the similar foreign authorities of Costa Rica (SUGESE) and Colombia (SFC), both in 2015. In 2015, the SSRP, together with the SFC of Colombia, conducted a joint audit in the framework of the MOU subscribed to increase its effectiveness.

526. The SMV is signatory of the MOU in the framework of the IOSCO, which allows to exchange information with 115 jurisdictions that have subscribed this information exchange agreement. The SMV submitted statistics of international collaborations and/or cooperation to prove its capacity and willingness to cooperate.

527. In relation to the cooperation on police matters, several countries of the Global Network remarked the willingness and capacity of Panama to cooperate in police matters, both in a bilateral manner, and through Interpol or RRAG channels.

#### *International exchange of basic and beneficial ownership information of legal persons and arrangements*

528. During the 2016 period, the FIU received two hundred seventy-three (273) requests, in respect of a total of five thousand nine hundred fifty-five (5,955) natural or legal persons. Such requests were mainly about beneficial ownership information, financial information, corporate information, registries of police records, and information of public property and commercial registries.

529. Only one single country has submitted, through the database of the Egmont Group, a request to ask for cooperation in the collection of information of around three thousand (3,000) natural and legal persons.

530. The result was the referral to the country of more than seven hundred forty-three (743) answers with information related to thousands natural and legal persons, containing: Information of shareholders and directors; beneficial owners of each of the companies; accounts information; information of companies' incorporation; balance sheets and annual profits submitted by these companies.

*Conclusions of Immediate Outcome 2*

531. In global terms, Panama has institutions that may render international cooperation and has incorporated internal rules, in line with the provisions set forth in international conventions. In this framework, it is important to remark the task performed by the FIU in improving the quality and time of response to the requests received, as well as the quality of the requests sent. The foregoing has been acknowledged by several countries of the Global Network.

532. Although Panama does not have tax crimes incorporated as autonomous or ML predicate offense, it could be verified a constructive vision of international cooperation, which seeks to enable cooperation in this type of cases. In this respect, it is sought to extend the analysis of the offenses involved in the requests for cooperation that may be associated to tax crime, and linking this to other offenses. The possibility of exchange of information between tax authorities is also underlined, which could subsequently be requested by the PPO of the requesting country, with the authorization of the General Revenue Office (DGI).

533. Notwithstanding the foregoing, the system requires the incorporation of a solid legal basis to provide international cooperation in ML matters, since the country is limited in their possibility to provide cooperation for tax crimes, category which results very relevant considering the risks identified by the country itself, and the structure of its financial and economic system, and that it impacts on possible limitations to MLA and extradition requests related to ML cases and linked to tax crimes. Likewise, the amendments recommended on beneficial ownership must be made to improve the quality and in-depth analysis in matters of international cooperation.

534. In addition, the country must improve the systematization process of cases or requests of Mutual Legal Assistance annually received, with the purpose of enhancing human, technical and financial resources from the several units that provide international cooperation, and it must also improve the coordination among the different stakeholders, and must give a timely response to the main information requirements received from several countries.

535. In light of the previous analysis, we consider that **Panama has a Moderate level of Effectiveness in the Immediate Outcome 2.**

## TECHNICAL COMPLIANCE ANNEX

TC1. This Annex provides a detailed analysis of the level of compliance with the 40 FATF Recommendations in their numerical order. It does not include a descriptive text on the situation or risks of the country, and it is limited to the analysis of the technical criteria for each Recommendation. It should be read along with the Mutual Evaluation Report.

TC2. The AML/CFT system of Panama has not been previously evaluated by GAFILAT; therefore, this Annex makes a detailed analysis of all the criteria according to the Methodology, to evaluate the technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems, for the fourth round of evaluations, hereinafter the methodology.

### *Recommendation 1 – Assessing risks and applying a risk-based approach*

TC3. *Criterion 1.1* Panama made a NRA which was approved on December 5, 2016, by the National Commission against Money Laundering, TF and Financing the Proliferation of Weapons of Mass Destruction, hereinafter the National Commission, which is the competent authority on the matter and which guided the work development process. The NRA was submitted before the President of the Republic and its cabinet on December 20, 2016, and later, an evaluation socialization event was made on January 24, 2017, with 356 attendees from the public and private sector.

TC4. The document produced is available for the general public, through the Web site of MEF, at the following hyperlink: <http://www.mef.gob.pa/es/Documents/Evaluacionde%20RiesgoPanama.pdf>

TC5. In the document resulting from the work developed, it is mentioned that the main risks on ML matters for Panama derive from external criminal threats, which make a misuse of Panama's characteristics as an important financial and connection center in land transport (a link between Central America and South America), maritime transport (link between the Pacific Ocean and the Atlantic Ocean) and air transport (with Tocumén Airport). As to TF risks, they are rated as low considering the sectors most likely to be used to finance the terrorism, the characteristics of remittances received and referred by Panama, and the absence of terrorist groups, as they have been identified by the UN. It is important to point out that the NRA evaluated mainly terrorism risk and not TF risk.

TC6. However, the NRA approved does not consider one of the main risks currently experienced by the country in terms of income from criminal activities, which is the receipt of funds or other financial assets derived from tax crimes committed abroad. On the other hand, the report does not go further enough on the analysis of existing risks in each of the different activity sectors identified as vulnerable (attorneys, free zones, realtors, etc.), with the purpose of adopting adequate mitigating measures in each sector.

TC7. *Criterion 1.2* As established in Article 5 of the Law No. 23, 2015, the National Coordination System for the Prevention of ML/TF/FPWMD, was created, and this is comprised by:

- a) The National Commission against ML, TF and FPWMD.
- b) The FIU for the Prevention of the Crime of Money Laundering.
- c) Supervisory entities.

TC8. The creation of the National Commission is established in Article 6 of the same law, and is comprised by the following national authorities:

- the Ministry of Economy and Finance (who will act as Chairman of the Commission and the Deputy Minister of Finance, in absence of the Minister);

- the Minister of Foreign Relations;
- the Minister of the Presidency;
- the Superintendent of Banks of Panama (in his capacity as Chairman of the Financial Coordination Committee);
- the General Attorney of the Nation;
- the Director of the Financial Intelligence Unit for the Prevention of Money Laundering and TF, hereinafter FIU, and;
- the President of the Commission on Economy and Finance of the National Assembly.

TC9. Furthermore, the Executive Secretary of the Security Council will participate with the right of voice at the respective sessions; the Technical Secretariat of the National Commission will be attached to the Ministry of Economy and Finance.

TC10. Through this Coordination System, the competent authorities cooperate and coordinate the development of policies and the implementation of policies and activities to prevent ML/TF and FPWMD.

TC11. *Criterion 1.3* Article 8 of the Law No. 23, 2015, provides that within the functions of the National Commission, it shall “[a]pprove national strategies for the Crimes of Money Laundering, TF and Financing the Proliferation of Weapons of Mass Destruction, in order to take measures to mitigate national risks, efficiently manage available resources, and adopt decisions for its enforcement on reporting institutions, [...] and activities performed by professionals subject to supervision [...]”, and “[m]onitor the National Risk Assessment Plan for the prevention of the Crimes of Money Laundering, TF and Financing the Proliferation of Weapons of Mass Destruction”, and “[e]stablish policies for the prevention of the crimes[.]”

TC12. Article 8 sets forth that the National Commission shall be in charge of monitoring the National Risk Assessment Plan and establishing policies for the AML/CFT/PWMD, and it shall gather with a minimum frequency of four times a year. The NRA document will be updated every two years.

TC13. *Criterion 1.4* As previously mentioned, the NRA was published at the MEF Web site, and is available to any person or entity for consulting and downloading. It has also been published at the FIU, IPACOOOP and financial supervisors' Web pages. Article 8 of the Law No. 23, 2015, provides in para. 5 that reports on measures and actions carried out based on the NRA will be submitted to the Cabinet Council.

TC14. In addition, the respective supervisors and the FIU have issued guidelines of warning signs and typologies for reporting institutions, for the management and mitigation of risks in line with the NRA. On the other hand, as it was previously mentioned, the NRA report does not go further enough on the analysis of existing risks in each of the different activity sectors identified as vulnerable (attorneys, free zones, realtors, etc.), so the available information is very general and does not allow the reporting subjects to adopt adequate mitigating measures in each sector.

TC15. *Criterion 1.5* As from the NRA results, Panama has outlined an action plan to deal with the vulnerabilities detected, including measures to be adopted by the public sector and by the several sectors of reporting institutions. However, policies and activities implemented by competent authorities are not consistent with all risks identified in the country and significant vulnerabilities have not been attended by the National Strategy.

TC16. *Criterion 1.6.* There are no exceptions to the implementation of the recommendations established for financial reporting institutions.

TC17. *Criterion 1.7* As abovementioned, based on the provisions set forth in Article 3 of the Executive Decree No. 363, 2015, the reporting institutions, whether financial or not, and the professionals subject to AML/CFT supervision must implement the RBA “[...] aimed at identifying, assessing, monitoring,



managing and mitigating risks related to ML/TF; to that purpose, they shall implement basic, simplified or enhanced CDD processes and measures, depending on the risk level to which they could be exposed.” This provision should be supplemented with the issuance of more detailed sector- risk guidelines to allow the RIs applying adequate mitigating measures.

TC18. *Criterion 1.8*. In the event of non-financial reporting institutions and activities of professionals subject to supervision, the Law No. 23 contemplates certain limitations in CDD measures –basic CDD, identification and monitoring of the customer's activity– which will be duly supported in a risk analysis of the activity. On the other hand, Article 3 of the Executive Decree No. 363, 2015, indicates that reporting institutions must implement a risk-based approach (RBA), according to which they may establish simplified measures when low ML/TF risks are identified. The Executive Decree itself sets forth in Article 10 simplified CDD measures, including among them, the reduction of the documentary review process, the reduction of the frequency of updates of the customer’s identification, and the reduction of the monitoring of the business relationship, and the scrutiny of transactions that do not exceed the minimum threshold established by supervisory entities. CDD measures are addressed with further detail in the analysis of the Recommendation 10. This provision should be supplemented with the issuance of more detailed sector- risk guidelines to allow the RIs applying adequate mitigating measures.

TC19. *Criterion 1.9* Article 20 of the Law No. 23, 2015, establishes the powers of supervisory entities, among which it is mentioned the supervision of due compliance with legal provisions on AML/CFT matters established in the legal framework; likewise, Article 20 of the Executive Decree No. 363, 2015, which regulates said Law, indicates the power of the supervisory entities to “[...] verify due compliance with the mechanisms for the prevention and control of the risks of money laundering, TF and financing the proliferation of weapons of mass destruction, adopting a risk-based approach to supervision that will permit the supervisor to clearly understand the risks at which the reporting institution is exposed [...]”

TC20. Beyond the powers of the supervisory entities, there are activity areas requiring a greater presence of supervisors to ensure compliance with the law, especially on the trust sector, and in the most vulnerable sectors of the DNFBPs (realtors, free zones and attorneys).

TC21. *Criterion 1.10* This criterion is contemplated in Article 26 of the Law No. 23, 2015, and provides as follows: “The financial reporting institutions, the non-financial reporting institutions and the activities performed by professionals subject to supervision, shall maintain, in their transaction, CDD and care to reasonably prevent that these transactions are carried out with funds or resulting from activities related to the crimes of money laundering, TF and financing the proliferation of weapons of mass destruction. The mechanisms for customer and/or beneficial owners identification; as well as the verification of information and documentation, will depend on the risk profile of the financial reporting institutions, the non-financial reporting institutions and the activities performed by professionals subject to supervision, by considering the types of customers, products and services offered, the distribution or commercialization channels used, and the geographic location of their facilities, and that of their customers and/or beneficial owners. These variables, either separately or in combination, can increase or decrease the potential risk posed, thus impacting the level of CDD measures. In this sense, there are circumstances where the risk of money laundering, TF and financing the proliferation of weapons of mass destruction is higher, and stricter measures must be taken, and in circumstances, in which the risk can be minor, provided that there is an appropriate risk analysis, simplified DDC measures may be applied.”

TC22. However, the obligation to document the risk assessment made in not established, as required in para. a) of this Criterion. It must also be considered that in the same Article, the obligation to keep updated the so mentioned information is only established for reporting institutions of the financial sector; therefore,



the non-financial sector does not have the obligation to keep updated the customers' risk assessments mentioned in para. c) of this Criterion.

TC23. *Criterion 1.11* For financial and non-financial reporting institutions, this criterion is contemplated in the Law No. 23, 2015, which provides as follows: “Article 40. Control designs for the implementation of preventive measures on a risk-based approach. Financial reporting institutions and non-financial reporting institutions must implement a risk-based approach, which involves an assessment of the products and services offered and to be offered to the customers, as well as the geographic location in which the reporting institution offers and promotes its services and products.” In addition, the mentioned Article sets forth that reporting institutions must design controls according to the degree of complexity of their activities, perform predictive analysis to sensitize on the risks that may affect the products, and consider the use of technological tools to add effectiveness to the functions of prevention.

TC24. *Criterion 1.12* Art. 3 of Executive Decree 363 of 2015 states that RIs should implement a RBA, based on which they may establish simplified measures when low ML/TF risks are identified. Rt. 10 of the Executive Decree also establishes simplified DDC measures, including reducing document review, reducing the frequency on updates of customer identification information and reducing monitoring of the business relationship and transactions under the legal thresholds established by supervisors. However, the regulations do not restrict the application of simplified DDC to cases of verified low ML/FT risk.

### *Weighting and conclusion*

TC25. Panama has drafted a NRA to identify and evaluate the risks of the country, which was approved on December 5, 2016. By way of this Coordination System, the competent authorities cooperate and coordinate the development of policies and implementation of policies and activities to prevent ML/TF/FPWMD.

TC26. However, the NRA approved does not consider one of the main risks currently experienced by the country in terms of income from criminal activities, which is the receipt of funds or other financial assets derived from tax crimes committed abroad. On the other hand, the report does not go further enough on the analysis of existing risks in each of the different activity sectors identified as vulnerable (attorneys, free zones, realtors, etc.), with the purpose of adopting adequate mitigating measures in each sector. Additionally, national policies and activities implemented by the competent authorities are not consistent with all risks identified in the country, significant vulnerabilities have not been attended by the National Strategy. **Recommendation 1 is rated as Largely Compliant.**

### *Recommendation 2 - National cooperation and coordination*

TC27. *Criterion 2.1* In May 2017, Panama approved the “National Strategy for Combating Money Laundering, TF and the Proliferation of Weapons of Mass Destruction”, which was officially submitted on May 10, 2017.

TC28. This document was drafted by the National Commission against ML/TF/FPWMD, based on the NRA results and with the technical support of the IMF, and established the Strategic Priorities of the country divided in five pillars: Transversal, Institutional, Prevention Component, Detection and Intelligence Component, and Investigation and Criminal Justice Component. Based on these pillars, the so-called Action Plan was developed, which determines several objectives and actions to develop up to December 2020, designating the responsible agencies, and the expected implementation dates in each case.

TC29. However, it is considered that there are some relevant aspects that should be further analyzed to adequate the regulatory framework to the current standards and mitigate the risks identified in some sectors, significant vulnerabilities have not been attended in the National Strategy. On the other hand, it is highlighted that the absence of criminalization of the tax crime represents a risk not identified by the NRA. Although, later, the National Strategy has acknowledged the need to incorporate it as a ML predicate offense, it is considered that subsequent measures must be taken for the adequate incorporation of the criminal type to the Panamanian legal regime in the possible shortest term.

TC30. The lack of criminalization of the tax crime as a ML predicate offense enhances the risks in some vulnerable sectors, such as the financial sector, the corporate sector and the free zones.

TC31. In addition, the current control mechanisms of operation of the corporate service sector are not considered enough to mitigate the risks associated to the operation of Panamanian corporations and private-interest foundations, especially in the offshore sector.

TC32. *Criterion 2.2* By means of the Law No. 23, 2015, the National Commission is established as an entity formed by several authorities with jurisdiction in matters of prevention and combating the crimes of ML/TF/FPWMD, while it has the function of establishing ML/TF/FPWMD prevention policies and monitoring the National Risk Assessment Plan.

TC33. *Criterion 2.3* Article 5 of the so mentioned law indicates that the Panamanian AML/CFT/CFPWMD system is comprised by the following institutions: the National Commission, the FIU and the supervisory entities, which pursuant to Article 19, are listed below: The Superintendence of Banks of Panama, the Superintendence of Insurance and Reinsurance of Panama, the Superintendence of the Securities Market, the Intendency of Supervision and Regulation of Non-Financial Institutions, and the Panamanian Autonomous Cooperative Institute. If so required, the National Commission may consult any other public institution, unions or associations representing reporting institutions. The National Commission, in addition to the functions mentioned in the previous Criteria, will also have the power to coordinate the participation of Panama in international forums related to ML/TF/FPWMD prevention and combating.

TC34. *Criterion 2.4* The scopes of jurisdiction of the National Commission, and the system as a whole, are applicable for the FPWMD prevention.

### *Weighting and conclusion*

TC35. Panama has the National Commission against Money Laundering, TF and Financing the Proliferation of Weapons of Mass Destruction which allows coordinating the activity of authorities with jurisdiction on prevention matters, and under its scope, the National Strategy against ML/TF/FPWMD has been drafted. However, the measures provided in the Action Plan do not satisfactorily deal with all the risks faced by the country; therefore. **Recommendation 2 is rated as Partially Compliant.**

### *Recommendation 3 – Money Laundering Offense*

TC36. *Criterion 3.1* The criminal type considered in the Panamanian legal framework is that of “money laundering”, as established in Articles 254 to 259 of the Criminal Code; in accordance with Article 254, the crime of money laundering is committed by whoever whether “[...] personally or through another person, receives, deposits, trades, transfers or converts monies, securities, property or other financial resources, reasonably foreseeing that they come from activities related to international bribery offenses against the Law of Copyright and Related Rights, the Rights of Industrial Property, Illicit Migrant Trafficking, Human Trafficking, human organs trafficking, offenses against the Environment, Commercial Sexual Exploitation,

offenses against the Legal Status of the State, against the Legal Security of Electronic Means, qualified fraud, Robbery, Financial Crimes, kidnapping, extortion, murder for money or reward, Embezzlement, Corruption of Public Officials, Illicit Enrichment, Pornography and Corruption of Minors, international trafficking of stolen vehicles, its parts and components, Forgery of Documents in General, omission or falsification of travelers' customs declarations with respect to monies, securities or negotiable instruments, counterfeiting of currency and other securities, offenses against the National Historic Landmark, offenses against the Public Safety, Terrorism and TF, offenses related to Drugs, Piracy, Organized Crime, Illicit Association, Ganging, Illicit Arms and Explosives Possession and Trafficking, and Violent Appropriation and Theft of Illicit Material, traffic and reception of goods coming from crime, smuggling, and customs fraud, with the purpose to hide, disguise or conceal its illicit origin, or whoever helps evade the legal consequences of such offenses, will be punishable by 5–12 years in prison.”

TC37. In addition to the conducts above mentioned, Article 255 establishes that the same sentence shall be applied to anyone who “[not] having participated, but knowing the origin, hides, conceals or prevents the determination, origin, location, destination or ownership of money, goods, securities or other financial resources, or helps to take advantage therefrom, when these arise, or have been obtained, whether directly or indirectly, from any of the illicit activities mentioned in the above Article, or that otherwise, helps to take advantage therefrom”, who “performs transactions, whether personally or through another person, whether a natural or legal person, at a banking, financial or commercial facility, or of any nature whatsoever, with money, securities or other financial resources arising from any of the activities mentioned in the above Article”, or who “personally, or through another person, whether a natural or legal person, provides another person or banking, financial or commercial facility, or of any nature whatsoever, with false information for opening a bank account or for conducting transactions with money, securities or other financial resources arising from any of the activities mentioned in the above Article”. Other form of participation is set forth in Article 257, indicating that a person who “[...] uses his or her office, job, occupation or profession to authorize or allow the commission of the crime of money laundering [...]” shall be punishable by imprisonment.

TC38. The Criminal Code establishes specific provisions for public officials or candidates to public offices: the use of resources from illicit origin for the financing of political campaigns, or of any nature, is criminalized in Article 256; also, under the terms of Article 258, it is prescribed that “[a] public official who conceals, alters, removes or destroys evidence or proof of crime related to money laundering, or procures the escape of the person arrested, detained or sentenced, or who receives money or other benefits in order to help or hurt any of the parties to the proceedings, shall be sentenced to 3-6 years in prison.”

TC39. *Criterion 3.2* ML predicate offenses in Panama are expressly mentioned in the criminalization of the offense set forth in Article 254 of the Criminal Code. In this manner, thirty-seven offenses considered as serious in the legal framework of Panama are money laundering predicate offenses. However, a tax crime category as ML predicate offenses is not found in the list of ML predicate offenses included in the glossary of the FATF recommendations. According to the analysis of the evaluation team, this omission impacts in one of the main risks identified, which is the placement of assets arising from offenses committed abroad.

TC40. *Criterion 3.3* It is not applicable, since a threshold approach is not applied for the determination of ML predicate offenses, instead, a restrictive list of predicate offenses is made.

TC41. *Criterion 3.4* In accordance with the criminalization of ML set forth in Article 254 of the Criminal Code, this applies to “[...] money, securities, property or other financial resources [...]” reasonably foreseeing that they come from such criminal conducts expressly mentioned in said Article. In accordance with Article 2 of the Law No. 23, 2004, by means of which the Palermo Convention is ratified, it is mentioned

what kind of property will be involved “[...] property of any kind, physical or not, personal or real, tangible or intangible, and documents or legal instruments that certify the ownership or other rights over said property.”

TC42. Although in the criminal type referred to in Article 254, it is not found an express reference that applies to indirect proceeds from predicate offenses, Article 29 of the Law No. 23, 1986, as amended by the Law No. 57, 2013, provides that it may be confiscated, such property related, whether directly or indirectly, to the commission of a range of crimes, among which it is ML. In relation to the participation, object of Article 255, it is verified the express reference to the advantage coming indirectly from the illicit activities listed as predicate offenses.

TC43. *Criterion 3.5* As prescribed by Article 24 of the Criminal Code, those conducts set as criminal offenses in the Code, such as ML, or established as such in other laws, shall be deemed as offenses. In accordance with Article 254 of the Criminal Code, for the configuration of the crime of ML, it is enough that the person receives, deposits, trades, transfers or converts monies, securities, property and other financial resources, reasonably foreseeing that they come from activities related to international bribery offense, that is, it is not necessary the criminal verification of the predicate offense.

TC44. *Criterion 3.6* As set forth in Article 19 of the Criminal Code, Panamanian legal regulations shall apply, even for offenses committed abroad, when they involve offenses against Humanity, against the Legal Status of the State, against the Public Health, against the National Economy and against the Public Administration. Under the terms of Article 20, the Panamanian law shall apply to such offenses committed abroad which produce consequences in the national territory; which are committed in detriment of a Panamanian person; which are committed by Panamanian diplomatic agents, officials, or employees not judged by immunity reasons, or whose extradition to a foreign country has been denied. However, there is no express provision indicating that predicate offenses committed abroad may serve as basis for ML prosecution in Panama.

TC45. *Criterion 3.7* As established in the Criminal Code, the author of an offense is anyone who performs the conduct, whether personally or through another person (Article 43); furthermore, under Article 254 of the Criminal Code, whereby money laundering is set as a criminal offense, similar terms are prescribed. No obstacle is observed so that a person who commits the predicate offense may also be prosecuted for ML.

TC46. *Criterion 3.8* Article 26 of the Criminal Code provides that a conduct shall be deemed as an offense if this is willfully performed, except in such cases prescribed in the Code. In addition, as established in Article 2046 of the Judicial Code, an offense shall be verified with an exam conducted by an expert, specialist or witnesses, as well as by evidence, scientific means or any other rational means, that allow convincing the judge, provided they are not prohibited by law or against the moral or public order.

TC47. *Criterion 3.9* Articles 254 and 255 of the Criminal Code prescribe a minimum penalty of five (5) years in prison, and a maximum penalty of twelve (12) years applicable to the commission of ML. The same penalty shall be applied to anyone who performs the conduct, whether personally or through another person; to anyone who hides or conceals, or to anyone who conducts transactions or provides with facilities. Anyone who receives or uses resources, knowingly that they come from ML, for the financing of political campaigns, shall be punishable by 5-10 years in prison; in addition, anyone who uses his or her office or profession to allow or authorize such crime, shall be punishable by 5-8 years in prison.

TC48. The application of penalties specifically established for the crime of ML, under the terms above mentioned, may also be related to other crimes, in which case penalties shall accumulate, provided they are not greater than 50 years in prison, which is the maximum penalty in the Criminal Code.

TC49. *Criterion 3.10* Article 51 of the Criminal Code prescribes that when a legal person is used for committing an offense, the following penalties may be applied: 1. Cancellation or suspension of the license or registry for a term not greater than five years; 2. Fine not less than PAB 5,000 [USD 5,000] and not greater than the double of the damage or economic benefit; 3 Total or partial loss of tax benefits; 4. Disqualification to hire with the Government, whether directly or indirectly, for a term not greater than 5 years, which shall be imposed together with any of the above penalties; 5. Company dissolution, and; 6 Fine not less than PAB 25,000 [USD 25,000] and not greater than the double of the damage or economic benefit, in the event that the legal person involved is the transport service provider through which the drug is introduced in the national territory.

TC50. *Criterion 3.11* Articles 43 to 47 of the Criminal Code, there is a description of the grounds on which a person is author of an offense and on which a person is accomplice, as follows:

- Author: anyone who perpetrates, personally or through another person, the conduct described in the criminal type.
- Primary accomplice: is who participates in the execution of the offense, or provides assistance to the author without which he could not have committed the crime.
- Secondary accomplice: is who helps the author to commit the crime, or who conceals the product of the crime.
- Instigator: is whoever prompts other to commit crimes.

TC51. In addition, Article 328-A indicates that whoever belongs to an organized group with the purpose of committing “[...] any of the crimes of money laundering, offenses related to drugs, precursors and chemical substances, human trafficking and human organs trafficking, illicit arms, munitions and explosives trafficking, terrorism and TF, commercial sexual exploitation and pornography with minors, kidnapping and extortion, murder and grievous bodily or psychological injuries or theft and robbery of vehicles, its parts or components, genetic manipulation, piracy, financial crimes, offenses against the Public Administration, against the national historical landmark, the counterfeiting of currency and other securities [...]” shall be punishable.

### *Weighting and conclusion*

TC52. In general terms, almost all the specific requirements established in the criteria of the interpretative notes are met, since the country has set ML as a criminal offense based on the International Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1998 (Vienna Convention) and on the United Nations Convention against Transnational Organized Crime of 2000 (Palermo Convention). Money laundering has been set as an autonomous offense in Articles 254 to 259 of the Criminal Code, adopted by the Law No. 14 on May 18, 2007, and the respective amendments thereof introduced by the Law No. 30, 2010, the Law No. 67, 2010, the Law No. 1, 2011 and the Law No. 40, 2012.

TC53. However, considering the country context, in which it has been identified that the main risk of ML comes from abroad, and that there is a high number of companies created to operate in the international market, the deficiency cannot be considered as minor, since, in the opinion of the evaluation team, it is one of the main risks of ML affecting the country; therefore, we understand that **Recommendation 3 is rated as Partially Compliant**.



#### ***Recommendation 4 - Confiscation and provisional measures***

TC54. *Criterion 4.1* The accessory penalty for confiscation is defined by Article 75 of the Criminal Code, as follows: “Confiscation consists in the forfeiture of property, assets, securities and instruments used or derived from the commission of offenses. Such property, assets, securities and instruments belonging to third parties who are not liable for the crime are excluded.” It is important to remark that, under the terms of Article 12 of the Criminal Code, the confiscation of instruments used for the commission of crimes, shall not be prevented from the penalty extinction.

TC55. Article 7, para. 9 of the Law No. 11, 2015, prescribes the seizure or confiscation of personal or real property, monies, securities, goods or assets proceeds of crime, coming from instruments used, or intended to be used in a criminal act, or for terrorist financing, and goods of equal value.

TC56. *Criterion 4.2* As to the application of provisional measures, as prescribed in the Criminal Procedure Code, in Article 252, it is contemplated the seizure of “[...] instruments, personal or real property, monies, securities and products derived or related to the commission of crimes against the Public Administration, money laundering, terrorist financing, drug trafficking and related crimes [...]”, which shall be in custody of the MEF, until a competent court decides on such measures. For the above-mentioned purposes, Article 258 of the Criminal Procedure Code provides that MP shall inform the Criminal Magistrate Judge on the provisional measures ten days following their enforcement, when they have not been ordered by the Judge. In addition, as prescribed by Article 29 of the Law No. 23, 1986, as amended by the Law No. 57, 2013, the property seizure order shall be registered with the PR when deemed convenient.

TC57. Regarding the incorporation of measures to investigate, searching for the identification and tracking of property, by means of the Resolution No. 25, 2016, the PGN created the ML/TF Specialized Unit to support prosecutors in complex financial investigations, developing heritage research and assisting with ML criminal investigation strategy.

TC58. *Criterion 4.3* Article 6 of Law No. 34, 2010, provides that “[t]he action is filed against any property right, principal or accessory, regardless the person in possession of the property provisionally seized, or the person who has acquired them. It is excluded the right of third parties in good faith who prove having paid the property at the market value.” Also, Article 6 sets forth that any third party who owns property that must be seized may act as custodian of such property. On the other hand, and in relation to the seizure of companies or businesses with two or more owners and/or shareholders, Article 252 of the Criminal Procedure Code establishes that the seized property shall only be such property related to the crime commission, and the third parties' rights affected shall be acknowledged.

TC59. *Criterion 4.4* In relation to the management and disposal of property and funds provisionally confiscated or retained, the Law No. 34, 2010, determines the provisional seizure of personal and real property, securities and products derived or related to the commission of crimes against the Public Administration, ML, TF, drug trafficking and related crimes, and they shall be in custody of the MEF, until a final court decision is rendered.

TC60. In addition, Article 35 of the Law No. 23, 1986, as amended by the Law No. 57, 2013, provides that when the confiscation of property used for, or product of, a crime is ordered “[...] in personal or real property in respect of which a confiscation sentence has been rendered, the MEF may dispose of this property for its use and administration, or donation, in favor of public institutions or non-profit organizations, aimed at activities of verified national or social interest. [...] In the event that the MEF orders the auction of confiscated property, the proceeds of the sale, in compliance with all legal formalities for such purposes, shall be deposited at a Special Confiscated Property Account.”

TC61. In addition to the foregoing, Article 253 of the Criminal Procedure Code provides that upon a provisional confiscation of monies and securities, they shall be kept at the financial institution where they are placed, and they shall continue accruing interest, in accordance with the original terms; in the event they are not placed in any institution, they shall be deposited at the National Bank of Panama, in the Custody Fund account of the PGN, with the exception of the offenses of human trafficking and organized crime, for which there are special funds.

TC62. The foregoing makes reference to the possibility of Panamanian authorities for disposing of confiscated property. However, there is no provision related to property administration with the aim of avoiding the property value loss, with the only exception of money or securities that shall be kept at the origin account, or at an account opened at the BNP.

### *Weighting and conclusion*

TC63. **Recommendation 4 is rated as Compliant.**

### ***Recommendation 5 – Terrorist Financing Offense***

TC64. *Criterion 5.1* The criminalization of TF is defined by the Article 294 of the Criminal Code, as follows: “Whoever, whether individually or collectively, directly or indirectly, provides, organizes or collects funds or assets, of licit or illicit origin, with the intention of financing, in whole or in part, the commission of terrorist acts, or any other act aimed at causing death or grievous bodily injury to the population, when the purpose of such act, by its nature or context, is disturbing public peace or intimidating population, or obliges a government or an international organization to perform an act, or refrain from performing it, or the existence of individual terrorists, terrorist groups or organizations, or in any other manner acts in their benefit, shall be punishable by 25-30 years in prison”.

TC65. Furthermore, the International Convention for the Suppression of the Financing of Terrorism was incorporated to the Panamanian legislation by the Law dated May 22, 2002.

TC66. *Criterion 5.2* Article 294 of the Criminal Code provides that the same penalty applies to “[...] whoever provides, organizes, collects, or makes available resources, funds or assets, personal or real property, at the disposition of individual terrorists, or terrorist groups or organizations, regardless that these are to be used in the effective commission of one of the crimes mentioned.”

TC67. *Criterion 5.2bis* In accordance with the drafting of the Article 294 of the Criminal Code, the crime of TF shall be applicable to the funds used for a) terrorist acts or “[...] any other act aimed at causing death or grievous bodily injury to the population [...],” as well as b) the existence of individual terrorists or terrorist groups, and c) in any other manner acts in benefit of individual terrorists or terrorist groups. Although there is no express prohibition against the financing of terrorist travel, or attempt of terrorist travel, or terrorist training, Panama remarks that the financing of terrorist travel may be included according to b) an c), particularly, when the travel is aimed at training an individual terrorist or terrorist group, since this training is for their benefit.

TC68. *Criterion 5.3* The criminal type included in Article 294 expressly indicates that it applies to “[...] funds or assets, or licit or illicit origin [...]”

TC69. *Criterion 5.4* The criminal type set forth in Article 294 of the Criminal Code provides that the crime of TF will be committed by anyone who provides resources or funds “[...] regardless that these are to be used in the effective commission of one of the crimes mentioned [terrorist acts]”.



TC70. *Criterion 5.5* As established in Article 2046 of the Judicial Code, an offense shall be verified with an exam conducted by an expert, specialist or witnesses, as well as by evidence, scientific means or any other rational means, that allow convincing the judge, provided they are not prohibited by law or against the moral or public order.

TC71. *Criterion 5.6* The penalty for the commission of the crime of TF, pursuant to Article 294 of the Criminal Code, shall be between twenty-five (25) and thirty (30) years in prison.

TC72. *Criterion 5.7* As mentioned in the analysis of the Criterion 3.10, Article 51 of the Criminal Code prescribes that when a legal person is used for committing an offense, the following penalties may be applied: 1. Cancellation or suspension of the license or registry for a term not greater than five years; 2. Fine not less than PAB 5,000 [USD 5,000] and not greater than the double of the damage or economic benefit; 3 Total or partial loss of tax benefits; 4. Disqualification to hire with the Government, whether directly or indirectly, for a term not greater than 5 years, which shall be imposed together with any of the above penalties; 5. Company dissolution, and; 6 Fine not less than PAB 25,000 [USD 25,000] and not greater than the double of the damage or economic benefit, in the event that the legal person involved is the transport service provider through which the drug is introduced in the national territory.

TC73. These measures do not exclude the responsibility of natural persons for the same offense, under the respective penalties of imprisonment and confiscation.

TC74. *Criterion 5.8* Article 48 of the Criminal Code establishes the attempt for the commission of a crime, in such cases in which the commission of a crime is initiated by clear acts towards its perpetration, but the crime is not executed for reasons other than the author's will. Furthermore, as mentioned in the analysis corresponding to criterion 3.11, primary and secondary accomplices are contemplated. Article 294 of the Criminal Code provides that whoever organizes or collects funds linked to the crime of TF will be punishable. Also, Article 324-A of the Criminal Code punishes whoever belongs to an organized criminal group, which individually or collectively, has the intention of committing the crimes of terrorism and terrorist financing, among others.

TC75. *Criterion 5.9* As mentioned in the analysis of Criterion 3.1, under the terms of Article 254, the crime of money laundering will be committed by whoever “[...] personally or through another person, receives, deposits, trades, transfers or converts monies, securities, property or other financial resources, reasonably foreseeing that they come from activities related [...]” to such listed offenses, among which it is found terrorism and TF; therefore, the TF is effectively a ML predicate offense.

TC76. *Criterion 5.10* Under the terms of Article 21 of the Criminal Code, the Panamanian criminal law shall apply to whoever commit the offenses provided in such treaties where Panama is a party, when territorial jurisdiction is granted, regardless of the place of the crime commission and the nationality of the accused.

### *Weighting and conclusion*

TC77. Panama criminalized the crime of terrorist financing in Article 294 of the Criminal Code, and ratified the International Convention for the Suppression of TF, although there is still uncertainty whether to apply the crime of terrorist financing to the financing of terrorist travel, attempt of terrorist travel, or terrorist training. Article 294 applies both to the financing of terrorist attempts and to the terrorist acts actually performed. There is no express criminalization of penalties applicable to travel with terrorist purposes. However, the criminalization of the crime of TF is broadly interpreted by the Panamanian authorities, and includes the crime of travel with terrorist purposes. **Recommendation 5 is rated as Largely Compliant.**

### ***Recommendation 6 - Targeted financial sanctions related to terrorism and TF***

TC78. *Criterion 6.1* The MIRE is the authority in charge of coordinating the communications with the Sanctions Committees derived from the UNSCR 1267/1988/1989, and the designations made by foreign countries, in accordance with the terms of the UNSCR 1373. The foregoing is established in Article 12 of the Executive Decree No. 324, 2016, where it is provided that the MIRE shall be in charge of reporting, through diplomatic channels and upon deliberation of the National Security Council, to the respective Committee of the UNSC, and receiving response from the latter, to subsequently report to the National Security Council and the FIU.

TC79. The designation criteria with relation to the UNSCR 1267(1999) and 1988(2011), and their successor resolutions, as established in the Executive Decree No. 587, 2015, are the following:

- “a) Any individual or entity involved in financing, planning, facilitating, preparing or perpetrating acts or activities by, along with, under the name of, on behalf of, or in support of supplying, selling or transferring weapons and related material; recruiting for, or in any other way supporting acts or activities performed by Al-Qaeda or the Taliban, or any cell, affiliate, dissident or derived group; or
- b) Any company belonging to or controlled directly or indirectly by an individual or entity identified in the above paragraph, or by individuals acting on his/her/its/their behalf or direction.”

TC80. The national authorities requesting the inclusion of an individual or entity in the list of designated individuals and entities, must collect and deliver all the information that meets inclusion requirements to the National Security Council. Compliance with the above-mentioned criteria shall be revised by the National Council, following the procedure set forth in Article 12, para. 2, of the Executive Decree No. 587, which prescribes as follows: “The National Security Council, upon analyzing the results investigated of the request made by the national authority, if it deems the request appropriate, will immediately instruct the Executive Secretary to inform the MIRE, so that it notifies the relevant United Nations Security Council Committee through diplomatic channels; and the MIRE shall await its reply. Upon receipt of the answer, the MIRE shall notify the national authority, the National Security Council and the FIU.”

TC81. In relation to the reasons or “reasonable grounds” to make designations proposals to the Sanctions Committee, Article 3, para. 1, of the Executive Decree No. 587, 2015, provides the definition of “reasonable grounds” for the designation based on the UNSCR 1373, which is reinforced in Article 20 of said law. Article 17 of the same Decree sets forth the necessary criteria to propose an individual or entity for designation, based on the UNSCR 1267/1988, which must be justified on reasonable grounds. Furthermore, in accordance with Article 18, para. 1, the national authority requesting the designation of the individual or entity has to make a reasoned or justified request, that is, on “reasonable grounds” for the analysis of the National Security Council before delivery to the MIRE.

TC82. Panama has incorporated standard procedures and forms from the list, adopted by the Committees 1267/1989 and 1988, in its Procedures Manual on Targeted Financial Sanctions related to Terrorism, TF and the Proliferation of Weapons of Mass Destruction (Preventive Freeze).

TC83. *Criterion 6.2* The competent authority to make the designation of individuals or entities falling under the scope of the UNSCR 1373, is the National Security Council, in accordance with the Executive Decree No. 587, 2015; under the terms of the Article 20 of said law, the National Security Council will issue an administrative order placing the individual or entity on the national list, and will immediately inform the FIU to start the respective freeze. The foregoing is made by the Prevention Committee against Terrorism and Terrorist Financing, at the Executive Secretariat of the National Security Council, as prescribed by

Article 7 of the Executive Decree No. 324, which will have the function to study and evaluate the requests for inclusion made by authorities, both national and foreign authorities, for the designation before the UNSC.

TC84. With the purpose of identifying a prospective individual or entity for designation, based on the criteria of the UNSCR 1373, Article 17 of the Executive Order No. 587, 2015, prescribes as follows:

- Any individual or entity committing or attempting to commit terrorist acts, or that is involved in, or facilitating the commission of terrorist acts;
- Any individual or entity belonging or controlled, directly or indirectly, by any designated individual or entity; or
- Any individual or entity acting on behalf of, or under the direction of, any designated individual or entity.

TC85. Article 10 of the Executive Order No. 324, 2016, provides that the procedure to be followed by the Prevention Committee against Terrorism and Terrorist Financing of the National Security Council for the designation, is the following:

- Develop an identification profile of natural or legal persons, including their geographic location, who are related to terrorism indicators and its financing;
- Study intelligence indicators, and supplement the report on natural or legal persons about whether they meet or not the criteria included in the UNSCR 1373, for recommendation to the Executive Secretary of the National Security Council;
- Draft and justify before the Executive Secretary of the National Security Council, taking into account if the natural or legal person meets the criteria to suspect or believe that is suitable for its designation, and meets the designation criteria of the UNSCR 1373;
- The National Security Council will analyze and issue the administrative order with the designation to include it in the national list;
- Notify and refer immediately, through the Executive Secretary of the National Security Council, to the Financial Intelligence Unit (FIU), so that the funds or assets may be frozen.

TC86. The reasonable grounds for making designations are defined in Article 3 of the Executive Decree No. 587, as follows: “[...] standard used in deciding whether to make a designation (proposed designation) or not. The “reasonable grounds” standard should be used for the designations within the Resolution 1373 (2001); the competent authority will apply the legal standard of the relevant legal system and will determine the amount of evidence to establish the existence of “reasonable grounds”, or a “reasonable basis”, and to decide on the individual’s or entity’s designation, and then initiate an action within the mechanism for the freeze of assets. This occurs regardless of whether the proposed designation is made by one’s own initiative or by another country’s request. These designations (proposed designations) must not depend on the existence of a criminal proceeding.”

TC87. The Executive Decree No. 587, under Article 16, sets forth the requirements to answer a request made by other country, to start mechanisms of preventive freeze, which could include documentation and information on the identity, nationality, address of the individual or entity, and financial information. To ask for a third country to answer a Panamanian request of preventive freeze, the authorities have indicated that would send the same information that would be collected for the inclusion proceeding in the national list (for example: the profile of natural or legal persons related to terrorism, TF and financing the proliferation of weapons of mass destruction, its geographic locations, the case study, and any other supporting relevant information or documentation from intelligence product).

TC88. *Criterion 6.3* Article 15 of the Executive Order No. 263, 2010, empowers the Executive Secretariat of the National Security Council to investigate and collect information that is necessary to warn and prevent

risks and threats to national security; likewise, Article 17 indicates that the ES shall seek the flow of information between governmental institutions, and may request and receive information.

TC89. In addition to the abovementioned, Article 5 of the Executive Decree No. 324, 2016, provides that the Department against Terrorism shall have the following functions:

- Search and process the information of natural or legal persons related to terrorism, terrorist financing and the financing of proliferation of weapons of mass destruction, as well as provide the information to the Executive Secretary, and;
- Request and collect the information of the several public institutions and state entities, which shall answer in a timely, promptly and safely manner, under confidential and reserved conditions.

TC90. *Criterion 6.4* The procedure for the prompt implementation of targeted financial sanctions is included under Chapter II of the Executive Decree No. 587, 2016, alongside several Articles. In general terms, once the Ministry of Foreign Relations receives the updated list from the UNSC, it must inform the FIU (Article 4) which, in turn, will formally and immediately inform the reporting institutions (Article 5), who will review their customers' records to see if there are coincidences with the list, after which they will "immediately" proceed to make a preventive freeze of the funds, and will inform the FIU of such situation; likewise, they will inform the FIU, where no coincidences are found among the list and their customers.

TC91. *Criterion 6.5* The verifications, under Article 6 of the referred law, shall be made on: "(i) funds, property or assets belonging to or controlled by a listed individual or entity, and not just those assets that could be involved in a particular terrorist act, plan or threat; (ii) funds, property or assets belonging to or directly or indirectly, totally or jointly controlled by listed individuals or entities; and (iii) funds, property or assets derived from or generated by funds, or other assets that belong to, or are directly or indirectly controlled by, listed individuals or entities, as well as (iv) funds, property or assets of individuals and entities acting on behalf or under the direction of listed individuals or entities listed." However, the requirements set forth in 6.5 apply to all natural and legal persons of the country, and not only to reporting institutions, as prescribed in Article 49 of the Law No. 23, 2015, and Article 6 of the Executive Decree No. 587.

TC92. Failure to comply with the standard for the preventive freeze by financial reporting institutions, non-financial reporting institutions and professionals subject to supervision may be punishable by supervisors, at the FIU's request. However, it does not apply to any citizen, individual or entity within the national territory.

TC93. With the aim of protecting the rights of third parties in good faith, it is noted that the freeze measure was ratified by the Second Criminal Chamber of the Supreme Court of Justice, in Article 50 of the Law No. 23, 2015, which shall verify if there is a coincidence between the list and the individual or entity.

TC94. *Criterion 6.6* Article 18 of the Executive Decree No. 587, 2015, prescribes that any individual or entity included in the list 1267/1989 or 1988, or national or relatives of deceased listed individuals can request their delisting through the Office of the UNSC Ombudsman, or through the MIRE which, will channel the request through the UNSC; and upon receipt of the answer from the latter, will inform the FIU to proceed to the delisting. To submit a request for delisting, Panama, in consistency with the requirements of the Office of the UNSC Ombudsman, requires information on the identification of the author of the request, an explanation of the grounds or the justification for the delisting, and any document or other instrument in support to such request. At the Web page of the MIRE and the FIU, there is information on the requirements and procedures for the delisting. The information provided during the on-site visit also revealed that the FIU has a call center and a public mailbox to answer the questions on the listing or delisting of an

individual or entity, which could be used by a designated person to ask about the procedures for requesting his or her delisting.

TC95. Article 20 of the mentioned Executive Decree provides that the freeze shall cease only when there is a formal communication by the appointing countries, in accordance with the provisions of the UNSCR 1373, informing that the individual or legal entity does not longer meet the criteria for designation; the cessation of the measure will be ratified by the Second Criminal Chamber of the Supreme Court of Justice, after which the FIU will be informed, and the country will be notified on the cessation of that measure. The FIU is responsible of informing all updated lists, including any delisting, to the reporting institutions, to conduct the unfreeze proceeding. The FIU informs this to the reporting institutions through an e-mail.

TC96. Article 10 of the Executive Decree No. 324, in para. 6, provides that a natural or legal person who has been designated pursuant the RCSNU 1373, may submit a request for review before the Ministry of the Presidency, to start with the delisting process.

TC97. Furthermore, the unfreezing, for homonym reasons or for mistaken identity of the designated person, is provided in Articles 26 and 27 of the Executive Decree No. 587. The judicial authority will receive the requests for delisting from the United Nations Security Council when individuals or entities listed do not meet the criteria, or there are no reasonable grounds for their designation.

TC98. *Criterion 6.7* In accordance with Article 52 of the Law No. 23, 2015 “[...] the Second Criminal Chamber of the Supreme Court, prior notification via the MIRE to the UNSC Committee, established pursuant to Resolution 1267, may authorize the access to frozen funds or assets preventively, when these are necessary to cover basic expenses, which may include: Costs for services or other extraordinary expenses, interest, payments due on contracts, agreements or obligations and others pursuant to Security Council Resolutions 1452, 1963, 1718, 1737, and successive on the matter.” The regulation of the above provisions is included within Article 21 of the Executive Decree No. 587, 2015.

TC99. The communications of the UNSC in relation to the approval or rejection of access to frozen funds or assets, is received by the MIRE, as prescribed in Article 22 of the Executive Decree above mentioned. Regarding the requests for access to funds related to designations made under the terms the UNSCR 1373, Article 23 prescribes: “[...] the Ministry of Foreign Relations will inform the Second Criminal Chamber of the Supreme Court of the requests of individuals or entities on the internal list to access frozen funds or assets to satisfy the payment of basic or extraordinary expenses; the request and the attached documents will be evaluated, and the investigation and verification required for their authorization will be immediately coordinated.” In addition, Article 24 establishes that requests will be processed through the MIRE to the country which has made the request for designation, pursuant to the UNSCR 1373, understanding that the request will be considered accepted if there is no reply within two business days.

### *Weighting and conclusion*

TC100. Panama has a legal framework to implement the targeted financial sanctions related to terrorism and terrorist financing. It has identified authorities and mechanisms to propose the United Nations Committees individuals and entities for designation, pursuant to the Resolutions 1267/1988 and 1989. It may also propose an individual or entity for the inclusion in the national list, or in other country's list, in accordance with the Resolution 1373, and may reply upon other country's request. In addition, Panama has mechanisms to inform the financial sector and the DNFBPs on the updated lists of designated individuals or entities. However, the obligations to implement targeted financial sanctions do not apply to all individuals and entities in the country (only to reporting institutions), and there is no explicit legislation prohibiting all



citizens, or individuals/entities in the country from providing funds, assets or other property to designated individuals and entities. **Recommendation 6 is rated as Largely Compliant.**

### ***Recommendation 7 - Targeted financial sanctions related to proliferation***

TC101. *Criterion 7.1* Article 49 of the Law No. 23, 2015, instructs the reporting institutions to “[...] proceed immediately to carry out a preventive freeze on funds, goods or assets, after receipt of the lists that for that purpose is issued by the United Nations Security Council, in accordance with the provisions of the Resolutions [...] S/RES/1718, S/RES/1737, and all successive, or other Resolutions to be issued on the matter, in order to prevent the use of its products and services to [...] financing the proliferation of weapons of mass destruction.” The procedure establishes that after receiving the referred lists from the MIRE, the FIU shall distribute those to the reporting institutions, who once they have found a coincidence between the list and a customer, will proceed to suspend any transaction with him and to preventively freeze the funds held; and they shall immediately notify the FIU on the application of such measures; and the latter, in turn, will inform the prosecutors, so that the freeze will be immediately submitted to the control of the competent judicial authority.

TC102. In relation to the ratification of the preventive freeze measure, Article 50 of the Law No. 23, 2015, provides that the Second Criminal Chamber of the Supreme Court, without delay, as these are cases arising under the parameters of UNSCR 1718 and 1737, and all successive or other resolutions to be issued on this matter, will proceed to verify if there is coincidence between the natural or legal person in order to ratify the freeze measure.

TC103. The preventive freeze measure referred to by the Law No. 23, 2015, is regulated by means of the Executive Decree No. 587, 2015, which under Article 6 provides as follows: Reporting institutions will review their customers' records to see if there are [...] (ii) funds, property or assets belonging to or directly or indirectly, totally or jointly controlled by listed individuals or entities; and (iii) funds, property or assets derived from or generated by funds, or other assets that belong to, or are directly or indirectly controlled by, listed individuals or entities, as well as (iv) funds, property or assets of individuals and entities acting on behalf or under the direction of listed individuals or entities listed. If any coincidence is found, they will immediately proceed to stop any transaction with the customer, freeze the funds and inform the Financial Intelligence Unit for the Prevention of Money Laundering and the Terrorist Financing of the execution of the assets freeze. If there are no customers among those listed, they will so inform the Financial Intelligence Unit for the Prevention of Money Laundering and the TF.”

TC104. *Criterion 7.2* As indicated in Article 49 of the Law No. 23, 2015, mentioned in the previous Criterion, all reporting institutions are instructed to proceed immediately to carry out a preventive freeze, upon finding a coincidence between the list and their customers, as well as the regulation of the measures, as set forth in the Executive Decree No. 587, 2015; however, the drafting of Article 6 of the so mentioned Executive Decree, does not make an express reference to funds or assets related to a specific act, conspiracy or threats of proliferation, limiting only to the linking of terrorist acts, plans or threats. The Panamanian authorities indicate that the definition of terrorism involves all such acts aimed at causing death or grievous bodily injury to the population, including proliferation activities. The exception above established covers all such cases of funds to which the freeze measure shall apply. There are no provisions related to the express prohibition on Panamanian natural or legal persons to provide funds or assets to designated individuals or entities.

TC105. On the other hand, Article 49 of the Law No. 23, 2015, provides that after receiving the referred lists from the MIRE related to the UNSCR, the FIU shall distribute those to the reporting institutions, via e-

mail, including the respective updating. The FIU also includes information on updated lists at its Web page, and in social networks for the public knowledge. If a coincidence is found, the reporting institutions will inform the FIU, and it will proceed to the preventing freeze of funds, assets or other property found. The FIU then reports the preventive freeze to the Prosecutor's Office so that it is submitted to the control of the competent judicial authority. In addition, reporting institutions have to report on transactions attempts.

TC106. In relation to the protection measures of rights of third parties in good faith, Article 52 of the Law No. 23, 2015, provides that the judge must verify the list for homonym cases.

TC107. *Criterion 7.3* The Executive Decree No. 587, 2015, provides that the FIU and other regulating entities will monitor and supervise reporting institutions on the compliance of freeze-related obligations for the purposes of TF/FPWMD. Upon failure to comply with the standards, the FIU will request supervisors to impose the relevant sanctions, which may include the cancellation, withdrawal, restriction, removal or suspension of the license or certificate of good standing, or fines ranging from PAB 5,000 to PAB 1,000,000, according to the seriousness of the offense and the degree of repeated offenses.

TC108. *Criterion 7.4* As indicated in the analysis of the Recommendation 6, Article 27 of the Executive Decree No. 587, the procedures to delist an individual or entity affected by the economic sanctions related to the FPWMD, consist in reporting the Office of the UNSC Ombudsman or the Ministry of Foreign Relations. As in Recommendation 6, the FIU has a call center to answer the questions on the listing or delisting of an individual or entity, which could be used by a designated person to ask about the procedures for requesting his or her delisting. Furthermore, the information on the procedures for request delisting is available at the Web page of the FIU and the MIRE.

TC109. The mechanism to inform the delisting consists in the distribution of the updated lists, through which new designations are also notified, under the same terms than the sanctions on TF described in the analysis of the previous Recommendation. The same procedures to resolve a homonym case are also implemented.

TC110. *Criterion 7.5* Article 52 of the Law No. 23, 2015, prescribes that the Second Criminal Chamber of the Supreme Court, prior notification via the MIRE, may authorize the access to frozen funds or assets preventively, when these are necessary to cover basic expenses. Panamanian authorities indicate that Article 253 of the Criminal Procedure Code, referred to the provisional seizure of monies and securities, also applies to a preventive freeze case, according to a request made on the Resolutions No. 1718 and 1737. It provides that all money and securities, while the provisional seizure lasts, will remain deposited in the bank or financial institution of securities or trust company where they are, and will continue to accrue interest agreed upon. It is not provided that a due payment may be made under a contract entered into before the individual or entity became listed.

### *Weighting and conclusion*

TC111. Likewise, in the Recommendation 6, Panama has a legal framework and mechanisms to implement targeted financial sanctions related to the proliferation, and it must be clarified that the legal framework applies to both terrorism and the proliferation. Panama established mechanisms to inform reporting institutions, to implement the preventive freeze and to oblige reporting institutions to report any coincidence found between the UN lists and their customers. It has measures to supervise compliance, by financial institutions and the DNFBPs, with these obligations and procedures, and to sanction them upon any breach. However, it has not prohibited citizens and individuals/entities residing in the country from providing funds, assets or other resources to designated individuals and entities, and in the case of targeted financial sanctions



related to terrorism, the obligations for implementing sanctions only apply to reporting institutions; Recommendation 7 is rated as Largely Compliant.

### **Recommendation 8 - Non-profit organizations**

TC112. *Criterion 8.1* According to the results of the Panamanian NRA, the risks of some types of NPOs being used, are low, and it is established that terrorism threats are mainly found abroad, and that the NPOs in Panama, in general, do not send resources abroad, but capture them for conducting activities within the country. In addition, no cases were identified where a NPO has been used for terrorist financing purposes. According to the abovementioned, Panama does not include the NPOs within the range of reporting institutions, pursuant to the Law No. 23, 2015, and did not identify any subgroup of NPOs with higher risk of abuse for the terrorist financing. However, the Executive Decree No. 62, 2017, creates the Supervision, Monitoring and Evaluation Department of Non-Profit Organizations and Private-Interest Foundations, under the scope of the MINGOB, which will be in charge of supervising the operation of the NPOs, collecting information on the Board of Directors and financial statements every year, and re-evaluating the sector for possible risks and vulnerabilities regarding terrorist activities. Furthermore, NPOs receiving donations that may be deducted from income tax, must deliver an annual report to the DGI, and those receiving state funds, apart from complying with this requirement, must send reports on their accounts to the Comptroller's Office, to guarantee the proper use of public resources. These requirements effectively allow the State monitoring the sector at a deeper level.

TC113. *Criterion 8.2* As prescribed in Article 2 of the Law No. 6, 2002, any person is entitled to freely request information of public access kept by, or known by, the indicated institutions, among which there are foundations, charities and non-governmental organizations which have received, or are currently receiving, State funds, capital or property, according to the definition of "institution", prescribed by said Law. In addition, the Resolution No. 201-1183, 2008, provides under Article 4, that NPOs and non-governmental organizations authorized to receive donations that may be tax-deducted, shall be bound to submit donations reports, and other relevant forms, which must be annually submitted on the dates determined for such purposes (March 1 each year as from 2009). This last requirement motivates the formalization and bankization of the NPOs.

TC114. The Executive Decree No. 62, 2017, obliges the Ministry of Government to conduct approaching and training activities on the possible risks and vulnerabilities of the NPOs. Therefore, the MINGOB has conducted several training courses for the NPOs under its supervision, on matters of prevention and risk control, and the PANDEPORTES, in charge of supervising the sport activities of the country, has offered training courses, as well. No example was provided on the work performed by the MINGOB, or other state institution, with the NPOs to develop good practices on TF risks and vulnerabilities.

TC115. *Criterion 8.3* As prescribed by the Decree No. 62, 2017, issued by the MINGOB, the Supervision, Monitoring and Evaluation Department shall be in charge of verifying the registration and granting of legal status, supervising the legal status of institutions to guarantee the adequate development of activities, verifying and requiring records of the funds managed, intervening such institutions in breach of the provisions established by the current legislation, and applying control, monitoring and evaluation measures required by law. It also conducts on-site visits to the NPOs, to verify the performance of the activities for which they were created.

TC116. *Criterion 8.4* The Department may impose sanctions for the breach of administrative regulations, or when activities contrary to the purposes for which NPOs were created are conducted, mainly the provisional suspension of the legal status for 30 days to collect more information, or the permanent

suspension. The Judiciary may also subject the NPOs to criminal sanctions upon the commission of certain crimes, and the Comptroller's Office and the DGI of the Ministry of Economy and Finance may impose economic sanctions for breach of the obligation to report to the DGI on the income received during the taxable period.

TC117. *Criterion 8.5* The authorities have stated that they may exchange information on the NPOs when requested, and when the confidentiality of the information is kept.

TC118. The mechanisms to share information on investigations among authorities seem to apply to cases of NPOs involved or exploited for the purposes of terrorist financing, although there are no specific mechanisms for the investigation of NPOs suspected to be related to terrorism or TF. The Supervision, Monitoring and Evaluation Department has the right to require all the documentation to supervise, monitor and evaluate the NPOs, under the Executive Decree No. 62, 2017. The Executive Decree No. 62, 2017, under article 33, provides that the Legal Status Supervision, Monitoring and Evaluation Department shall keep as confidential any information under its control. In addition, Article 391 of the Judicial Code, and Articles 75 and 277 of the Criminal Procedure Code, provide for cooperation obligations with the agents of the Prosecutor's Office during the course of an investigation. The Prosecutor's Office may require information to any public officer, even to those of the Supervision, Monitoring and Evaluation Department, during the course of an investigation. Furthermore, the Department against Terrorism and the Prevention Committee against Terrorism and Terrorist Financing may require information to any public entity, decentralized state entity, or mixed state entity, during an investigation.

TC119. *Criterion 8.6* The Prosecutor's Office is the central authority for the receipt of mutual assistance requests, including the cases of NPOs suspected of terrorist financing. The FIU may share information through an Egmont request with other countries.

### *Weighting and conclusion*

TC120. Panama has regulations ruling on the NPOs, which are not reporting institutions. The Legal Status Supervision, Monitoring and Evaluation Department is in charge of granting legal status, supervising non-profit organizations and foundations, and verifying the funds' records. It may also request all the information from a NPO during a supervision or investigation visit. The requirements imposed by the DGI to receive donations that may be deducted from taxes also grant some monitoring capacity to the State. However, the authorities have not developed best practices, in coordination with the NPOs, to address the risk and vulnerabilities of NPOs towards TF. **Recommendation 8 is rated as Largely Compliant.**

### ***Recommendation 9 - Financial institution secrecy laws***

TC121. *Criterion 9.1* Pursuant to para. 1 of Article 111 of the Executive Decree No. 52, 2008, the disclosing of information on customers or bank transactions shall not require the consent of the latter when it is requested by competent authorities, as prescribed by law, and as when they should provide it by own initiative “[...] in compliance with the laws related to the prevention of Money Laundering, TF and other related crimes” The Law No. 23, 2015, under Article 20, subsection 4, provides for general powers of the supervisory entities, among which it is included the power to access to financial information related to the crimes of ML/TF/FPWMD.

TC122. In addition to the foregoing, and specifically mentioning each supervisory entity, Article 113 of said Law, sets forth that banks and other entities under the supervision of the of the SBP, must provide the information requested for the purpose of preventing ML, TF and other related crimes, whenever the SNP so

requires. As to the SMV, Article 24 of the Agreement 6-2015, provides that the information obtained from the reporting institutions may only be disclosed to the SMV, the FIU and the Prosecutor's Office, or to competent authorities, pursuant to legal provisions.

### *Weighting and conclusion*

TC123. **Recommendation 9 is rated as Compliant.**

### ***Recommendation 10 – Customer Due Diligence***

TC124. *Criterion 10.1* In accordance with Article 27 of the Law No. 23, reporting institutions (RI) must identify and verify the customers' identity, by documents, data and reliable information from independent sources and references. However, the existence of an express prohibition to open accounts under fictitious names is not found.

TC125. *Criterion 10.2* Obligations on customer due diligence (CDD) matters are set forth in the Executive Decree No. 363, 2015, through which the Law No. 23, 2015, is regulated. Article 4 of the Decree provides that measures must be implemented in the following cases:

- Establishing relationships with customers;
- Conducting occasional transactions greater than the amount established by supervisors, even in situations in which the transaction is conducted in a single operation, or in several operations that might be connected;
- Conducting occasional wire transfer transactions;
- The existence of unusual transactions that may be presumably related to ML/TF/FPWMD, or their predicate offenses;
- The existence of doubts as to the truthfulness or accuracy of the customer identification data;

TC126. Specifically, in relation to transactions conducted through wire transfers, the new Agreement 2-2017, which became effective in May 2017, provides in Article 4 that the information that will be collected to conduct the transactions must be the following:

- Originator:
  - i. Originator's explicit order to perform the wire transfer and the amount of the transaction;
  - ii. Originator's name or corporate name as registered on the account;
  - iii. Originator's physical address or, if unavailable, his/her mailing address;
  - iv. Bank account number or the unique transaction reference number;
  - v. Effective date of the wire transfer;
  - vi. Any other information deemed necessary to perform the transaction, or for the appropriate identification of the originator.
- Beneficiary:
  - i. Beneficiary's name and account number;
  - ii. The name of the bank in which the beneficiary will receive the wire transfer;
  - iii. The name of the country of destination;
  - iv. Any other information deemed necessary to perform the wire transfer, or for the appropriate identification of the beneficiary.

TC127. *Criterion 10.3* The customer identification and the verification and reasonable documentation of such information are included in Article 26 of the Law No. 23, 2015, in which it is provided that all reporting institutions, whether financial or non-financial, or activities subject to supervision on the matter, must keep

the CDD on their transactions, and must have the care and the respective provisions on ML/TF/FPWMD matters. In any case, the mechanisms for customer and beneficial owners' identification, and the verification and documentation of such information will be based on the risk profile of each reporting institution, considering several factors: customers, products and services offered, distribution channels, geographic area, among others. In such cases in which it is determined that the risk of ML/TF/FPWMD is greater than the analysis of the factors above mentioned, the CDD measures will be adapted to intensified measures, in the event of a higher risk, and to simplified measures, in the event of a lower risk.

TC128. The basic CDD measures that must be implemented are listed in Article 27 of the Law No. 23, and they consist in identifying and verifying the customer identity, and the financial and transactional customer profile, by means of documents, data and reliable information from independent sources and references. On its part, financial reporting institutions must identify and verify the customer identity with documents, data or information from official and independent sources.

TC129. As prescribed by Article 6 of the Executive Decree No. 363, 2015, regulating the Law No. 23, records on the information and documentation on the CDD of the natural person must be maintained, and they should contain, as a minimum, the following:

- Full name;
- Personal identification card or passport;
- Physical address;
- Profession or occupation; and
- Other requirements established by the supervisory bodies.

TC130. In the event of legal persons, the CDD must include the following, as set forth in Article 7 of the Executive Decree No. 363:

- Full name and type of legal person or arrangement;
- Jurisdiction and incorporation or registration data;
- Legal person or arrangement's identification number or its equivalent;
- Beneficial owner's identification and verification;
- Address;
- Mailing address;
- Name of its legal representative and the person authorized to enter into contracts on behalf of the legal person;
- Main activity;
- Other requirements established by the supervisory bodies.

TC131. In addition, under Article 28, financial and non-financial reporting institutions, and the activities subject to supervision must request certificates of incorporation and good standing of legal persons, and the identification and addresses of dignitaries, directors, agents, signatories and legal representatives thereof.

TC132. *Criterion 10.4* As prescribed in para. 3 of Article 27 of the Law No. 23, 2015, it must be verified that the person acting on behalf of another is authorized, to proceed to identify and verify the identity of this person. In line with the foregoing, in Article 27 of the Agreement 10-2015 entered into by the SBP, it is provided that in cases when the customer is acting as the intermediary for the beneficial owner or owner of the transaction, banks and trust companies must conduct CDD of that beneficial owner.

TC133. Similar provisions apply to other sectors subject to supervision on ML/TF matters. Article 9 of the Resolution JD/No 11/2015, provides that it must be verified that the person acting on behalf of another is authorized for such purposes, to be able to identify and verify the identity of such person. In Article 22 of

the Agreement 3, 2015, the SSRP indicates the need for verification; in the case of legal persons, it must also be requested to identify dignitaries, directors, agents, and legal representatives, and to conduct the CDD of natural persons acting as administrators, representatives, agents and beneficiaries. The Agreement 6-2015 entered into by the SMV, provides in Article 8, that it must be conducted the identification and verification of the signatories, agents and those who perform equivalent functions, and it must be requested a copy of the respective powers of attorney proving the capacity to act, in the case of legal agents. Article 9 of the Resolution JD/No 11/2015 of IPACCOOP, provides that it must be verified that the person acting on behalf of another is authorized for such purposes, to be able to identify and verify the identity of such person.

TC134. In addition, for the case of the so-called non-financial reporting institutions, which formerly included remittance companies and money exchange houses, the Intendency, by means of the Resolution JD-006-015, established that it must not be accepted for a person to perform transactions on behalf of another one.

TC135. *Criterion 10.5* The Law No. 23, 2015, defines the beneficial owner as “the natural person or persons who own, control o 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 arrangements.” Based on the foregoing, Articles 27, para. 4, and 28, of said Law, provides that reporting institutions and professional activities subject to supervision must identify the beneficial owner and take reasonable measures to verify the information and documentation obtained from each of the natural persons who identify themselves as the beneficial owners; in the event that the beneficial owner is a legal person, CDD will prolong until getting to know the natural person that is the owner or controller.

TC136. The regulation of the Law, included in the Executive Decree No. 363, 2015, provides under Article 8, that reasonable measures will be taken to comply with the requirements established by the supervisory entities for identifying and verifying the identity of the beneficial owner, making the following distinction among reporting institutions: 10% or more of ownership interest for financial reporting institutions, and 25% or more of ownership interest for non-financial reporting institutions (which formerly included remittances companies and money exchange houses), and professional activities subject to supervision. In the case of legal persons, foundations, trusts or other type of entity whose beneficial owners could not be identified by shareholding, a certificate of authentication or affidavit listing the beneficial owners, duly signed by its representatives or authorized persons, will be required. Non-financial reporting institutions may apply simplified CDD when the risk level is low and when the transaction is conducted in a single operation; provided there is no suspicion of ML/TF/FPWMD, as well as for occasional cash transactions exceeding the threshold of PAB 10,000 (USD 10,000).

TC137. They are also specific provisions for the financial sector issued by their respective supervisory entities: the SBP indicates in Article 14 of the Agreement 10-2015 that the beneficial owner or owner of transactions, in transactions where the client is acting as intermediary, must be identified; the Agreement 10-2015, also provides in Article 15 that banks and trust companies must take reasonable measures to identify the beneficial owner, understanding the nature of the customer’s business and its shareholding and control structure, and also identifying the natural person who is the owner or controller; the Agreement No. 005-2015, entered into by the SBP, also makes reference to the reasonable measures for the identification of the beneficial owner, using relevant information from reliable sources that must apply other reporting institutions under the supervision of said SBP.

TC138. The Resolution JD/No. 11/215 of the IPACCOOP, provides in Article 11, that cooperatives conducting savings and credit, or financial intermediation activities must identify the beneficial owner and



take reasonable measures to verify the information and documentation obtained; in the case that the beneficial owner, or the custodian of bearer shares, may not be identified, it must refrain from starting or continuing with the business relationship, or conducting the transaction.

TC139. On its part, insurance and reinsurance institutions are subject to the provisions of the Agreement No. 3, 2015, of the SSRP, which provides in Article 19 that the insurance beneficiary's identity must be obtained as soon as it is designated by the insured party, and in some cases, they may obtain the necessary information at the moment of payment; upon failure to comply with this obligation, a STR must be prepared and then sent to the FIU. In the event of insurance policies of legal persons, measures to identify the shareholder with an interest equal or greater than 10% in the company must be taken, and if this is not possible, a certification describing the beneficiaries above mentioned must be obtained.

TC140. Such entities under supervision of the SMV are subject to the Agreement 6-2015 of said Superintendence, which provides in Article 9 that, as a minimum, those having a shareholding of 10% or more must be identified, and if it is not possible to identify the beneficial owners through such criterion, it must be obtained an affidavit indicating the natural persons holding such rights or benefits equivalent to those that would be granted the 10% or more of the issued shares, and the administrators, representatives, agents and signatories of the legal person, or an official of similar rank; in the case of private-interest foundations, members of the foundation Board, the founder and the protector are also included. As to non-financial institutions, the ISRSNF, by means of the Resolution No. JD-006-015, 2015, under Article 5, provides that money remittance companies must, as part of their CDD processes, request the name, the ID document, the account or reference number, the address, the place and date of birth of the beneficiary.

TC141. *Criterion 10.6* Para. 5, Article 27, of the Law No. 23, 2015, clearly provides as a basic CDD measure understand, and as appropriate, obtain information about the purpose and nature intended for the commercial or professional relationship. Article 28 of said Law additionally prescribes that it must be understood the nature of the customer's business, and its shareholding and control structure. Furthermore, the regulation of Law 23, in Executive Decree No. 363 of 2015, indicates that additional information on the nature intended for the commercial or professional relationship must be obtained. Similar provisions for all sectors under supervision in ML/TF/FPWMD matters, are included in the respective Agreements and Resolutions issued by their supervisors.

TC142. *Criterion 10.7* The Law No. 23, 2015, which is the main regulatory framework in ML/TF/FPWMD matters, provides in Article 39, paras. 1 and 2, that financial reporting institutions, non-financial reporting institutions, and professional activities subject to supervision must monitor the transactions performed during the business relationship to ensure that they coincide with the customer's business and profile; in the event of noting any warning sign or behavior of higher risk, the monitoring will be increased. Additionally, periodic reviews must be performed to ensure that the documents, data and information obtained, and the financial and transactional profiled, are kept updated and presently respond to the reality of the customer's transactions. The monitoring must be conducted considering all the products and services of the customer, subscriber, agent, representative, associate, co-holder and beneficial owner of an account, contract or relationship. The frequency of the monitoring will be determined according to the risk.

TC143. Article 19 of the Executive Decree No. 363 provides that reporting institutions must maintain records on the transactions and updated information on their customers, whether natural or legal persons, national or foreign, maintaining the information for a minimum period of five years from the termination of the relationship for each specific customer.

TC144. The follow up procedures referred to before are regulated under supervision for each sector in regard to AML/CFT/CFPWMD in the Agreements and Resolutions of the relevant supervisory entities: the



Agreement 10-2015 of the SBP establishes in its Article 20 that the reporting institutions must count with the necessary tools to detect unusual activity patterns or suspicions with their clients' relations, and also to keep a record of the transactions made throughout the relation, while the Article 25 establishes that all the information records and documentation obtained in the CDD process must be kept updated; the Agreement 6-2015 of the SMV in its Article 23 establishes that the regular activities of the accounts and transactions must be followed up to detect unusual movements or suspicions, verify the clients with regards to risk lists, keep records of the transactions and evaluate the ones that must be subject to a reported CDD, among other aspects. Similar dispositions are in place for other sectors in the Articles 8 and 12 of the Agreement 005-2015 of the SBP, Article 15 of the Resolution JD/No. 11/2015 of the IPACCOOP, Article 18 of the Agreement 3 of 2015 of the SSRP and the Article 25 of Agreement 6-2015 of the SMV.

TC145. It is important to point out that the Article 25 of the Agreement 10-2015 of the SBP establishes a regularity for the client CDD document and information update in the following way: high risk clients at least every twelve (12) months, medium or moderated risk at least every twenty-four (24) months and the low risk clients at least every forty-eight (48) months. Additionally, the Article 18 of the Agreement 3 of 2015 of the SSRP establishes a minimum update regularity of a year for all the clients, and once a semester for the clients with reinforced CDD. These are the only documents that explicitly establish the update regularity information to the CDD.

TC146. Criterion 10.8 Article 28 of the Law No. 23 of 2015, in its paragraph 4, establishes that the reporting institutions and activities under supervision, must understand the nature of the client's business and its shareholding and control structure. At the same time, in the Agreement 10-2015, issued by the SBP, it is mentioned that, as part of the identification of the beneficial owner, the nature of the client's business and the shareholding and control structure must be understood; the Agreement 005-2015 of the same Superintendence in its Article 7 establishes dispositions in equal terms.

TC147. For its part, the IPACCOOP in the Resolution JD/06/2016 points out the comprehension of the nature of the client's business and the shareholding and control structure like CDD to the legal persons listed in a market acknowledged by the SMV; the SSRP, through the Agreement 3 of 2015, Article 22, establishes that the nature of the business of the contracting and/or insured; the Agreement 6-2015 of the SMV, in its Article 8, indicates that the entities under its monitoring must know the experience, objective of the investment, the intended nature of the commercial relation and the origin of the funds, and the identification and verification of the final beneficial owners. In the cases in which the legal person does not have transactions, it is indicated that the banking references of the beneficial owners will be sufficient; at the same time, the origin of the funds will be presented in written that may have diverse information, including rent, and purchase and sale declarations, among others. In all the previous cases it is established that, if the client is a legal person with shares issues to the bearer, measures must be taken in order to meet the shareholders, such as requesting the information to the custodian of such bearer shares, among others.

TC148. Regarding the remittance agencies and money exchange houses, the Resolution No. JD-006-015 the Intendency establishes a prohibition to conduct business with legal persons.

TC149. *Criterion 10.9* paragraph 1 of the Article 28 of the Law No. 23 of 2015, when the clients are legal persons, the corresponding certificates evidencing the incorporation and legal existence of the legal persons shall be requested, as well as the identification of officers, directors, agents, authorized signatures and legal representatives of such legal persons, as well as their address; in case the society has a record of bearer shares, measures shall be taken to identify the beneficial owner of such shares. In addition to the above, Article 7 of Executive Decree 363 of 2015 states that for persons and other legal arrangements, the following information must be kept in the registers: a) full name and type of person or legal structure; b) jurisdiction

and data of incorporation, and; c) identification number or equivalent. Provisions in Art. 47 of Executive Decree 363 do not establish that information on the address of legal persons should be collected.

TC150. *Criterion 10.10* Para. 2, 3, 7 and 8 of Article 28 of Law No. 23 of 2015 establish that when the beneficial owner is identified as a legal person, CDD must be extended until the natural person or persons who are owners and controllers are known, while customers who are legal persons with a bearer share record must make sure to identify the beneficiary or beneficial owner and apply a transactional CDD. Regarding trusts, Article 31 of the same law establishes that the trust companies have the obligation to know, identify and verify the identity of the settlor and the beneficial owner of a trust, extending the CDD until knowing the natural person that is the beneficial owner.

TC151. Also, Art. 15 of Agreement No. 10-2015 by the SBP establishes that banks and trust-service providers must take reasonable measures to identify the beneficial owner by using relevant information obtained through trustworthy sources, where CD shall extend until identifying the individual that has either ownership or control. For the identification of the beneficial owner of corporations (sociedades anónimas), reporting institutions must identify the shareholders that possess a percentage equal or above ten percent (10%) of the total share stock, and will be required a copy of their identification document. Companies that place their shares in the stock markets are exempt from identifying the beneficial owner.

TC152. In the case of other legal person whose beneficial owners cannot be identified through shareholding criteria, the reporting institution must collect a certification or declaration under oath from the legal representatives or authorized individuals clearly establishing the beneficial owners.

TC153. *Criterion 10.11* Executive Decree 363 of 2015 establishes that in the case of persons and legal arrangements, reasonable measures must be taken to identify and verify relevant information obtained from reliable sources regarding the beneficial owner. Finally, establishing the criteria for shareholding (10% in the case of financial subjects and 25% in the case of non-financial entities) and others in case the beneficiary cannot be determined using such measures, will be extended until the natural person which is the owner or controller is known. Likewise, each supervisory body, through the agreements and resolutions that have been mentioned throughout the analysis of this criterion, establish specific measures for its reporting institutions, which are in line with the requirements established by the aforementioned legal systems.

TC154. *Criterion 10.12* As established in Agreement 3 of 2015 of the SSRP, in its Article 18, subsection 1, should obtain o obtain the identity of the beneficiary or beneficiaries of the insurance as soon as they are designated by the insured. Regarding beneficiaries generically designated, by will or other means, the reporting institutions will obtain the necessary information to establish the identity of the beneficiary at the time of payment.

TC155. *Criterion 10.13* As established in the Article 19 of the SSRP Agreement 3 of 2015, the beneficiary of a life insurance policy shall be included as a relevant risk factor when determining the application of the enhanced CDD measures; in the event that the individual beneficiary or legal arrangement presents a greater risk, the CDD must include reasonable measures to identify and verify the identity of the beneficiary of the insurance at the time of payment.

TC156. In accordance with the provisions of Article 28, subsection 5 of Agreement 3 of 2015 of the SSRP, it is necessary to obtain the approval of senior management to start or continue the commercial relationship with a contractor or insured, natural and/or legal persons.

TC157. *Criterion 10.14* In accordance with the provisions of Article 9 of Executive Decree 363 of 2015, the reporting institutions shall have complied with the CDD until the minimum requirements have been verified. Regarding the possibility of completing the verification after the establishment of the commercial

and professional relationship by non-financial RIs, the Article states that it can be carried out as long as such verification occurs as soon as reasonably possible, being essential not to interrupt the development of the operation and the ML/TF/FPWMD risks are effectively controlled.

TC158. *Criterion 10.15* For financial reporting institutions, Art. 14 of SBP Agreement 10-2015 establishes that it will not be possible to begin a business relationship if the customer's identity has not been verified.

TC159. *Criteria 10.16* According to the provisions of Article 26 of Law No. 23 of 2015, the reporting institutions must maintain CDD in their operations, as well as the conducive care to reasonably prevent the transactions from being carried out with funds linked to ML/TF/FPWMD activities. Likewise, Article 39 of the aforementioned law establishes that the transactions carried out throughout the business relationship must be monitored and verified to coincide with the client's professional or business activity, as well as its transactional and financial profile; if they observe warning signs or risk behaviors, the follow up will be increased, which will incorporate all the products and services of the client, signatory, proxy, representative, associate, co-owner and beneficial owner who has the account, contract or relationship

TC160. *Criterion 10.17* Executive Decree 363 of 2015, through its Article 4, establishes that CDD measures must be taken when there are unusual transactions that could be linked to ML/TF/FPWMD conducts. On the other hand, Article 10 states that simplified measures may be applied according to the risk exposure that has been identified, without these being applied when there are or exist unusual transactions possibly linked to ML/TF/FPWMD; likewise, Article 11 establishes that CDD should be reinforced, through various measures, when applicable, including: collecting information on the source of funds or wealth; collecting information on the reason of the operation, and; having the approval of the Directors to start or continue the business relation. Furthermore, each supervisor has approved resolutions and agreements relevant to their reporting institutions referring to the enhanced CDD, which is analyzed in-depth in Criterion 19.1.

TC161. *Criterion 10.18* Article 3 of Executive Decree 363 of 2015 gives the RI the possibility of implementing basic, simplified or extended measures, depending on the risks to which they are exposed. In this sense, Art. 10 establishes that simplified measures can be applied according to the identified risk exposure, without allowing their implementation when there are unusual transactions potentially linked to ML/TF/FPWMD. Likewise, Article 26 of Law No. 23 of 2015 states that "in circumstances where the risk may be lower, provided that an adequate risk analysis is carried out, simplified CDD measures may be authorized...".

TC162. Article 10 of Executive Decree 363 indicates which are the simplified measures, which indicate that they can be applied by all types of RI, among which the following are highlighted:

- Reduce the documentary review;
- Reduce the frequency of identification update, and;
- Reduce the monitoring of the business relationship or scrutiny of transactions.

TC163. Also, Article 10 of Executive Decree 363 opens the possibility of not collecting information on the client's professional or business activity when it is clearly known. In any case, the implementation of the measures described above must be consistent with the risk exposure of the RI and for no reason can simplified measures be applied or exempted from the application of CDD if unusual transactions arise that are potentially linked to ML/TF/FPWMD.

TC164. *Criterion 10.19* Article 36 of Law No. 23 of 2015 states that when the client does not facilitate the compliance with CDD measures, the reporting institutions of all kinds must not open the account or start the commercial relationship, or not carry out the transaction, in addition that they may send a STR to the FIU.

Similar and specific provisions to each of the sectors are established in relevant regulations issued by supervisors.

TC165. The SBP established in Article 15 of its Agreement 10-2015 that the reporting institutions that cannot identify the beneficial owner will refrain from initiating or continuing the business relationship or making the operation if a doubt persists about the identity of the client and/or beneficial owner. IPACOOOP regulates in Article 17 of its Resolution JD / No. 11/2015 that in cases where the client does not facilitate compliance with the CDD measures, the Cooperatives subject to the AML/CFT/CFPWMD measures will be prohibited from creating an account or starting commercial relations, they will not have to carry out the operation and they must issue a STR on the particular case. Regarding SRRP, Article 19 of its Agreement 3 of 2015 establishes that when it is not possible to comply with the knowledge and verification measures of the insurance beneficiary, it must consider the preparation of an STR to be sent to the FIU, while Article 22 of the same law indicates that a business relationship should not be initiated or continued nor, should the operation be carried out. The SMV states in its Agreement 6-2015 that it is forbidden to carry out transactions or establish a commercial relationship when the client does not facilitate compliance with the CDD measures.

TC166. Paragraph 1 of Article 28 of Law No. 23 of 2015, sets that when clients are legal persons, the rule does not establish the need to register what is defined by criterion 10.9. Specifically, regarding the identification of the address of the domiciled office and, if different, a main commercial address.

TC167. *Criterion 10.20* There is no possibility for the RI to maintain the relationship or carry out the operation, presenting a STR, in case it is considered appropriate so as not to alert the client.

### *Weighting and conclusion*

TC168. The legal framework of Panama is quite robust in relation to the application of CDD measures, allowing the possibility of these being implemented in accordance with the risk exposure. However, the existence of an express prohibition to open accounts under fictitious names is not clear. Also, although the legal framework is quite solid in terms of the need to have the CDD to start business relationships, the possibility of not conducting CDD is not provided in order not to alert potential customers with signs of ML/TF, in the terms of Criterion 10.20. **Recommendation 10 is rated as Largely Compliant.**

### *Recommendation 11 - Record keeping*

TC169. *Criteria 11.1* For purposes of AML/CFT/CFPWMD requirements, Article 29 of Law No. 23 of 2015 states that reporting institutions must keep the CDD information and documentation registers updated, as well as proof of transactions records, for a minimum period of five years, so that the identification of the client and the reconstruction of their operations are possible. Additionally, Executive Decree 363 of 2015 establishes in Article 19 that such information must be maintained for natural or legal persons and legal arrangements, either national or foreign, through physical, electronic or other means that are authorized by the supervisory entities, and that it must be maintained for a minimum period of five years from the termination of the relationship with each client. Provisions regarding the same matter specific to each sector are found in the following regulations:

- Article 12 del Agreement No. 005-2015 of the SBP, for all the reporting institutions under Superintendence of Banks monitoring;
- Article 15 of the Resolution JD/No. 11/2015 of IPACOOOP for savings and credit cooperatives, cooperatives of multiple or integral services, and others that do financial intermediation;
- Article 35 of Agreement 3 of 2015 of the SSR for the insurance and reinsurance sector reporting institutions;

- Article 26 of Agreement 6-2015 de la SMV for the financial reporting institutions under monitoring of the Superintendence of Securities Market.
- Article 25 of Agreement 10-2015 on "Prevention of misuse of banking and trust services".

TC170. *Criterion 11.2* As stated in Criterion 11.1, a backup of the CDD information, account files and business correspondence must be maintained a period of at least five years.

TC171. *Criterion 11.3* For purposes of AML/CFT/CFPWMD requirements, Article 29 of Law No. 23 of 2015 establishes that reporting institutions must keep CDD information and documentation records updated, as well as proof of the transactions records, for a minimum period of five years, so that the identification of the client and the reconstruction of their operations are possible.

TC172. *Criterion 11.4* Law No. 23 of 2015 establishes in various Articles that the information obtained by the reporting institutions financial, non-financial and professional activities must be available during AML/CFT/CFPWMD monitoring procedures. Article 20 states that supervisory entities have the authority to access financial information related to the ML/TF/FPWMD offenses associated with the clients, products and services of the reporting institutions, as well as ensuring that the latter have access to the basic information on international transfers, which should be available to the FIU; Article 32 establishes that trust companies must provide the information required by the AML/CFT/CFPWMD regulations; Article 46 establishes that the information of the electronic transfers must be maintained along the payment chain and be available to the competent authorities, including supervisors and the FIU, for purposes of detecting, investigating and prosecuting criminals and terrorists.

TC173. Likewise, based on Article 13 of Executive Decree 363 of 2015, it is stated that "[...] all records necessary to allow competent authorities and supervisory entities to reconstruct any event or individual transaction, including amounts, to provide evidence, if necessary, for prosecuting criminal activity or for verifying the adequacy of controls for offering the service." must be maintained.

TC174. However, the aforementioned standards do not specify the deadlines in which the information must be delivered to the relevant authorities, specifically to the FIU, so it is not possible to determine if it is made available "quickly", as indicated in the Criterion.

### *Weighting and conclusion*

TC175. The rules adequately establish the record keeping, their conservation and that they must be sufficient for the reconstruction of transactions. However, it is not possible to determine if the information should be made available to the authorities "quickly", since no defined deadlines are established.

**Recommendation 11 is rated as Largely Compliant.**

### *Recommendation 12 - Politically exposed persons*

TC176. *Criterion 12.1* Article 4 of Law No. 23 of 2015 defines politically exposed persons (PEP) as follows:

18. Politically exposed persons. "Are the national or foreign persons that serve high-ranking public functions with authority and jurisdiction, in a State, (for instance and without limitation to) Heads of State or of Government, high-level politicians, high ranking governmental, judicial or military officials, senior executives of state companies or corporations, public officials holding elected office, among others, that are part of the decision making in the public entities; persons holding or who have been entrusted with



important functions in an International Organization, refers to those who are members of senior management, that is directors, deputy directors and members of the Board of Directors or equivalent functions."

TC177. Based on the aforementioned definition, Article 34 establishes that reporting institutions and professional activities under monitoring must apply enhanced CDD measures for clients entering the national or foreign PEP category, either as a client or as a beneficial owner, being considered a high-risk profile; among the measures implemented especially for PEPs are the following, based on Article 34 itself:

- To have tools that allow carrying out pertinent diligences to determine if the client or the beneficial owner is a person with political exposure.
- For reporting institutions, obtain the approval of senior management to establish (or continue, in the case of existing clients) business relationships with those clients, and in the cases, that apply for non-financial reporting institutions and activities carried out by professionals subject to monitoring.
- For financial reporting institutions, to identify the financial and transactional profile of politically exposed persons regarding the source of their assets and the source of the funds, and in the cases that apply for non-financial reporting institutions, and activities carried out by professionals subject to monitoring.
- To carry out continuous intensified monitoring of transactions throughout the commercial relationship

TC178. Executive Decree 363, which regulates Law No. 23 of 2015, establishes in Article 12 that extended CDD should be applied to PEPs. The following legal systems contain provisions in the same sense applicable specifically for each type of reporting institution:

- Article 22 of the Agreement No. 10-2015 of the SBP;
- Article 16 of the Resolution JD/No. 11/2915 of IPACOOOP;
- Article 30 of Agreement 3 of 2015 of the SSRP;
- Articles 7,8,16, and 17 of the Agreement 6-2015 of the SMV;
- Article 8 of the Resolution No. JD-006-015 of 2015 of the Intendencia<sup>38</sup>.

TC179. *Criterion 12.2* In accordance with the provisions of previously cited Article 34, in the case of all reporting institutions and activities under AML/CFT/CFPWMD supervision, must have systems to determine if the final client or beneficial owner is PEP of an international organization or a close relative or collaborator of any type of PEP; if it is determined that the relationship is of greater risk, the enhanced CDD measures that are applicable to national and foreign PEPs should be applied. Furthermore, as indicated in the previous criterion, such type of clients is considered as high risk and the measures listed in Article 34 of Law No. 23 of 2015 will be applied to them.

TC180. *Criterion 12.3* Article 4 of Law No. 23 of 2015 defines the "close associate" as "a person known for its close relationship with a Politically Exposed Person, this includes those in a position to perform financial, commercial or of any other nature, either local or international, on behalf of the Politically Exposed Person." Likewise, as indicated above, Article 34 of Law No. 23 of 2015 states that reporting institutions must have systems that allow them to determine if a customer or beneficial owner is a PEP a close relative or a close collaborator, as defined in the indicated regulation. In order to clarify the concept of "close relative" indicated, Article 22 of Agreement 10-2015 of the SBP establishes that close relatives will be the spouse, parents, siblings and children, as well as persons known for their intimate relationship with a PEP. The SSRP

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<sup>38</sup> The measures described in cited Article 8 are applicable to money remittance companies and money exchange houses, which are considered as non-financial reporting institutions in the legal framework of Panama.



establishes the application of the same concept of PEP in Article 30, paragraph 5 of Agreement 3 of 2015, while the SMV states it in Article 8 of Agreement 6-2015.

TC181. *Criterion 12.4* As indicated above, Article 30 of Agreement 3 of 2015 of the SSRP establishes the measures regarding PEPs for insurance and reinsurance companies, which will be detailed in the analysis of this criterion. The aforementioned provision indicates that a reinforced CDD of the contractor and/or insured must be made for individuals who fall within the PEP category. Systems for risk management and carry out enhanced CDD. Additionally, and specifically for life insurance policies, the same Article 30 states that insurance companies must be required to adopt reasonable measures, including CDD, to determine whether the beneficiaries are politically exposed persons. This must be done, at the latest, at the time of payment of the premium. When major risks are identified, financial institutions should be required to inform senior management before proceeding with the payment of the policy so that they can carry out more in-depth reviews of the entire business relationship with the policy holder and consider preparing a report of suspicious transaction report. Meaning, the provision is in the same terms as Criterion 12.4.

### *Weighting and conclusion*

TC182. **Recommendation 12 is rated as Compliant.**

### ***Recommendation 13 - Correspondent banking***

TC183. *Criterion 13.1* The provisions related to correspondent services are contained in Article 33 of Law No. 23 of 2015, which establishes that "the Financial Reporting Institutions shall maintain CDD measures enabling them to know financial institutions to whom they offer and receive correspondent services, as well as design controls to assure the nature of their transactions in order to prevent them from becoming a vehicle for the offenses of Money Laundering, TF and Financing of Proliferation of Weapons of Mass Destruction." The basic measures that should be applied for correspondent relations, in terms of Article 33, are listed below:

- Gather sufficient information about the financial institution that allows them to understand the nature of its business and determine, based on the information available, the reputation of the institution and the quality of monitoring, including whether or not it has been the object of a money laundering investigation, TF and financing of weapons of mass destruction or a regulatory action of the country of origin or of the countries where it maintains physical presence or financial activity.
- Evaluate the controls of the correspondent financial institution and that it understands its responsibilities in terms of prevention of money laundering, TF and financing of weapons of mass destruction of the financial institution.
- Reject a correspondent banking relationship with banks without a physical presence and without an origin regulator.
- Validate that financial institutions that receive the correspondent service do not allow their accounts to be used by entities without a physical presence and without an origin regulator.
- Obtain the approval of senior management before establishing new correspondent relationships

TC184. *Criterion 13.2* . In addition to the foregoing, Agreement 7-2016 of the SBP establishes in its Articles 3 to 5, provisions on correspondent relationships aimed at the institutions that provide correspondent services, indicating that said institutions will have to fully understand the nature of the client/represented bank's business and evaluate their risks of preventing money laundering, TF and the financing of proliferation of weapons of mass destruction. For the above purposes, such institutions must have policies and procedures to prevent ML/TF/FPWMD based on their risk; define the obligations and responsibilities of each of the

parties in the correspondent relationship related to the prevention of ML/TF/PWMD; include provisions on providing of information obtained through CDD information when required; the approval of new correspondent relationships by senior management, and in relation to payment transfer accounts in other places, the correspondent bank must have proof that the represented bank has complied with all CDD obligations that have direct access to this type of account and is in a position to provide identification data to the correspondent bank when it requires it.

TC185. Measures related to CDD to the represented banks indicate that, as a minimum, the following aspects must be included: sufficient information of the represented bank to understand the nature of its business; information and conformation of the corporate structure and senior management; location of the represented bank's operations, type of business, jurisdictions in which it has branches and subsidiaries and their activities; measures, controls and prevention manuals for ML/TF/FPWMD; purpose of correspondent services and transactional profile; monitoring and regulatory situation of the bank, with special emphasis on prevention of ML/TF/FPADM, and; compliance with CDD measures by the represented bank. In addition to the aforementioned, Article 5 establishes the enhanced CDD regime in correspondent relationships, which should be applied in the cases of:

- Banking entities located in jurisdictions with weak rules for the prevention of money laundering, TF and financing of the proliferation of weapons of mass destruction, according to lists issued by international organizations such as the Financial Action Task Force (FATF), among others.
- Correspondent relationships with entities that have been investigated and/or publicly sanctioned for deficiencies in their system for the prevention of money laundering, TF and financing the proliferation of weapons of mass destruction, or are authorized in a non-cooperative country in accordance with lists issued by the Financial Action Task Force (FATF).
- The possibility that PEPs are involved in the ownership of a represented bank.

TC186. The SBP indicates, in Article 3, paragraph 5 of Agreement 07-2016, that in the case of accounts for transfers of payments in other places, the correspondent bank must have proof that the client/represented bank has complied with all the obligations of CDD with their clients that have direct access to this type of account and, therefore, the client/represented bank is in a position to provide identification data of its clients, when the correspondent bank so requires.

TC187. *Criterion 13.3* Article 7 of Agreement 10-2015 of the SBP establishes an express prohibition to establish or maintain relations, whether inter-bank or correspondent, with banks that lack physical presence in the origin jurisdiction or are not affiliated to a financial group subject to consolidated supervision. In addition to the foregoing, Article 8 of said Agreement establishes that among the CDD measures for inter-bank transactions, the existence and physical presence of the bank or its parent company must be ensured "

### *Weighting and conclusion*

TC188. **Recommendation 13 is rated as Compliant.**

### ***Recommendation 14 - Money or value transfer services***

TC189. *Criterion 14.1*. Law No. 48 of 2003 establishes that people, both natural and legal, who regularly make money transfer services "either through transfer systems or transfer of funds, compensation of funds or by any other means, inside and outside the country, which will be called remittance agencies, must request an authorization for such effects from the MICI, through the Directorate of Financial Companies. In accordance with Article 2 of the aforementioned regulation, the application by a natural person will be presented through a lawyer and must contain the following:

- Name, last names, marital status, identity card number and address of the applicant in the Panama.
- Commercial name of the company.
- Exact physical address of the commercial establishment, telephone numbers, post office box and e-mail, if any.
- Indication of the capital with which the business will operate.

TC190. Additionally, in accordance with the provisions of Article 3 of Law No. 48 of 2003, a certificate must be attached to the application stating that it has a minimum capital of 50,000 PAB (50,000 USD), always free of liens; a certified check for 1,000 PAB in favor of the MICI for the concept of an expedition fee, and; the description of the economic and financial objectives and projections of the company.

TC191. In the case of applications filed by legal persons, the application will also be submitted through a lawyer and the following information will be requested:

- Name or business name of the applicant.
- Type of company or company in question.
- Registration date in the PR, with indications of respective volume, sheet, and entry (file, reel and image or equivalent registration).
- Name of its directors, officers and legal representative.
- Legal domicile of the applicant in Panama.
- Commercial name of the company.
- Exact physical address of the commercial establishment and telephone numbers in Panama.
- Indication of the capital with which the business will operate.

TC192. In addition to the aforementioned information, as indicated in Article 5 of the cited law, the request must be accompanied by the public deed which contains the social contract of the applicant, amendments, registered in the PR; the PR certificate not older than thirty days, stating the validity and registration details of the company, capital and names of directors, officers and legal representative; a certificate that the company has a minimum capital of 50,000 PAB (50,000 USD), with the shares fully subscribed, paid and released; a check of 1,000 PAB certified in favor of the MICI for the expedition fee; an authenticated photocopy of the identity card of the directors, officers and legal representative, and; the description of the economic and financial objectives and projections of the company.

TC193. Article 23 of Law No. 23, of April 27, 2015, had established money remittance companies as non-financial reporting institutions under the supervision and regulation of the Reporting Body. On May 2017, Law No. 21 has modified Articles 22 and 23 of Law No. 23 of 2015, assigning the SBP with the responsibility to regulate and supervise these reporting institutions, now considered as financial. The SBP has issued Agreement 8-2017 in which the regulatory requirements applicable to remittance houses are specified.

TC194. *Criterion 14.2* Article 31 of Law No. 48 of 2003 expressly states that when there is knowledge or well-founded reasons that indicate that a natural or legal person is habitually carrying out the money remittance business, without the authorization issued by the Directorate of Financial Companies of the MICI, it will have the power to examine its books, accounting records, accounts and other documents that are relevant and necessary, to determine the fact. In case there is a refusal to provide the information, a fine will be imposed, and in the case of repeated refusal, it will be assumed that the described activities are carried out without authorization.

TC195. Article 32 states that the Directorate of Financial Companies of the MICI may intervene in the establishments and, in the case of verifying that money remittance activities are carried out without authorization, a fine of one hundred thousand PAB (100,000 USD) will be applied, and the license or

commercial registration of the establishment will be requested to be cancelled to the General Directorate of Internal Commerce. The immediate closure of the establishments will be ordered, for which the Directorate of Financial Companies can count on the support of the National Police.

TC196. The SBP has created a specific group of supervisors for the remittance houses, taking actions to adapt these new subjects within their supervisory focus, and an Agreement has been signed with the MICI for cooperation between both institutions.

TC197. *Criterion 14.3* Article 23 of Law No. 23 of 2015 explicitly lists remittance companies as non-financial reporting institutions, regardless of whether or not this is their main activity; in that sense, they were under the supervision of the Intendency, in accordance with the attributions that Article 3 of Executive Decree 361 of 2015 gives to such authority. In consistency with the aforementioned, the Board of Directors Intendency No. JD-006-015 of 2015, which in its Article 1 extends the provisions on prevention of ML/TF/CFPWMD to non-financial subjects, naming in the first place the money remittance companies, even when this is not their main activity.

TC198. Pursuant Law 21 from 2017 money remittance houses are now considered financial reporting institutions, supervised by the SBP.

TC199. *Criterion 14.4* In terms of Article 17 of Law No. 48 of 2003, companies authorized to carry out money remittance activities may use intermediaries (subagents), under their own responsibility, in which case they must be delivered to the Directorate of Financial Companies of the MICI copies of the contracts signed with the intermediaries, which include the complete general information of the contracting parties and their physical address. However, Panamanian legislation does not establish any requirement to register or license remittance subagents.

TC200. *Criterion 14.5* It is not established in the relevant legislation that the agents must apply of the AML/CFT measures or the compliance program is extended to them.

### *Weighting and conclusion*

TC201. Panama has recently included remittance and currency exchange houses as businesses under the supervision of the SBP. Notwithstanding the above, the agents are not covered in the application of the compliance program of the relevant RI nor are required to register or have an operation license. **Recommendation 14 is rated as Partially Compliant.**

### *Recommendation 15 - New technologies*

TC202. *Criterion 15.1* As established in Subsection 1 and 2 of Article 40 of Law No. 23 of 2015, reporting institutions, both financial and non-financial, "[...] must implement a risk-based approach, which involves an evaluation of the products and services offered and to be offered [...]" the paragraph 2 of the aforementioned Article adds the reporting institutions obligations of "[...] Perform predictive analysis to sensitize on the risks that may affect the products and services, considering the probability and impact [...] and based on this analysis design appropriate controls to mitigate the observed risks." The foregoing establishes a general framework in which the products and services currently offered and that may be offered in the future are included, including those provided by technological means currently available, in development, or to be developed in the future.

TC203. *Criterion 15.2* Provisions in the same sense are reproduced in Article 3 of Agreement 06-2016 of the SBP, where it adds the provision in which reporting institutions must apply a risk-based approach when dealing with new technologies or technologies in development for products, both new and existing. The

provisions state that risks derived from new technologies must be identified and evaluated both in the development of new products and commercial practices, and in the use of new technologies in new products and existing ones, always before the release or widespread use of them. In addition, the reporting institutions will be given a mandate under the supervision of the SBP to take measures to manage and mitigate said risks.

TC204. Regarding the Savings and Credit Cooperatives sector, Article 24 of the IPACOOOP was amended by Resolution No. JD/06/2016, to include provisions regarding new technologies, in the same tenor as those established for reporting institutions under the supervision of the SBP. They are also advised that ML/TF risk evaluation should be done prior to the launch of new products, business practices or the use of new or developing technologies. Cooperatives must take appropriate measures to manage and mitigate those risks.

TC205. The insurance and reinsurance sector were also covered in terms of new technologies through Agreement No. 5 of 2016 issued by the SSRP, stating in its Article 7 that the risk evaluation regarding ML/TF/CFPWMD with respect to its products and services should apply to new products and services, as well as the use of new technologies or technologies in development, for both new and existing products prior to market launch.

TC206. Lastly, institutions supervised by the SMV, in Article 5 of Agreement 06-2015 of such Superintendence establishes provisions that risk management measures of ML/TF/CFPWMD in relation to products and services, as well as distribution or commercialization channels. In addition, Article 12-A, added through Agreement 2-2017, indicates that the risks of ML/TF/CFPWMD related to new products and new business practices, including new technologies, offering forms, ways of delivering, distribution channels and implementation of new technologies, in both new and existing products.

### *Weighting and conclusion*

TC207. **Recommendation 15 is rated as Compliant.**

### ***Recommendation 16 - Wire transfers***

TC208. *Criterion 16.1*. Article 46 of the Law of 2015 states that reporting institutions must ensure that electronic transfers include the name of the originator, the name of the beneficiary, the account number or, failing that, the unique reference number, as well as other precise information that is required. The above information must remain throughout the payment chain and be available to the judicial authorities, supervision entities and the FIU. This applies to all transfers, regardless of the amount, whether they are individual or if they are grouped for the same client, if they are international or if they are national.

TC209. Specifically in the case of banks, Article 18 of the Agreement No. 10-2015 of the SBP "To Prevent the Misuse of Banking and Trust Services", the same provisions are indicated, as well as that banks must "[...] must have efficient security procedures and measures to prevent customer misuse of wire transfers, for which the bank must ensure it has a system which provides the relevant warnings in cases where these transfers are unusual..." Additionally, the SBP, through its Agreement 2-2017, updated the provisions applicable to the transfer of funds, among others relevant to the AML/CFT/CFPWMD regime, indicating that it is applicable to transfers of funds completed through any mode of operation. Article 4 of the agreement states that the information to be maintained will be at least as follows:

- Payor
- Explicit order to carry out the transfer of funds and the amount of it;
- Name or business name;
- Physical or postal address;

- Bank account number or unique reference number of the transaction, and;
- Date of execution of the transfer.
- Beneficiary
- Name and account number;
- Transfer receiving bank, and;
- Destination country

TC210. In addition, the provisions of the Agreement allow the institution to request any other data or information deemed necessary to carry out the operation.

TC211. With regard to another relevant sector for this purpose, such as remittance companies, the SBP has not yet issued regulations on the specific subject of remittance companies. However, Article 5 of Resolution No. JD-006-015 of the Intendency, which supervised and regulated the sector until May 2017, stated that these companies should at least request and verify the following information from the client:

- Name of the originator;
- Identity document of the payer;
- Originator account number or reference number;
- Address of payer;
- Date and place of birth;
- Name of the beneficiary;
- Identification number of the beneficiary;
- Account number or reference number of the beneficiary;
- Address of beneficiary; and
- Date and place of birth.

TC212. *Criterion 16.2* Article 8 of Agreement 2-2017 states that "Where several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries, the bank must ensure the batch file contains required and accurate originator and beneficiary information that is fully traceable within the beneficiary country" and that "the ordering bank will be exempt from requesting originator information for each transaction, provided that they contain the payer account number or a unique transaction reference number."

TC213. *Criterion 16.3* For national transfers, Article 5 of Agreement 2-2017 establishes that in the case of funds transfers for amounts equal to or less than 1,000 PAB it is not necessary to collect the beneficiary's information. For transfers in higher amounts, the originator bank must collect the data of the payer and beneficiary in accordance with Article 4, the account number of the payer and the beneficiary or a single reference number of the transaction and the amount of the transfer. There is no minimum threshold for international transfers.

TC214. *Criterion 16.4* Article Ten of Agreement 2-2017, which modifies Art. 23 of Agreement 6-2015 of August 2015, determines that banks must "properly apply the "Know Your Client" policy, the CDD procedures and other provisions set forth in the Agreement to Prevent the Misuse of Banking and Trust Services."

TC215. In the terms established by Article 5 of Resolution No. JD-006-015 of 2015, issued by the Intendency, establishes that money remittance companies (together with money exchange houses), must request information for the identification and verification of the client, as established in the analysis of criteria 16.1 - 16.3 above.



TC216. *Criterion 16.5*. For national transfers, Article 5 of Agreement 2-2017, as amended by Agreement 4-2017, determines that "when the information accompanying domestic wire transfers is available to the beneficiary bank and appropriate competent authorities by other means, the payer bank need only include the account number or a unique transaction reference number provided that this number or identifier will permit the transaction to be traced back to the payor or the beneficiary."

TC217. *Criterion 16.6*. As mentioned in the analysis of Criterion 16.1, the application of the measures of identification and monitoring of the information of the payer and beneficiary of the electronic transfer applies to all equally, regardless of whether they are national or international. Article 46 of Law No. 23 of 2015 does not establish any deadline for the delivery of the information of the transfers by the relevant reporting institutions, limiting itself to indicate that the information must be available to the judicial authorities, supervisory entities and the FIU. Agreement 2-2017 in Article 5 on national transfers provides, according to the standard, that the information on these transfers will be provided to the authorities within a period of no more than three business days.

TC218. *Criterion 16.7*. Under the terms of Article 29 of Law No. 23 of 2015, the reporting institutions must keep the updated information and documentation records of the transactions carried out for a minimum period of five (5) years after the conclusion of the relationship, this in order to know and, as far as possible, reconstruct transactions. Likewise, Agreement 10-2015 in its Article 25 states that banks must keep updated the information and documentation records of the CDD process and the documents supporting operations or transactions, as well as keep those documents and information for a period not inferior to five years from the end of the contractual relationship with the client. Likewise, deadlines for updating such information are established depending on the identified risk profile of the client, as follows: high-risk clients updated every 12 months; medium-risk clients updated at least every 24 months, and; low-risk customers updated at least every 48 months.

TC219. Additionally, Article 9 of Agreement 2-2017 of the SBP states that every bank must maintain records of funds transfers for at least 5 years from the date on which they were carried out.

TC220. *Criterion 16.8*. Article 36 of Law No. 23 states that when the client does not facilitate compliance with the CDD measures, the reporting institution shall not create an account, start a relationship or make a transaction, and may send a STR to the FIU.

TC221. *Criterion 16.9*. As noted in the analysis of Criterion 16.1, the originator, beneficiary, and account number information for each of these and other information required from the originator and the beneficiary should remain along the payment chain and be available to the authorities for cases of electronic transfers, including cross-border ones. Agreement 2-2017, which updates the provisions on transfers of funds, establishes in its Article 9 that any bank that carries out a national or international transfer must ensure of maintaining the required information on the originator and beneficiary, which it must be able to be verified with the transfer or related message throughout the entire payment chain, which is applicable to both national and foreign transfers.

TC222. *Criterion 16.10*. Article 9 of Agreement 2-2017 provides that in the case of international transfers the intermediary bank must keep a record, for a minimum period of 5 years, with all information received from the originator bank or another intermediary bank, when there are technical limitations that prevent the required information on the originator or beneficiary that accompanies said transfer from remaining with a related national transfer.

TC223. *Criterion 16.11*. Article 7 of Agreement 10-2015 states that any transaction resulting from an interbank relationship that is offered to foreign institutions will also be subject to CDD measures, according to the level of risk represented. On the other hand, Article 12 of Agreement 2-2017 establishes that the

originating banks, intermediaries and beneficiaries must take reasonable measures to identify the transfers that lack the required information about the originator and the beneficiary.

TC224. *Criterion 16.12*. In accordance with subsection c) of paragraph 2 of Article 12 of Agreement 2 of 2017, the intermediary banks shall "have effective risk-based policies and procedures for determining: (i) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (ii) the appropriate follow-up action."

TC225. *Criterion 16.13*. In accordance with the provisions of Article 36 of Law No. 23 of 2015, a reporting institution whose client does not facilitate compliance with the CDD measures must not perform the related operation and may issue an STR to the FIU. Likewise, Article 12 of Agreement 2-2017 that updates the electronic transfer provisions for banks indicates that beneficiary banks must take reasonable measures to identify international transfers that lack information on originator or beneficiary.

TC226. *Criterion 16.14*. The identification and verification of the client is made for all electronic transfers, both cross-border and national, regardless of the amount involved, under the terms of Article 46 of Law No. 23 of 2015.

TC227. *Criterion 16.15*. Agreement 2-2017 in its Article 12, provides that the beneficiary bank must have policies and procedures based on risk to determine when to execute, reject or suspend a transfer that lacks the required information about the originator and beneficiary. However, there is no reference to the possibility of applying follow-up actions.

TC228. *Criterion 16.16*. Money transfer service providers are reporting institutions of Law No. 23 of 2015 and responsible for the compliance of their agents according to Article 17 of Law No. 48 of 2003.

TC229. *Criterion 16.17*. In spite of Article 5 of the Resolution No. JD-006-015, issued by the Intendency, indicates that the remittance agency, whether that is their main activity or not, should request information on the originator and the beneficiary (name, identification, account, address, place and date of birth), the SBP has not yet issued regulations on the specific issue for remittance companies and this authority is currently the supervisor and regulator of the sector.

TC230. *Criterion 16.18*. In terms of Article 49 of Law No. 23 of 2015, the reporting institutions must apply a preventive freezing of funds, property or assets upon receiving the lists of the UNSC by the FIU, in case they find any coincidence between the list and one of its clients, suspending all transactions with them and freezing preventively the funds they have. When carrying out such freezing, the FIU must be notified about said action, so that such authority subsequently notifies the PPO.

### *Weighting and conclusion*

TC231. The provisions related to electronic transfers meet almost all the criteria for banking institutions. Still, those that are subject to remittance activity have not yet been properly regulated by their new supervisor, the SBP - even if they make regulations issued by the previous supervisor, the Intendencia. However, there is no clarity about the obligation of beneficiary banks to carry out follow-up actions in the event of detecting transfers without complete information, which does not allow full compliance with the standard. **Recommendation 16 is rated as Largely Compliant.**

### *Recommendation 17 - Reliance on third parties*

TC232. *Criterion 17.1*. As established in Article 37 of Law No. 23 of 2015, the reliance on third parties to perform CDD will only be applicable to non-financial reporting institutions, which are money remittance

services and currency exchange services, which for purposes of the FATF Glossary will be considered as financial institutions, and therefore are within the scope of this Recommendation. In turn, the third party carrying out the CDD at the same time a reporting institution.

TC233. The provisions related to the reliance on third parties for these institutions, which are contained in Article 14 of Executive Decree 363 of 2015, indicate that financial and non-financial reporting institutions financial, and professionals who perform activities subject to supervision may resort to companies that assist them in client identification processes, identification of the beneficial owner and understanding of the nature of the client "[...] provided that the respective supervisory entity authorizes it and it is duly registered to said compliance company." Additionally, the companies must have a domicile in Panama and be registered by attaching the following documentation:

- a) Certification of the PR, Notice of Operation and Identification number of the legal person or its equivalent;
- b) Validity certificate of the PR;
- c) Good standing by the DGI, when applicable;
- d) Authenticated copy of the identity card of persons or passport of its directors, officers, legal representative, and legal proxy if any;
- e) Present the documentation curriculum, programs and credentials of its shareholders, directors, officers, legal representative and legal proxy if any, are technicians and workers, who credit the experience and expertise in the area or sector to which they intend to provide their services as compliance companies, especially in the area of money laundering and particularly CDD;
- f) National or international certifications that credit experience in money laundering, TF and financing of proliferation of weapons of mass destruction of its managers, technicians and workers;
- g) Proof that the qualified personnel and specialized professionals who are part of the compliant company have received or facilitated as an instructor, a minimum of one hundred and sixty (160) hours of specialized training annually in the area of prevention of money laundering, TF and financing of proliferation of weapons of mass destruction; and
- h) Other requirements established by the supervisory entities.

TC234. Article 37 of Law No. 23 of 2015, "reliance on third parties", was modified by Law No. 21 of 2017, providing that financial and non-financial reporting institutions and activities performed by professionals subject to supervision may, at their discretion, relying on the CDD carried out by a third party that belongs to the same economic group, which, in turn, is a reporting institution. It is important to clarify that the legal framework of Panama contemplates two different figures one from another, namely:

1. Compliance companies are those that, duly registered before the Intendency, are dedicated to offering the service of support for CDD to non-financial reporting institutions and activities carried out by professionals subject to supervision who hire them to comply with the objectives of this Law.
2. Reliance on third parties refers to the fact that financial, non-financial reporting institutions and activities performed by professionals subject to supervision may, at their discretion, rely on the CDD performed by a third party belonging to their same group and it is at the same time, a reporting institution.

TC235. The Board of Directors of the Intendencia issued Resolution No. JD-014-016 that regulates the process of registration and authorization for compliant companies in accordance with the provisions of Law No. 23 of 2015 and Executive Decree No. 363 of 2015. From the foregoing, it is clear that in the legal framework of Panama, the reliance on third parties and the compliance company are two different figures, both applicable to non-financial reporting institutions.

TC236. Article 14 of Executive Decree 363 of 2015 indicates that they can be supported in CDD, for which they must establish mechanisms to ensure that the reporting institution will provide a copy of the identification data and other documentation related to CDD requirements to the client, and that the reporting institutions will be responsible for the identification of the client, beneficial owner and understanding of the commercial and transactional nature of the client. However, it does not emphasize that the information obtained can be gotten immediately and without delay.

TC237. *Criterion 17.2*. Article 13 of Executive Decree 363 of 2015 establishes that "Application by third parties of CDD measures. Financial and non-financial reporting institutions and those professionals who perform activities subject to supervision, may only resort to compliance companies to assist them in the identification procedures of the client, identification of the beneficial owner and understanding of the commercial or transactional nature of the client, provided that the respective supervisory entity authorizes it and duly registered it with said compliance company. These must be domiciled and physically present in the Republic of Panama...".

TC238. *Criterion 17.3*. In terms of Article 38 of Agreement no. 10-2015 of the SBP, banking groups should ensure that they manage the risk of ML/TF/FPWMD globally and evaluate the possible risks related to the activities of their branches and subsidiaries; likewise, they must have procedures that allow them to determine the client's risk exposure in other branches, subsidiaries or affiliates of the economic group. The application of rules equal to those of the bank by the banking group will be supervised by the SBP.

### *Weighting and conclusion*

TC239. Because the Laws of Panama emphasize that the third party is in the country, but does not indicate that the information can be obtained immediately and without delay. **Recommendation 17 is rated as Largely Compliant.**

### *Recommendation 18 - Internal controls and foreign branches and subsidiaries*

TC240. *Criterion 18.1*. Law No. 23 of 2015 establishes in Article 12 that reporting institutions, both financial and non-financial, and those professional activities supervised in the matter of AML/CFT/CFPWMD, must designate a liaison, be it an official or a unit, before the FIU and its respective supervisor for the purpose of implementing the AML/CFT/CFPWMD measures. In addition to the above, Article 18 of Executive Decree 363 of 2015, which regulates the aforementioned Law, indicates the designation of an official or liaison unit with the FIU and its supervisor, and that the latter will establish which activities will be managed by the liaison. Law No. 23 establishes in its Article 47 that the subjects and activities under supervision in matters of AML/CFT/CFPWMD must provide continuous and specific training to employees with charges related to "[...] the treatment, communication and managing relations with Customers and suppliers, receiving money, processing transactions, designing products and services and others personnel working in sensitive areas: such as Compliance, Risks, Human Resources, Technology and Internal Audit [...]" Additionally, supervisors must inform the National Commission about the training guides of the reporting institutions.

TC241. Each supervisory body has issued provisions related to the designation of the liaison officer, as follows:

- a) Article 2 of Agreement 20-2015 of the SBP - the banks will designate one or more persons at the executive level called "Compliance Officer", who will ensure the implementation and management of the compliance program, considered as the set of policies and procedures to guide employees in

complying with the legal provisions regarding ML/TF/CFPWMD. The officer shall have sufficient authority, hierarchy and independence in relation to the other employees to implement the program and execute effective corrective measures and may not perform any other function that is incompatible with that of a compliance officer. The compliance officer will prepare reports on AML/CFT/CFPWMD required by the FIU.

b) Article 4 of the Resolution No. JD / 06/2016 of IPACOOOP - cooperatives supervised in the field of ML/TF/FPWMD shall designate a liaison, be it a person or a unit, with the FIU for the application of AML/CFT/CFPWMD measures. The referred liaison will have the functions of designing and implementing standards, policies, procedures and controls to prevent transactions potentially related to ML/TF/CFPWMD, through the application of training and continuous updating in the matter; of performing independent evaluations; monitor, analyze and track operations to detect suspicious transactions, register the latter, and; present the reports to the Board of Directors regarding the carried-out tasks.

c) Article 4 of Agreement 3 of 2015 of the SSRP - the reporting institutions must designate a person in charge as liaison with the Superintendence and the FIU for the application of prevention measures of ML/TF/CFPWMD, who will also supervise the implementation and operation of said system.

d) Article 6 of Agreement 10-2015 of the SMV - there must be a full-time Compliance Officer who develops these functions exclusively, stating that the Compliance Officer can only perform as such for a reporting institution, with some exceptions which include the Financial Groups.

TC242. Regarding the selection process of the employees of the institutions under supervision in terms of AML/CFT, Article 42 of Law No. 23 of 2015 establishes that the behavior of employees must be selected and supervised, "[...] especially those in positions related to the management and analysis of customers, money receiving, information control and key controls", in addition to establishing profiles of employees to be updated throughout the employment relationship and to be trained in terms of the risks to which they are exposed, controls for mitigation and the impact of their actions. Article 27 of Agreement 10-2015 and Article 14 of Agreement 5-2015, both of the SBP, state that an employee knowledge policy should be established, indicating that banks and trust companies should properly select and supervise the conduct of its employees, as well as training them, in the same terms expressed in Law No. 23 of 2015.

TC243. In the cooperative sector, Article 19 of Resolution JD/No. 11/2015 of the IPACOOOP establishes that the reporting institutions under their supervision must implement preselection systems, in order to ensure strict rules of hiring and follow-up of collaborators; additionally, savings and credit cooperatives, multiple or integral services must establish collaborator profiles and supervise their conduct, in order to guarantee the highest moral integrity of the team; a training program should also be developed that considers at least three stages, one introductory, one specialized and focused and one general for all of the cooperative staff; additionally, it lists some "warning signs" about collaborators that must be paid attention to, which are the following:

- a) Those whose lifestyle does not correspond to their salary level.
- b) Reluctant to take vacations.
- c) Directly or indirectly related to the disappearance of funds from the Cooperative.
- d) As well as any suspicious behavior that favors the laundering of capital, TF and financing of the proliferation of weapons of mass destruction.

TC244. The sector of insurance and reinsurance companies is covered for this purpose by means of Article 15 of Agreement 3 of 2015 of the SSRP indicates that insurance and reinsurance companies must adopt adequate employee pre-selection systems to ensure strict hiring norms and regulations. Track your behavior,



as well as establishing an employee profile. The provisions also indicate the need to establish a training program, both specific and generic, at least once a year that includes the following:

- a) Introductory training for new personnel, which must be offered before or at the time of employment or contracting;
- b) Specialized and focused training for personnel working in areas considered sensitive or more exposed to risk;
- c) Common and general training for all personnel working in the entity and that can contribute to the prevention of ML/TF/FPWMD;
- d) Specialized training for all personnel who have contact with the public;
- e) Information and awareness sessions for managers and senior management of the entity;
- f) Specialized training for personnel in the areas of compliance, portfolio underwriting, loss and internal audit in the area of ML/TF/FPWMD;

TC245. For other reporting institutions of the insurance sector<sup>39</sup> it is established that the behavior of the employees should be properly selected and supervised. Article 42 of Agreement 3 of 2015 also establishes the need to establish selection procedures and the establishment of employee profiles.

TC246. In relation to the independent audit function aimed at testing the ML/TF/CFPWMD prevention systems, Article 45 of Law No. 23 of 2015 establishes: "Independent evaluations on the effectiveness of controls may be made by external auditors or other independent experts with expertise on the matter. As a responsible practice, the Financial Reporting Institutions must have ongoing financial internal audit procedures for the prevention and detection of offenses of Money Laundering, Terrorism financing and Financing of Proliferation of Weapons of Mass Destruction". Independent evaluations shall "[...] focus on the risk determined for each area and its programs will vary according to the size of the Reporting Entities, the complexity, the scope of the Activities, the risk profile, the quality of its control functions, the geographic diversity, the number of products and services, customers, distribution channels, the volume of transactions and the use made of technology. The frequency and scope of each independent evaluation will vary according to the assessed risks."

TC247. The SBP, through Agreements 5-2015 and 10-2015, mention (Art. 12 and 28, respectively) the obligation to provide continuous training to employees and must keep a record for such training courses. Likewise, the SBP has constant training programs, which has been provided to GAFILAT every time it has been requested. Quarterly, the SBP send the FIU a detailed statistic on all training courses provided, including the type and number of institutions in attendance.

TC248. Furthermore, the SBP provides online training to its reporting institutions on ML/F/FPWMD prevention, which can be verified at the SBP website.

TC249. *Criterion 18.2*. Article 38 of Agreement 10-2015 of the SBP states that, in the case of banking groups, share owner of the SBP must ensure that ML risk is managed globally at a group level, as well as assess the possible risks related to the activities of its branches, affiliate and subsidiaries. They must also have policies and procedures to determine the client's risk exposure in other branches, affiliates and

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<sup>39</sup> Article 2 of Agreement 3 of 2015 establishes two groups of regulated persons: a "Group A" that concentrates insurance companies and reinsurance companies and a "Group B" that concentrates the following types of reporting institutions: captives insurers, insurance brokers, reinsurance brokers, insurance adjusters and/or fault inspectors, insurance agents, insurance account or sale executives, alternative marketing channels, insurance company managers, captive insurance administrators and insurance administrators. insurance brokers.



subsidiaries of the same economic group. The information of the clients will be available to the SBP in order to evaluate compliance with the provision.

TC250. For the cooperatives branches subject to supervision and AML/CFT/CFPWMD rules, Article 25 of Resolution No. JD/No. 11/2015 (added by Resolution No. JD/06/2016) of the IPACCOOP states that anti-ML/TF programs should be established in all savings and credit cooperatives, cooperatives of multiple or integral services or those that develop financial intermediation; the content of these programs should include policies and procedures for compliance with CDD and ML/TF risk management.

TC251. Insurance and reinsurance companies must have an annual compliance program for AML/CFT/CFPWMD, which in the case of financial groups should be implemented at the level of the entire group and should be applicable and appropriate for all branches and subsidiaries with majority ownership by the Group. The foregoing is reinforced by Article 3 of Agreement No. 7 of 2016 of the SSRP, indicating that the AML/CFT/CFPWMD measures that are stricter should be applied, whether those of the country of origin or the subsidiary, to the extent permitted by the laws of the host country. Likewise, Article 4 of the same Agreement states that the ML/TF/CFPWMD prevention programs established at the economic group level must include controls, policies and procedures that consider:

- a) The exchange of information within the group of the CDD and risk management, for the prevention of ML/TF/FPWMD.
- b) The appointment of the compliance officer appointed by the board of directors, who will respond directly to it and must attribute sufficient authority, hierarchy and independence, to serve as liaison with the FIU and the SSRP to apply the ML/TF/FPWMD prevention measures.
- c) The selection, hiring and monitoring of the behavior of its employees, especially those related to customer management, money and control of information.
- d) A continuous training program for all the employees of the group.
- e) Independent audits to ensure the effectiveness of the prevention functions of ML/TF/FPWMD.
- f) Provide information about the client, accounts and transactions of the branches and subsidiaries for prevention purposes of, ML/TF/FPWMD when requested and without delay.
- g) The protection, confidentiality and use of the information exchanged

TC252. *Criterion 18.3* Likewise, Art. 38-A on branches and subsidiaries abroad establishes that banks should ensure them on implementing ML preventive measures and others equivalent to measures established in Panama and in the FATF Recommendations when the minimum requirements from the country are not as strict as those from the supervisor in the headquarters.

### *Weighting and conclusion*

TC253. **Recommendation 18 is rated as Compliant.**

### ***Recommendation 19 - Higher risk countries***

TC254. *Criteria 19.1* The country in which a client is located is one of the criteria used to determine the type of identification, verification and documentation of the relationship with the client, as established in Article 26 of the Law No. 23 of 2015, which explicitly states that the identification and verification mechanisms will depend on, among other factors indicated, "the geographic location of their facilities and their customers and/or beneficial owners..." Likewise, Article 41 of the cited Law establishes in its second paragraph that enhanced CDD should be applied to business relationships or transactions with any person, natural or legal, and financial institutions "[...] from countries that according to the Financial Action Task

Force do not apply sufficient measures for the Offenses of Money Laundering, TF and Financing of Proliferation of Weapons of Mass Destruction".

TC255. In addition to the aforementioned, Article 12 of Executive Decree 363 states in paragraph 4 that reinforced CDD measures must be applied to "Business relationships and transactions with customers from risk countries, territories or jurisdictions, or that involve the transfer of funds from or to such countries (risk jurisdictions), or from territories or jurisdictions including, under all circumstances, those countries for which the Financial Action Task Force (FATF) requires the application of enhanced or reinforced CDD measures [...]"

TC256. As in other types of provisions, the specific regulations on AML/CFT/CFPWMD issued by each supervisor. Thus, Article 7 of Agreement 10 of 2015 of the SBP establishes that banks must pay special attention to interbank transactions with institutions located in jurisdictions with weak rules for the prevention of ML/TF/FPWMD in accordance with the lists issued by the FATF and other bodies. Likewise, Article 23 of the Agreement, in paragraph 3, states that customers with capital or partners that come from territories or countries considered as "non-cooperative" by the FATF will be considered high risk.

TC257. With regard to cooperatives, Resolution JD/No. 11/2015 IPACOOOP establishes in its Article 8, paragraph 5 as high risk the business relations and transactions of funds transfers to countries, territories or jurisdictions that include those for which the FATF requires the application of enhanced CDD. In relation to insurance and reinsurance companies, Agreement 3 of 2015 of the SSRP establishes in its Article 36 that a CDD proportional to the risks of commercial relations and transactions of countries with inadequate ML/TF/FPWMD prevention systems should be applied; those that are subject to sanctions by the United Nations, the European Union or other international organizations; those that have significant levels of corruption or criminal activities, and; those that facilitate financing or support for terrorist activities. Article 16 of Agreement 6-2015 of the SMV states in its second paragraph that enhanced or reinforced CDD will be made to individuals, natural and legal, who have their domicile in jurisdictions that have not effectively implemented the ML/TF/FPWMD Recommendations. Regarding non-financial reporting institutions Resolution No. JD-006-15 establishes in its Article 3, paragraph 6, that different methods of identification and verification of clients will be applied, with reinforced measures, in the event that a country considered as high risk is involved.

TC258. *Criterion 19.2*. The regulation does not establish the obligation on the part of the RI to establish countermeasures in relation to the countries identified by the FATF.

TC259. *Criterion 19.3*. Article 12 of Executive Decree 363 states in paragraph 4 that reinforced CDD measures must be applied to "Business relationships and transactions with customers from risk countries, territories or jurisdictions, or that involve the transfer of funds from or to such countries (risk jurisdictions), or from territories or jurisdictions including, under all circumstances, those countries for which the Financial Action Task Force (FATF) requires the application of enhanced or reinforced CDD measures [...]". However, the legal framework does not establish in the provisions any mechanism whereby the authorities transmit information about the countries of attention to the reporting institutions, or where they are informed of the periodicity or source from which they will obtain said information. In this sense, there is the possibility that the RI do not have the most updated and accurate information about these jurisdictions.

### *Weighting and conclusion*

TC260. The legal framework of Panama does not establish a mechanism by which the RI are informed about the countries that should be considered high risk, limiting themselves to those that are identified as such by the FATF; in this way, it is not clear how the RI can be aware of changes in the list of countries to

pay more attention to. Likewise, the provisions are limited to instructing a RDD, but do not indicate the implementation of countermeasures related to those countries with strategic deficiencies, as identified by the FATF. **Recommendation 19 is rated as Partially Compliant.**

### ***Recommendation 20 - Suspicious Transactions Report***

TC261. *Criterion 20.1*. The obligation to issue STRs is established in Article 54 of Law No. 23 of 2015, with the following text: "Obligation to report a suspicious operation. The Financial Reporting Institutions, the Non-Financial Reporting Institutions and Activities performed by Professionals subject to supervision must communicate directly to the Financial Intelligence Unit for the Prevention of the Crimes of Money Laundering and the FT of any fact, transaction, operation, in which there is suspicion that it may be related to the Offenses of Money Laundering, Terrorism financing and Financing of Proliferation of Weapons of Mass Destruction, regardless of the amount that cannot be justified or supported, as well as control weaknesses. The reports should be submitted to Financial Intelligence Unit within fifteen calendar days from the detection of the event, transaction or operation or control failure. Nevertheless, Reporting Institutions may request an extension of fifteen more calendar days to send the supporting documentation, where there is a complexity in the collection."

TC262. In addition to the obligation established in that Law, Article 17 of Executive Decree No. 363 of 2015, in which Law No. 23 of 2015 is regulated<sup>40</sup>, also establishes the obligation to keep a record of transactions that qualify as suspicious, which "[...] will contain the data on the account(s) or transaction(s) originating the operation, the date(s), the amount(s) and the type(s) of operation. This record must include succinct remarks by the employee that determined that the operation was considered suspicious." Also, in the same provision it is indicated that the communication must be made "immediately", which apparently is not consistent with the period of 15 renewable days indicated by Law No. 23 of 2015, as well as the specific provisions for each of the supervised sectors.

TC263. Due to the abovementioned, it is verified that the term to file a STR is of fifteen days counted from the identification of the suspicion, which does not comply with the "without delay" provision in the Standards.

TC264. *Criterion 20.2*. The legal framework does not expressly include the need to report those transactions that have not been completed.

### ***Weighting and conclusion***

TC265. The term of fifteen days counted from the detection of the suspicious conduct is not consistent with the timeliness set forth in the standard. Legislation is limited to reporting "any fact, transaction or operation" without making any explicit reference to attempted transactions. **Recommendation 20 is rated as Partially Compliant.**

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<sup>40</sup> Provisions in the same line as those established in Law 23 of 2015 are set in Agreement No. 5 2015 and in Agreement No. 10-2015, both from the SBP and applicable to reporting institutions, as well as banking and trust-service providers. Resolution JD No. 08 2015 of IPACOP, which establishes the Guideline for Suspicious Transactions, issues an order to all Saving and Credit, Multiple or Integral Service Unions and other relevant Unions that carry out financial intermediation activities must implement the format to send STRs under Law 23 of 2015; likewise, the aforementioned legislation sets a catalogue of red flags to be examined by reporting institutions in order to determine if transactions could be exposed to ML/TF risk. Regarding the insurance and reinsurance sector, the obligation is established under SSRP Agreement 3 of 2015, in Art. 45 and Art. 46. SMV Agreement 6-2015 establishes the general obligation to issue STRs to securities reporting institutions.

### ***Recommendation 21 - Tipping-off and confidentiality***

TC266. *Criterion 21.1*. Article 56 of Law No. 23 of 2015 expressly states that "The Financial Reporting Institutions, the Non-Financial Reporting Institutions and Activities performed by Professionals subject to supervision, when applicable, its directors, officers and employees will not be subject to criminal and civil liability for filing suspicious transactions reports or related information, in compliance with this Law."

TC267. *Criterion 21.2*. In addition to what is indicated in *Criterion 21.1*, Article 56 indicates later that the same institutions that will be exempt from criminal and civil liability for STR presentation "may not make known to the customer or third parties, that information has been requested or has been provided, including the delivery of the suspicious transactions reports, to the Financial Intelligence Unit for the Prevention of the Offenses of Money Laundering and the TF, in compliance with this Law and other regulations in force. Non-compliance entails the application of the sanctions provided in this Law and its regulations."

#### *Weighting and conclusion*

TC268. **Recommendation 21 is rated as Compliant.**

### ***Recommendation 22 - DNFBPs: CDD***

TC269. *Criterion 22.1*. The legal framework of Panama establishes compliance obligations with respect to AML/CFT/CFPWMD issues for non-financial reporting institutions, enlisted in Article 23 of Law No. 23 of 2015, as amended by Law No. 21 of 2017, as the following:

- a) Companies of the ZLC, companies established in the Panama-Pacifico Agency, Baru Free Zone, the Diamond's Market of Panama and Free Zones.
- b) Casinos, luck and chance games and organization of betting systems and other physical or telematic establishments that develop these businesses through the Internet.
- c) Real estate development companies, property agents and property brokers, when these are involved in transactions concerning the purchase and sale of property for their clients.
- d) Companies dedicated to the construction industry: general and specialized contractors.
- e) Pawn shops.
- f) Companies dedicated to the commercialization of precious metals and companies dedicated to the commercialization of precious stones, in any of its forms, either through physical delivery or purchase of contracts in the future.
- g) National Lottery of Beneficence.
- h) National Post and Telegraph of Panama.
- i) Companies dedicated to buying and selling new and used cars.
- j) Activities carried out by professionals, as provided in Article 24.

TC270. In addition to the entities indicated above, it is anticipated that those derived from the National Risk Evaluation Plan will also be subject to the same obligations as non-financial institutions. In relation to the so-called "activities carried out by professionals subject to supervision", Article 24 of the same legal system lists them as follows:

- a) Purchase and sale of property;
- b) Administration of money, market capitalization or other assets of the customer;
- c) Management of bank, savings or securities accounts;
- d) Organization of inputs or contributions for the creation, operation or management of companies;

- e) Creation, operation or management of legal persons or legal arrangements, such as: Private Interest Foundations, Corporations, Trusts and others;
- f) Sale of legal persons or legal arrangements;
- g) Performing or arranging for a person paid by the lawyer or law firm, to act as proxy director of a company or a similar position in relation to other legal persons;
- h) Provide a registered office, business address or physical space, correspondence or administrative address for a company, corporation or any other legal person or arrangement that is not of his property;
- i) Perform or arrange for a person, paid by the lawyer or law firm, to act as a front man shareholder for another person;
- j) Perform or arrange for a person, paid by the lawyer or law firm, to act as a member of an express trust or perform an equivalent function for another form of legal arrangements;
- k) and Those of Resident Agent of legal entities incorporated or existing under the laws of Panama

TC271. The institutions and professions that are listed in Articles 23 and 24 of the aforementioned Law No. 23 of 2015 must implement measures of CDD in terms of Article 27 of such Law, in accordance with the requirements established for the financial reporting institutions that were described in the criteria that comprises Recommendation 10

TC272. Additionally, Executive Decree No. 363 of 2015, contemplates the basic and enhanced CDD measures that must be applied and adopted by all the non-financial reporting institutions and the activities carried out by professionals subject to supervision, which allows strengthening the regulations exposed by Law No. 23 of 2015.

TC273. Finally, the Board of Directors of the Intendencia has issued resolutions for each sector, identifying the CDD measures that must be adopted by the NFRI for their clients, attending to the risks to which each sector is exposed, thus strengthening the current regulations.

TC274. On the other hand, Article 29 of Law No. 23 of 2015, establishes the obligation to update records and their protection for reporting institutions, while for non-financial reporting institutions and professional activities subject to supervision, only the obligation to safeguard the information and documentation of the clients is established, not anticipating expressly the periodic update of such information. Finally, it should be considered that Law No. 2 of 2011 establishes important limitations in CDD made by resident agents, as developed in the analysis of Recommendation 24.

TC275. *Criterion 22.2*. According to the provisions of Article 29 of Law No. 23 of 2015, the so-called "activities carried out by professionals subject to supervision" are obliged to keep updated records of information and documentation of CDD, as well as records of transactions performed, for a minimum period of five (5) years after the conclusion of the business relationship. A provision in the same terms and on the same line is stated in Article 19 of Executive Decree 363 of 2015, through which the aforementioned Law is regulated.

TC276. Notwithstanding the foregoing, as indicated in the analysis of Recommendation 11, there are no established times in which the information and documentation must be made available to the authorities.

TC277. *Criterion 22.3* DNFBPs, supervised in Panama under the name of "professional activities", must adopt enhanced CDD measures for clients that fall under the category of PEP, whether national or foreign, client or beneficial owner, given that they are considered as high-risk clients, as established in the definition of PEP indicated in Article 4 of the Law. Based on the foregoing, and as indicated in the analysis of Recommendation 12, these professional activities under supervision must have measures to perform

enhanced CDD. Provisions in the same sense are set forth in Article 12 of Executive Decree 363 of 2015, through which Law No. 23 of 2015 is regulated.

TC278. As with the financial reporting institutions, professional activities have specific resolutions for each of them in which they are obliged to comply with the provisions related to PEP, as follows:

- a) Real estate and construction sector - Resolution No. JD-001-015, Article 7;
- b) Free zones - Resolution No. JD-002-015, Article 7;
- c) Metal and precious stones trading companies and the Diamonds Market of Panama - Resolution No. JD-003-015, Article 6;
- d) Companies buying and selling new and used cars - Resolution No. JD-004-015, Article 6;
- e) Casinos, games of chance and games of chance - Resolution No. JD-005-015, Article 8;
- f) Pawn shops - Resolution No. JD-007-015, Article 6;
- g) Securities transport companies - Resolution No. JD-008-015, Article 6;
- h) National Bank of Mortgages – Resolution No. JD-010-015, Article 6;
- i) Savings and Loan Companies for Housing - Resolution No. JD-010-015, Article 6;
- j) Agricultural Development Bank - Resolution No. JD-011-015, Article 6;
- k) Post and Telegraph of Panama - Resolution No. JD-012-015, Article 6; and
- l) National Lottery of Beneficence - Resolution No. JD-013-015, Article 5.

TC279. *Criterion 22.4*. The provision relevant to new technologies is contained in Article 40 of Law No. 23 of 2015, applicable to non-financial reporting institutions, states that "[...] must implement a risk-based approach, which involves an evaluation of the products and services offered and to be offered [...]"; paragraph 2 of the aforementioned Article adds the obligation on the part of the reporting institutions of "Perform predictive analysis to sensitize on the risks that may affect the products and services, considering the probability and impact [...] and based on this analysis design appropriate controls to mitigate the observed risks". The foregoing establishes a general framework in which the products and services currently offered and that may be offered in the future are included, including those provided by technological means currently available, in development, or to be developed in the future.

TC280. In addition, the Intendency, in its role as regulator and guide for the reporting institutions, issued Resolution No. I-REG-001-017 by which a guide was established to be adopted by all non-financial reporting institutions, with respect to compliance with the mechanisms for the prevention and control of the risk of money laundering, TF and financing the proliferation of weapons of mass destruction. In its Article 8, paragraph 8, it determines that the reporting institutions must include in their money laundering prevention manuals the methodology used by them to evaluate new products, services and technologies, new or in development for both new and existing products.

TC281. *Criterion 22.5*. Article 37 of Law No. 23 of 2015 establishes that activities by professionals subject to supervision may be supported by the CDD of a third party that belongs to the same economic group, which, in turn, a reporting institution. Additionally, Article 14 of Executive Decree 363 of 2015 establishes such support, provided that:

- a) Mechanisms are previously established that ensure that the reporting institution will provide a copy of the identification information and other pertinent documentation related to the requirements regarding the CDD; and
- b) Make sure that the reporting institution has implemented measures to comply with the requirements of CDD and record keeping.



TC282. Article 37 of Law No. 23 of 2015, was also amended by Law No. 21 of 2017, stipulating that financial reporting institutions, NFRI, and activities carried out by professionals subject to supervision may, at their discretion, support of the CDD performed by a third party that belongs to the same economic group, which, in turn, is a reporting institution.

TC283. The Board of Directors of the Intendencia issued Resolution No. JD-014-016 that regulates the registration and authorization process for compliance companies in accordance with the provisions of Law No. 23 of 2015 and Executive Decree No. 363 of 2015.

TC284. For more information please refer to the analysis of Criterion 17.1, where the matter is developed in more detail.

### *Weighting and conclusion*

TC285. DNFBPs have recently been incorporated into the AML/CFT regime with provisions very similar to those of financial RI. In this sense, some of the relevant deficiencies that these RI have and that have not been addressed through Agreements or guides from their supervisors are transferred to the DNFBPs, such as the lack of provisions related to the timeframes in which they should be put the information available to the authorities. **Recommendation 22 is rated as Largely Compliant.**

### ***Recommendation 23 - DNFBPs: Other measures***

TC286. *Criterion 23.1*. Law No. 23 of 2015, in Article 54, establishes the obligation by financial reporting institutions, NRFI, and activities carried out by professionals subject to supervision to report any event, transaction or operation in which it is suspected that they may be related to the offenses of ML/TF/FPWMD, *regardless of the amount that cannot be justified or sustained, as well as failures in control. The reports must be made to the Financial Intelligence Unit.* Executive Decree 363 of 2015, in Article 17, establishes that the reporting institutions to perform a suspicious transactions report must: 1) Create a record with the information on the transaction 2) Notify immediately the suspicious transaction to the Financial Intelligence Unit for the preventions of money laundering, the TF and the financing the proliferation of weapons of mass destruction, 3) regarding suspicious transactions, the correspondent file must be updated. However, the legislation regarding the possibility of reporting transactions that have been attempted is not clear.

TC287. Resolution No. JD-014-015 establishes in Article 8 that lawyers, authorized public accountants and notaries, in accordance with administrative or legal procedures in the exercise of the activities indicated in Article number one (1) of the Resolution, must report any fact related to the offense of ML/TF/FPWMD.

TC288. By means of Article 7 of Resolution No. JD-003-015 establishes that companies engaged in the commercialization of precious metals and in the commercialization of precious stones, in any form, by physical delivery or purchase of futures contracts, as well as the Diamond's Market of Panama, shall report the transactions or operations in accordance with the provisions of Law No. 23 of 2015 and current rules regarding this matter.

TC289. *Criterion 23.2* Article 12 of Law No. 23 of 2015 that the liaison to be designated as unit or person responsible for serving as liaison with the FIU and the respective supervisory entity. This Article was modified by Law No. 21 of May 10, 2017, which indicates that the non-financial reporting institutions and activities carried out by professionals subject to supervision should designate a person or unit responsible for serving as liaison with the FIU and the respective supervisory body for purposes of the implementation of ML/TF/FPWMD prevention measures, established in Law No. 23 of 2015. However, compliance

management agreements (including the appointment of a compliance officer at the management level) within the non-financial reporting institutions are not defined.

TC290. *Criterion 23.3* Under the terms established by Article 41 of Law No. 23 of 2015, professional activities subject to supervision - term with which DNFBPs are denominated in Panama - should implement enhanced CDD measures to business or transactions with individuals or legal persons from countries identified by the FATF.

TC291. *Criterion 23.4* As established in Article 56 of Law No. 23, applicable to all financial, non-financial reporting institutions or professional activities subject to supervision in matters of ML/TF, in no case may make the knowledge of the client or from a third party that has requested or supplied information, which considers the issuance of STR to the FIU.

### *Weighting and conclusion*

TC292. In accordance with the weighting in relation to other recommendations, specifically for the DNFBPs sector, **Recommendation 23 is rated as Largely Compliant.**

### ***Recommendation 24 - Transparency and beneficial ownership of legal persons***

TC293. *Criterion 24.1* . In general, the information required by this criterion is available to the general public through the PR website, which can be consulted free of charge. Foreign companies that operate in the country must also incorporate their data into the Registry.

TC294. Panama has a broad legal framework to regulate the different legal persons that can be incorporated within the country, which consists of the following laws:

- Commerce Code (regulates the limited partnership, general partnership and limited partnership with issued shares);
- Law No. 32 of 1927 "General Incorporation Law";
- Law No. 25 of June 12, 1995 "Law on Private Foundations"
- Law 4 of 2009 "Law Regulating Limited Liability Companies"

TC295. In general terms, the Commercial Code establishes some characteristics and information that must be contained in the deeds of the companies that in terms of Article 293 are the following:

- The names, last names and addresses of the grantors;
- The reason or social signature, as well as the name of the company in that case, expressing its class and the address;
- The object and duration of the company and the way of computing such term;
- The share capital, specifying the contribution subscribed and paid totally or partially by each partner, and the terms and manner in which the rest must be delivered in the latter;
- If the company is a corporation or limited partnership with issued shares, the nature, number, value and other circumstances of these will be expressed, indicating whether they are registered or bearer and whether they are reciprocally convertible or not;
- Mention of the partners that must be in charge of the management or administration of the company and the use of the social signature
  - i. In the case of a limited partnership, the name and address of the partners shall also be stated;
  - ii. If the company is a corporation or limited partnership with issued shares, the name and address of the directors, their powers and the manner in which the company is to be managed,

- directed and supervised shall be expressed; the powers of the general shareholders' meeting, the conditions for the validity of its resolutions and the way to compute the votes;
- The manifestation of what each partner contributes to the company, be it in industry, money, credits, effects or other property, with expression of the value that is given to them;
  - The percentage destined to reserve fund in companies with issued shares that are not a cooperative;
  - The manner and way of making the inventory and balance, as well as the distribution of dividends, the means of supervising those transactions and the time when they should be practiced;
  - The participation that the founders of corporations and limited partnerships with issued shares are reserved in the profits, and the way in which they are to receive them, as well as any other advantage that should correspond to them;
  - The cases in which the company has to be dissolved early;
  - The bases to practice the liquidation of the company and the way to proceed to the election of the liquidators, when they had not been previously designated;
  - The way society will make its publications, and;
  - All other clauses and legal conditions in which the partners have agreed or that were necessary to determine with precision their rights and obligations among themselves, and with respect to third parties.

TC296. In accordance with the provisions of Law No. 32 of 1927 (General Corporation Law), a corporation may be formed by two or more persons of any nationality, even if they do not have a domicile in Panama, through the signing of a social pact that contain the following information:

- The names and addresses of each of the subscribers of the social pact;
- The name of the company, which will not be the same or similar to that of another company, including the name or abbreviation of a corporation (INC);
- The object or general objects of the society;
- The amount the capital stock and the number and nominal value of the shares in which it is divided; and if the company has to issue shares without nominal value, the declarations mentioned in the Law.
- If there are actions of various kinds, the number of each class, and the characteristics of the actions of each class; or the stipulation that they may be determined by resolution of the majority of the interested shareholders or by resolution of the majority of the directors;
- The number of shares that each subscriber of the social pact takes;
- The address of the company and the name and address of its agent in the Republic, which may be a legal person;
- The duration of the company;
- The number of directors who will not be less than three with specification of their names and addresses;
- Any other lawful clauses that the subscribers have agreed upon

TC297. Based on Articles 4 and 5 of the Law, the social pact may be recorded by public deed, and must be certified by a Notary Public or any other official authorized for such purposes; in case the agreement is not carried out through a public deed, it must be notarized in a Notary in Panama. Article 6 establishes that the protocolized document must be registered in the Company Register so that it can take effect before third parties.

TC298. With regard to the Limited Partnerships (*Sociedades en Comandita Simple*), the relevant provisions are contained in Articles 330 to 358 of the Commercial Code. The capital of companies of these types may be divided into shares, in which case they will be governed according to the provisions related to corporations (Article 347). The administration and governance of such an established company will only be attributed to partners with unlimited responsibility designated on the basis of the bylaws and a watchdog committee of at

least three shareholders will be appointed, who cannot be limited liability partners (Article 350). In the event that there are two or more managing partners the company's own contract must establish who will manage.

TC299. With regard to Limited Liability Companies, Law No. 4 of 2009 establishes the provisions to which they will be subject. This type of company will be constituted by a public deed document or protocolized private document, both registered before the PR for purposes of giving it legal personality (Article 6), which will contain the following information:

- The identification of the grantors and partners and the indication of their address;
- The address of the company;
- The duration of the company, with the possibility that it will be perpetual;
- The indication of the corporate purpose, which may be broad or limited;
- The amount of the authorized capital stock, the shares or quotas in which it is divided and the value of each one;
- The designation of the person or persons who will be in charge of the administration and representation of the company;
- The designation of one or more general or special officers or attorneys and their attributions,
- The designation of a resident agent, who must be a lawyer or a law firm, and;
- The other legal agreements that the grantors deem convenient to agree.

TC300. *Criterion 24.2*. Chapter IV of the NRA on ML/TF/FPWMD of Panama evaluates the risks of commercial persons being used for illicit purposes, concluding that it is a vulnerability and considered high risk. According to the conclusions of the diagnosis made in the aforementioned document, he points out that simple limited partnerships and limited partnerships with issued shares are no longer used, while corporations are the most widely used. Regarding corporations with bearer shares and private interest foundations, trust companies and NPOs, these are the companies that could be used most widely for such purposes.

TC301. In addition, the NRA states that "[...] there is a vulnerability for companies without activities in Panama to be used in other countries for money laundering, or the TF." However, the NRA does not determine the importance of the risks derived from their operation or its impact at both, national and international level.

TC302. With respect to Panama offshore companies, since the recent approval of Law No. 52 of 2016 it states that legal persons that do not carry out transactions that are perfected, consume or have their effects within Panama, will be obligated to keep accounting records and to keep their supporting documentation inside or outside of Panama, according to what their administrative bodies determine.

TC303. In the event that the accounting records and supporting documentation are kept in a place that is not the office of the resident agent, the legal person shall be required to provide the agent, the physical address of the place where they will be kept, and the contact information of the person who will keep them under its custody, and they shall be available upon request of the competent authorities in no more than fifteen business days.

TC304. In short, this obligation to keep accounting records is a measure that seeks to ensure the availability of accounting information only to enable international cooperation when required by the countries where the legal persons operate and does not pursue any additional objective of risk control or mitigation of ML/TF risk derived from the activity of these entities abroad. In fact, this law does not establish any obligation of preventive control from the resident agent or the authorities from Panama regarding accounting records, that allows evaluating the risks of the activities developed by a specific company, and the adoption of measures to avoid their misuse.

TC305. *Criterion 24.3*. As mentioned above, in the case of all commercial companies that can be created in Panama, it is essential for them to be registered in a PR - which includes the Company Register, as established in Article 1754 of the Civil Code - for purposes of having legal personality. Also, the Civil Code of the Republic of Panama, in its Article 1753, states that one of the objectives of the PR is to "[...] establish in a reliable manner everything related to the capacity of natural persons, to the constitution, transformation or extinction of legal persons, to all kinds of general mandates and to all legal representations [...] ". Said registry may be consulted freely by any person, as indicated in Article 1755 of the Code. All the basic information that this criterion requires regarding commercial companies - and even the Foundations - is available in said Registry, which can be consulted free of charge in its website.

TC306. *Criterion 24.4*. In terms of all commercial companies that can be established in Panama, Article 71 of the Commercial Code - which was amended by Law No. 22 of 2015 - states that legal persons must keep records of acts and actions, for which they will have to use books, electronic records and other mechanisms. However, in the case of corporations, it is not expressly established that the information must be available in the country, as this criterion requires.

TC307. In effect, Law No. 32 of 1927, related to Corporations, establishes in its Article 36 that any company of this type "[...] will be obliged to have in its office in the Republic [of Panama], or in any other the place that the social pact or the bylaws determine, a book that will be called 'Stock Registry', in which the names of all the persons who are shareholders of the company will be recorded, except in the case of shares issued to the bearer, in alphabetical order, indicating the place of domicile, the number of shares corresponding to each of them, acquisition date and the amount paid for it or that the shares are fully paid and released. In the case of shares issued to bearer, the Share Registry will indicate the number of shares issued, the date of issuance and that the shares have been fully paid and released." Law No. 23 and Decree 363, on the other hand, also do not clearly establish the information that resident agents must keep on all shareholders or members of a company, since the obligation is expressly established for those who own 25% or more of participation in the ownership of the company.

TC308. *Criterion 24.5*. Current regulations establish that the information required by criterion 24.3 must be updated in the PR so that it is valid before third parties. Regarding to the information required by criterion 24.4, which is not incorporated into the registry but can be maintained by the companies and there is no specific mechanism that allows the authorities or the resident agent to ensure its updating.

TC309. *Criterion 24.6*. All companies and foundations must have an authorized resident agent, who is the one obliged to identify the beneficial owner. The Article 6 of Law No. 2 of 2011, which regulates the measures to know the client for resident agents of existing legal entities in accordance with the laws of Panama, indicates that "any resident agent is obliged to apply the measures to know the client, for *which it will require* the client to provide satisfactory evidence of his identity; when the client acts on behalf of a third party, he will have to provide satisfactory evidence of the identity of said third party; and, when the share certificates that represent the property title on the legal entity are issued to the bearer, he will have to provide satisfactory evidence of the identity of the holders of the shares".

TC310. Additionally, Article 8 of Executive Decree 363 of 2015, states that in the process of identifying and verifying the identity of the beneficial owner, in the case of legal persons and other legal arrangements, reasonable measures will be taken by the supervisory entities established for the fulfillment of these duties, in their area of competence, which will be a 10% or more of stock of the property for financial reporting institutions and a stock of 25% or more of the property for the financial, non-financial reporting institutions and those professionals who perform activities subject to supervision.



TC311. Article 3 of Law No. 2 of 2011 establishes that the resident agent must 1) identify the client, 2) obtain information about the purpose for which the legal entity is created, and 3) provide the competent authorities with the required information, in the terms established in this Law, to combat ML/TF and any other illegal activity.

TC312. For the effects of paragraph 2), it is established that "in the application of the measures to know the client, the resident agent shall not be obliged to perform any proactive action or verification of the information provided by the client on the activity the legal entity will be dedicated to, and it will comply with its obligation, established by this Law, to obtain the information of the client at the time of starting the provision of its services." This provision may constitute a limitation of importance in relation to the quality of the CDD measures applied by resident agents. And its subsequent update, since what has been declared is not adequately verified or a subsequent monitoring of the company's activity is carried out to detect any changes in the information initially provided on the beneficial owner of the companies with which it is related, so that the due update is not assured.

TC313. Finally, it is emphasized that according to Article 7 of Law No. 2 the resident agent will not require obtaining information from the third party on behalf of which the client acts, when it is certain that this is a legal person that belongs to a professional body whose conduct or practices require it to adopt and maintain professional and ethical standards for the prevention and detection of ML/TF and any other illegal activity in terms not inferior to those required in compliance with this Law, such as law firms, banks, trust companies, insurers, securities companies and authorized public accountants. In these cases, and in compliance with the provisions of this Law, the resident agent will limit himself to obtaining and maintaining in his files, certain minimum data about the client that the company acquires.

TC314. *Criterion 24.7*. In addition to the doubts mentioned in the previous criterion in relation to the quality of the CDD measures applied by resident agents. There are also doubts regarding its subsequent updating, since the declarations made by the client are not adequately verified and no monitoring of the company's activity is carried out to detect any changes in the information initially provided on the beneficial owner by the companies with which it is related so that the proper update is not assured.

TC315. In effect, once the professional relationship with the client has already begun, the resident agent does not have a legal obligation to permanently monitor the client's activity that could allow him to detect changes in the final beneficial owner, since Article 5 of Law No. 2 only provides that the resident agent must apply measures to know the client "when he is aware that the client has directly or indirectly transferred their interests on the legal entity" or when necessary to keep the documents and information updated obtained as part of the measures to know the client".

TC316. On the other hand, Law No. 23 of 2015, which was subsequently approved and complements the obligations of NFRI, is not clear as to the resident agent's obligation to perform a subsequent follow-up of the client's activity that could allow him to detect possible changes in the information initially provided on the beneficial owner of the companies, so that the proper update is not ensured.

TC317. In effect, Articles 27, 28 and 29, which establish the basic CDD and the obligation of updating and safeguarding the information, are not clear with respect to the obligation of the NFRI to monitor the activity and update the client's information, which does not ensure adequate CDD, especially in the case of resident agents.

TC318. *Criterion 24.8* Article 13 of Law No. 2 of 2011 establishes that resident agents of existing legal entities according to the laws of Panama must provide the information or documentation requested by the competent authority, fulfilling the following requirements: 1) The notification must indicate the reasons why the competent authority requires the information or documents to be presented, 2) The period in which such



information or documents must be provided by the resident agent, which must not be less than five (5) business days from the date of notification of the request for information and 3) The office of the competent authority in which the information or documents must be delivered."

TC319. The competent authorities, according to Law No. 23 of 2015, which modified Article 2 of Law No. 2 of 2011, are the following: The Intendency, the FIU, the Prosecutor's Office and the Judiciary, for purposes of money laundering, financing of terrorist activities and any other illicit activity in accordance with Panama legal system; and the DGI, for purposes of compliance with international treaties or agreements ratified by Panama.

TC320. *Criterion 24.9* Law No. 2 of 2011, in its Article 10, states that the information required to satisfy the measures to know the client must be maintained by the resident agent, by any written or technological means authorized by law, by a period not less than five years, counted from the termination of the professional relationship with the entity. In addition, Law No. 23 of 2015, in Article 29 states that "The Financial Reporting institutions shall keep updated all information and documentation records of CDD for both natural persons as well as legal persons; they will also safeguard the records of the transactions carried out for a minimum period of five years, counted as of the date of the termination of the relation, so as to make it possible to recognize them and reconstruct transactions. The Non-Financial Reporting Institutions and Activities performed by professionals subject to supervision, are equally obliged to safeguard the information and documentation on the terms provided in this Article." Therefore, the obligation to maintain the information and records includes to all the reporting institutions bound by Law No. 23 of both the financial and non-financial sectors.

TC321. *Criterion 24.10* The authorities can directly access the basic information about the companies since it is public. Likewise, Law No. 2 of 2011, in its Article 3, lists the measures aimed at knowing the client that must be applied by resident agents, one of them is to provide the competent authorities with the information required in the matter of AML/CFT/CFPWMD.

TC322. Articles 12 and 13 of Law No. 2 of 2011 state that the authorities may request resident agents for information or documents on the client's identity or other information they have gathered in compliance with the aforementioned law, always notifying the reasons for the request and granting a period greater than five (5) business days from the notification to present it, as well as indicating in which office the information and/or documents must be presented.

TC323. *Criterion 24.11* . Through Law No. 47 of 2013, a custody regime is adopted that applies to the issued bearer shares, where every owner of shares issued to the bearer must designate an authorized custodian to maintain the respective bearer shares certificates (Article 3). Likewise, any company that issues bearer shares must deliver them to the authorized custodian appointed by the owner, together with a sworn statement, within 20 days of the approval of the issue (Article 5). Additionally, as established in Article 8, regardless of other information requested by the authorized custodian, identification information must be provided about the owner and about the resident agent of the issuing company. Article 8 also establishes that the owner of the shares issued to the bearer will be the person that appears as such in the aforementioned sworn statement.

TC324. The bearer shares that were issued prior to the entry into force of the Law that establishes the regime were granted a transition period that ended on December 31, 2015, in which they were to be exchanged for registered shares or delivered in custody. After the end of that period, the issuance of bearer shares was prohibited, unless the company has adopted the regime of immobilization of shares (custody) established in the Law. Non-compliance by the owner of bearer shares that have not delivered such shares in custody as of December 31, 2015, may not exercise definitively the political and economic rights inherent

to these recognized by law in front of the issuing company without prejudice to the legal actions that the parties of good faith can exert by the damages caused.

TC325. It is important to highlight that the transfers of the shares issued to the bearer will be perfected when the authorized custodian is notified in writing of such transfer by the owner and the acquirer delivers the sworn statement described above to the authorized custodian.

TC326. Finally, the competent authority that has knowledge of a breach by the authorized custodian, must notify in writing to the Fourth Chamber of General Businesses of the Supreme Court of Justice, in the case of lawyers, which will impose the corresponding sanctions.

TC327. The custodians have the following obligations, under the terms of Agreement 7-2015 of the SBP:

- Maintain all documentation related to the provision of the custody service at its headquarters in Panama;
- Maintain records related to the provision of the custody service for a minimum period of five (5) years, after completing the provision of the service;
- Maintain physical custody of certificates of shares issued to the bearer for the duration of the exercise of its function at its headquarters in Panama, declared before the SMV, under the parameters of security, integrity, preservation and confidentiality with which all information related to certificates must be handled;
- Maintain, at all times, strict reservation regarding the information received by virtue of the provision of the custody service;
- Provide all information when required by competent authorities;
- Send account statements to the owners or holders, with the periodicity, content, and within the period agreed with the clients;
- Act with due care, keeping the certificates of bearer shares in good condition;
- Carry diligently the registration of the bearer shares ownership;
- Issue the respective certifications or accreditations, stating the identity of the owner or holder of the shares issued to the bearer when they are required by court order, by the owner or the creditor, and;
- Apply the CDD measures at all times to allow a reasonable identification and effective knowledge of the clients and the final beneficial owners.

TC328. *Criterion 24.12*. The regulations of Panama do not prohibit the existence of nominal shareholders and directors, nor does establish any specific provision for control over this activity.

TC329. *Criterion 24.13*. Article 10 of Agreement 4-2015 states that the SBP may cancel the authorization of a custodian if it detects that they have not complied with the internal policies, controls and procedures for the provision of the service, previously giving a term of thirty (30) days to correct the findings. Additionally, monetary sanctions are established for the failure to pay the single rate tax to maintain the full validity of the company, established by Article 318-A of the Tax Code.

TC330. Chapter IV of Law No. 2 of 2011 establishes sanctions for resident agents who fail to comply with legal provisions, which include: 1) Warning, 2) Fine of up to 5,000 PAB and 3) Temporary suspension of the capacity of the lawyer or law firm to provide the resident agent services for new legal persons, for a term of not less than three months, nor more than three years. The competent authority to apply these sanctions is the Fourth Chamber of General Businesses of the Supreme Court of Justice.

TC331. Title IX of Law No. 23 also establishes the possibility of sanctions for those who fail to comply with it. Title IX of Law No. 23 also establishes the possibility of sanctions against those who fail to comply with its provisions, including breaches of the identification and collaboration obligations by the resident agents.

TC332. Current legislation establishes that the information required by criterion 24.3 (basic information about the company) must be updated in the PR so that it is valid before third parties.

TC333. *Criterion 24.14*. This criterion is contemplated in Law No. 23 of 2015, in its Article 11 paragraphs 8, 9, 10, which refers to the powers of the FIU to exchange information with similar entities from other countries for the analysis, previous signing of a memorandum of understanding or other cooperation agreements, or that the counterparty integrates the Egmont Group.

TC334. On the other hand, Law No. 11 of 2015, which establishes provisions on international legal assistance in criminal matters, indicates, in Article 1, that the authorities of Panama, through their competent entities, will facilitate reciprocal legal assistance in investigations, prosecutions and actions concerning the offenses provided for in the legislation of Panama, including those related to the seizing and confiscation of proceeds of crime, when they are required by other States in accordance with international conventions and treaties in force in Panama. In the absence of these, legal assistance may be provided based on the universal principle of reciprocity between nations."

TC335. Regarding the supervision of securities, based on the provisions of Article 30 of Law No. 67 of 2011, the SMV may enter into understanding and cooperation agreements with foreign authorities and supervisors of the securities market, exchanging or supplying the necessary information to the development of its functions.

TC336. *Criterion 24.15* There has been no reported application of a specific mechanism to monitor the quality of assistance received from other nations.

### *Weighting and conclusion*

TC337. The ML/TF/FPWMD NRA of Panama, in Chapter IV, evaluates the risks of commercial persons being used for illicit purposes, concluding that it is a vulnerable sector and considered high risk. In particular, the NRA establishes that there is a high vulnerability for companies without activities in Panama to be used in other countries for money laundering, or the TF." However, the NRA does not deepen the analysis of the operational and specific risks of the activity of the sector or quantify the importance of the risks derived from such operations or its impact at national and international level, to define the appropriate mitigating measures.

TC338. On the other hand, there are no mechanisms to guarantee the accuracy and updating of the available data on the shareholders and beneficial owners of the entities, since the liability of the resident agents is limited and does not include activity monitoring of the legal person to which is related to.

TC339. The supervision activity on resident agents is limited and the sanctions provided for these professionals by Law No. 2 do not appear as proportional nor sufficiently dissuasive, and no sanctions have been applied to the date.

TC340. Neither have control measures been adopted to prevent the improper use of nominal shareholders and directors, services that are permitted by current legislation and that are regularly provided by the law firms that operate in the country. **Recommendation 24 is rated as Non-Compliant.**

### *Recommendation 25 - Transparency and beneficial ownership of legal arrangements*

TC341. *Criterion 25.1*. The legislation in force in Panama (Law No. 1 of 1984 "Whereby trust is regulated in Panama" and Law No. 21 of 2017 "Which establishes the rules for the regulation and supervision of trust and the trust business and prescribes other provisions") generally contemplate criteria 25.1 (a), 25.1 (b) and

25.1 . Article 12 of Law No. 21 establishes the individuals and legal entities that may provide these services, after obtaining the corresponding trustee license, establishing some exceptions for state agencies and companies. On the other hand, Article 22 of this Law empowers the SBP to supervise and punish those who exercise the function of trust companies without having the corresponding license.

TC342. Article 31 of Law No. 23 of 2015 establishes that financial reporting institutions must take CDD measures to prevent the activities of a trust company from being used for the purposes of ML/TF/FPWMD; Therefore, the trust companies must ensure that they know, identify and verify the identity of the settlor and natural person who serves as the beneficial owner of the trust. Additionally, Article 8 of Executive Decree 363 of 2015 and Article 15 of Agreement No. 10-2015 of the SBP indicate provisions to identify beneficial owners.

TC343. *Criterion 25.2* The trust companies are subject to the provisions of Article 29 of Law No. 23 regarding the updating and safekeeping of CDD records, safeguarding the records for a minimum of five years from termination of the relationship. For this last aspect it is also important to point out the application of Article 20 of Executive Decree No. 363 of 2015, which establishes that the reporting institutions must maintain records on transactions and updated CDD information, which must be maintained for a minimum period of five years from the termination of the relationship with each client.

TC344. As mentioned above, in the terms of the aforementioned Decree, the information will be updated at least every 12 months for high risk clients, every 24 months for medium risk clients and every 48 months for low risk clients.

TC345. However, the risk that the information available on shareholders and the beneficial owner is not accurate or duly updated due to the misuse by shareholders and appointed directors has not been evaluated, services which may be professionally rendered within the country and for which there is no specific control established.

TC346. *Criterion 25.3* Article 28 of Law No. 23 of 2015 establishes the basic CDD measures that must be adopted by reporting institutions, NFRI and activities carried out by professionals subject to supervision over legal persons and other legal arrangements. These include the obligation to identify officers, directors, attorneys, signatories and legal representatives of such legal persons, as well as to identify and take reasonable measures to verify the beneficial owner using relevant information obtained from reliable sources. When the beneficial owner is a legal person, CDD will be extended until the person who is the owner or controller is known.

TC347. *Criterion 25.4* . Chapter VI on Confidentiality of Law No. 21 of 2017 establishes trust confidentiality, and within this includes the exception of keeping said confidentiality in specific cases, when the information is required by the competent authority according to the Law or when it is required in compliance with ML/TF/FPWMD prevention measures.

TC348. *Criterion 25.5* . Article 32 of Law No. 23 of 2015 specifically establishes that trust companies must supply the information required by laws, decrees and other regulations regarding AML/CFT/CFPWMD and that they are obligated to deliver it to the SBP upon it request. The regulation does not establish the procedure that the competent authorities must comply with in order to access such information.

TC349. *Criterion 25.6* . Article 1 of Law No. 11 of 2015 establishes that the authorities of Panama, through their competent entities, will facilitate reciprocal legal assistance in investigations, proceedings and processes relating to the offenses provided for in Panamanian law, including those related to the seizing and confiscation of proceeds of crime, when they are required by other States in accordance with international

conventions and treaties in force in the Republic of Panama. In the absence of these, legal assistance may be provided based on the universal principle of reciprocity between nations."

TC350. On the other hand, Article 11 of Law No. 23 of 2015 empowers the FIU to exchange financial intelligence information with similar entities from other countries for the analysis in case they may be related to money laundering, TF and financing the proliferation of weapons of mass destruction.

TC351. *Criteria 25.7 and 25.8*. The noncompliance sanction system to which the trust companies are entitled is the one applied to reporting institutions, contained in Articles 59, 60, 61 y 62 of the Law No. 23 of 2015. Generic sanctions ranging from 5,000.00 to 1,000,000.00 PAB and specific sanctions are envisaged depending on the severity of the offense committed.

TC352. Likewise, Law No. 21 of 2017 establishes in its Chapter X on Sanctions (Articles 72 to 78) provisions on criteria for the imposition of sanctions by the Superintendence of Banks in relation to acts that violate the provisions of Law No. 21 and its regulations, applicable to the trustee, its directors, officers, managers, officials and other persons who have participated in the violation of the provisions of the Law. In case of recidivism, it also provisions that the Superintendence is authorized to request the commercial disqualification of the infringing party. In addition, in Article 76 of the aforementioned Law No. 21 it is clarified that the fines and sanctions imposed by the Superintendence of Banks are independent and without prejudice to other fines and penalties that may be incurred for acts that violate any other applicable laws or regulations and appropriate civil or criminal actions. Up to the present, sanctions have been applied only for delays in submitting information to the FIU and not for other breaches detected in the CDD or other prevention norms.

### *Weighting and conclusion*

TC353. The current regulations for legal arrangements include, in general terms, the criteria established by recommendation 25. However, the risk that the information available on shareholders and the beneficial owner is not accurate or duly updated due to the misuse by shareholders and appointed directors has not been evaluated, services which may be professionally rendered within the country and for which there is no specific control established. For this reason, in the opinion of the assessment team, a greater number of supervision actions carried out by the SBP would be desirable to verify compliance with the regulatory requirements and to detect this type of situation as long as no specific controls are established on that activity. On the other hand, up to the present, sanctions have been applied only for delays in the submission of information to the FIU and not for other breaches detected in the CDD or other prevention norms. By virtue of the above, **Recommendation 25 is rated as Partially Compliant.**

### *Recommendation 26 - Regulation and supervision of financial institutions*

TC354. *Criterion 26.1*. Article 19 of Law No. 23 of 2015 establishes that the SBP, the SSRP, the SMV, the Intendencia (that included the remittance agencies and Money exchange houses), the IPACOOOP, and any public institutions determined by law, are considered supervisory entities of the compliance of AML/CFT requirements, in order to guarantee the supervision of other activities described in that law or which risk profile requires so. Article 20 establishes the powers of the supervisory entities. This law was regulated by Executive Decree 363, which in Article 20 establishes the powers of the supervisory entities. Law No. 12 of 2012 that regulates the insurance activity establishes in Article 12 as a technical function of the superintendence to require supervised persons to comply with the legal and regulatory provisions on corporate governance, prevention of the offense money laundering, TF and ML, as well as sanction infractions and breaches.



TC355. The Banking Law contemplates in its Chapter XIII Article 112 up to Article 114 provisions on the "Prevention of the Crime of Money Laundering, TF and Related Offenses. These provisions are in turn developed through the Agreements No. 4-2015, 5-2015, 7-2015, 9-2015, 10-2015, 6-2016 y 7-2016 and all their modifications issued by the SBP. Additionally, Article 59 of the Banking Law establishes that all banks that exercise the banking business in Panama will be subject to the inspection and supervision of the Superintendence, in order to verify its financial stability and its structure of compliance with the provisions of this Decree Law and the regulations that develop it. However, it does not establish in particular the attribution of supervision in AML/CFT.

TC356. Article 13 of Decree 361 determines the supervisory functions of the Intendency. The Decree Law No. 1 of 1999 of the Securities Market Law is contemplated in Article 329 in a generic way the regime of supervision and Inspection of the Superintendence of the Securities Market of Panama, without referring to AML/CFT. IPACOOOP is regulated by Law No. 24 of 1980, which in Article 2 determines that it will have the power to supervise the operation of the cooperatives directly or delegate it to cooperative associations.

TC357. *Criterion 26.2*. Article 2 of Executive Decree 52 of 2008 establishes that banking business in or from Panama may be exercised only by those who have obtained the respective banking license. Article 43 of Decree 52 establishes that foreign banks must have the authorization or the non-objection of their supervisory body to request a license to exercise the banking business in or from Panama or to request a representative office.

TC358. Regarding financial companies, this criterion is embodied from Article 6 to Article subsection 13 of Law No. 42 of 2001 that determines that once the application is received and once compliance with the requirements is verified, the Directorate of Financial Companies of the MICI, by reasoned resolution, will issue the corresponding authorization.

TC359. Law No. 12 of 2012 in Title II, Chapter I, (Requirements and Guarantees to Constitute Insurers), Article 39 establishes that any company or entity, public or private, that has the purpose of carrying out supervised activities or other transactions related to the insurance industry in or from the Republic of Panama must be previously and duly authorized by the Superintendence.

TC360. Regarding Reinsurance companies, pursuant to Law No. 63 of 1996, Title II, Chapter I, on requirements for the Constitution and Operation of Reinsurance Entities, Article 18 establishes that the request of a license to exercise the reinsurance business must be in writing to the National Commission of Reinsurance, who by reasoned Resolution will grant the license (pursuant to Article 20 of Law No. 12). Article 15 establishes that there are four types of licenses, namely: 1) General Reinsurance License, which will be granted to Legal Persons that from an office established in Panama, indistinctly engage in reinsurance of local or foreign risks; 2) International Reinsurance License, which will be granted to Legal Entities that, from an office established in Panama, exclusively contract reinsurance of foreign risks; 3) Reinsurance Administrator License, which will be granted to Legal Persons that, from an office established in Panama, represent third party reinsurers and on their behalf contract reinsurance of local or foreign risks and 4) Broker License of Reinsurance, which will be granted to the Legal Persons that from an office located in Panama are dedicated to serve as an intermediary between the Reinsurance Companies and their Reinsured.

TC361. Law No. 24 of 1980 that creates the Panamanian Autonomous Cooperative Institute establishes in its Article 3, that it will have the function of processing the obtaining and suspension of legal status for cooperatives.

TC362. The Securities Market Law compels self-regulated organizations: securities companies, investment managers, pension fund administrators, investment advisors, to obtain a license to provide their services. Since they are collective investment vehicles, investment companies and self-managed investment



companies are required by law to obtain a registration with the SMV to obtain funds from the investing public through the sale of their participation quotas in accordance with the principles of the International Organization of Securities Commissions (IOSCO).

TC363. Article 45 of Executive Decree 52 of 2008, regulates the exercise of the banking business without a license, establishing that whenever there is knowledge or well-founded reasons to suppose that a person exercises or intends to exercise the banking business without a license, the Superintendence will be empowered to examine their books, accounts, and other documents, in order to determine such fact. Any unjustified refusal to present said books, accounts and documents shall be considered as presumption of the exercise of the banking business without a license. If necessary, the Superintendence may intervene the establishments in which the banking business without a license is presumably occurring and, if such fact is proven, must order its closure. For these actions, the Superintendence may count on the help of the National Police and other authorities. The Superintendence will command the PR the annotation of a marginal in the registration of each company referred to in this Article and will impose the sanctions established in this Decree Law. After sixty calendar days have elapsed from the date of the corresponding annotation, the affected company will be dissolved as a matter of right or disqualified from doing business in Panama, depending on whether it is a Panamanian or foreign company.

TC364. Law No. 48 of 2003 establishes that people, both natural and legal, who regularly carry out money transfer services "[...] either through transfer systems or funds transfer, funds compensation, or by any other means, inside and outside the country, which will be called money remittance houses", must request an authorization for such effects from the MICI, through the Directorate of Financial Companies.

TC365. *Criterion 26.3* Paragraph 1 of Article 48 of Executive Decree 52 establishes the criteria for the approval or denial of banking licenses, subsection a) determines that the identity of the main shareholders and the suitability of the administrative body should be presented for this purpose based on their experience, integrity and professional record.

TC366. Additionally, the SBP issued Agreement No. 3-2001, which establishes in Article 2 that it will be evaluated at the moment of granting a license that natural persons have not: a) been convicted for money laundering, illicit drug trafficking, racketeering, illegal arms trafficking, person trafficking, kidnapping, extortion, embezzlement, corruption of public servants, terrorist acts, international vehicle traffic, or for any offense against property or public faith; b) It is impeded from practicing trade, in Panama or in another country; c) Has been declared bankrupt or in a civil bankruptcy; d) It has been identified by the Superintendence as responsible in the Bank for the acts that led to the compulsory liquidation of the Bank.

TC367. Article 14 of Agreement 2-2011 indicates that the SMV may deny a license to a securities house for lack of commercial integrity, and/or professional record in accordance with the activity to be developed.

TC368. Article 8 subsection 4 of Law No. 42 of 2001, through which the transactions of financial companies are regulated, indicates that at the moment of requesting the application to operate, the natural person wanting to obtain such authorization must present the criminal and police record, in which that it has not been punished for offenses against the patrimony, against the public faith, against the public administration or for money laundering." While Article 10 subsection 7, establishes that the criminal and police history of the directors, officers, legal representative or general proxy should be presented, if any, stating that they have not been punished for offenses against the patrimony, against the public faith, against public administration or for money laundering.

TC369. The Insurance Law (Law No. 12 of 2012) establishes in Article 44 subsection 8, that verification of final conviction of directors, officers, executives or general proxies, who have been convicted - within ten years prior to the request for registration of the company before the Superintendence -for offenses that

involve drug trafficking, money laundering, fraud, fraudulent machinations, financial crimes or other crimes against the public faith will be grounds for denial, postponement or cancellation of the insurance license. The same regulation arises for reinsurance companies in Article 21 subsection 3 of Law No. 63 of 1996.

TC370. With regard to the granting of Legal Status to cooperatives, the requirements established in Law No 17 of 1997 -Cooperatives Special Regime- do not refer to necessary measures to prevent criminals or their associates from participating in this type of entity.

TC371. It is important to highlight that there was no information related to a sector of importance and high risk according to the standards, as is the case of remittance agencies.

TC372. *Criterion 26.4* . Agreement 10-2015 of the SBP, in Articles 38 and 3 8A, establishes that the banking groups that consolidate or sub consolidate their transactions in Panama must ensure that they manage globally the money laundering risks to group level, as well as evaluate the possible risks related to the activities of its branches, affiliates and subsidiaries.

TC373. The other members of the financial sector (insurance, securities, cooperatives and, as of May, remittance agencies and money exchange houses) are under risk-based supervision and monitoring as described elsewhere in this report. However, the regulation by the SBP for its new reporting institutions (remittance agencies and money exchange houses) is not yet complete.

TC374. *Criterion 26.5* . Law No. 23 of 2015, Article 20 subsection 3, establishes that supervisory entities must adopt a risk-based supervision approach that allows the supervisor to have a clear understanding of the risks of the offenses of money laundering, TF and financing the proliferation of weapons of mass destruction, present in the country.

TC375. Agreement 10-2015 of the SBP, in Articles 38 and 38A, establishes that the banking groups that consolidate or sub consolidate their transactions in Panama must ensure that they manage the money laundering risks globally at a group level, as well as evaluating the possible risks related to the activities of its branches, affiliates and subsidiaries.

TC376. The Executive Decree 363 of 2015 regulating Law No. 23, establishes in Article 20 the following: "Without prejudice to the provisions of Law, supervisory entities are authorized to verify due compliance with the mechanisms for the prevention and control of the risks of money laundering, the financing of terrorism and financing the proliferation of weapons of mass destruction, adopting a risk-based approach to supervision that will permit the supervisor to clearly understand the risks to which the regulated financial and nonfinancial reporting institutions and the professionals engaged in activities subject to supervision are exposed".

TC377. To assess the reporting institutions compliance with the relevant CDD measures, supervisory entities will have access to pertinent and relevant information, whether for individual cases or statistical samples that are representative of the portfolio, adapted to measuring the effectiveness of controls applied on money laundering, the financing of terrorism and financing the proliferation of weapons of mass destruction. Taking into consideration the degree of discretion on the identity of depositors and creditors of banks, holders of securities companies accounts and trust beneficiaries, requests for producing information for monitoring the compliance of requirements to prevent money laundering, the financing of terrorism and financing the proliferation of weapons of mass destruction will only be made in the supervised entity itself under measures of control that permit the maintenance of the confidentiality of all information and documentation, except in specific instances in which the SMV requires banking information and requests it through the SBP for the purposes established by Law or in which the supervisory entity is conducting actions related to a specific money laundering investigation, ensuring confidentiality on the use the information

gathered. The intensity and scope of onsite and offsite supervision may be applied according to the risk profile of the financial and nonfinancial reporting institutions and those professionals engaged in activities subject to supervision.

TC378. The SBP has, as of 2012 with the Uniform Risk-based Supervision Manual (MUSBER). Its implementation corresponds to the fulfillment of Pillar 2 of the Strategic Plan 2010 - 2012 of the SBP. And additionally, it has a tool (TEAM MATE), which consolidates the information in an integral manner of all the procedures based on risks applicable to the entities.

TC379. This Manual establishes the procedures that will be verified, in situ and extra situ, to confirm that the institution has procedures in accordance with the regulations and controls applied in practice, to identify the risk of money laundering. All of this with the purpose of identifying the incidences or weaknesses of the financial institution, to establish an action plan that develops the necessary corrective measures when there are requirements for breaches and healthy practices.

TC380. Through Resolution of Board of Directors No. SBP-JD-0032-2012 of 3 of 2012, this SBP approved the MUSBER, which established that a final inspection report will be sent to the banks as a result of the inspections carried out, the findings, recommendations and non-compliances determined during the inspection.

TC381. The SMV has a Manual for Supervision in the area of Prevention of Money Laundering, TF and the Financing for the Proliferation of Weapons of Mass Destruction approved by the Board of Directors through Resolution No. JD-01-16 de 2016. The Manual establishes that inspections must be conducted with a Risk-Based Approach, in order to evaluate the effectiveness of the mechanisms, policies and methodologies for managing the ML/TF/FPADM risk of the reporting institutions, in accordance with the variables required in our regulations such as, but not limited to, the risk profile of the reporting institution and its activities; their clients; the products and services it offers; the distribution or commercialization channels; the geographical location of the reporting institutions, its clients and beneficial owner; the risk of the custodian or the custodians or correspondent services, in order to identify opportunely anomalous situations as well as their mitigation. Additionally, the SSRP maintains an In Situ and Extra Situ Supervision Manual, with a RBA for the ML/TF/FPWMD risk.

TC382. In reaction to the supervision of the insurance and reinsurance market, Article 3 of Agreement 3 of 2015 establishes that "the Superintendence will exercise its supervisory role with a risk-based approach, so it will establish the methodology so that the reporting institutions of the insurance sector, both group A and group B, under their supervision, can design and implement processes to identify, evaluate and understand their ML/TF/FPWMD risks."

TC383. IPACOOOP developed a Manual of Supervision for the prevention of Money Laundering and against TF and Financing of Proliferation of Weapons of Mass Destruction with a risk management approach. It provides a guide for the identification, measurement and control of ML/TF risk exposure levels to which the products and services offered by the Cooperatives may be exposed, as well as customer risks, geographical location and distribution channels. The manual contains an outline of the requirements of a compliance program, risk management and inspection procedures that even allow to qualify if the reporting institutions and respondents know and understand the risks they face, with special attention to validating the efficiency and effectiveness of the controls that are applied as mitigating factors.

TC384. *Criterion 26.6*. MUSBER is updated periodically and its updates are approved by the MUSBER Committee, which is composed of directors of the SBP and includes the Financial Groups that consolidate

their transactions in Panama, which makes the SBP the supervisor of origin of these groups; the scope of supervision is both local and external.

TC385. The SBP monitors its reporting institutions permanently by means of the extra situ supervision, making semi-annual reviews of its risk profiles, in accordance with its "Technical document to develop a supervision with a risk-based approach to the risk of money laundering, terrorist financing and financing the proliferation of weapons of mass destruction ", using the information to "determine the annual plan of on-site visits and validate semiannually that this is maintained or must vary according to the risk indicators that are of greatest interest to the supervision authority".

#### *Weighting and Conclusion:*

TC386. Due to the lack of legal definitions regarding the treatment of Financial Groups in most of the criteria, **Recommendation 26 is rated as Largely Compliant.**

#### ***Recommendation 27 - Powers of supervisors***

TC387. *Criterion 27.1* Article 19 of Law No. 23 of 2015 establishes that the supervisory entities to supervise AML/CFT requirements are the SBP, the SSRP, the SMV, the Intendencia (which included the activity of remittance agencies and money exchange houses), the IPACOOOP and any other public institution that is determined by law, in order to guarantee the supervision of other activities described in that Law or whose risk profile requires it. Article 20 subsection 1 establishes that they have the power to "Supervise that the Financial Reporting Institutions, the NFRI and Activities performed by Professionals subject to supervision have the policies, mechanisms and procedures of internal control, of each of the natural or legal persons subject to supervision, in order to verify due compliance with the provisions of this Law and its regulations." This Article was regulated by Article 20 of Decree 363 of 2015.

TC388. Prior to Law No. 23 of 2015 and its regulations, the SBP, the SSRP, the SMV and the IPACOOOP had the possibility of supervising by the regulations that granted them the powers of supervision, but without having a focus on AML/CFT.

TC389. Law No. 23 of 2015 created the Intendencia that will be in charge of carrying out the supervision in matters of prevention of money laundering, TF and financing the proliferation of weapons of mass destruction to the non-financial obligated parties and those professionals who perform activities subject to supervision, including money exchange houses and remittance funds, for these purposes may perform in situ and extra situ supervision to our non-financial reporting institutions and to professionals who perform activities subject to supervision based on in risk matrices, according to Article 13 subsection 4 of Law No. 23 of 2015.

TC390. *Criterion 27.2* . Article 19 of Law No. 23 of 2015 determines as supervisory entities:

- SBP
- SSRP
- SMV
- Intendencia.
- IPACOOOP
- Any other public institution that is determined by law in order to guarantee the supervision of other entities described in this Law or whose risk profile requires it.

TC391. Article 20 of Law No. 23 of 2015 establishes a general framework in which the supervisory entities of financial institutions are empowered, as well as any other reporting institution, to supervise the reporting entities in their policies, mechanisms and control procedures linked to the AML/CFT/CFPWMD regime.

TC392. Executive Decree No. 52 of 2008 establishes in Art. 59 that banks conducting business in Panama will be subject to the inspection and supervision of the SBP to verify their financial stability and structure to comply with the provisions of this Law and other related regulations.

TC393. Law No. 12 of 2012, which regulates insurance activities, sets forth in Art. 12, paragraph 15, that the superintendent will have the attributions of inspecting, verifying and investigating, as many times as considered convenient, the commercial operations and professional practices of the supervised persons and may, for such purposes, examine their books and files, order corrections and amendments, request and collect balances, financial statements, annual and other reports and, in general, carry out the necessary acts and arrangements to guarantee compliance with the law.

TC394. On the other hand, Law No. 63 of 1996 by means of which Reinsurance operations and those of Companies of the sector are regulated, provides in Article 1: "Companies or entities with the purpose of carrying out operations of Reinsurance, in any of its sectors and types of licences and legal persons who are Reinsurance brokers shall be under the control, prior authorization, monitoring, supervision, regulation and surveillance of the SSRP, hereinafter, the Superintendency".

TC395. Executive Decree No. 52 of 2008 that regulates the SBP establishes in Art. 59 that all banks conducting banking business in Panama will be subject of the oversight and supervision of the SBP, to verify their financial stability and their compliance structure regarding the provisions in the aforementioned Decree, as well as other relevant regulations. Art. 60 of the Law establishes that official banks will be subject to the inspection and monitoring of the Comptroller General in the terms set forth in the Constitution, to the supervision of the SBP and under compliance with the regulations, rights and requirements under the Law.

TC396. Article 66 of Executive Decree No. 52 determines that the SBP must carry out an inspection in each bank, at least every two years, in order to determine their financial situation and whether they have complied with the provisions of the Law. Such inspections will include the bank and may extend to the financial group and those affiliated companies, either banks or non-financial entities.

TC397. The Law of the Securities Market (Decree-Law No. 1 of 1999) establishes under Art. 14 paragraph 10 that the SMV may carry out inspections, investigation and diligences provided for in the Law, subject to the investigation and sanctioning procedure established by the SMV.

TC398. IPACOOOP is regulated under Law No. 24 of 1980, which creates the institute, without being provided with the possibility of conducting inspections; however, it is given the power to monitor operations of cooperative unions either directly or to delegate it to cooperative associations.

TC399. *Criterion 27.3*. Executive Decree 363 of 2015 that regulates Law No. 23 of 2015, establishes in Article 20 that in order to evaluate the compliance of the relevant CDD measures by the reporting institutions, the supervisory entities will have access to pertinent and relevant information either in individual cases or statistically representative samples of the portfolio adequate to measure the effectiveness of the controls applied according to the risk of money laundering, the TF and financing the proliferation of weapons of mass destruction.

TC400. With respect to the faculty of the SSRP, the SMV and the IPACOOOP, it is not clear that the information pertinent to the monitoring of compliance with AML/CFT may be demanded.



TC401. Executive Decree No. 52 of 2008 (Banking Law) of the SBP, instructs in Article 122 that: "Banks and other entities supervised by the Superintendence are obligated to establish policies and procedures and the internal control structures to prevent their services being used improperly for criminal purposes in Money Laundering, the TF, and other crimes that are related or similar in nature or origin, and Article 133 indicates that: "Banks and other entities supervised by the Superintendence will submit the information required by law, decrees, and other regulations in force in the Republic of Panama for the Prevention of Money Laundering, TF, and other offenses that are related or similar in nature or origin. Furthermore, they are obligated to submit this information to the Superintendence whenever it may so require."

TC402. *Criterion 27.4*. Law No. 23 of 2015, in Article 59, regulates the imposition of sanctions, establishing that the supervisory entities will impose the administrative sanctions that result from the violation of the provisions taking into consideration the seriousness of the fault, the recidivism and the magnitude of the damages caused to third parties. To this end, the grading of the sanctions will be progressive and includes the possibility of the application of disciplinary and financial sanctions.

TC403. Likewise, Law No. 23 of 2015 in Article 59, establishes that the power to cancel, withdraw, restrict, remove or suspend the license, certificate of suitability and other authorizations for the performance of Activities or transactions conducted by Financial Reporting Institutions, Non-Financial Reporting Institutions and Activities performed by Professionals subject to supervision, will correspond to the appropriate supervisory entity that granted it, at the request of the respective Supervisory Entity, on matters related to the Prevention of Money Laundering, TF and Financing of Proliferation of Weapons of Mass Destruction, who shall be authorized by this Law to request the authority that issued the license or permit, the cancellation thereof of the serious repeated violation of the provisions of this Law.

TC404. Article 60, for its part, establishes generic sanctions that may be applied in the event of a breach of Law No. 23 or of those dictated for its application by the specific bodies, for which no specific sanction is established, the applicable fine will vary between five thousand PAB to one million PAB, depending on the seriousness of the offense and the degree of recidivism. This type of fines will be imposed by the supervisory entities of each activity or at the request of the FIU.

TC405. Article 61 establishes that the regulation of specific, proportional and dissuasive sanctions shall be empowered by each supervisory entity. It should be noted that Banking Law, Executive Decree No. 52 of 2008, establish a range of sanctions that includes the possibility of applying fines of up to one million PAB (according to Article 185) and generic sanctions that include reprimands and a fine of up to two hundred and fifty thousand PAB (according to Article 186).

TC406. Resolution J.D./No.1/2016 of the Panamanian Autonomous Cooperative Institute (IPACOOOP) by which the sanctioning administrative regulation is approved, for infractions to the provisions on prevention of money laundering, terrorist financing and financing the proliferation of weapons of mass destruction applicable to Savings and Credit Cooperatives, Cooperatives of Multiple or Integral Services that develop the Savings and Credit activity and any other Cooperative Organization that performs the activity of Financial Intermediation, establishes in Article 13 generic sanctions, meaning, fines from five thousand PAB (5,000.00) to one million PAB (1,000,000.00) and specific sanctions according to the severity (MAX, MEDIUM AND MILD) and in proportion to the segmentation established by Resolution J.D./No.10/2015 of 2015, which establishes segments according to the assets of the first grade, second grade cooperatives, and any other auxiliary organism of cooperatives. Finally, it regulates the application of progressive fines: which will be applied when the violating acts or the norms that develop it last in time.

TC407. As per Agreement 3 of 2015, the SSRP establishes in Title V the Sanctioning Regime, and provides in Article 47 that the Superintendence, as a supervisory entity, will impose all reporting institutions that



violate the current provisions on ML/TF/FPWMD prevention, administrative sanctions will be applied taking into consideration the seriousness of the offense, the recidivism of the infringing party, the threat or magnitude of the damage, the indications of intentionality, the duration of the conduct and the damages caused to third parties.

TC408. Resolution No. JD-016-015 issued by the Intendencia, which establishes the sanctioning procedure in matters of prevention of money laundering, TF and financing the proliferation of weapons of mass destruction aimed at non-financial reporting institutions and professionals who perform activities subject to supervision.

TC409. While the SMV is competent to impose sanctions, on May 16, 2017 through Executive Decree No. 126- the SMV regulated the Sanctioning Regime applicable to the sector.

### *Weighting and conclusion*

TC410. It is not clear that the SSRP, the SMV and the IPACOOOP can demand the pertinent information to monitor compliance with AML/CFT requirements. **Recommendation 27 is rated as Largely Compliant.**

### ***Recommendation 28 - Regulation and supervision of DNFBPs***

TC411. *Criterion 28.1* Article 73 of Decree Law No. 2 of 1998, states that for each Contract granted by the Gambling Control Board, one or more Games Licenses shall be issued, which shall specify the name of the Administrator-Operator and the specific location approved.

TC412. Regarding the legal and regulatory measures necessary to prevent offenders and their associates from having, or being the beneficial owner, of a significant or controlling stake or occupy a managerial position or are operators of a casino, the following is established: Article 69 of Decree Law No. 2 of 1998 requires that at the time of the request the following information to be provided: the names of all persons directly or indirectly involved in the proposed operation and the nature of such interest and full information and details regarding the personal history of the Applicant, criminal history, commercial activities, financial and commercial matters covering, at least, a period of ten (10) years prior to the date of submission of the Application according to the forms provided by the Director.

TC413. Article 71 of Decree Law No. 2 of 1998 requires that any person requesting an Operation and Administration Contract from the Gambling Control Board satisfactorily approves the integrity and background investigation (pursuant to subsection c)) and provide information that may be required by the Gaming Control Board, including: names and personal and financial background of all dignitaries, officers, directors and trusted employees; financial structure of the legal person, including a list of all outstanding shares of the legal person and a corresponding list of related rights and the names of the shareholders of the legal entity.

TC414. On the other hand, Article 48 of Law No. 49 of 2009, which amended Article 77 of Decree Law No. 2 of 1998, establishing that: "Every person who aspires to occupy the position of officer, director or employee of trust of a Registered Company or any company that has a contract with the Gambling Control Board that is directly involved in the administration and operation or supervision of a gaming venues or any person that has, at the discretion of the Gaming Venue Director, a significant relationship with the activities of Type "A" Slot Machines, Complete Casinos, Bingo Halls, Betting Agencies or any other that he determines must previously request and obtain a certificate of suitability from the Gaming Venue Director.

TC415. Supervision of the gaming venues is the responsibility of the Intendencia, which is the supervisor in matters of ML/FT/FPWMD, to NFRI and activities carried out by professionals subject to supervision, as

indicated in paragraph 1 of Article 14 of Law No. 23 of 2015. Within this Law, it is detailed in Article 23, subsection 3 casinos, games of chance and organization of betting systems, among others are the non-financial reporting institutions under the supervision of the Intendencia.

TC416. *Criterion 28.2* By Law No. 23 of 2015, the Intendencia is created, attached to the MEF, which is in charge of administrative supervision of non-financial reporting institutions and activities carried out by professionals subject to supervision (according to Article 13).

TC417. *Criterion 28.3* Articles 23 and 24 of Law No. 23 of 2015, establish that DNFBPs are regulated in the AML/CFT system, and include those required by the standard. Article 13 of Executive Decree 361 of 2015, which regulates Law No. 23, establishes that the Intendencia will be in charge of monitoring compliance with AML/CFT requirements.

TC418. *Criterion 28.4* Article 20 of Law No. 23 of 2015, refers to the powers of the Intendencia, to perform the competent functions for supervision, which include in accordance with the subsection 1 attributions in order to verify the due compliance with the legal provisions that regulate the AML/CFT. Article 13 of Executive Decree 361 of 2015, states in subsection 1, that one of the faculties is to supervise the policies, mechanisms and internal control procedures of each of the natural or legal persons subject to supervision by the Intendencia of supervision and regulation for non-financial reporting institutions and in the subsection 4 is given the possibility of carrying out in Situ and extra Situ supervision to NFRIs and to the professionals who carry out activities subject to supervision based on risk matrices.

TC419. Article 20 of Law No. 23 of 2015, in subsection 7 establishes that the Intendencia will have the authority to issue the procedures for the identification of the beneficial owners, of the legal persons and other legal arrangements; likewise, subsections 5 and 11 establish that the Intendencia may impose measures and corresponding sanctions for breaching the Law of money laundering, TF and financing the proliferation of weapons of mass destruction and that it must notify the FIU of the sanctions imposed, in accordance with the provisions of subsection 6. Resolution No. JD-016-015 of the Intendencia, in its Articles 31, 32, 33, 34 and 35 determines what type of sanctions may be applied and under what circumstances.

TC420. *Criterion 28.5* The risk-based supervision approach is regulated by the provisions of Law No. 23 of 2015 in its Article 20, specifically in paragraph 3, which states that the Supervisory Entities must be in charge of supervision, among them the Intendencia, must adopt a risk-based supervision approach that allows the supervisor to have a clear understanding of the risks of the offenses of money laundering, TF and financing of the proliferation of weapons of mass destruction."

TC421. The Municipality has published a Supervision Manual with a risk-based approach where the strategy and planning are defined, as well as the scope and context of the supervision. The manual also has methodologies and matrices for evaluating and rating various risks related to the activities of the DNFBPs.

### *Weighting and conclusion*

TC422. Bearing in mind that the Intendencia, as a DNFBPs supervisor, does not have the authority to grant operating authorization for those who it regulates, and these activities are carried out by other authorities, it has no legal basis to prevent criminals from being members of an DNFBPs. **Recommendation 28 is rated as Largely Compliant.**

### **Recommendation 29 - Financial Intelligence Units**

TC423. *Criterion 29.1* Article 9 of Law No. 23 of 2015 points to the Financial Intelligence Unit for the Prevention of the Offense of Money Laundering and TF is "[...] the national center for the collection and

analysis of financial information related to the crimes of money laundering, Terrorism financing and financing the proliferation of weapons of mass destruction, and for communicating the results of that analysis to the investigation and prosecution authorities of the country.

TC424. Criterion 29.2 Article 11 paragraph 1 of said regulation authorizes the FIU to "[...] The National centralization of suspicious transaction reports, cash and quasi cash generated or issued by the Financial Reporting Institutions, the Non-Financial Reporting Institutions and Activities performed by Professionals subject to supervision, as defined in this Law... "

TC425. Based on the provisions of Article 53 of the Law, the financial institutions must report the following transactions or operations, whether they are made in or from Panama:

- Deposits or withdrawals of cash or quasi-cash held in accounts or natural or legal persons, in the amount of then thousand dollars USD 10,000 or more, or through successive transactions, although individually are for amounts under ten thousand dollars USD 10,000.00 or more Foreign currency transactions must be reported for the equivalent change. Transactions in foreign currency must be reported for the equivalent of the change;
- Changes in cash from low denominations by others of higher denominations or vice versa, for an amount of 10,000 USD or more, or through successive transactions that, although individually, are for lower amounts, but at the end of the day or the week add up to a total of 10,000 USD or more;
- Change of management checks, travelers, payment orders, issued to the bearer, with blank endorsement and issued on the same date or close dates by the same drawer or by drawees of the same place;
- Purchase and sale of currency other than legal currency in Panama, equivalent to 10,000 USD or more, or the sum of this figure in a week, or through successive transactions that, although made individually, are for lower amounts, but at the end of the day or the week sum a total of USD 10,000 or more, or its equivalent to the exchange rate, and;
- Payments or collections of money in cash or quasi-cash for an amount of 10,000 USD or more, or the sum of this figure in a week by the same client or a third party acting on behalf of the client.

TC426. Article 46 of said Law stipulates that information on electronic transfers must be available to the competent authorities, supervisory entities and the FIU.

TC427. Article 75 of the aforementioned Law imposes on the ANA to send a daily report to the FIU of the information contained in the passenger affidavits completed by passengers entering or leaving the national territory, related to the introduction or departure of money or its equivalent in other currencies, traveler's check, bonds, securities or other negotiable documents or means of payment that exceed the value of 10,000 USD.

TC428. *Criterion 29.3* Article 11 paragraph 3 of the aforementioned Law No. 23, provides that the FIU may require in writing to the reporting institutions and professional activities subject to supervision in the matter of AML/CFT/CFPWMD, any information related to cases of competence of the FIU that is considered necessary to carry out its analysis; likewise, paragraph 12 authorizes the FIU to obtain additional financial information related to the offenses of ML/TF/FPWMD when the derived analysis from the reports received merit it.

TC429. The FIU has access to open and public sources of information maintained by the authorities that grant authorizations to engage in trade, create corporations, private interest foundations, ownership of movable property (automobiles, ships, airplanes, ships, ships, etc.) and property.

TC430. *Criterion 29.4* Article 11 of Law No. 23, in its paragraph 5 and 6, indicates that the FIU has the faculty to carry out operational analysis and strategic analysis. Within the Organic Structure of the FIU, the

Analysis Department is identified, which in turn has two Articles, these being the Tactical Analysis and Strategic Analysis.

TC431. *Criterion 29.5* As established in the aforementioned Article 11, paragraph 4 and 11, the FIU has, among its powers, the right to analyze the information obtained in order to communicate the results of its analysis and the documents that support them to the PPO, to the agents with functions of criminal investigation and to the jurisdictional authorities, when there are reasons to suspect that they have or are developing activities related to money laundering, TF and financing the proliferation of weapons of mass destruction. It will also have the power to provide the PPO, the supervisory entities, the ANA and other State intelligence and security bodies, with any technical assistance required to assist in criminal or administrative investigations of acts and offenses related to money laundering, TF and the proliferation of weapons of mass destruction.

TC432. The procedure for communicating the results of the analysis is carried out through working group meetings, between senior officials of the FIU and the Prosecutor's Office and/or intervening authority. In this way, the dissemination of the results is done in person and not through electronic channels, which in some way helps to maintain the confidentiality and security of shared intelligence information between the FIU and the investigating authorities. However, no indication is made about the modality in which the analysis of the FIU should be disseminated in the current regulations.

TC433. *Criterion 29.6* The general provision related to the protection of the confidentiality of financial intelligence information obtained and/or produced by the FIU is set forth in Article 55 of Law No. 23 of 2015, which states that the information "[...] shall keep it in strict reserve, confidentiality and may only be disclosed to the Prosecutor's Office, the agents with criminal investigation functions and the jurisdictional authorities in accordance with the legal provisions in force" In this way, FIU officials who know about the information related to the fulfillment of the functions of the FIU shall keep it with strict confidentiality and they may only reveal it to the MP, in accordance with the legal system in force; those officials who contravene this provision will be sanctioned in terms of Art. 258 of the Criminal Code, without prejudice to civil and administrative liability, even when they have ceased in the functions for which they knew the aforementioned information." In addition to the foregoing and more specifically, the FIU has a Manual of Security Policies for handling information, specifying various types of information assets and their security classification, in order to maintain the confidentiality, availability, and integrity.

TC434. It is also important to note that the FIU has a Manual of Personnel Selection Processes, approved by means of Resolution No. AL-30-2015, which contains the willingness to sign a Confidentiality Agreement on the part of the officials who work in said authority, in compliance with Article 55 of Law No. 23 of 2015. Additionally, the FIU has a Manual of procedures for the area access control through levels configured in the personnel cards and a Manual of Security Procedures and Information Security of the cybersecurity and technology department.

TC435. *Criterion 29.7* Article 10 of Law No. 23 of 2015 establishes that the FIU must have the necessary financial, human and technical resources to guarantee its operational independence. Additionally, as established in Article 6 of Executive Decree 947 of 2014, the President of the Republic will appoint the Director of the FIU for a period of five years; the latter will be in charge of appointing the Assistant Director of the FIU (Article 7). The Director can be removed by a disciplinary process, which takes place within the scope of the Ministry of the Presidency, which coordinates the functions of the State and is the Communication Body of the President and the Cabinet Council and within which is the FIU (Resolution 5 of 2008). Article 89 and pursuant of said Resolution 5 describe the grounds for removal of the Director.

TC436. According to Article 3 of Decree 947 of 2014, the FIU will be staffed with qualified professional and technical personnel, as well as equipment and programs for ordering, analyzing data and exchanging information. Article 8 of the aforementioned decree provides that FIU personnel will be selected through merit competitions, which will be prepared and executed annually by the FIU, together with a plan for the election and promotion of personnel.

TC437. Finally, Article 10 states that the FIU, represented by the Director, can sign Memorandum of Understanding or Cooperation Agreements for the exchange of information. Article 11, paragraph 8 of Law No. 23, authorizes the FIU to sign Memorandum of Understanding or other cooperation agreements, to exchange financial intelligence information with counterpart organizations in other countries.

TC438. *Criterion 29.8* Panama has been a member of the Egmont Group of Financial Intelligence Units since 1997.

### *Weighting and conclusion*

TC439. *Recommendation 29 is rated as Compliant.*

### ***Recommendation 30 - Responsibilities of law enforcement and investigative authorities***

TC440. *Criterion 30.1* The Prosecutor's Office is the authority in charge of properly investigating the ML, the predicate offenses and the TF. Paragraph 4 of Article 220 of the Political Constitution establishes that it is attribution of the Prosecutor's Office "to prosecute the offenses and contraventions of constitutional or legal dispositions". This constitutional mandate is materialized in the exercise of criminal prosecution in the Criminal Jurisdiction.

TC441. Article 276 of the Criminal Procedure Code establishes that "It is the duty of the Prosecutor's Office to promote the investigation of offenses prosecuted ex officio and those promoted by complaint, by gathering any element of conviction adjusted to the protocols of action appropriate to the techniques or forensic sciences necessary for that purpose. The respective Prosecutor will carry out all the necessary investigations in relation to the facts of which he has knowledge with the collaboration of the investigation organisms. It may provide, in the manner provided in this Code, the reasonable and necessary measures to protect and isolate the places where an offense is investigated, in order to avoid the disappearance or destruction of traces, evidence and other material elements. "Also, the Article 220, subsection 1 determines that they are attributions of the Prosecutor's Office: to defend the interests of the State or the Municipality.

TC442. On the other hand, through Law No. 69 of 2007 the Judicial Investigation is created in the Police, in chapter 1, Article 1, paragraph 3 establishes "The services of Police of the national territory, in their respective competency fields, will organize research units that will operate in coordination with the Department of Judicial Investigation as an auxiliary service of the Prosecutor's Office and the Judiciary."

TC443. Resolution No. DG-202-05, of 16 2005, by which the Financial Investigation Section is organized, within the Judicial Technical Police, with competence at the national level, attached to the General Directorate, in Article 4 subsection 1 establishes that the financial investigation Section may assist investigating officers in money laundering investigations..."

TC444. In accordance with Article 329 of the Judicial Code, the PGN created the Special Unit in Offenses of Money Laundering and TF by resolution No. 25 of 2016, with the purpose of providing collaboration to prosecutors who have investigations with a profile where ML investigations can be developed between their functions.



TC445. Although the legal and regulatory framework establishes responsibilities for the investigative authorities, they are not applicable to tax crimes, which are not defined as ML determinants, which means a considerable limitation that affects the responsibility to ensure tax crimes as determinants of ML are properly investigated.

TC446. *Criterion 30.2* The Panamanian legal framework does not explicitly establish the possibility of carrying out parallel financial investigations. However, Article 276 of the Criminal Procedural Code empowers the PPO to carry out all kinds of investigations with the collaboration of the research organizations. These investigations may gather any element of conviction according to the technique or forensic science necessary for investigations, specifically, any form of identification, tracking and documentation of money movements while committing an offense.

The Offenses prosecution powers are strengthened by Resolution No. 23 of April 4, 2016 that creates the Special Unit against Money Laundering and Terrorist Financing, which establishes a framework for collaboration in financial investigations with PPO Prosecutors.

TC447. *Criterion 30.3* Article 252 of the Criminal Procedure Code establishes that "instruments, movable and immovable property, securities and products derived from or related to the committing of offenses... of money laundering shall be seized provisionally by the investigating officer... and related crimes, organized crime and will be under the orders of the MEF until the case is decided by the competent judge.

TC448. *Criterion 30.4* It is not applicable whenever within Panama only the law enforcement authorities are authorized to carry out investigations.

TC449. *Criterion 30.5* Article 351 of the Judicial Code establishes that the Anticorruption Prosecutors of the PGN, have the obligation to "Practice all the necessary procedures for the clarification of offenses against the public administration or when for any reason they find affected property of the State, of autonomous or semi-autonomous institutions, of the municipalities, communal boards and, in general, of any public entity."

### *Weighting and conclusion*

TC450. The country has designated law enforcement authorities that can investigate ML cases, predicate offenses (with the exception of tax crimes) and TF cases. The Panamanian legal framework does not explicitly establish the possibility of carrying out parallel financial investigations, notwithstanding the foregoing, it was found that these are also carried out mainly by the Money Laundering Unit of the Prosecutor's Office.

TC451. In conclusion, taking into account the existence of these deficiencies, **Recommendation 30 is rated as Partially Compliant.**

### ***Recommendation 31 - Powers of law enforcement and investigative authorities***

TC452. *Criterion 31.1* Article 391 of the Judicial Code imposes on natural and legal persons the duty to provide all the necessary collaboration, when the agent of the Prosecutor's Office, acting as an investigating officer, collects news, data, reports and copies without needing the resolution of any authority, for these purposes it establishes that "All the employees in charge of the custody of public documents, have the duty to give ex officio, all the news, data, reports and copies requested by the agents of the Prosecutor's Office, without needing the resolution of any authority. Natural or legal persons must also provide the necessary cooperation to these agents, when they act in defense of public interests or as officers of instruction, and the aforementioned officials may impose by means of a reasoned resolution, fines of up to twenty-five PAB



(25.00) or on eight-day arrest, to those who, without justification, obstruct their action with delays, evasive or negative."

TC453. In addition, the agent of the Prosecutor's Office is authorized to practice eye inspections in the establishments of natural and legal persons, within a criminal investigation, Article 2077 establishes "When it is convenient to clarify and verify the fact, the practice of an ocular inspection that will be communicated to the interested parties with the due anticipation and will not be suspended due to the non-appearance of these."

TC454. Article 277 of the Criminal Procedure Code establishes the same attributions to the Prosecutor's Office agent, regarding natural and legal persons, given that it reads "Outside of the cases that require the authorization of the Judge, the Prosecutor's Office, attending to the urgency and for the purposes of the process, it may request information from any public servant, who is obliged to supply it and to collaborate with the investigation according to its competence. You can also request information held by natural or legal persons."

TC455. Article 2178 of the Judicial Code authorizes the agent of the Prosecutor's Office to search a building of any kind, establishment or property in order to arrest the alleged accused, effects or instruments used for the offense, books, papers, documents or any other objects that can serve to verify the punishable act or to discover its authors and participants. Likewise, Article 2181 of the Judicial Code authorizes the agent of instruction, for the registration of persons presumed to conceal important objects related to the investigation.

TC456. Articles 294, 296 and 297 of the Criminal Procedure Code authorize the Prosecutor's Office to carry out search proceedings, with the prior authorization of the Criminal Magistrate Judge, who must decide the request within two hours from the filing time. Article 294 for the search of public premises or establishments for meetings or recreation, while they are open to the public and not intended for the room, as well as for business or office buildings, cars, ships and aircraft must always be authorized by the Criminal Magistrate Judge.

TC457. Additionally, said Article determines that the search warrant can be dispensed with the express and free consent of the persons in charge of the premises, which will be recorded and signed by the person who gives his authorization or will be registered in the filming of the process. In case of refusal or material impossibility of obtaining consent, the search warrant will be required, and the National Police may be used to enforce it. In the case of rural establishments, only judicial authorization will be required for homes or rooms.

TC458. On the other hand, Article 5 of Law No. 69 of 2007, establishes that the DIJ may carry out the proceedings ordered by the agents of the Prosecutor's Office, which shall be put in consideration of such agents in the term granted, together with the respective report of action and the elements of conviction gathered.

TC459. Article 2105 of the Judicial Code establishes that anyone who is summoned by the investigating officer, as a witness, expert or medical practitioner, must appear to render the statement or to perform the procedure required of him. If he does not do so or if he appears and refuses to testify without legal excuse, he will be punished with deprivation of liberty for up to two days each time he incurs in this contempt.

TC460. In the jurisdictional framework of the accusatory criminal system, Article 273 of the Criminal Procedure Code provides "... shall be consigned and ensure everything that leads to the verification of the fact and the identification of the authors and participants in it. Likewise, the status of the persons, things or

places shall be stated, the witnesses of the investigated event shall be identified, and their versions shall be consigned... "

TC461. Due to the seizing and obtaining of evidence, Articles 2050, 2051 and 2052 of the Judicial Code order the agent of the Prosecutor's Office to ensure the evidence that is related to the crime. They also provide for the possibility of requesting the criminal seizure of letters, documents, packages, securities, telegrams or other objects of correspondence, when there are well-founded reasons to suppose that they have been addressed to the accused.

TC462. Articles 307, 308, 309 and 310 of the Criminal Procedure Code provide for the competence of the Prosecutor's Office agent to seize evidence. Article 307 establishes "Whoever has in his possession objects or documents that can serve as a means of proof will be obliged to present them and deliver them when they are required, the coercive measures allowed for the witness refusing to testify will be applicable. If the required objects are not delivered, their seizure will be arranged...".

TC463. Article 308, establishes that "The instruments, money, securities and property used in the commission of the punishable act or those that are the product of it may be seized by the Prosecutor's Office in order to prove the offense. The seizing of copies, reproductions or images of the objects may be arranged when they are convenient for the investigation. "According to Article 315 of the Criminal Procedure Code, the Prosecutor's Office may conduct covert transactions for the purpose of gathering evidence to determine the occurrence of the punishable act, as well as its actors and participants. In accordance with Article 317 of the Criminal Procedure Code shall submit to the control of the Criminal Magistrate Judge such proceedings within a period not exceeding ten days. The parties may object to the Criminal Magistrate Judge the measures adopted by the Prosecutors, their assistants or police officers in the exercise of the powers recognized in this Chapter. The Judge will resolve what corresponds in oral hearing".

TC464. Article 10 of Law No. 121 of 2013, gives the investigating officer the power to order the performance of covert operations in investigations of organized criminal groups, which must be submitted to the control of the Criminal Magistrate Judge within sixty days.

TC465. The lack of criminalization of tax crimes as determinants of ML has an impact on this criterion, since it prevents the investigative authorities from having access to the relevant documentation and information in order to have access to information and documentation necessary to be used in investigations, accusations and related actions.

TC466. *Criterion 31.2* The Criminal Procedure Code in Article 311 regulates the interception or recording by any technical means of other forms of personal communication. Which should require judicial authorization.

TC467. Article 24 of Law No. 121 of 2013 establishes that in investigations of organized criminal groups "The criminal magistrate judge or, where appropriate, the respective judge of the Criminal Chamber of the Supreme Court of Justice may authorize at the request of the prosecutor, by reasoned resolution, the interception of communications by any technological means and seizing of correspondence, telegraphic, electronic or other private documents. The procedure for the communications interception and seizing of correspondence will be that provided in Articles 310 and 311 of the Criminal Procedure Code."

TC468. Regarding access to computer systems, it is highlighted that Article 314 of the Criminal Procedure Code states: "When computer equipment or data stored on any other medium is seized, the same limitations regarding professional secrecy and the reservation of the data shall apply on the content of the seized documents. The examination of the content of the data will be carried out under the responsibility of the Prosecutor who carries it out. The accused person and his or her defense counsel will be summoned in

advance to such diligence. However, the absence of them does not prevent the operation. Equipment or information that is not useful to the investigation or understood as non-seized objects will be returned immediately and may not be used for the investigation.

TC469. Likewise, Article 25 of Law No. 121 of 2013 determines that when electronic systems or data stored in any other support being used by members of an organized criminal group are seized, the rules set forth in Article 314 of the Criminal Procedure Code shall apply.

TC470. The competent authorities may not use special investigative techniques stated in the legislation for those cases in which ML is investigated which its associated predicate offense is a fiscal offense.

TC471. *Criterion 31.3* As noted above, Article 391 of the Judicial Code establishes that "all employees in charge of the custody of public documents, have the duty to give, on their own initiative, all the news, data, reports and copies the agents of the Prosecutor's Office request, without the need for resolution of any authority. Natural or legal persons must also provide cooperation..."

TC472. Likewise, Decree Law No. 9 of 1998, establishes in Article 111, that banks must provide banking information that is required by a competent authority about their clients or their transactions with their consent, except when: subsection 1. When the information is required by the competent authority in accordance with the law and subsection 2. When on their own initiative they must provide it in compliance with laws related to the prevention of offenses of Money Laundering, TF and related crimes, among others.

TC473. *Criterion 31.4* Law No. 23 of 2015, in subsection 11 of Article 11, establishes that the FIU will have to provide the Prosecutor's Office, the supervisory entities, the National Customs Authority and the different intelligence and security bodies of any technical assistance required to assist in the criminal or administrative investigations of acts and offenses related to money laundering, TF and financing the proliferation of weapons of mass destruction..."

### *Weighting and conclusion*

TC474. The country has law enforcement authorities empowered to obtain all documents and information necessary to investigate these matters. There is only confidentiality regarding the financial or banking information, there are no issues accessing it by the competent authorities. On the other hand, the institutions in charge of research can use a wide range of investigative techniques, as well as having the possibility of identifying assets and requesting relevant information from the FIU.

TC475. Notwithstanding the foregoing, the competent authorities may not have access to information and documentation during the investigation, the accusations and related actions that the predicate offense of ML is a fiscal offense, in the same way that they may not use special investigation techniques. **Recommendation 31 is rated as Largely Compliant.**

### *Recommendation 32 - Cash couriers*

TC476. *Criteria 32.1* Cabinet Decree 10 issued in March 1994 states that all persons entering the territory must fill out a form where the money and other convertible securities that they carry are declared (Article 1), and that those who fail to comply with said obligation will be subject to sanctions established in the Tax Code (Article 4). In this sense, a written declaration system is established for all travelers, who must declare if they carry more than ten thousand PAB (10,000 USD). The Executive Decree of 1994 also establishes that every person entering Panama must fill out the form prepared for such purposes by the customs authority, declaring whether it carries more than ten thousand PAB (10,000 USD) in cash or convertible securities.

TC477. Through Article 579 of the Regulations of the Central American Uniform Custom Code (RECAUCA), which was adopted by means of Law No. 26 of 2013, it is indicated that every traveler that "[...] arrives in the customs territory by any qualified means, shall make a declaration on the form issued by the [National Customs Authority] for this purpose". In 2016, by the Resolution No. 297 of the ANA, a new design of the "Traveler Affidavit" form was adopted, taking into consideration the provisions of the aforementioned CAUCA and RECAUCA.

TC478. Article 19 of Decree Law No. 1 of 2008 states that the ANA will be in charge of "[...] controlling, monitoring and supervising the entry, exit and movement of goods, persons and means of transport across borders, ports and airports of the country, for the purposes of the tax collection of the taxes that apply or for the controls that are applicable to them[...]" In addition, Article 84 states that the means of commercial transportation, among which cargo transport and mail could be considered, must announce the cargo manifest before departure. However, it is not clear to what extent this includes in the obligations of declaration of cash and negotiable instruments to such modalities of transport.

TC479. *Criterion 32.2* As mentioned in analysis for criterion 32.1, the Tax Code establishes a written declaration system for all travelers carrying an amount equal or over 10.000 USD.

TC480. *Criterion 32.3* This criterion is not applicable, since Panama has implemented a declaration system for all travelers, not a disclosure system.

TC481. *Criterion 32.4* Article 34 of Law No.1 of 2008 establishes that the ANA will have an investigative body that will have the power to practice all the necessary procedures to clarify infractions in its knowledge, discover authors, accomplices, accessories, put out of trade the property from the offenses under its jurisdiction, promote resources and any acts to safeguard the interests whose guardianship is assigned. "Additionally, Article 583 of the RECAUCA, incorporated into Panamanian law, states that a baggage check procedure must be made when the traveler has not filled out a declaration established in Article 579, when it is unaccompanied baggage (such as mail or cargoes).

TC482. However, no provision or ordinance was found that expressly grants powers to request or obtain more information from persons who transfer cash or negotiable instruments.

TC483. *Criterion 32.5* Article 18 of Decree Law 30 of 1984 establishes as an offense of customs fraud the realization of customs transactions with false declarations where the weight, quantity, value, origin of goods is altered, as well as deception through false statements to the officials responsible for the control of the passage of goods. Since the definition of "merchandise" as established in Article 14 of Decree Law No. 1 of 2008 expressly includes "money", the provisions related to merchandise are applicable to money.

TC484. *Criterion 32.6* As established in Law No. 23 of 2015, in its Article 75, the ANA will send a daily report to the FIU with the information contained in the declarations of travelers entering or leaving the territory on the introduction or cash exit or negotiable instruments or means of payment above 10 thousand PAB (10,000 USD); likewise, it will inform the FIU daily about the money or instruments that have been confiscated based on the non-declaration of it.

TC485. *Criterion 32.7* The country reported on the existence of inter-institutional teams at airports that are made up of the National Security Council, the National Police, the ANA, the National Immigration Service and the Prosecutor's Office, among others. However, there are no collaboration agreements, directives, decrees or other documents in which such cooperation is established. Likewise, there is no information regarding similar equipment deployed at land borders or maritime posts.

TC486. *Criterion 32.8* Under the terms of Article 1309 of the Tax Code of the Republic of Panama, the money will be held for a minimum period of five days, while the appeal process by the affected party who

was retained the money takes place, and the resolution will be issued in fifteen business days, during which time the money will be retained.

TC487. *Criterion 32.9* There is no evidence in Panamanian legislation of any impediment to provide information as part of the international cooperation provided through the FIU.

TC488. *Criterion 32.10* There is no evidence of restrictive provisions for commercial payments or free movement of capital.

TC489. *Criterion 32.11* Based on Article 18 of Law No. 30 of 1984, the customs fraud consists in carrying out any customs operation using false documents or statements where the weight, quantity, quality, class, value, or origin of the goods is altered; the deceit or inducement to error by means of false declaration to customs officials.

### *Weighting and conclusion*

TC490. In general terms, Panama fully complies with the requirements and criteria established for this recommendation. In this context, it has a declaration system that applies to both entry and exit, having a standard form and a procedure to follow in case of false declaration or lack of declaration. The information obtained is shared with the FIU, with adequate coordination with the other related authorities, as well as for international cooperation and assistance purposes. Regarding the possibilities of seizing, retention and confiscation, the rules referring to smuggling are applied.

TC491. However, it is not clear that the scope of the declarations measures covers all means of transportation of foreign currency indicated by the standard, enunciatively mail and freight transport. Also, there was no evidence to conclude that the legislation empowers the authorities to obtain more information in the cases that are required. **Recommendation 32 is rated as Largely Compliant.**

### *Recommendation 33 – Statistics*

TC492. *Criterion 33.1* Article 11 of Law No. 23 of 2015 empowers the FIU to keep statistics "on matters relevant to the implementation of this Law, including the suspicious transaction report received and the reports disseminated to the competent authorities." In addition to the foregoing, as established by Executive Decree 44 of 2017, the FIU will also concentrate statistics on supervision, administrative or sanctioning processes, fines, training, census of reporting institutions, investigations or prosecutions, prosecutions and convictions for offenses of ML/TF and the predicate offenses. These statistics will be received by the supervisory entities, the Judiciary, the Prosecutor's Office, the National Police and others not expressly mentioned by law.

TC493. Notwithstanding the foregoing, the FIU has not yet begun the task of collecting and disseminating among the competent authorities the statistics provided for in Executive Decree 44.<sup>41</sup>

### *Weighting and conclusion*

TC494. The country does not produce comprehensive statistics on the AML/CFT prevention system, although the FIU was recently designated as the body responsible for preparing them in the future. **Recommendation 33 is rated as Partially Compliant.**

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<sup>41</sup> After the date of the visit, and in accordance with the provisions of Article 4 of Decree 44, the FIU collected the statistical information corresponding to the first quarter of 2017, which was cut on March 31, 2017.

### ***Recommendation 34 - Guidance and feedback***

TC495. *Criterion 34.1* Law No. 23 of 2015 establishes in several articles the power to the relevant authorities to give guides and feedback to the reporting institutions. Article 11 paragraph 9, of the aforementioned law gives the power to the FIU to give "[...] guidelines and offer feedback to help financially reporting institutions, non-financial reporting institutions and activities carried out by professionals subject to supervision in the application of the measures [...] and in particular in the detection and suspicious transactions report".

TC496. With respect to the supervisory entities, paragraph 7 of Article 20 empowers them to issue guidance and feedback standards to their reporting institutions "[...] for their application, as well as the procedures for the identification of the beneficial owners, legal persons and other legal arrangements. "In the same sense, Article 21 states that said bodies "[...] will issue guidelines and directions that contribute to the integral management of the risks to which the reporting institutions are exposed".

TC497. Regarding the non-financial reporting institutions, although these are mentioned in the provisions that authorize the FIU to give guidance and feedback, Executive Decree 361 of 2015 establishes as one of the tasks of the Intendencia, through the Supervision Unit, the support in the development of guidelines and procedures for their adequate risk management (paragraph 5), as well as issuing recommendations regarding compliance with current regulations (paragraph 9); likewise, the Unit for the Regulation of Non-Financial Reporting institutions has an attribution in the same sense, as established in Article 14, paragraph 6, of the aforementioned Executive Decree.

TC498. The supervisors have issued various guides to their reporting institutions and promote various feedback activities to their regulated AML/CFT issues and carry out public consultation processes on draft agreements, or resolutions issued in the matter with their regulated, both in the financial sector as with DNFBPs.

### ***Weighting and conclusion***

TC499. **Recommendation 34 is rated as Compliant.**

### ***Recommendation 35 - Sanctions***

TC500. *Criterion 35.1* Articles 257 and 294 A of the Criminal Code establish criminal sanctions for those who in any way facilitate the commission of money laundering and TF offenses or acts that disturb the peace of the population or lead to death or serious injuries to the population.

TC501. The process of preventive freezing is framed in Law No. 23 of 2015, which determines that the Supervisory Entities will impose the administrative sanctions that may result from the violation of said Law No. 23. Fines can range from five thousand dollars (PAB 5,000.00) to one million dollars (PAB 1,000,000.00)

TC502. Article 59 of Law No. 23 of 2015 establishes the supervisory entities shall impose the administrative sanctions resulting from the violation of the provisions of this Law and its regulations, taking into consideration the seriousness of the offense, the recidivism and the magnitude of the damages caused to third parties. The supervisory entities will establish the gradation of sanctions, a progression of disciplinary and financial sanctions, the power to withdraw, restrict, suspend the license of the reporting institutions... ()

TC503. Article 60 of Law No. 23 of 2015 determines that non-compliance for which a specific sanction is not established, will be punished for that single fact with fines of five thousand PAB (5,000.00) to one million



PAB (1,000,000.00), depending on the severity of the offense and the degree of recidivism, which will be imposed by the supervisory entities of each activity or at the request of the FIU for any breach of the late delivery or incorrect of the reports. However, the maximum amount of one million PAB does not seem sufficiently dissuasive for larger financial institutions, such as international banks.

TC504. Article 61 of Law No. 23 of 2015 establishes that supervisory entities shall regulate the scale of specific, proportional and dissuasive sanctions that are available to treat natural or legal persons covered by this Law, in accordance with the corresponding sanctioning powers granted by the constitutive law or the one that creates them, that fail to comply with the requirements to prevent the offenses of money laundering, TF and financing the proliferation of weapons of mass destruction. The sanctions must be applicable not only to the reporting institutions, but also to those who permit or authorize the breach of the provisions established in this Law or of those dictated for their application by the respective supervisory entities of each activity.

TC505. Additionally, Article 62 of Law No. 23 of 2015 establishes that fines must be progressive until the violation committed is remedied.

TC506. Executive Decree No. 363, regulation of Law No. 23 of 2016 establishes in Article 21, that administrative sanctions will be applied by the respective Supervisory Entity, without prejudice to the other sanctions established by Law and the civil or criminal liability that may arise. Each Supervisory Entity will apply the special administrative procedure and, failing that, the general administrative procedure. Supervisory entities.

TC507. Article 22 of Executive Decree No. 363, determines that the Supervisory Entities will take into consideration at least the following evaluation criteria: 1. The severity of the infraction; 2. The threat or magnitude of the damage; 3. Damages caused to third parties; 4. The signs of malice; and 5. The recidivism of the infringing party.

TC508. Article 23 of Executive Decree No. 363 establishes that sanctions will be classified according to the following severity criteria: 1. Maximum severity 2. Average severity and 3. Slight severity, and contains a series of indications for each of the classifications.

TC509. Lastly, Article 24 of Executive Decree No. 363, establishes that the Supervisory Entity may impose monetary sanctions and administrative sanctions. Within the administrative sanctions, there is the possibility of the cancellation, withdrawal, restriction, removal of the licenses, certificates of suitability or other authorizations after verifying the sanctioning processes that correspond. In cases in which the supervisory body is empowered by the Law, administrative sanctions will apply; and by the corresponding Intendencia that granted the license, certificate of suitability and other authorizations for the exercise of activities or transactions carried out, at the request of the respective supervisory entity.

TC510. In relation to Financial Institutions, Agreement No. 9-2015 of 27 of 2015 of the Panamanian Superintendence of Banks establishes that an "administrative sanctioning procedure for possible infractions to the dispositions in matter of prevention of money laundering, TF and financing the proliferation of weapons of mass destruction applicable to the reporting institutions".

TC511. Resolution J.D./No.1/2016 by means of which the sanctioning administrative regulation is approved, for infractions to the dispositions in matter of prevention of money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction applicable to Cooperatives of Savings and Credit, Cooperatives of Multiple or Integral Services that develop the activity of Savings and Credit and any other Cooperative Organization that performs the activity of Financial Intermediation establishes in its Article 13 the types of sanctions making reference to generic and specific sanctions.

TC512. The generic sanctions will be applicable in cases where there is non-compliance with the provisions established in Law No. 23 of 2015, its General Regulation - Executive Decree 363 of 2015, or its Special Regulation - Resolution J.D/11/2015 of 2015, when the infringement of the aforementioned standards is not described within the specific sanctions, which is determined by this Regulation. In case of generic sanctions, the reporting institutions may be punished for that single fact with fines from five thousand PAB (5,000.00) to one million PAB (1,000,000.00).

TC513. In relation to insurance and reinsurance, Agreement 3 of 2015 establishes in Article 47 that the Intendencia, as the supervisory entity, will impose all of the reporting institutions that violate the current provisions regarding prevention of ML/TF/FPWMD, administrative sanctions considering the seriousness of the offense, the recidivism of the infringing party, the threat or magnitude of the damage, the indications of intentionality, the duration of the conduct and the damages caused to third parties.

TC514. Article 55 of Agreement 3 of 2015, regulates the severity criteria for the imposition of specific sanctions, understanding that administrative sanctions will be qualified according to the non-compliance with the provisions of Law No. 23 of 2015, its respective regulations and the Agreement. The Intendencia may suspend or cancel the corresponding authorizations granted to operate, as indicated in Article 44 of this Agreement.

TC515. The SMV establishes in Agreement 6-2015 Article 38, that violations or breaches to the Law No. 23 of 2015 and said Agreement will be sanctioned by the Superintendence in accordance with the provisions of Articles 59 to 66 of Law No. 23 of 2015. In the determination of the infractions and the application of the sanctions set forth in such Articles, the current sanctioning procedure adopted by the Superintendence will be applied. In the absence of a sanctioning procedure, the provisions of the Administrative Procedural Law shall supplement it.

TC516. Regarding DNFBPs, Resolution No. JD-016-015 of the Intendencia, established that according to the criteria of the severity of the infringement, recidivism and the magnitude of the damages caused to third parties, it is authorized to impose administrative or disciplinary, pecuniary or financial sanctions as well as requesting from other institutions the withdrawal, restriction or suspension of the license to the non-financial reporting institutions.

TC517. The administrative sanctions will be imposed by the Intendencia, by reasoned resolution, which will be governed by the principles of administrative law, especially by due process and in response to the criteria for assessing the behavior of the non-financial reporting institutions and professionals who perform activities subject to supervision, without prejudice to the other sanctions established by law and the civil or criminal liability that may arise.

TC518. Additionally, Article 35 of Resolution No. JD-016-015, establishes that in the case of serious misconduct, administrative sanctions may be imposed such as cancellation, withdrawal, restriction, removal or suspension of licenses, certificates of suitability and other authorizations for the exercise of activities or transactions carried out by the NFRI and professionals who perform activities subject to supervision, which will correspond to the Intendencia that granted it, at the request of the Intendencia.

TC519. *Criterion 35.2* Article 253 of the Criminal Code of the Republic of Panama defines that "Whoever, knowing its provenance, uses its function, employment, trade or profession to authorize or permit the offense of money laundering, described in Article 250 of this Code, will be punished with imprisonment of five to eight years."

TC520. Article 61 of Law No. 23 of 2015 establishes that supervisory entities shall regulate the scale of specific, proportional and dissuasive sanctions that are available to treat natural and legal persons covered

by this Law, in accordance with the corresponding sanctioning powers granted by its constitutive law or the law that created them, that fail to meet the requirements to prevent the offenses of money laundering, terrorist financing and financing the proliferation of weapons of mass destruction. The sanctions must be applicable not only to the reporting institutions, but also to those who permit or authorize the breach of the provisions established in this Law or of the ones dictated for their application by the supervisory entities of each activity".

TC521. Article 63, determines that for the exclusive purposes of the sanctions and the regulation adopted in its development, the acts and behavior of the manager, official, executive, administrative or operations personnel of the reporting institutions are imputable to the reporting institution and to the persons who exercise the activities for whose account they act. For their part, the natural persons who are the authors of such acts and behavior are subject to civil and criminal liability under the terms provided in this Law and the Criminal Code.

TC522. On the other hand, Article 36 of Agreement No. 10-2015 on prevention of the improper use of banking and trust companies, establishes that, for the exclusive effects of the sanctions, the acts and conducts of the managerial, official, executive, administrative or operations personnel of the banks and trustee companies will be imputable to said entities and to the persons who exercise the activities on whose account they act. The natural persons who commit such acts and behaviors are subject to the corresponding civil and criminal liabilities.

TC523. Also, Resolution No. JD-016-015 on sanctioning procedure to FRI establishes: in Article 36 that the same will apply according to the development, both to natural and legal persons, for the acts and conduct of the directive, official, executive, administrative or operations personnel of the reporting institutions are imputable to the reporting institution and to the persons who carry out the activities on whose account they act, in a joint liability, in accordance with the provisions of Article 63 of Law No. 23 of 2015.

### *Weighting and conclusion*

TC524. Panama has developed a broad sanction system, which seems to be proportional. However, it is considered that the sanctions are not sufficiently dissuasive for larger institutions. **Recommendation 35 is rated as Largely Compliant.**

### ***Recommendation 36 - International instruments***

TC525. *Criterion 36.1* Panama has ratified the following international instruments, which have been incorporated into its domestic laws through the aforementioned laws:

- United Nations Convention against Corruption, sanctioned by Law No. 15 of May 10, 2005.
- United Nations Convention against Transnational Organized Crime, through Law No. 23 of 2004
- The Convention for the Suppression of the Financing of Terrorism, approved by Law No. 22 of May 9, 2002.
- Law No. 20 of December 7, 1993, which approved in all its parts the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This Convention entered into force for Panama on April 13, 1994.

TC526. *Criterion 36.2* In accordance with Article 4 of the Political Constitution of the Republic of Panama, the rules of International Law are observed. However, in order to incorporate the provisions of the aforementioned Conventions into the domestic law of Panama, the following laws have added or modified provisions:

- Law No. 34 of 2015, which modifies and adds articles to the Criminal Code and dictates other provisions
- Law No. 10 of 2015, which modifies and adds articles to the Criminal Code.
- Law No. 121 of 2013, which reforms the Criminal, Judicial and Criminal Procedural Code and adopts measures against activities related to the offense of organized crime
- Law No. 11 of 2015, which establishes provisions on international legal assistance in criminal matters
- Law No. 35 of 2013, which establishes provisions on extradition
- Law No. 23 of 2015, which adopts measures to prevent money laundering, TF and financing the proliferation of weapons of mass destruction, and dictates other provisions
- Executive Decree No. 363 of 2015, which regulates Law 23 of 2015, which adopts measures to prevent money laundering, TF and financing the proliferation of weapons of mass destruction, and dictates other provisions.

### *Weighting and conclusion*

TC527. **Recommendation 36 is rated as Compliant.**

### ***Recommendation 37 - Mutual legal assistance***

TC528. *Criterion 37.1* Panama has signed a range of international instruments, both bilateral and multilateral, regarding international legal assistance in criminal matters, that establish the terms under such assistance will be provided.

TC529. In addition to the above, Law No. 11 of 2015 on international legal assistance in criminal matters establishes the possibility and general guidelines to provide such assistance. Article 4 of the aforementioned law establishes that when a request is made not based on a bilateral or multilateral agreement, the authority that will receive and send requests to the competent foreign authorities will be the Ministry of Foreign Relations. With the above, Panama is able to provide extensive cooperation in mutual legal assistance.

TC530. However, the absence of a criminalization of the fiscal offense prevents the investigative bodies from being able to identify this type of cases and limits the possibility of assistance in requests for international legal cooperation. Thus, in the hypothesis of the existence of a case abroad for a tax offense that needs cooperation in Panama, the country does not legally have the tools to proceed with an adequate cooperation since in Panama the conduct is not criminal. The situation is aggravated in cases in which intrusive measures are needed, since Panama could not proceed to execute the request due to the absence of double criminality.

TC531. *Criterion 37.2* Article 3 of Law No. 11 of 2015 defines "central authority" as a "designated authority in bilateral or multilateral agreements or treaties by the Republic of Panama, in charge of sending, receiving and processing requests of legal assistance".

TC532. As mentioned in the analysis of Criterion 37.1, those requests that are not based on a bilateral or multilateral instrument will be centralized by the MIRE. Additionally, the PGN is the central authority for the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption and the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The Prosecutor's Office has a special unit destined to fulfill functions in international cooperation matters, which carries out a process of prioritization and request for assistance monitoring with the objective that they will be answered in a timely manner. To the aforementioned authorities, the Office

for the Execution of Mutual Legal Assistance Treaties and International Cooperation of the MINGOB is added as the central authority for the bilateral treaties, as well as the Inter-American Convention on Mutual Assistance in Criminal Matters and the Treaty of Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

TC533. *Criterion 37.3* Article 1 of Law No. 11 of 2015 states that Panamanian authorities shall provide reciprocal legal assistance in investigations, actions and proceedings in the offenses provided for in Panamanian law. Likewise, no evidence was found that there are unduly restrictive provisions in the Panamanian legal framework or in the instruments, both bilateral and multilateral, of which they are part.

TC534. *Criterion 37.4* Article 111 of Decree Law No. 9 of 1998 establishes that the banking confidentiality does not apply in the case of information required by authority or remitted based on the obligations in the matter of ML/TF/FPWMD. The only reporting institutions in which a banking secrecy applies are the SBP supervised entities, the other reporting institutions do not have a banking secret, therefore it is not necessary to lift it. Under the terms of Article 40 of Law No. 21 of 2017, banking secrecy may be suspended at the request of the competent authority.

TC535. Panama does not have tax crimes criminalized, so criminal proceedings are of a different nature than prosecutions for violations of tax laws. In this sense, Panama would not be in a position to provide information for prosecutions for tax crimes, based on the conditions of the instruments that indicate that the offense must be criminalized in Panama.

TC536. *Criterion 37.5* Law No. 11 of 2015 states that requests for legal assistance will be governed based on the principle of confidentiality, which includes, based on Article 5 of such Law:

- The reservation of the request for assistance, unless its removal is necessary to execute it. If, for the fulfillment or execution of the requirement, the withdrawal of the reservation is necessary, its approval shall be requested from the required State.
- The confidentiality of the evidence and information provided by the required State, by virtue of this Law, unless its removal is necessary for the investigation or procedures described in the request."

TC537. *Criterion 37.6* Article 1 of Law No. 11 of 2015 states that the Panamanian authorities will facilitate all assistance in investigations, proceedings and actions in offenses that are found in Panamanian legislation, in accordance with the international instruments in force for Panama; in case that there are no according instruments, the principle of reciprocity will be used. In addition to the foregoing, provisions that require double criminality to provide assistance in non-coercive measures were not found in Panamanian legislation.

TC538. *Criterion 37.7* According to the Merida Conference, which was approved and incorporated into Panamanian law by means of Law No. 15 of 2005, the requirement of double criminality will be considered covered if the offense is criminalized as such in both legal systems, regardless of whether it is considered within the same category of offenses or if it has the same name. However, as mentioned above, because Panama does not have tax crimes criminalized, it is not in a position to provide assistance.

TC539. *Criterion 37.8* Article 7 of Law No. 11 of 2015 states that foreign authorities may request assistance to:

- Receive testimonies or take statements from people.
- Submit legal documents
- Examine documents, objects, and places.
- Provide information, evidence elements and expert evaluations.

- Deliver original or certified copies of relevant documents and records, including public, banking or financial documentation, as well as companies' social or commercial documentation.
- Identify or locate the proceeds of crime, the property or assets laundered, from the instruments used or intended to be used in a criminal act or for the financing of terrorism, property of corresponding value or property of an equivalent value or other elements for evidentiary purposes.
- Facilitate the voluntary appearance of the persons to the requesting State.
- Authorization of the presence of the competent authorities of the requesting Party or its official delegates during the execution of an application.
- The seizure or confiscation of movable and immovable property, money, securities, property or proceeds of crime, from instruments used or intended to be used in a criminal act or for the financing of terrorism, and Property of corresponding value or property of an equivalent value.
- Conducting Videoconferencing for evidentiary purposes.
- The delivery of criminal records.
- Search and location of people.
- Special investigation techniques: covert operations, interception of communications, access to computer systems and controlled deliveries.
- Any other form of legal assistance in accordance with the purposes of this Law, as long as it is not incompatible with national laws.

### *Weighting and conclusion*

TC540. In general, the country has the legal basis and specific mechanisms to provide mutual legal assistance. However, limitations on the provision of cooperation in tax matters is a limitation of Panama's ability to provide assistance. **Recommendation 37 is rated as Largely Compliant.**

### ***Recommendation 38 - Mutual legal assistance: freezing and confiscation***

TC541. *Criterion 38.1* Article 7 of Law No. 11 of 2015 expressly states that assistance may be requested for the "seizure or confiscation of movable and immovable property, money, securities, deeds, property or proceeds of crime, from instruments used or intended to be used in a criminal act or for the financing of terrorism and Property of corresponding value or property of an equivalent value." Regarding the coverage of the instrument of the offense (subsection c and d) of the literal wording of the Article, it is understood that the property or proceeds of crime that "come from" instruments used or that are intended to be used in a criminal act are covered.

TC542. However, despite the general forecast, the impossibility of prosecuting the ML offense stemming of a tax offense due to the absence of criminalization has a decisive influence on the legal capacity to provide assistance in measures requiring seizure and confiscation measures. In addition, it prevents the adoption of legal measures for the seizure and confiscation of assets resulting from tax crimes committed abroad and limits the possibility of assistance in requests for international legal cooperation related to this predicate offense.

TC543. *Criterion 38.2* The cooperation measures of Law No. 11 are broad and should include the possibility of requests for assistance based on a non-conviction based confiscation.

TC544. *Criterion 38.3* Although there are no specific coordination agreements for seizure and confiscation actions, Panama may carry it out through international instruments or the general basis provided by Law No. 11 of 2015. Law No. 34 of 2010 (applicable to cases that are still governed by the inquisitorial procedure) determines in Article 29 that instruments, movable and immovable property, securities and products of the commission of offenses against the Public Administration, money laundering, financial,



terrorism, drug trafficking and related crimes will be seized provisionally by the instructing agent and will be under the orders of the MEF. In the same way, Law No. 121 of 2013 and the Criminal Procedure Code determine that the provisional seizing will be placed at the orders of the MEF.

TC545. Likewise, Article 253 of the Criminal Procedure Code determines that the money, securities will remain deposited in the bank or the securities financial institution or trust companies where they are and will continue accruing the agreed interest while the provisional seizure lasts. On the other hand, the property apprehended and seized for offenses described in Law No. 57 of 2013 to the Directorate of Administration of Assets Apprehended by MEF it corresponds their maintenance and preservation. The aforementioned Ministry has the legal competence to carry out the auctions and adjudications of the assets.

TC546. Article 12 of Law No. 11 of 2015 states that when a State so requires, the central authority designated for such purposes may transfer the product or instruments seized or guarded in Panama, either totally or partially, requiring a copy of the confiscation order issued by the competent authority of that State.

TC547. In accordance with the provisions of Article 6 of Law No. 34 of 2010, prosecutors specializing in drug-related crimes and those specializing in offenses against collective security must file an appeal to make an advance decision on provisionally apprehended property in cases of flagrancy in LA crimes, related to drugs, terrorism and related crimes.

TC548. *Criterion 38.4* Article 12 of Law No. 11 of 2015 states that when a State so requires, the central authority designated for such purposes may transfer the product or instruments seized or guarded in Panama, either totally or partially, requiring a copy of the confiscation order issued by the competent authority of that State.

### *Weighting and conclusion*

TC549. In general, the country has the legal basis and specific mechanisms to provide mutual legal assistance regarding seizure and confiscation, However, the impossibility of prosecuting the offense of ML arising from a tax offense due to the absence of criminalization has a significant influence in regards of providing assistance, limiting the possibility in requests for international legal cooperation related to this predicate offense. **Recommendation 38 is rated as Largely Compliant**

### ***Recommendation 39 – Extradition***

TC550. *Criterion 39.1* Article 517 of the Criminal Procedure Code of Panama states that the Executive Branch may, as reciprocity, grant the extradition of persons processed by other State and who are in Panamanian territory, which shall be granted if the offense is punishable in both countries with imprisonment, or another type of liberty deprivation for one year or a longer period at the time of the offense; it is not required that the offenses fall under the same category of offenses or for both offenses to have the same name in both countries. The only exception stated in the Panamanian legal framework corresponds to political offenses, in which case, in accordance with Article 24 of the Political Constitution, extradition may not be granted. The extradition procedure in Panama is regulated by the treaties on the subject of which the country is a part; in case of absence of a bilateral or multilateral treaty, Title IX "Extradition" of the Criminal Procedure Code will be the applicable regulation, in terms of Article 516 of the aforementioned legal system. The crime of ML and TF are extraditable offenses.

TC551. In spite of the general forecast, the impossibility of prosecuting the crime of ML arising from a tax offense due to the absence of criminalization has a decisive influence on the legal capacity to extradite for determining tax crimes committed abroad.

TC552. According to Article 521 of the Criminal Procedure Code, the extradition request is received by the MIRE through the corresponding diplomatic or consular agent, accompanied by the following:

- When there is a conviction, a copy of the sentence and the elements that prove the basis of the request, or in its absence a statement of the fact that the conviction is applicable and the degree to which the sentence must still be served.
- In the case of an accused, a copy of the arrest warrant and the order for prosecution or preventive detention, as well as the evidence on which those decisions are based.
- An accurate account of the facts constituting the charged offense that includes a description of the acts or omissions that constitute said offense, including an indication of the time and place of its commission, as well as the degree of participation of the person sought.
- Text of the legal provisions that establish the jurisdiction of the requesting State regarding the criminal conduct, accompanied by a description of the constituent elements of the offense, as well as a copy of the regulations regarding the prescription of the criminal prosecution and penalty.
- Evidence that could constitute a reasonable and probable basis to believe that the offense was committed.
- Special information that allow establishing the identity, nationality and possible location of the claimed.
- In cases where the death penalty is applicable, a certification of non-execution of the penalty.

TC553. The request for extradition may be denied, in terms of Article 518 of the Criminal Procedure Code, which does not have restrictive, unreasonable or undue reasons:

- That the person requested is Panamanian
- That the Panamanian courts are competent to judge the person whose extradition is requested for the offense in which the request is based
- That, in the opinion of the Executive Branch, the person may be tried in the requesting State for an offense different from that for which extradition is requested or by an exception or ad hoc court, in which case the requesting State may give sufficient guarantees that the trial will be conducted by a court normally competent in criminal matters
- That, with the same conditions, had been previously denied
- That the person claimed has complied with the corresponding sanction or has been pardoned or amnestied for the offense that motivated the extradition request
- That, in accordance with Panamanian legislation or that of the requesting State, the criminal prosecution or the penalty imposed on the person claimed has prescribed before the request
- That they are persons who, in the opinion of the Executive Branch, are being persecuted for political offenses or whose extradition is requested in response to political motives
- That the offense is punishable by death in the requesting State, unless a commitment to apply a less severe sanction to the person sought is given
- That the person sought is subject to prosecution or serving a sanction in Panama, in which case extradition may be granted in a deferred manner until the criminal process ends, except in those cases provided for as temporary delivery
- That the person sought has been tried in Panama for the offense on which the extradition request is based
- That the crime for which extradition is requested is criminalized by military law and does not constitute an offense under ordinary criminal law
- That this is so provided by the Panamanian Executive Body in a reasoned manner.

TC554. *Criterion 39.2* As indicated above, Article 518 establishes that persons of Panamanian nationality will not be extradited. However, Article 2506 of the Judicial Code establishes that, in cases in which extradition is denied, the person will be judged in Panama as if the imputed offense had been

committed within the country; In addition to the above, the Criminal Procedure Code establishes in its Article 519 that if extradition is denied due to nationality, among others, the file will be sent to the competent authority for purposes of prosecution, considering the crime as if it had been committed in Panama.

TC555. *Criterion 39.3* Based on Article 2500 of the Judicial Code, for extradition to proceed it is necessary that the offenses for which the person in extradition is claimed have been executed in the jurisdiction of the State that requires it and that in both countries they are subject to a penalty of imprisonment. Article 517 of the Criminal Procedure Code states that in order to cover the double criminality requirement "[...] it will not be necessary for the offenses for which a person is claimed to be under the same category of offenses in national criminal legislation or that have the same name, definition or characterization." As mentioned above, the lack of criminalization of tax crimes has an impact on the weighting of this criterion.

TC556. *Criterion 39.4* Article 537 of the Criminal Procedure Code expressly establishes the simplified procedure of delivery, which will apply in the event that the requested person expresses his consent to be extradited by simplified procedure. The person will be informed about their rights and the legal consequences of the simplified process, in which case they may consent to extradition or waive the specialty rule, which, if expressed, will be irrevocable.

TC557. Article 539 of the Code indicates what is related to the simplified delivery order, which will be arranged by order of a Judge with information of the person delivered, a State reference requesting the extradition, the reason for delivery to the State and the waiver of the specialty rule, if applicable.

### *Weighting and conclusion*

TC558. The country has the legal basis and specific mechanisms for extradition. To provide mutual legal assistance in seizure and confiscation, however, despite the general provision, the impossibility of prosecuting the crime of ML arising from a tax crime for lack of criminalization has a decisive influence on the legal capacity to extradite for determining tax crimes committed abroad. **Recommendation 39 is rated as Largely Compliant.**

### *Recommendation 40 - Other forms of international cooperation*

TC559. *Criteria 40.1* In addition to international cooperation on mutual legal assistance and extradition, which is regulated through Law No. 11 of 2015, Panama has the following instruments to provide international cooperation:

- Protocol of cooperation procedure and exchange of customs information between the customs authorities of the Republic of Panama and the Republic of Colombia, signed October 31, 2006.
- MOU between different customs through free trade agreements.
- MOU between the States of the Financial Action Task Force of South America/Financial Action Task Force of Latin America (GAFISUD/GAFILAT).
- Regional MOU for the Fight against ML and Financing of Terrorism between Financial Intelligence Units
- Adhesion to the Charter and the Principles of the Egmont Group, which was ratified by Panama in 1998
- MOU between the FIU and its counterparts with the countries listed in the table below.

	Country		Country		Country
1	Albania	28	United States of America	55	Nicaragua

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	Country		Country		Country
2	Germany	29	France	56	Nigeria
3	Netherlands Antilles	30	Georgia	57	Paraguay
4	Argentina	31	Ghana	58	Czech Republic
5	Armenia	32	Gibraltar	59	Peru
6	Aruba	33	Guatemala	60	Poland
7	Australia	34	Haiti	61	Portugal
8	Bahamas	35	Greece	62	United Kingdom
9	Bangladesh	36	Honduras	63	Dominican Republic
10	Barbados	37	Hong Kong	64	Romania
11	Belgium	38	Hungary	65	Russia
12	Bermuda	39	Cayman Island	66	San Marino
13	Bolivia	40	Thailand	67	Saint Martin
14	Brazil	41	Isle of Man	68	Saint Vincent and the Grenadines
15	Bulgaria	42	Israel	69	St. Lucia
16	Canada	43	Italy	70	Serbia
17	Chile	44	Japan	71	Seychelles
18	Colombia	45	Kazakhstan	72	Sri Lanka
19	Costa Rica	46	Latvia	73	South Africa
20	Croatia	47	Lebanon	74	Sweden
21	Curacao	48	Liechtenstein	75	Taiwan
22	Denmark	49	Luxembourg	76	Togo
23	Ecuador	50	Malta	77	Tunisia
24	Egypt	51	Mexico	78	Ukraine
25	El Salvador	52	Monaco	79	Venezuela
26	Slovenia	53	Montenegro	80	The Vatican
27	Spain	54	Netherlands	81	Equatorial Guinea

TC560. As for the police authorities of Panama, they are part of the following instruments and/or agencies:

- Central American Integration System (SICA): On December 13, 1991, the Central American Integration System (SICA) was established with the signing of the Tegucigalpa Protocol, which reformed the Charter of the Organization of Central American States (ODECA) of 1962.
- Community of Police of the Americas (AMERIPOL): On April 17, 2008, in the City of Bogotá DC, Colombia, the inauguration of the Headquarters of the Executive Secretariat of AMERIPOL was held. During the celebration of the First Summit on April 25 and 26, 2008, the Republic of Panama was integrated.
- International Criminal Police Organization (INTERPOL): The Republic of Panama, is a member as of September 15, 1958.
- The Latin American and Caribbean Community of Police Intelligence (CLACIP): On February 18, 2004, within the framework of the Fourth Summit of the Andean Community of Police Intelligence, the Republic of Panama adheres to this community.

TC561. In addition to the bilateral and multilateral agreements of which Panama is a part, Law No. 23 of 2015 states in its Article 11 as one of the faculties of the FIU the exchanging of information with counterparts that could be linked to offenses of ML/TF/FPWMD, exchange financial intelligence information and information related to compliance with Resolution 1373 of the UNSC. Two assumptions are established in which information can be exchanged with other FIUs, which are those with which a MOU that has been signed and those that are part of the Egmont Group.

TC562. Article 20 of the same regulation establishes the powers of supervisory entities to sign cooperation agreements with counterparts and State entities, in order to facilitate supervision functions. Likewise, Article 70 of the same law reforms Article 30 of Law No. 67 of 2011, to establish that the Intendencia will be able to enter into agreements of understanding and cooperation with authorities or foreign supervisory bodies to facilitate effective supervision and international investigation through the exchange of information necessary for the exercise of supervisory and investigative functions. It is also stated that the Intendencia may establish norms, procedures and requirements pertinent to this faculty. Provisions in the same sense are expressed in Articles 16 and 65 of the Banking Law, and in Article 30 of Law No. 1 of 1999 "Sole Text of the Securities Market Law".

TC563. With regard to safe and clear channels for the exchange of information, the use of various electronic systems for data transmission was reported, among which the Egmont Group's Secure Net (ESW) stands out, for information on FIU; the Regional Secure Network derived from the Regional MOU for the Fight against ML and the Financing of Terrorism; the Platform for the RRAG, in which information is exchanged with police and prosecutors of the countries member of GAFILAT; the secure information exchange channel of the World Customs Organization (WCO), and; the Ibero-American Network of International Legal Cooperation (IberRed), which brings together points of contact for prosecutors, Prosecutor's Offices and judicial powers of the 22 countries that make up the Ibero-American Community of Nations<sup>42</sup>.

TC564. The National Police has the powers, in accordance with Article 2 of Law No. 69 of 2007, to represent the country before the INTERPOL. Additionally, Article 14 of Resolution 093-R-49 of 2008, with the approval of the Internal Regulations of the DIJ, indicates that the National Central Office of INTERPOL-Panama will have the purpose of obtaining and developing the widest reciprocal assistance of the criminal police authorities for the prevention and repression of common law infractions; other functions indicated by the law in Article 16 include:

- Coordinate the exchange of operational police information at the national, regional and international levels, with a view to developing investigations of cases that cross our borders.
- Cooperate with the criminal police or investigation authorities of the countries, when it comes to discovering the whereabouts of the criminals who arrive to national territory, persecuted by the justice.
- Contribute to international investigations related to drug trafficking, money counterfeiting, vehicle theft and any other offenses that by their nature make it necessary to unify efforts to control and eradicate organized crime.
- Process the different dissemination ways (bulletins, spoken portraits, photographs), sent and received from abroad.

TC565. Notwithstanding the latter, the lack of criminalization of tax related offenses as predicate to ML is an obstacle to provide the widest range of international cooperation, as established under the criterion.

TC566. Criterion 40.2 In order to properly prioritize the requests received by the different Panamanian authorities with powers to exchange information and cooperate with their counterparts, the FIU has procedures established in manuals for the management of documents received and sent through the ESW, as well as for the attention to international requirements.

TC567. The safeguarding of information that is exchanged between supervisors and the FIU with their counterparts is regulated by Article 55 of Law No. 23 of 2015, which establishes that the information

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<sup>42</sup> The countries that make up the Ibero-American Community of Nations are: Andorra, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Spain, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, Puerto Rico, Dominican Republic, Uruguay and Venezuela.

obtained by these authorities must be kept under strict confidentiality and it can only be disclosed to the Prosecutor's Office, agents with criminal investigation functions and jurisdictional authorities, in accordance with the legal provisions in force, which in turn incorporates the Egmont Group Charter into national law, making its provisions on security mandatory and emphasizing that the violation of these provisions will cause the country to be subject to the Support and Compliance Process of said organization.

TC568. Although the legal framework is quite broad, as has been pointed out in the analysis of other Recommendations, with the possibility of providing cooperation on request or spontaneously, the lack of criminalization of tax crimes as autonomous and as determinants of ML limits the framework of cooperation that the country can provide.

TC569. *Criterion 40.3* It is important to point out that Article 11 of Law No. 23 of 2015 gives the FIU the power to exchange information after signing MOUs with its similar foreign authorities, although it also establishes the possibility of exchanging information with countries that do not have a MOU, as long as they are members of the Egmont Group. Article 20 of the same Law No. 23 of 2015 grants supervisory entities the power to sign cooperation agreements with similar foreign authorities to facilitate their supervisory tasks.

TC570. *Criterion 40.4* The legal provisions do not show any restriction to provide timely feedback on the use and usefulness of the information.

TC571. *Criterion 40.5* Panama does not have tax crimes incorporated as an autonomous offense or precedent of ML. Despite the fact that a constructive vision of international cooperation could be verified, which seeks to broaden the analysis of the offenses involved in the requests for cooperation that may be associated with tax crimes, linking it with other crimes or with the exchange of information between the tax authorities DGI, the limitations affect the cooperation and the possibility of using the information for purposes of identification of illicit assets, seizing, confiscations, and extraditions. In relation to the b-d criteria, there are no limitations to provide cooperation.

TC572. *Criteria 40.6* The safeguarding of the information that is exchanged is regulated by Article 55 of Law No. 23 of 2015, which establishes that the information obtained by these authorities must be kept under strict confidentiality and it may only be disclosed to the Prosecutor's Office, agents with criminal investigation functions and jurisdictional authorities in accordance with the legal provisions in force. In addition, the use of the information can only be given because of the reasons of the request, unless specific requirement. The information is kept protected by the same means available for the protection and confidentiality of similar national information.

TC573. *Criterion 40.7* As established under criterion 40.6 Art. 55 of Law 23 of 2015 establishes the safeguard of information and its treatment with the same confidentiality provisions as that coming from a national source.

TC574. *Criterion 40.8* The legal framework allows investigations or searches to be carried out on behalf of foreign counterparts for purposes of information exchange.

TC575. *Criteria 40.9 and 40.11* As previously mentioned, Law No. 23 of 2015 empowers the FIU as a national center for the reception and analysis of financial intelligence in the matters of ML/TF/FPWMD. Article 11 of the aforementioned Law, in its paragraphs 8, 9 and 10, also gives it the power to exchange financial intelligence information with counterparts in other countries, after signing memoranda of understanding, with financial intelligence units belonging to the Egmont Group, or cooperation relevant to the fulfillment of Resolution 1373 of the UNSC.

TC576. *Criteria 40.10* There are no limitations in the Panamanian legal system to the provision of feedback to the countries with information is exchanged, when they request it.



TC577. *Criterion 40.11* Art. 11 under Law 23 of 2015, in paragraphs 8, 9 and 10, provides the power to the FIU to exchange financial intelligence information with counterpart units from other countries, previously signing MOUs, with the FIUs members of the Egmont Group or to provide cooperation related to UNSCR 1373.

TC578. *Criteria 40.12* Law No. 23 of 2015 establishes the framework for supervisory entities to establish international cooperation measures in terms of its Article 1 to 20 of said Law empowers supervisory entities, among other actions, to sign cooperation agreements with Panamanian State entities and other similar foreign authorities to facilitate supervisory functions. Additionally, Article 70 of such Law modifies Article 30 of Law No. 67 of 2011, establishing that the SMV will enter into agreements of understanding and cooperation with authorities and supervisory entities abroad, in order to facilitate effective supervision and investigation through the exchange of information for the development of supervision and investigation functions. The cooperation will be based on the principles of bilateralism and reciprocity, mutual cooperation, confidentiality of information, relevance of the requirement for supervision and investigation or sanction, as well as any other principle deemed appropriate for supervisory purposes. In order to carry out such cooperation, the SMV has signed the following agreements on consultation and technical assistance with similar entities:

Country	Regulator
Ukraine	Securities and Exchange Commission of the State of Ukraine
Colombia	Financial Superintendence of Colombia
Colombia	Securities Self-Regulatory Organization of Colombia
Dominican Republic	Superintendent of Securities of the Dominican Republic (SIV)
Mexico	National Banking and Securities Commission (CNBV)
Honduras	National Commission of Banking and Insurance of the Republic of Honduras (CNBS)
Puerto Rico	
Spain	National Securities Market Commission of Spain CNMV
El Salvador	Superintendence of Financial Institutions
Costa Rica	Superintendence of Securities Institutions
Argentina	National Commission of Securities
Chile	Superintendence of Securities and Insurance of Chile (SVS)
Central America and the Dominican Republic	Multilateral Memorandum of Understanding
Guatemala	Guatemalan Registry of Securities
Nicaragua	Superintendence of Banks and Other Financial Institutions of Nicaragua

TC579. For its part, the Banking Law provides that, among the attributions of the Superintendent (of Banks) is the establishment of cooperation links with foreign supervisory entities to, among other actions, exchange useful information for the exercise of the supervisory function (Article 16, paragraph 20). Likewise, the SBP may have understandings with foreign supervisors, both bilaterally and multilaterally, to facilitate consolidated and cross-border supervision, as well as a global evaluation of banking institutions and groups, within which the applicable criteria for such effects shall be specified.

TC580. *Criterion 40.13* Law 23 of 2015 establishes the framework for supervisory bodies to take international cooperation measures, in terms of Art. 1; Arg. 20 under the aforementioned Law the supervisory bodies can, among other measures, sign cooperation agreements with entities of the Panamanian government and other foreign counterparts to facilitate supervision tasks.

TC581. *Criterion 40.14* Art. 70 of Law 23 of 2015 modifies Art. 30 under Law 67 of 2011, establishing that the SMV will enter into cooperation agreements and MOUs with foreign authorities and supervisory entities in order to facilitate effective supervision and investigation, through the exchange of information. Cooperation will be based on the principles of bilateralism and reciprocity, mutual cooperation, confidentiality of information, need to know for the requirements for supervision and investigation or sanctioning purposes, as well as any other principle considered relevant for purposes of supervision.

TC582. *Criterion 40.15* The Panamanian legal framework for supervisory cooperation sets the possibility of exchanging information for supervision and investigation purposes.

TC583. *Criterion 40.16* The legal framework enables supervisory bodies to exchange information for any purpose including investigation and sanctioning.

TC584. *Criteria 40.17 , 40.18 , 40.19 and 40.20* For the purposes of investigation and information exchange related to ML/TF/FPWMD, Panama has the following agreements, which have constitutional rank for purposes of compliance:

- Multilateral Agreement on Cooperation and Mutual Assistance among the National Directorates of Customs of Latin America, Spain and Portugal, September 11, 1981.
- Protocol of cooperation procedure and exchange of customs information between the customs authorities of the Republic of Panama and the Republic of Colombia, signed October 31, 2006.

TC585. Additionally, the Panamanian customs authority has signed memoranda of understanding with various countries, as part of the free trade agreements subscribed.

TC586. In police matters, Panama is a member of several international systems through which it can obtain information from its counterparts and carry out activities jointly. These systems include the following:

- Central American Integration System (SICA), constituted on December 13, 1991 with the signing of the Tegucigalpa Protocol;
- Latin American and Caribbean Community of Police intelligence, to which Panama adhered in the framework of the IV Summit, on February 18, 2004;
- Community of Police of America (AMERIPOL), to which Panama joins in the I Summit, held on April 25 and 26, 2008;
- International Criminal Police Organization (INTERPOL), of which Panama has been a member since September 15, 1958.

TC587. It is especially important to mention the membership of Panama to INTERPOL, since, in the framework of the establishment of the National Central Office of INTERPOL-Panama, in accordance with the provisions of Resolution 093-R-49, "Internal Regulations of the Department of Judicial Investigation of the National Police ", states that one of the functions of said office will be to coordinate the exchange of operational information at the regional and international level for the development of international investigations, as well as assist in related international investigations. with offenses that, due to their nature, make it necessary to join efforts, such as ML/TF/FPWMD.

TC588. Other secure channels that are used by the Panamanian authorities in the exchange of information include the GAFILAT Asset Recovery Network (RRAG) and the Ibero-American International Legal Cooperation Network (IberRed).

TC589. *Criterion 40.18* As established under the analysis for Recommendation 7, foreign authorities may request the use of special investigative techniques for purposes of international cooperation.

TC590. *Criterion 40.19* Panama is part of several international systems through which it can obtain information from its counterparts and carry out its activities jointly, as established under Criterion 40.17.

TC591. *Criterion 40.20* The Panamanian legal framework does not establish any restrictions to indirect exchange of information.

### *Weighting and conclusion*

TC592. In general, the country has other forms of cooperation available and regulated, highlighting the cooperation carried out within the framework of the supervisors, by the FIU (through the Egmont Group platform or Memoranda), police collaboration (through specific agreements and Interpol) and in tax matters through the DGI. However, the lack of incorporation in criminal law of tax crimes affects the possibilities and quality of cooperation, as well as limiting the use of information for the purposes of seizures, confiscations, and extraditions. **Recommendation 40 is rated as Largely Compliant.**

*Summary of Technical Compliance – Main Deficiencies*

<b>Compliance with the FATF Recommendations</b>		
<b>Recommendation</b>	<b>Rating</b>	<b>Underlying factor(s) to the rating</b>
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> <li>The NRA does not consider the reception of funds or other assets linked to tax offenses committed abroad, which is one of the main ML threats</li> <li>The NRA does not carry out an in-depth analysis of the several sectors and activities considered as vulnerable (lawyers, free-trade zones, real estate, etc.)</li> </ul>
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> <li>Measures in the ML/FT Action Plan do not satisfactorily address all risks faced by the country.</li> </ul>
3. Money laundering offence	PC	<ul style="list-style-type: none"> <li>Tax offences are not criminalized as predicate to M, which impacts one of the main risks identified, which is the placement of illicit assets coming from abroad.</li> </ul>
4. Confiscation and provisional measures	C	
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> <li>It is unclear whether the provisions on the prohibition to provide funds or benefits to individual terrorists or terrorist groups also extends to financing the trip or the provision of terrorist training.</li> </ul>
6. Targeted financial sanctions related to terrorism & terrorist financing	LC	<ul style="list-style-type: none"> <li>Obligations to implement targeted financial sanctions are not applicable to all persons and entities within the country and are limited only to RIs.</li> <li>There is no express legislation nor regulation prohibiting an individual or entity to supply funds, assets or other goods to designated individuals or legal entities.</li> </ul>
7. Targeted financial sanctions related to proliferation	LC	<ul style="list-style-type: none"> <li>Obligations to implement targeted financial sanctions are not applicable to all persons and entities within the country and are limited only to RIs.</li> <li>There is no express legislation nor regulation prohibiting an individual or entity to supply funds, assets or other goods to designated individuals or legal entities.</li> </ul>
8. Non-profit organizations	LC	<ul style="list-style-type: none"> <li>Authorities have not developed best practice in coordination with the relevant sectors to address their TF risks and vulnerabilities.</li> </ul>
9. Financial institution secrecy laws	C	
10. Customer due diligence	LC	<ul style="list-style-type: none"> <li>There is no express prohibition to open accounts under fictitious name</li> <li>There is no possibility to not perform CDD to not alert possible customers with potential links to ML/TF activities, in terms of criterion 10.20</li> </ul>
11. Record keeping	LC	<ul style="list-style-type: none"> <li>Terms under which the information must be presented to the relevant authorities specifically the FIU, are not established,</li> </ul>

Compliance with the FATF Recommendations		
Recommendation	Rating	Underlying factor(s) to the rating
		so it is not possible to determine if the information is available “promptly”.
12. Politically exposed persons	C	
13. Correspondent banking	C	
14. Money or value transfer services	PC	<ul style="list-style-type: none"> <li>The Law does not establish that agents must implement AML/CFT measures or being under the scope of the compliance program</li> <li>Remittance and currency Exchange houses are not subject to the requirement of being registered or licensed.</li> </ul>
15. New technologies	C	
16. Wire transfers	LC	<ul style="list-style-type: none"> <li>The remittance sector has not been adequately regulated by it new supervisory body</li> <li>There is no clarity in the obligation of beneficiary Banks to take follow-up actions while detecting wire transfers without complete information.</li> </ul>
17. Reliance on third parties	LC	<ul style="list-style-type: none"> <li>While the regulations include the third party located in the country, there is no mention of information being gathered immediately and without delay</li> </ul>
18. Internal controls and foreign branches and subsidiaries	C	
19. Higher risk countries	PC	<ul style="list-style-type: none"> <li>There is no mechanism through which RIs are informed on the countries that should be considered a high risk, only mentioning “those identified by the FATF”</li> <li>Provisions instruct conducting an enhanced CDD, but do not enforce the implementation of countermeasures related to those countries with strategic deficiencies.</li> <li></li> </ul>
20. Reporting of suspicious transactions	PC	<ul style="list-style-type: none"> <li>The term to file a STR is fifteen days after the suspicious act has been detected, which is not in line with “without delay”</li> <li>There is no explicit reference to the RIs having to report attempted transactions</li> </ul>
21. Tipping-off ad confidentiality	C	
22. DNFBPs: Customer due diligence	LC	<ul style="list-style-type: none"> <li>There are no terms under which information and documents should be made available to the authorities.</li> </ul>
23. DNFBPs: Other measures	LC	<ul style="list-style-type: none"> <li>Management of compliance is not defined (including the appointment of a high-level management compliance officer)</li> </ul>

Compliance with the FATF Recommendations		
Recommendation	Rating	Underlying factor(s) to the rating
24. Transparency and beneficial ownership of legal persona	NC	<ul style="list-style-type: none"> <li>• There is no obligation to take preventive controls by the resident agent nor the Panamanian authorities with regards to the accounting records, which enables to evaluate the risks of the activity being carried out by a given company, as well as the adoption of measures to avoid its misuse.</li> <li>• In the case of corporations, there is no express provision establishing that information must be available within the country</li> <li>• There is no clear provision for resident agents to keep records on all the shareholders of members of the board of a company, and only for those with 25% or more of stock capital</li> <li>• Information required under criterion 24.4 is not included in the records, instead, it can be kept by companies and there is no specific mechanism allowing authorities or the resident agent to ensure its update.</li> <li>• The resident agent has no legal obligation to monitor or permanently follow-up the customer's activity in order to detect changes in beneficial ownership</li> <li>• Panamanian regulations do not prohibit nominee directors or shareholders, nor establishes any specific provision to control this activity</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> <li>• The risk of available information on BO being precise or up to date has not been assessed</li> <li>• No sanctions have been imposed based on the lack of BO information.</li> </ul>
26. Regulation and supervision of financial institutions	LC	<ul style="list-style-type: none"> <li>• There are deficiencies in legal definitions on the treatment of Financial Groups in most criteria.</li> </ul>
27. Powers of supervisors	LC	<ul style="list-style-type: none"> <li>• Regarding the Powers of the SSRP, SMV and the IPACOOOP, it is not clear whether information on ML/TF compliance monitoring can be requested</li> </ul>
28. Regulation and supervision of DNFBPs	LC	<ul style="list-style-type: none"> <li>• The Intendencia, as DNFBPs supervisor, does not have the power to grant authorization to operate to its regulated entities and has no legal grounds to prevent criminals from being partners in a DNFBP.</li> <li>•</li> </ul>
29. Financial intelligence units	C	
30. Responsibilities of law enforcement and investigative authorities	PC	<ul style="list-style-type: none"> <li>• There is no express provision on the possibility of carrying out parallel financial investigations.</li> </ul>
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>• Competent authorities may not have access to information and documentation during the investigation, accusations or actions in case the predicate offence is a tax offence, and may not use special investigation techniques in such cases.</li> </ul>



Compliance with the FATF Recommendations		
Recommendation	Rating	Underlying factor(s) to the rating
32. Cash couriers	LC	<ul style="list-style-type: none"> <li>• There is no provision expressly granting powers to request or collect more information to cash couriers</li> <li>• The scope of the declarations does not cover all transportation means established under the standard, especially mail and freight.</li> </ul>
33. Statistics	PC	<ul style="list-style-type: none"> <li>• The country does not have complete statistics on the AML/CFT system, although the FIU was recently designated as the competent body to keep them.</li> </ul>
34. Guidance and feedback	C	
35. Sanctions	LC	<ul style="list-style-type: none"> <li>• Applicable sanctions are not considered to be sufficiently dissuasive for larger institutions in Panama</li> </ul>
36. International instruments	C	
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> <li>• The lack of criminalization of tax offences prevents law enforcement bodies from identifying this kind of cases and limits the possibility to provide assistance in case of an international request.</li> </ul>
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> <li>• The impossibility of prosecuting ML with tax offences as predicate crimes impacts on the legal power to provide assistance where confiscation and seizure are required. It also prevents the adoption of legal measures to seize and confiscate assets linked to tax crimes committed abroad and limits the possibility to provide assistance in cases linked to this offence.</li> </ul>
39. Extradition	LC	<ul style="list-style-type: none"> <li>• Deficiencies in criminalization of tax offences as predicate to ML limit the possibility of Panama to cooperate in this matter with other countries.</li> </ul>
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> <li>• The deficiencies in criminalization of tax offences impact the possibility and quality of cooperation, and it also limits the use of information to be used for seizure, confiscation and extradition.</li> </ul>



The Financial Action Task Force of Latin America (GAFILAT) is a regionally based inter governmental organization that gathers 16 countries from South America, Central America and North America in order to combat money laundering and terrorist financing by means of a commitment for continuous improvement of the national policies against both scourges, and the enhancement of different cooperation mechanisms among its member countries.

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