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This Detailed Assessment Report for Panama on the FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism was prepared by a team of the International Monetary Fund using the assessment methodology adopted by the FATF in February 2004 and endorsed by the Executive Board of the IMF in March 2004.

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PANAMA

DETAILED ASSESSMENT REPORT ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

JANUARY 2014

INTERNATIONAL MONETARY FUND
LEGAL DEPARTMENT

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ACRONYMS

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
APIS	Advanced Passenger Information System
BL	Banking Law
BCP	Basel Core Principles
BHN	Banco Hipotecario Nacional
BSD	Bank Supervision Department
CC	Criminal Code
CCF	Consejo de Coordinacion Financiera
CDD	Customer Due Diligence
CONAPRED	National Council for the Study and Prevention of Crimes Related to Drugs of Panama
CPAN	Comision Presidencial de Alto Nivel
CPC	Criminal Procedure Code
CSP	Company Service Provider
CTR	Currency transaction reporting
DGEF	MICI's division of financial entities
DIJ	Direccion de Investigacion Judicial
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit
FSAP	Financial Sector Assessment Program
FSRB	FATF-Style Regional Body
GAFISUD	Grupo de Accion Financiera de Sudamerica
GCB	Gaming Control Board from the MEF of Panama
TF	Terrorism Financing
IAIS	International Association of Insurance Supervisors
IPACOOP	Panamanian Autonomous Institute for Cooperatives
KYC	Know your customer/client
LEA	Law Enforcement Agencies
LEG	Legal Department of the IMF
MEF	Ministry of Economy and Finance
MFA	Ministry of Foreign Affairs
MFD	Monetary and Financial Systems Department of the IMF
MICI	Ministry of Commerce and Industries of Panama
MOU	Memorandum of Understanding
ML	Money laundering
MLA	Mutual legal assistance
MLAT	Mutual Legal Agreements in Criminal Matters
MTR	Multiple linked transactions
MUSBER	Manual Unico de Supervision Basado en Riesgos
NPO	Nonprofit organization
OEM	Other enforceable means
PEP	Politically-exposed person
RETB	Real Estate Technical Board
PGN	Procuradoria General de la Nacion
ROSC	Report on Observance of Standards and Codes

SBPSB	Superintendence of Banks of Panama
SMV	Superintendency of the Securities Market of Panama
SRO	Self-regulatory organization
SSRP	Superintendency of Insurance and Reinsurance of Panama
STR	Suspicious Transaction Report
UAF	Panama FIU (Unidad de Análisis Financiero)
UN	United Nations Organization
UNSCR	United Nations Security Council Resolution

PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Panama is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the updated AML/CFT assessment Methodology 2004.The assessment team considered all the materials supplied by the authorities, the information obtained on-site during their mission from October 15–29, 2012, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the agencies and entities met is set out in Annex 1 to the detailed assessment report.

The assessment was conducted by a team of assessors composed of two staff of the International Monetary Fund (IMF) and four expert(s) acting under the supervision of the IMF. The evaluation team consisted of: Manuel Vasquez (team leader, LEG); Carolina Claver (financial sector expert, LEG); Emily Reinhart (financial sector expert under LEG supervision); Marianne Mathias (financial intelligence unit/law enforcement expert under LEG supervision); Alejandro Montesdeoca (legal expert under LEG supervision); Gonzalo Alvarado (non-financial sector expert under LEG supervision). The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the terrorism financing (TF) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Panama at the time of the mission. It describes and analyzes those measures, sets out Panama's levels of compliance with the FATF 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

The assessors would like to express their gratitude to the Panamanian authorities for their assistance, cooperation, and hospitality throughout the assessment mission.

EXECUTIVE SUMMARY

1. KEY FINDINGS

1. **Panama is vulnerable to money laundering (ML) from a number of sources including drug trafficking and other predicate crimes committed abroad such as fraud, financial and tax crimes.** It is a country with an open, dollarized economy and, as a regional and international financial and corporate services center, offers a wide range of offshore financial and corporate services. It is also a transit point for drug trafficking from South American countries with some of the highest levels of production and trafficking of illegal drugs in the world. These factors put the country at high risk of being used for ML. Although the authorities have not conducted a risk assessment, they attribute the largest sources of ML to drug trafficking and other predicate crimes committed abroad. No information or estimates were provided on the extent of domestic and foreign predicate crimes and the amount of related ML in Panama. No terrorism financing (TF) cases have been detected so far.

2. **Panama has criminalized ML and TF, but its AML/CFT framework is not fully in line with the FATF Recommendations**. Some CFT requirements are included in subsidiary instruments but these, like other provisions contained therein, appear to go beyond the AML Law and, therefore, inconsistent with the legal principles established under the Constitution. This creates uncertainty as to their validity, if challenged. There are inadequate statistics on ML investigations, prosecutions, and convictions to properly assess the effectiveness of implementation of the ML/TF legislation.

3. **The AML Law covers most of the core financial sectors but does not fully apply to the insurance sector and does not extend to a number of other financial activities as required under the FATF standard.**[1] This Law applies to bureau de change but this high-risk sector is not subject to licensing or registration nor, in practice, is it regulated and supervised.

4. **Of the designated non-financial businesses and professions (DNFBPs), only trustees are fully covered under the AML Law, while casinos and real estate brokers (legal persons only) are only subject to currency transaction reporting (CTR) obligations.** Other DNFBPs including lawyers, accountants, notaries, corporate services providers (including resident agents who must be lawyers), and dealers in precious metals and stones are not covered. Resident agents providing corporate services are covered under a specific law that provides a limited range of customer identification requirements and are subject to strict secrecy provisions that severely limit or prohibit access to information by supervisors and the financial intelligence unit (FIU).

5. **The substantial gaps in coverage of financial activities and DNFBPs in the AML/CFT framework pose significant ML/TF risks to the country and other jurisdictions.** At the time of the mission, the authorities had no concrete plans to address these shortcomings.

6. **Competent authorities, including law enforcement and the FIU, do not have timely access to information on legal persons and arrangements as required under the FATF standard.** In turn, this limits their capacity to cooperate nationally and internationally. A law was passed in July 2013 to provide for the custody of bearer shares and facilitate access to information on the owners of

[1] Post mission, the authorities informed that they have drafted amendments to the AML Law (Law 42 of 2000) that would include requirements consistent with the new FATF standard.

such shares. The law will not come into force for two years (2015), and for bearer shares issued prior to the law coming into effect, a three-year transition period for compliance is provided ending during 2018.

7. **The FIU's operational effectiveness is hampered by restrictions on its access to information on legal persons and arrangements and by limited resources.** The FIU has identified only a few significant ML cases and has provided limited cooperation to its foreign counterparts. In addition, its operational independence could be enhanced through amended administrative reporting arrangements.

1.1. Legal Systems and Related Institutional Measures

8. **Panama has ratified the main AML-related UN Conventions and has legal provisions in its Penal Code with respect to ML that are broadly in line with the FATF standard, but a number of significant deficiencies remain.** ML has been criminalized as an autonomous offense relating to a large number of FATF-designated categories crimes, but counterfeiting of currency, smuggling, forgery, and piracy are not covered, and illicit association and trafficking in stolen goods are only partially covered. In addition, criminal liability of legal persons is limited as it does not cover situations where a legal person is used to launder assets but does not benefit from it. There are no parallel civil proceedings when such person is convicted of ML.

9. **The sanctions provisions for ML offenses are consistent with those for other serious criminal offenses under Panamanian law and are largely in line with the international standards.** However, the assessment of effective implementation cannot be properly ascertained due to the lack of adequate statistics. The number of prosecutions seems to be relatively low, taking into account the size of the financial and economic system of Panama, its status as an international financial and corporate center, and its geographic location as a transit country for drugs. This also suggests that implementation is weak.

10. **Panama has ratified the UN TF Convention and the Penal Code criminalizes TF but does not cover all of the required designated offenses.**[2] The TF offense does not explicitly cover the financing of a terrorist organization or an individual terrorist, the collection of funds, and the indirect provision of funds for TF. Weaknesses in the AML regime also affect the CFT framework including those related to the liability of legal persons. In addition, the criminalization of TF has not been implemented in the primary preventive measures legislation as was done for ML. The AML Law does not include CFT provisions and certain provisions have only inconsistently been included in subsidiary instruments raising constitutional uncertainty as to their validity if challenged. This is a significant shortcoming.

11. **The sanctions for TF are consistent with the sanctions applicable to other serious criminal offenses in the Penal Code and are broadly in line with international practice.** However, as for ML, the lack of adequate statistics does not allow for a proper assessment of

[2] Post mission, the authorities informed that in September 2013, new anti-terrorism provisions were added to the Criminal Code.

effective implementation. The authorities indicate that they are not aware of any TF cases in the country.

12. **The legal framework of Panama allows for the freezing, seizure, and confiscation of the instruments and proceeds of crime including ML and TF; however, it does not provide for the confiscation of property of corresponding value and the application of other measures.** The procedures extend to property that is directly or indirectly derived from proceeds of crime, including income, profits, and other benefits. There are no provisions for freezing and seizure on an ex-parte basis or without prior notice, and for voiding of contracts and arrangements. Key limitations to the effective implementation of these procedures are the secrecy and confidentiality provisions and practices afforded to the beneficial owners and controllers of legal persons and arrangements that hamper access to information for purposes of tracing and locating illicit assets. In addition, the volume of confiscated assets associated with ML seems small taking into account the abovementioned risks of ML faced by Panama.

13. **Even though Panama has provisions for freezing assets, it does not have effective laws and procedures to freeze without delay terrorist funds or other assets in accordance with the relevant UN Security Council resolutions.** Terrorist funds can only be frozen in the context of a criminal trial, through the application of the general rules for seizing the instruments and proceeds of crime.

14. **Panama has established a financial intelligence unit as the center for receiving, analyzing, and disseminating information related to suspicious transactions, but its effectiveness is constrained by inadequate resources and access to information, including on legal persons and arrangements.** While the law establishes reporting obligations on a number of financial and non-financial entities, it does not cover all of the FATF financial activities and DNFBPs which deprive the FIU of important sources of information for analyzing and disseminating cases suspected of ML and TF. Most suspicious transaction reports (STRs) are filed by the banking sector and the number of reports has been declining, partly attributed to onerous documentation requirements.

15. **The legal framework for the FIU provides for its operational and budgetary independence, but its analytical and case dissemination capacity could be improved.** The detection of potential ML cases by the FIU through its analysis of STRs is uncommon and its support for law enforcement mainly involves reactive assistance in the conduct of drug-related financial investigations. In addition, the FIU's dissemination reports to law enforcement lack sufficient supporting documentation which limits their value to, and impairs the effectiveness of investigations and prosecutions. More specific feedback and guidance to reporting entities could also improve the quality of STRs.

16. **The FIU has mechanisms for domestic and international cooperation but does not provide a full range of cooperation and information exchange to its foreign counterparts, despite the high demand.** In practice, the FIU only shares public data and information contained in its database. Unlike the number of requests it receives from abroad, the FIU's requests to foreign counterparts is relatively low.

17. **Panama has established law enforcement authorities (LEAs) that are responsible for ML and TF investigations and prosecutions, but their activities are mainly concentrated on drug-related offenses.** Moreover, the lack of adequate statistics does not allow for a proper determination of whether law enforcement measures are being effectively implemented, and to ascertain whether ML has been investigated or prosecuted as a stand-alone offense. Limited resources

and training also hamper the effectiveness of LEAs. Shortcomings in the legal framework for the conduct of investigations (such as a 60-day limitation for preliminary investigations and a 10-day window before having to disclose to a suspect the existence of undercover operations) limit the LEAs' capacity to conduct complex and lengthy financial investigations. Limitations on the timely and efficient access to information held by financial institutions, particularly banks, and on information on legal persons and arrangements, also impact their effectiveness.

18. **Panama has established a system for the declaration and monitoring of cross-border transportation of currency and bearer instruments, but the measures in place are not comprehensive or effective.** The measures apply only to inbound cash movements, and mostly at the Tocumen International Airport. There are no specific legal provisions for restraining and seizing currency that may be related to ML/TF. Parallel administrative and criminal sanctions can be applied for noncompliance but the absence of statistics does not allow for a determination of how well the system operates in practice. Some sanctions for breaches of the declaration requirement are relatively low, and there are no apparent arrangements that would allow for cooperation with foreign counterparts.

1.2. Preventive Measures – Financial Institutions

19. **Panama has implemented an AML Law but it does not cover CFT and many financial activities subject to the FATF standard are not included or only partially covered.** In particular, the AML Law does not cover the following entities and activities: (i) insurance companies and intermediaries (insurance companies, reinsurance companies, and reinsurance brokers are only subject to CTR requirements); (ii) savings and loan associations; (iii) the national mortgage bank; (iv) multi-service cooperatives; (v) issuance and managing means of payment; (vi) financial leasing; (vii) factoring; and (viii) safekeeping/custody of cash and other liquid assets (e.g., gold). The AML Law covers bureau de change but this active sector is not subject to licensing or registration requirements, and in practice is not effectively supervised.

20. **The AML Law has broad provisions that are further supported by more detailed regulations, but many of the requirements that should be in law or regulations are included in other enforceable means (OEMs).** In addition, many of the provisions contained in regulations and OEMs appear to go beyond the primary AML Law contrary to constitutional provisions and their validity could be challenged. The authorities maintain that under Panamanian jurisprudence, they are enforceable until declared illegal or unconstitutional. Notwithstanding, potential challenges to their validity may have a dissuasive effect on compliance by financial institutions and enforcement by supervisors. A number of the preventive measures are not fully in line with the FATF Recommendations including in the areas of: identification and verification of beneficial owners and controllers, conduct of ongoing due diligence, enhanced due diligence for high-risk customers, cross-border banking relationships, provisions for reliance on third parties, and non face-to-face business relationships. In addition, there are limited customer due diligence (CDD) requirements and guidance for trustees and foundation clients. In particular, identification and verification of beneficial owners or controllers of bearer share companies and the settlors and ultimate beneficiaries of trusts is weak.

21. **Internal AML/CFT controls are stronger in the banking sector but weaker in others.** In particular, shortcomings were identified in CDD procedures, internal audit, and employee due diligence requirements. Implementation of AML/CFT requirements is generally weak in the nonbanking sectors partly due to weak oversight.

22. **All covered financial institutions are subject to recordkeeping requirements that are broadly in line with the FATF standard.** Records must be retained for 10 years or more but there are limited requirements to maintain records of both domestic and international transactions, business correspondence, and to make available such information in a timely manner to competent authorities. Deficiencies in the CDD requirements also limit the effectiveness of recordkeeping requirements.

23. **Although ordering banks are required to obtain and maintain information on the originator of wire transfers, there is no explicit requirement that they and any intermediary banks transmit this information in the payment message.** Beneficiary banks are prohibited from processing wire transfers when the name of the originator and the originator bank are not included in the payment message. However, the prohibition does not extend to wire transfers lacking other originator information as required by the standard. Beneficiary banks are not required to apply a risk-based approach for identifying and handling wire transfers that lack complete originator information or, in such circumstances, to consider filing a STR, restrict or terminate business relationships.

24. **Financial institutions are required to report transactions they suspect involve ML but the requirements apply only to a narrow range of financial institutions designated in the AML Law.** Moreover, the reporting obligation under this law does not extend to suspicion that a transaction may be related to terrorist financing as required under the standard. There is a 60-day reporting timeframe for institutions to report suspicious transactions after they are identified. This period may be too long for purposes of the standard that requires suspicion to be reported promptly. The effectiveness of the STR reporting regime is also weakened by an overemphasis on currency transaction reporting (CTRs).

25. **Overall, financial institution secrecy laws do not overly inhibit the implementation of the FATF Recommendations but confidentiality provisions and supervisory practices limit access to information on trusts held by FIs and others acting as trustees.** Such limitations also restrict effective interagency and international cooperation, and information exchange.

26. **There are five supervisory authorities responsible for AML/CFT supervision and enforcement, but the absence of CFT requirements in the AML Law (some CFT provisions are included in regulations and OEMs) limits the overall scope and effectiveness of supervision.**[3] Supervisors generally have powers to supervise financial institutions and ensure compliance with the AML/CFT requirements, but the effectiveness of implementation varies significantly across sectors. While supervision of the banking sector is more advanced, the systems and capacity for AML/CFT supervision of other sectors is weak, especially with respect to on-site inspections. In addition, there is a more limited scope of supervision of trust business conducted by financial institutions. The scope and depth of supervisory methodologies and procedures used, including for applying a risk-based approach, are absent or inadequate for the nonbank sector. Most inspections mainly focus on regulatory compliance and do not sufficiently take account of off-site supervision activities and ML/TF risks.

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[3] In their response to the assessment, the authorities indicated that the assessment reports do not take account of amendments to the laws for the Superintendencies of the securities and insurance sectors markets. However, since these laws predate the mission date, the assessors took them into account in the assessment and are reflected in the Detailed Assessment Report.

27. **The human, financial, and technical resources allocated to the supervisory authorities for their AML/CFT functions are generally inadequate.** Regular AML/CFT training for staff conducting AML/CFT inspections should be strengthened particularly with respect to the identification of high-risk activities and the application of related supervisory tools.

28. **An important number of financial institutions operating in Panama that are captured under the FATF standard are not covered, or only partially covered under the AML Law, and are, therefore, not subject to effective AML/CFT supervision. (See paragraph 21 above).** Bureau de change are covered under the AML Law and subject to supervision by the Ministry of Commerce and Industry (MICI) for AML purposes only, but their activities are not licensed or registered and, in practice, their supervision is negligible. The licensing requirements for financial institutions are generally broad with respect to the banking and securities sector. However, the licensing procedures for all other financial institutions can be improved and lack a system of ongoing and periodic review of fit-and-proper tests for owners and key officials of licensees. In addition, bureau de change should be licensed or registered and subject to effective supervision.

29. **There are no explicit provisions in the Banking Law or elsewhere for banks to have meaningful mind and management located in Panama as a key requirement for physical presence.** There are some requirements and measures in place to prevent the establishment of shell banks in Panama, but these could be strengthened by specific mind and management requirements for physical presence.

30. **A broad range of sanctions can be applied by supervisors for noncompliance with AML/CFT requirements (with the exception of MICI) but implementation cannot be regarded as effective overall.** The AML Law allows for sanctions to be imposed on financial institutions as well as their executives and other employees. Most of the sanctions applied are moderate monetary fines for failure to comply with the CTR obligations and not with the broader range of AML obligations. The fines that have been imposed are relatively low and may not be sufficiently dissuasive or proportionate to be deemed effective.

1.3. Preventive Measures – Designated Non-Financial Businesses and Professions

31. **The AML Law imposes the full range of obligations that are applicable to financial institutions only on trustees, whereas casinos (including internet casinos) and real estate brokers (legal persons only) are only subject to CTR obligations.** The remaining DNFBPs (i.e., lawyers, notaries, accountants, company services providers/resident agents, real estate brokers (natural persons), and dealers in precious metals and stones) are not covered by the AML Law. This is a significant systemic gap given the important role they play in Panama's financial and economic system, and the risks they pose.

32. **Trustees place far more effort in complying with their CTR obligations than on compliance with the rest of the AML requirements.** Notably, trustees have filed a very low number of STRs and few sanctions have been applied. Other than the Superintendency of Banks of Panama (SBP) which supervises trustees, the supervisors for casinos and real estate agents have relatively limited supervisory resources. Overall, the effectiveness of implementation of AML requirements and supervision of covered DNFBPs is weak.

1.4. Legal Persons and Arrangements and Nonprofit Organizations

33. **Panama registers legal persons and arrangements in its Public Registry but information on the ownership and control of such entities is not generally available, including with respect to bearer share companies.** Panamanian companies can issue bearer shares and at the time of the mission, there were no requirements for their immobilization or custody.[4] In addition, corporate information is generally held by resident agents (each corporate entity and arrangement requires the appointment of a resident agent in Panama who must be an attorney), but access to such information is restricted and available only to a narrow range of designated competent authorities. The FIU and AML/CFT supervisors do not have access to information held by resident agents. These limitations adversely affect the ability of the FIU and LEAs to effectively and efficiently obtain information, and trace and locate assets held by legal entities. The weaknesses are compounded when documentation is held overseas. Because resident agents, accountants and attorneys (as corporate services providers) are not subject to the AML Law, there are no established efficient procedures for the FIU and other competent authorities to access information on the ownership and control of legal entities. In addition, financial institutions providing services to these entities, especially bearer share companies, do not sufficiently verify the identity of beneficial owners which further limits availability and access to such information to competent authorities.

34. **Trusts are the main form of legal arrangement present in Panama (trustees are supervised by the Superintendency of Banks of Panama (SBP)), but the availability and access to information by competent authorities is limited.** There are no provisions in place to provide efficient access to information on the beneficial ownership and control of trusts (including protectors). In addition, while the SBP conducts AML/CFT supervision of trustees on a regular basis, the scope of supervision does not fully extend to reviewing compliance with customer due diligence requirements regarding ultimate beneficial ownership and control, especially when beneficiaries and/or settlors of trusts are other legal persons or arrangements.

35. **Nonprofit organizations (NPOs) are registered in the Pubic Registry and are subject to authorization and supervision by a specialized unit of the Ministry of Government.** However, this specialized unit is not operational. There have been no domestic reviews on the activities, size, and other features of the nonprofit sector for TF purposes, and no assessment of their vulnerabilities and TF risks has been conducted.

1.5. National and International Cooperation

36. **Panama has national coordination bodies for AML/CFT but effective mechanisms for implementation are lacking.**[5] There is a need to establish operational level contacts for cooperation

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[4] Post mission, a law was passed in July 2013 providing for their custody. The law comes into force in two years (2015) and for shares issued prior to the law coming into effect, there is a three-year transition period ending in 2018 for compliance.

[5] In their response to the assessment, the authorities indicated that the assessment reports do not take account of amendments to the law that created the Council of Financial Coordination. However, this law predates the mission date and the assessors took them into account in the assessment and are reflected in the Detailed Assessment Report.

between the Panama FIU and LEAs, and a system of regular reviews of the effectiveness of national AML/CFT measures. To this end, access and sharing of information would be required but would be limited by the lack of availability of and access to comprehensive statistics on e.g., corporate entities and other legal arrangements.

37. **There is a legal framework for international cooperation, including mutual legal assistance treaties (MLATs) on criminal matters.** However, shortcomings in the range of predicate offenses to ML and TF offense limit the effectiveness of the system. Panama applies the principle of dual criminality in a very strict manner and it does not provide legal assistance when the offense is also considered to involve fiscal matters.

38. **The limited range of entities that are subject to the AML Law, and the absence of CFT obligations for financial institutions and DNFBPs limit the ability of competent authorities to effectively cooperate with foreign counterparts.** In practice, the FIU unduly limits the types of information it shares with foreign counterparts and it cannot share information in the absence of memoranda of understanding (MOUs). The FIU makes comparatively fewer requests for cooperation than it receives. The lack of statistics on cooperation by other competent authorities (e.g., LEAs) does not allow for a proper assessment of effectiveness. Supervisory agencies have concluded a number of MOUs with foreign counterparts but not all of these arrangements explicitly provide for cooperation on AML/CFT matters and effectiveness cannot be properly assessed in the absence of adequate statistics.

2. GENERAL

2.1. General Information on Panama

39. The Republic of Panama (Panama) is an independent country located in Central America, bordering both the Caribbean Sea and the North Pacific Ocean, between Colombia and Costa Rica. It has a total area of 17,517 square km with land boundaries of 555 km of which 225 km is shared with Colombia in the north and 330 km with Costa Rica in the south. It has a total coast line of 2,490 km. Panama is in a strategic location on eastern end of the isthmus forming a land bridge connecting North and South America, and controls the Panama Canal that links the North Atlantic Ocean with the North Pacific Ocean.

40. Explored and settled by Spain in the 16th century, Panama broke with Spain in 1821 and joined a union of Colombia, Ecuador, and Venezuela. When this union was dissolved in 1830, Panama remained part of Colombia until 1903 when it gained its independence. As of July 2012, its population was estimated at 3,510,045 of which about 1.5 million live in Panama City, its capital. The official language is Spanish but English is commonly spoken in urban areas. Other indigenous dialects and foreign languages are also spoken by minority groups. The country is made up of nine provinces, 77 districts or municipalities, three indigenous provincial territories, and two indigenous towns.

41. The country is governed through a unicameral National Assembly with 71 seats. Its members are elected by popular vote to serve five-year terms. The Executive Branch is composed of the President, two Vice-Presidents and three Ministers of State. The president is both the chief of state and head of government. Currently there is only one Vice-President and 16 persons have been appointed by the President to the Council of Ministers.

Judicial System

42. Panama has a civil law system with judicial review of legislative acts by the Supreme Court of Justice that is comprised of nine judges appointed for staggered 10-year terms. There are five superior courts and three courts of appeal. The legal system is at its apex governed by a 1972 Constitution which has been revised several times. The Constitution establishes the Supreme Court as the highest judicial body in the land and defines it as the guardian of the integrity of the Constitution. In consultation with the attorney general, it has the power to determine the constitutionality of all laws, decrees, agreements, and other governmental acts. The Supreme Court also has jurisdiction over cases involving actions or failure to act by public officials at all levels. There are no appeals from decisions by this Court. The administration of justice may also be exercised through arbitration jurisdiction, as determined by law. The courts of arbitration may hear and decide for themselves on matters within their jurisdiction. For the purposes of judicial jurisdiction, Panama is divided into four Judicial Districts which are further divided into Judicial Circuits and Judicial Districts/Municipalities in accordance with the political subdivisions of the country.

43. The Supreme Court is comprised of judges appointed by agreement of the Council of Ministers, and subject to approval by the Legislative Branch, for a period of 10 years. Several constitutional provisions are designed to protect the independence of the judiciary. However, observers have indicated that a major defect in the judicial system lies in the manner in which appointments are made to the judiciary. Appointments of judges are subject to the approval of the Legislative Assembly and it is observed that this may subject it to undue influence by the executive.

44. The functions of the Public Ministry (Ministerio Publico) are headed by the Attorney General, prosecutors and other officials as determined by law. The main functions of the Public Ministry are to: defend the interests of the State or municipality; promote compliance with the law, judicial decisions, and administrative provisions; oversee the official conduct of public officials and ensure that they fully carry out their duties; prosecute crimes and violations of Constitutional or legal provisions; serve as legal advisor to administrative officials; and carry out other functions set forth in the law.

45. The following chart summarizes the structure of the Judicial System. (Source: Organo Judicial.)

Governance

46. The Transparency International Corruption Perception Index for 2012 scored Panama at 38 (0=highly corrupt to 100=very clean) and ranked it at 83 among 174 countries.

47. The World Bank's Worldwide Governance (perception) Index for 2011 scored Panama at -0.07 for Rule of Law (-2.5=weakest to 2.5=strongest) and ranked it at 53.52 (0=lowest to 100=highest) among 215 economies. For corruption, Panama scored at -0.35 and ranked at 46. For regulatory quality it scored Panama at 0.41 and ranked it at 65. The World Bank uses three other indexes to estimate the quality of governance including voice and accountability, political stability and absence of violence, and government effectiveness.

General information on the economy

48. The official currency of Panama is the Balboa and is equivalent to the US dollar. Nonetheless, its economy is totally US dollar-based and it does not have a central bank. Its economy is largely based on services, which constitute about 63 percent of its GDP, but there have been recent increases in the construction and industrial sectors. The primary service sectors include operating the

Panama Canal, financial and corporate (offshore) services, the Colon Free Zone, container ports, flagship registry, and tourism. The Panama Canal expansion project began in 2007 and is scheduled to be completed by 2014 at a cost of $5.3 billion. This expansion is expected to significantly bolster economic growth and to more than double the Canal's operating capacity. The United States and China are the top users of the Canal. Panama is also constructing a metro system in Panama City, valued at $1.2 billion and scheduled to be completed by 2014.

49. Panama's GDP for 2012 was estimated at $36 billion ($25.79 billion in real terms). According to World Bank data, the poverty ratio has been steadily declining but was still at around 26.2 percent in 2012. The unemployment rate (percent of economically active population) for 2012 was 4.2 percent and 4.5percent as of March 2013.

2.2. General Situation of Money Laundering and Financing of Terrorism

50. Panama is a country with an open, dollarized economy, which offers a wide range of offshore financial services and is adjacent to countries with the highest levels of production and trafficking of illegal drugs in the world. That puts the country at high risk of being used for money laundering and even terrorist financing activities. However, the authorities have not conducted any study or assessment of the risks of money laundering or terrorist financing associated with drug trafficking and other related crimes.

51. According to the authorities, the largest source of ML is drug trafficking. Other significant but less important predicate offenses and sources of ML are cited to include: arms trafficking, financial crimes, human trafficking, kidnapping, corruption of public officials and illicit enrichment. With respect to predicate crimes committed outside of Panama, the authorities indicate that these would include activities related to financial crimes, tax crimes (tax evasion is not a predicate crime for ML in Panama) and fraud. These foreign offenses are likely to be linked with Panama's position as an offshore jurisdiction. It is believed that ML related to these crimes is conducted electronically through the use of computers and the internet using new banking instruments and systems both in Panama and internationally. The authorities indicated that the diversity of foreign predicate crimes has been increasing in recent times.

52. No information or estimates were provided on the extent of these domestic and foreign predicate crimes and the amount of related ML conducted in, through or from within Panama. The authorities have informed that no TF cases had been detected within Panama up to the time of the on-site visit. Statistics on the number of STRs received by the UAF shows a decline from 1,315 STRs in 2008 to 652 in 2011, and 405 for the first half of 2012. The decline was largely consistent across all sectors with banks showing the largest decline from 1,024 STRs in 2008 to 481 in 2011. The reasons for this decline are discussed under Recommendations 13 and 26 of this report and assessors are of the view that these statistics are not a reliable measure of the volume of predicate crimes and related ML/TF which, as indicated in the preceding paragraph, may be increasing.

53. Notwithstanding the above, no statistics were provided by the judicial branch with respect to cases to substantiate a link between STRs and predicate crimes. Panama does not have a computerized system that would allow for a tracking of the cases along the penal chain. Statistics on the number of investigations, prosecutions and convictions of ML/TF are incomplete or missing. Panama provided the following statistics regarding the number of prosecutions for money laundering from 2009 to 2012, linked to the predicate offenses. However, it is noted that under the title "against the economic order" are grouped all the cases reported by the FIU, whose predicate offenses are unknown.

Year	Number of cases	Offense
2009	**80**	Against the Economic Order (15) Against the Public Administration (2) Drugs (80)
2010	**179**	Against the Economic Order (111) Drugs (63) Fraud (1)
2011	**88**	Against the Economic Order (41) Drugs (42)
2012	**25**	Against the Economic Order (11) Qualified Fraud (1) Drugs (16)

54. Additionally, the authorities provided the following information on seizures and confiscations made between 2010 and 2012. However, there has been no study or analysis of these results.

55. BANK ACCOUNTS

YEAR	PREDICATE OFFENSE	NUMBER AND CATEGORY OF SEIZED PROPERTY	VALUE (B)
2010	Against the Economic Order	Bank accounts in 3 banks	5,201,293.27
2012	Against the Economic Order	Bank accounts	22,326,93
TOTAL			**5,223,620.20**

56. CASH

YEAR	PREDICATE OFFENSE	NUMBER AND CATEGORY OF SEIZED PROPERTY	VALUE (B)
2009	Drugs	Cash	12,294,807.61
2010	Drugs	Cash	8,209,290.83
2011	Drugs	Cash	11,306,748.06
2012	Drugs	Cash	4,100,936.00
TOTAL			**35,911,782.50**

57. MOVABLE AND IMMOVABLE PROPERTY (no valuation provided)

Description	2009	2010	2011	2012	Total
Parcels of land	11	0	4	11	**26**
Houses and apartments	7	1	4	7	**19**
Motor vehicles	61	10	106	7	**184**

58. In the Detailed Assessment Questionnaire (DAQ), no statistics were provided with respect to prosecutions, convictions and confiscations associated with predicate crimes and/or related ML/TF that would provide assessors with a reliable and more general overview of the extent of criminality in Panama, the risks to its economic and other adverse consequences. Nonetheless, the authorities indicated that criminal organizations use both the traditional financial sectors to launder money as well as other economic sectors that are vulnerable due inadequate or the absence of prevention mechanisms in those sectors. A key factor contributing to this vulnerability, as acknowledged by the

authorities, is that not all the financial and non-financial sectors are subject to the AML/CFT regime (mainly the AML Law of 2000, subsidiary instruments and supervision) of Panama.

Money Laundering methods, typologies, and trends

59. The authorities only provided a generic description of the types of instruments and vehicles used to launder property but which may not be specific to Panama. For purposes of this assessment, it is assumed that all of those methods and typologies also apply in Panama. No specific information was provided about changes in ML patterns as a result of countermeasures employed. The following vulnerable entities and sectors were cited by the authorities:

- Use of offshore banks established in tax havens. Note that Panama issues a special international (offshore) license for banks that are only permitted to conduct business with foreigners. At the time of the mission, 48 banks operated under international licenses out of a total of 79 banks.

- Structuring of electronic (wire) and banking transfers within and across countries including through the internet. In light of the significant proportion of international business conducted by financial and non-financial businesses in Panama (see next section), the use of cross-border transfers can be assumed to be substantial as well as the inherent ML/TF risks in such operations.

- Shell and shelf companies that may not be active, exists only on paper but which can be used to receive and transfer property. It is noted that Panama is considered an important corporate and trust services jurisdiction and is believed to have a significant number of companies with issued bearer shares. At the time of the mission there was no requirement to immobilize or otherwise hold shares in custody or to register the true beneficial owners or controllers. Post mission in July 2013, a law (Law 47 of 2013) that provides for the custody of bearers shares was passed and published in August 2013. This law will not come into effect until August 2015 (two years from publication) and for bearer shares issued prior to the law coming into effect (August 2015), there will be an additional transition period of three years ending August 2018. In addition, each legal entity established in Panama must appoint a Registered Agent (not subject to the regular AML/CFT regime of Panama applicable to financial and non-financial sectors) that should conduct customer due diligence and keep records pursuant to a special law (Law 2 of 2011) and under strict secrecy. The UAF, as the cornerstone of Panama's AML/CFT institutional regime, does not have access to the information on companies Registered Agents (RAs) represent (especially beneficial ownership and control) and RAs are not subject to an ongoing supervisory regime.

- Others: lawyers, accountants, and notaries (not subject to the AML/CFT regime in Panama), issuers and operators of debit and credit cards including prepaid cards (not subject to the AML/CFT regime in Panama), financial leasing companies (not subject to the AML/CFT regime in Panama), factoring companies, money exchange and FOREX businesses, casinos and games of chance including internet casinos, firms engaged in the purchase, sale and auction of art and antiques (not subject to the AML/CFT regime in Panama), car dealers (not subject to the AML/CFT regime in Panama), private associations and foundations (not subject to the AML/CFT regime in Panama), and firms engaged in electronic commerce activities (not subject to the AML/CFT regime in Panama). See Recommendations 5, 23, 29, 12, 16, and 24 for a description of financial and non-financial activities that are not subject to Panama's AML/CFT regime. Most of the high risk sectors indicated by the authorities are not under such regime.

Financing of Terrorism

60. There are no statistics regarding provisional measures, prosecutions or criminal sanctions related to terrorism or TF. The authorities indicated that they are not aware of cases of terrorism finance. They do state however, that Colombian armed groups (presumably includes the FARC which Colombia and some other countries have designated as a terrorist organization) occasionally enter Panamanian territory in the border areas. In its DAQ response, the authorities indicated that a review of assistance provided by Panamanians to such Colombian groups was classified as "humanitarian collaboration."[6] To the extent that any of these groups are considered by Panama and/or other countries as terrorist organizations by virtue of their activities or acts (as defined under the applicable UN Convention and related instruments), any financing elements of their operations taking place or being facilitated in, from within or through Panama should be considered as a real risk of TF for Panama. On this assumption, any narco-terrorist group from other countries that are involved in predicate offenses e.g., drug and arms trafficking, would represent a real and significant risk of terrorism financing for Panama if any funds associated with such activities and groups involve the use of Panamanian institutions, corporations, foundations, persons, and facilities, etc. The authorities have indicated that drugs and arms trafficking are two of most significant sources of money laundering in Panama.

2.3. Overview of the Financial Sector[7]

61. Panama is an important regional financial services center, especially for Central America and South America. Most of the financial services offered are traditional products and there is no significant activity on derivatives and other structured products. Globally, Panama is not a large financial center with respect to deposits liabilities. Panamanian banks have at around $40 billion in deposits, significantly below the levels seen in major offshore financial centers (Hong Kong SAR, $845 billion; Singapore, $870 billion) or other regional offshore centers such as the Bahamas ($488 billion) and Cayman Islands ($1,782 billion).

62. There are five regulatory and supervisory agencies involved in the oversight of the financial sector in Panama, namely the Superintendency of Banks (SBP) for banks and trust companies; the Superintendency of the Securities Market (SMV) for the stock exchanges, brokerage houses, stock brokers investment fund managers, and clearing houses; the Panamanian Autonomous Institute for Cooperatives (IPACOOP) for savings and loans cooperatives; the Superintendency of Insurance and

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[6] In its 2010 Country Report on Terrorism for Panama, the UNHCR (UN Refugee Agency) stated that "Legislation and Law Enforcement: The Government of Panama's determination to exercise its sovereignty in the Darien through more aggressive patrolling by security forces has increasingly brought FARC combatants in direct contact with Panamanian forces. In January, three FARC members were killed and two were captured during a confrontation with Panamanian border police in the Darien, and in June two border police were injured by improvised explosive devices (IEDs), presumably placed by the FARC. Eight local Panamanians were subsequently arrested for collaborating with the FARC. In October, the Colombian military bombed a FARC camp near the Panamanian border, killing one mid-level commander and several other members. Finally, in December, Panama brought to trial three presumed members of the FARC 57th front captured after a February 2008 confrontation with border police in the Darien; the trial is one of the first held in Panama specifically on terrorism charges."

[7] IMF, *Financial System Stability Assessment*, February 8, 2012

Re-Insurance (SSRP) for insurance companies, re-insurance companies and re-insurance brokers; and the Ministry of Commerce and Industry (MICI) for finance companies, money remitters, and foreign exchange houses (*casas de cambio*).

Banking Sector

63. At the time of the mission there were 79 banks operating in Panama, including one in liquidation. In addition, there were 14 bank representative offices. Of the operating banks, two are state-owned, 48 had general (onshore) licenses, and 28 had international (offshore) licenses (Table 3). At end 2012, total assets of $89.8 billion and total deposits were $64 billion representing an increase of about 10.5 percent from the previous year. Of these deposits, $54.5 billion were held by onshore banks and $9.5 billion by offshore banks. Onshore banks had about $17 billion in deposits from foreigners and $37.5 billion from local depositors. Total deposits (foreigners) in the offshore banks were $9.4 billion resulting in total foreigner deposits in the private banking sector of about $26.5 billion. However, the real volume of offshore and foreigner deposits is likely to be significantly understated because Panamanian registered companies, including foreign-based/owned companies registered in Panama, as well as Panamanian offshore companies, trusts and foundations are classified as local deposits.

64. Panama's onshore banks are largely foreign-owned, with the latter accounting for about 50 percent of total onshore deposits and about 52 percent of total foreign deposits, including offshore banks. Some foreign banking groups from Latin America have based their regional activity in Panama, including several of Central America's largest regional financial groups. Some of the largest onshore banks are also part of conglomerates that own several other types of financial institutions, including insurance companies, asset management firms, leasing firms, and factoring companies. The following table illustrates:

Banking Sector (in US$ billions)

Type of Bank	Total Assets	Total Deposits	Local Deposits	Nonresident Deposits
Total banking system	99.7	72.4	45.9	26.5
Total banks (private)	89.8	64.0	37.5	26.5
Onshore banks (private)	72.9	54.5	37.5	17.0
Offshore banks	16.9	9.5	--	9.5
State-owned banks	9.9	8.4	8.4	--
Onshore banks	72.9	54.5	37.5	17.0
Onshore Panamanian banks	25.3	19.5	16.5	3.0
Onshore foreign-owned banks	37.7	26.6	12.7	13.9
State-owned banks	9.9	8.4	8.4	--

Source: Superintendencia de Bancos de Panama website.

65. Trustees fall under the supervision of the SBP and can provide both trust services and other nontrust business activities for clients (e.g., foreign company incorporation, administration of foreign trusts, and private foundations, etc.). In practice such business can be conducted by banks, insurance companies, lawyers and any other natural or legal person that habitually engage in trust business. There are currently 69 trustees.

Capital market

66. The domestic capital market is relatively small and unsophisticated with most market intermediaries, especially brokerage houses (which are also authorized to conduct FOREX business

pursuant to Art. 72 of Law 1 of 1999 as amended), primarily engaging in transactions in international markets. At the time of the mission, there were: 81 brokerage houses of which 17 were members of the Panamanian stock exchange, 16 investment fund managers, 44 investment advisors, one stock exchange, one clearing house, and eight credit rating agencies. Stock brokers are part of a brokerage house and do not operate independently.

67. No updated information was provided on the volume of activities of securities firms but based on 2011 figures, the total volume of transactions conducted by brokerage houses during that year was about $83 billion, of which only 35 percent was accounted for by brokers that were members of the stock exchange and 65 percent by nonmembers. Of the total volume of transactions, 91 percent were international transactions. This indicates that most of the stock broking activities are offshore in nature. Similar results were recorded for investment advisors who managed about 3,665 accounts ($5.6 billion) of which 75 percent were for foreign clients.

68. The SMV supervises Bolsa de Valores and Latin Clear, both of which are self-regulatory organizations (SROs). The Bolsa is a demutualized corporation organized under Panama Law. Its shareholders include the main local banks, commercial firms, insurance companies and brokerage houses. Latin Clear acts as the central securities depositary for performing custody, clearing, and settlement operations for equity instruments, government bonds, corporate bonds, commercial paper, and treasury certificates. The securities held at the depositary are immobilized.

Cooperatives and savings and loans

69. At the time of the mission, there were 167 credit and savings cooperatives and 25 multi-purpose cooperatives that also offer credit and savings products. As of December 2011, total assets of cooperatives were $811 million and equity contributions were $141.2 million. The four largest cooperatives hold 53 percent of the sector's assets and almost 60 percent of deposits. Technically, the multi-purpose cooperatives are not subject to the AML/CFT regime because only the savings and loans cooperatives are covered by the main AML Law (Law 42 of 2000).

Savings and Loan Mortgage Associations and Companies (hereinafter "associations" or "asociaciones") and the National Mortgage Bank (Banco Hipotecario Nacional)

70. There are four savings and loans mortgage associations that make up Panama's National Mortgage Savings and Loans System (SINAP) that are primarily engaged in real estate lending. According to the authorities, their loan limit is B55,000 per customer and is regulated by the National Mortgage Bank ("Banco Hipotecario Nacional"). As their name implies, they are authorized to accept savings and can be organized as companies or mutual entities. None of these entities are subject to the AML/CFT regime of Panama. Statistics on their operations As at December 31, 2012 follow:

Mortgage Associations:		
Savings accounts	No. of accounts 12,466	Volume B21,679,673
Mortgage loans	No. of accounts 896	Volume B18,436,084
National Mortgage Bank:		
Mortgage loans	No. of accounts 41,000	Volume B143,783,818

Insurance sector

71. The insurance sector is small relative to the banking sector, but expanding. There are 31 licensed insurance companies of which 31 are authorized to sell policies for individuals and 27 are

composites (general, life and guarantees (fianzas), and five pure lives. The sector's assets account for 5 percent of GDP. For 2012, premia subscribed totaled about $1.2 billion of which life policies accounted for about $255 million (individual $120 million and group $135 million). Health, automobile and guarantees (fianzas) accounted for the other top three sources of premia followed by "other" category which totaled about $112 million. It is not known what proportion of insurance policies and amounts relate to policies that have investment features. The top three companies accounted for about half of total premia. Total assets at the end of 2011 for all insurance companies were $1,700,000,000.

72. These entities are licensed to conduct various lines of business including individual and group policies for medical and life insurance, and annuities, etc. Licenses for general insurance are also issued covering various risks including fire, theft, and accidents, etc. Some insurers are also licensed as sureties for, inter alia, for contracts and payments, including construction bonds and other guarantees.

73. The following insurance intermediaries have been authorized in accordance with their line of business:

- Individual policies 875 (of which 4 are legal persons)
- General policies 219 (of which 15 are legal persons)
- Composite/general business 1,350 (of which 325 are legal persons)

74. Under the Insurance Law (Law 12/2012), the SSRP is responsible for the regulation and supervision of insurance companies, insurance agency administrators, insurance broker administrators, adjusters, insurance brokers (individual or companies), captive insurers, captive insurance administrators, and re-insurance and re-insurance brokers.

Bureau de change (Casas de Cambio)

75. There are an estimated 79 bureaux de change (casas de cambio) operating in Panama but this activity is not regulated or supervised but they are covered under the AML Law which designated the MICI as the supervisor for AML purposes. There are no statistics with respect to the size and activities of the sector, nor information with respect to their ML/TF risks.

Money Remitters

76. At the time of the mission there were 17 money remittance firms operating in Panama. During 2011, equivalent of $2.4 billion was sent abroad and $2.8 was received. Remitters are subject to the AML Law and supervised by MICI.

Other Financial Institutions

77. In addition, there are other types of financial entities operating in panama including finance companies (subject to the AML Law), leasing and factoring companies (both not subject to the AML Law) as follows: 162 finance companies and 124 leasing companies. No data was provided for factoring companies. It is estimated that these entities represent approximately 2.5 percent of GDP. Total assets of finance companies at the end of 2011was $843 million, of which loans and receivables totaled about $759 million or 90 percent. These assets were funded mainly through loans and other accounts payable ($453 million) and "other liabilities" ($185 million). No detailed information was available for leasing companies' assets.

78. There are also about 285 pawn shops (not subject to the AML Law) that engage in collateralized lending.

79. The tables below reflect the breakdown for each type of financial institution operating in Panama.

Statistical Table 1. Structure of Financial Sector, 2012

	Number of Institutions	Total Assets ($ billion)	Authorized/ Registered and Supervised by:
Commercial banks	78	94.609	SBP
Mortgage banks	1		N/A
Investment companies	167	23.413	SMV
Collective investment associations	Not provided		N/A
Life insurance companies and occupational pension funds	31	1.899	SSRP
Company pension funds	Not provided		N/A
Insurance brokers	2401		SSRP
E-Money	Not provided		N/A
Savings institutions	Not provided		N/A
Foreign exchange	87		MICI (by law, not practice)
Money transmitters	15		MICI
Leasing	12		MICI
Factoring	Not provided		N/A
Credit cards etc.	Not provided		N/A
Postal services	Not provided		N/A

Statistical Table 2.

	Number of branches abroad	Number of subsidiaries abroad	Branches of foreign banks in the country	
			Number	Supervisor
Commercial banks	N/A	N/A	177	SBP
Mortgage banks	N/A	N/A	N/A	
Life insurance companies	Not provided	Not provided		
Investment companies	12	1	N/A	SMV

80. The following table sets out the types of financial institutions that can engage in the financial activities that are within the definition of "financial institutions" in the FATF 40+9.

Statistical Table 3. Financial Activity by Type of Financial Institution

Type of financial activity (See glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator and supervisor
1. Acceptance of deposits and other repayable funds from the public (including private banking)	1. Banks	1. SBP
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	1. Banks 2. Credit card companies 3. Factoring and finance/ consumer credit	1. SBP 2. N/A 3. MICI
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	1. Banks 2. Leasing companies	1. SBP 2. MICI
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g., alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	1. Banks 2. Money remitters	1. SBP 2. MICI
5. Issuing and managing means of payment (e.g., credit and debit cards, checks, traveler's checks, money orders and bankers' drafts, and electronic money).	1. Banks 2. Credit cards companies 3. Electronic money institutions	1. SBP 2. N/A 3. N/A
6. Financial guarantees and commitments	1. Banks	1. SBP
7. Trading in: (a) money market instruments (checks, bills, CDs, and derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	1. Banks 2. Investment companies	1. SBP 2. SMV
8. Participation in securities issues and the provision of financial services related to such issues	1. Banks 2. Investment companies	1. SBP 2. SMV
9. Individual and collective portfolio management	1. Banks 2. Investment companies 3. Investment associations	1. SBP 2. SMV 3. SMV
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	1. Banks 2. Investment companies 3. Investment management companies.	1. SBP 2. SMV 3. SM
11. Otherwise investing, administering or managing funds or money on behalf of other persons	1. Banks	1. SVP
12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	1. Life insurance companies 2. Lateral pension funds 3. Life insurance agents and brokers	1. SSRP 2. SSRP 3. SSRP
13. Money and currency changing	1. Banks 2. Foreign exchange offices	1. SBP 2. MICI (by law, not practice)

2.4. Overview of the DNFBP Sector

81. Panama has all categories of DNFBPs operating in or from within the country and their activities appear to be significant, based on their numbers as shown in the following table.

Statistical Table 4. Financial Activity by Type of Financial Institution

DNFBP	GOVERNING LAW	AML REGULATOR SUPERVISOR	SIZE OF THE MARKET
Casinos and internet casinos	Law of Casinos (Law Decree 02 of 1998), amended by Law 49 of 2009	Gaming Control Board (GCB) from the Ministry of Economy and Finance (MEF)	18 casinos 5 internet casinos (operating with sub-licenses)
Dealers in precious metals and stones	None	None	N/A
Real estate agents	Real Estate Agents Law (Law Decree 6 of 1999)	Real Estate Technical Board (RETB) from the Ministry of Commerce and Industries (MICI)	911 legal persons 3,113 natural persons (not covered under AML/CFT framework)
Trustees (legal persons)	Trust Law (Law No. 1 of 1984), developed by Executive Decree 16 of 1984 for the nonbanking institutions	Superintendence of Banking of Panama (SBP)	68 trustees
Lawyers	Law 9 of 1984 on the legal profession	None. (For other matters the Corte Suprema de Justicia. The National College of Lawyers is the self-regulatory body)	16,000 plus according to some estimates
Accountants	Law 57 of 1978	None	N/A
Company services providers (must be lawyers)	Law 2 of 2011 on CDD for Registered Agents of legal entities	None specifically	N/A

82. Law 42 of 2000 (the main AML Law) covers casinos (including internet casinos), real estate brokers (and developers that can also conduct brokerage business) doing business as legal persons, and trustees ("fiduciaries" that are legal persons). Nonetheless, only trustees are subject to all of the provisions of AML Law 42, while casinos and real estate brokers are only subject to cash and quasi-cash reporting (CTR) obligations. As for the financial sector, Law 42 only covers AML and does not cover CTF issues. There are no AML/CFT measures or supervision for lawyers, accountants, notaries, company services providers (other than some customer due diligence requirements for registered agents (that must be lawyers) under Law 2 of 2011), and for dealers in precious metals and dealers in precious stones.

83. Panama is an international center for corporate and trust services where lawyers and accountants play a key role in the conduct of such business. Trading in precious metals and stones is also a significant activity, particularly in the Colon Free Trade Zone. Nonetheless, as noted above, they are not subject to AML Law regime (Law 42). Resident Agents, who must be lawyers, are

covered by Law 2 of 2011 but only with respect to certain customer identification requirements and with a more lenient approach compared to the ones applicable to e.g., trustees.

2.5. Overview of commercial laws and mechanisms governing legal persons and arrangements

84. Legal persons in Panama are covered under Article 64 of the Civil Code of 1917, as well as in other specific legislation. The following relevant legal entities can be incorporated in Panama:

LEGAL ENTITY	OWNERSHIP	CONTROL	REGISTRATION	NUMBER
Corporation (sociedad anónima)	Shareholders	Board of directors	Public Registry	Not Available
Corporation (sociedad anónima) with bearer shares				Not Available
Foundations of private interest (fundaciones de interés privado)	Founder	Foundation Council	Public Registry	Not Available
Limited Liability Companies - LLCs (sociedades de responsabilidad limitada - SRL)	Partners	Partners	Public Registry	Not Available
General Partnership (sociedad colectiva),	Partners	Partners	Public Registry	Not Available
Limited Partnership (sociedad en comandita simple)	Partners	Partners	Public Registry	Not Available
Limited Partnership by shares (sociedad en comandita por acciones)	Partners and shareholders	Partners and shareholders	Public Registry	Not Available
Cooperatives (Cooperativas)	Associates	Board of Directors	Cooperative Registry	Not Available
Charitable organizations (foundations)	Assembly	Board	Ministry of Government	Not Available

85. Panama did not provide statistics on the total number of entities that have been registered to date and which may still be active stating that the database used by Public Registry does not easily allow the generation of such information, including how many companies have issued bearer shares. They provided information on the number of registrations since 2009 as shown below.

Year	Corporations (Sociedades Anónimas)		Private Interest Foundations		Limited Liability Companies		Foreign Companies		Other Legal Entities[8]
	Active	Non-active	Active	Non-active	Active	Non-active	Active	Non-active	
2009	37,408	3,266	5,233	819	267	26	73	4	1,914
2010	36,022	1,868	4,503	330	154	9	153	5	1,918
2011	34,233	953	4,397	134	192	18	155	4	2,092
2012	34,264	203	4,170	36	193	-	145	3	3,274
Total	141,927	6,290	18,303	1,319	806	20,428	526	16	7,284

[8] These include NPOs and other civic organizations.

86. The extent of available information on these legal persons differs considerably by their type. General information can be gathered from the Public Registry, but it does not include information on their beneficial owners (e.g., corporations, both with nominative and bearer shares, and private foundations).

87. Legal personality of NPOs is granted by the Ministry of Government that keeps a record of NPOs. Once legal personality is granted, the NPOs are registered with the Public Registry of Panama and with the Panamanian taxation authority for tax exempt status.

2.6. Overview of Strategy to Prevent Money Laundering and Terrorist Financing

AML/CFT Strategies and Priorities

88. In its DAQ, the authorities state that the National Council for the Study and Prevention of Crimes Related to Drugs (CONAPRED) was in the process of developing a new National Drugs Strategy for 2012–2017, which would include ML related to drug trafficking. CONAPRED falls under the Public Ministry (Ministerio Publico). However, the proposed Strategy and CONAPRED are primarily focused on domestic narcotics demand and supply issues, and would not specifically address nondrug crimes and sources of ML. Neither does it address TF issues. Previous Strategy documents include specific AML objectives and activities. It is not clear whether or how CONAPRED's AML strategies and activities integrate into a broader national AML/CFT strategy and policy that is led by the High Level Presidential Commission on AML/CFT, as discussed further below.

The Institutional Framework for Combating Money Laundering and Terrorist Financing

89. There is a number of public sector institutions (some with private sector participation) involved in national AML/CFT efforts. The roles of the principal agencies are described below.

90. The Ministry of Finance and Economy is a key player in national AML/CFT efforts particularly as it chairs the High Level Presidential Commission on AML/CFT (Commission Presidencial de Alto Nivel) that was established by Executive Decree in June 2003, substituting a similar Commission established in 1995 to deal only with drug-related AML issues. The primary mandate of the Presidential Commission, as established in this Decree is stated as:

> *"Article 1: The High Level Presidential Commission against Money Laundering and the Financing of Terrorism is hereby established as a Permanent Consultative Council Ad-Honorem, to advise the President of the Republic in relation to the implementation of the necessary measures to develop the national policy against money laundering and the financing of terrorism, as this crime is defined in the Penal Code and Law No. 22 of 9 May 2002."*

91. A legal amendment in 2005 added additional functions of the Presidential Commission to include (i) coordination activities of the public and private sectors at national and international levels, to efficiently and consistently implement the national policy to combat ML and TF and (ii) to foster the implementation of measures to adequately develop and update the national AML/CFT policy.

Further changes defined the administrative and operational functions of the Chair and the Commission. This Commission should lead the formulation of a comprehensive integrated national AML/CFT strategy but at the time of the mission, such strategy had not been developed. This Commission is made up of public and private sector representatives[9] and meets once a year. The Commission is chaired by the Minister of Finance (or his designate) and the Secretariat is by the financial intelligence unit (UAF). Technical meetings are also organized. It is noted that CONAPRED is not specifically represented in this Commission. However, the Attorney General's Office is represented in the Commission which also falls under the Public Ministry like CONAPRED.

92. Panama created a financial intelligence unit, the UAF[10] (Unidad de Analisis Financiero) in 1995 which is now attached to the Ministry of the Presidency. It is in charge of receiving and analyzing suspicious transaction reports (STRs) from the reporting entities, and of disseminating cases to the Attorney General Office (PGN=Procuradoria General de la Nacion) that forwards cases for investigations to the various investigating units (Fiscalias). Composed of 26 staff, the UAF is the cornerstone of the institutional framework for combating money laundering and terrorist financing. The UAF is also in charge of receiving and maintaining statistics on cash transaction reports above the equivalent of B10, 000. It also receives statistics of cross-border currency transportation from the Customs Administration and has a role in national coordination, training and other AML/CFT activities with respect to both the public and private sectors.

93. The Attorney General Office[11] (Procuradoria General de la Nacion) is in charge of prosecutions. It is made up of various specialized Prosecutorial Units (Fiscalias). Panama is currently transitioning from an inquisitorial to an accusatorial system. As a consequence, two procedural penal codes are coexisting until 2015–2016. The Organized Crime Unit is in charge of investigation money laundering and terrorism financing offenses when such offenses are not prosecuted jointly with the predicate offenses. This PGN/Organized Crime Unit is the main recipient of the cases from the UAF.

94. The Office of Judicial Investigations (Direccion de Investigacion Judicial – DIJ[12]) is the Police unit in charge of investigating penal offenses on Prosecutors' requests. It has a specialized unit of nine investigators in charge of money laundering and terrorism financing cases. The Judicial System (Organo Judicial) and National Police also play a role in the enforcement of national AML/CFT measures.

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[9] **Public sector**: Ministerio de Economía y Finanzas (MEF), Ministerio de Gobierno (MIGOB), Ministerio de Seguridad (MINSEG), Ministerio de Relaciones Exteriores (MIREX), Consejo de Seguridad Pública y Defensa Nacional (CSPDN), Procuraduría General de la Nación (PGN), Superintendencia de Bancos de Panamá (SBP), Banco Nacional de Panamá (BNP), Zona Libre de Colón (ZLC), Unidad de Análisis Financiero (UAF). **Private sector:** Asociación Bancaria de Panamá (ABP), Asociación Nacional de Instituciones Financieras (ANIFI), Consejo Nacional de Cooperativas de Panamá (CONALCOOP), Asociación de Agentes Vendedores de Valores de Panamá (AVVP), Asociación Panameña de Aseguradoras (APADEA), Cámara de Comercio e Industrias, Asociación Panameña de Ejecutivos de Empresas (APEDE), Asociación de Usuarios de la Zona Libre de Colón (AUZLC)

[10] http://www.uaf.gob.pa/

[11] http://www.ministeriopublico.gob.pa/minpub/

[12] http://www.panamatramita.gob.pa/institucion/direcci%C3%B3n-de-investigaci%C3%B3n-judicial

95. The General Customs Administration[13] is in charge of monitoring the cross-border cash transportation, through a system of disclosure. The declarations filled by travelers are later shared with the UAF, which maintains overall statistics of cash movements in Panama.

96. Other public agencies have been designated as supervisors for entities subject to Panama's AML/CFT regime that are responsible for overseeing compliance with the applicable legislation (AML Law and subsidiary instruments some of which include CFT provisions). They also participate in other AML/CFT activities such as coordination, training and awareness-raising. These supervisors and the sectors they oversee for AML/CFT purposes are (Executive Decree 55 of 2012):
(i) Superintendency of Banks (for banks and trust companies); (ii) Superintendency of Securities Markets (for brokerage houses/brokers, investment managers, and securities clearing house (centrales de valores); (iii) Superintendency of Insurance and Reinsurance (insurance and reinsurance companies, and reinsurance brokers); (iv) Panamanian Autonomous Cooperatives Institute (savings and loan cooperatives); and (v) Ministry of Commerce and Industry casas de cambio (not a regulated activity), finance companies, remittance firms, real estate brokers and developers, free zones under its jurisdiction); National Lottery (as an SRO for the sale of lottery tickets); Ministry of Economy and Finance (for casinos and other games of chance); and three Administrators of Free/special commercial Zones (for entities in the Colon Free Zone, Baru Free Zone and Agencia Panama-Pacifico).

97. As noted above, not all of the financial and designated non-financial businesses operating in Panama that are covered by the FATF Recommendations are subject to the primary 2000 AML Law and are, therefore, not subject to AML/CFT supervision by any of the above supervisors for AML/CFT compliance purposes. (See Recommendations 5, 23, and 29 of this report).

Approach Concerning Risk

98. The authorities have not conducted an assessment of ML/TF risks at the national, regional or sectoral level to inform the formulation of national strategies, law and regulations, policies, systems, and procedures to combat ML/TF. The Superintendency of Banks has initiated efforts to apply risk-based processes for AML/CFT supervision of banks and trust companies but at the time of the mission this had not been fully developed and implemented. There has also not been a formal risk assessment to better inform this initiative.

99. With respect to the scope of the application of the 2000 AML Law, a number of financial and non-financial activities listed by the FATF and being conducted in Panama are not covered. Subsidiary legislation and particularly administrative regulatory instruments have extended some AML/CFT obligations to the covered entities and also extended coverage to additional entities not subject to the AML Law. In cases where the AML Law and subsidiary instruments do not include some FIs and DNFBPs, and where the provisions do not fully cover the FATF requirements, they have not been based on an assessment of risk in those sectors or activities to support their exclusion or partial applicant of the FATF requirements. In addition, many of the provision in these subsidiary instruments go beyond the main AML Law in contravention of explicit Constitution provisions.

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[13] http://www.ana.gob.pa/

Progress since the Last IMF/WB Assessment or Mutual Evaluation

100. Since the last AML/CFT assessment of Panama in 2005, the authorities reported the following principal measures to strengthen the national AML/CFT regime, with comments from the assessors where applicable.

101. 2012: New Superintendency of Insurance and Reinsurance was created and is now responsible for AML/CFT supervision.

102. Colon Free Zone Authority establishes an AML/CFT unit to review compliance by firms operating within the Zone.

103. 2011: Law establishes inter-institutional coordination and cooperation system amount the supervisory agencies and created the Superintendency of Securities Markets.

104. 2011: Law on Registered Agents (which must be lawyers) for corporate/legal entities establishes customer due diligence requirements for their clients. The law does not extend the full AML obligations as for e.g., trust companies, imposes strict secrecy restrictions on registered agents, does not require custody of bearer shares of companies, does not require Registered Agents to Report Suspicious Transactions and does not allow the UAF to have access to their records. Registered agents are not subject to the AML Law and a supervision regime as are the other covered financial and non-financial entities. The Supreme Court has power to sanction registered agents. It is not clear why they were not covered by under the 2000 AML Law as are e.g., trust companies.

105. 2010: Penal Code amended to sanction for failure to declare or falsely declare cross-border currency movements exceeding B10,000. Customs authorities issued a resolution to give effect to this requirement with respect to travelers subjected to such declarations. However, the requirements for travelers leaving the country have not been implemented.

106. 2010: Amending legislation for provisional restraint, disposal and distribution of property linked to certain crimes including ML and TF.

107. 2007: Penal Code added TF and made it a predicate offense to ML, and added 14 additional predicate offenses.

108. 2005: UAF and National Mortgage Bank enter into an arrangement for savings and loans associations send CTRs to the UAF. However, neither the mortgage bank or savings and loans associations are subject to the 2000 AML Law, hence this arrangement is minimal. There is an administrative requirement for such associations to prepare know your customer manuals and the transfer of their supervision to the Superintendency of Banks is being contemplated.

109. Based on the above and while some of these measures are important, there still remain significant systemic gaps and deficiencies in the AML/CFT regime including the inadequacy and unconstitutionality of key provisions of the legal framework, gaps in legal and supervisory coverage of financial and DNFBP businesses operating in Panama that fall under the FATF Recommendations, lack of transparency of beneficial ownership and control of legal entities and arrangements, deficiencies in customer due diligence and the use intermediaries/introducers, etc.

3. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

3.1. Criminalization of Money Laundering (R. 1 and 2)

3.1.1. Description and Analysis[14]

110. Legal Framework:

111. Panama has ratified the United Nations Convention against Transnational Organized Crime through Law 23 of 2004 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances through Law 20 of 1993. Panama has criminalized money laundering offense under Sections 254 to 259 of the Penal Code, as adopted by Law 14 of 2007 (Amended by Act 26 of 2008, Act 5 of 2009, Law 68 of 2009, Act 14 of 2010 and Act 40 of 2012), under Book II, Title VII Crimes against the Economic Order, Chapter IV Money Laundering.

112. Criminalization of Money Laundering (c.1.1—Physical and Material Elements of the Offense):

113. Section 254 of the Penal Code provides that: "whoever, personally or through another person, receives, deposits, trades, transfer or convert money, securities, property and other financial resources, reasonably foreseeing that they come from activities related to international bribery, the Offenses against the Law of Copyright and Related Rights, against Industrial Property Rights or against humanity, drug trafficking, illicit association to commit drug offenses, qualified fraud, financial crimes, illegal arms trafficking, human trafficking, kidnapping, extortion, embezzlement, murder for money or reward, crimes against the environment, corruption of public officials, illicit enrichment, acts of terrorism, financing of terrorism, pornography and corruption of minors, trafficking and commercial sexual exploitation, or traffic of international vehicles, in order to hide, conceal or disguise the illicit origin, or help evade the legal consequences of such offenses shall be punishable with five to twelve years in prison."

114. Section 255 provides that: "It shall be punished with the penalty referred to in the preceding article whoever:

115. *"1. Without their participation, but knowing its provenance, conceals, disguises or impedes the determination, origin, location, destination or ownership of money, goods, securities or other financial resources, or help secure their advantage, when these come from or are obtained directly or indirectly from any of the illegal activities mentioned in the preceding article, or otherwise, help secure their advantage.*

2. Performs transactions personally or through another legal or natural personal, in banking, financial, commercial or any other kind of establishment, utilizing money, securities or other financial resources from some of the activities mentioned in the previous article.

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[14] For all recommendations, the description and analysis section should include the analysis of effectiveness, and should contain any relevant statistical data.

3. Personally or through another person, natural or juridical, provides to any person or banking institution, financial, business or other nature, false information to open bank account or to carry out transactions with money, securities, property or other financial resources, from of some of the activities planned in the previous article."

116. Section 256 criminalizes the reception and use of money or any financial resources coming from money laundering to finance political campaigns.

117. Section 257 punishes whoever knowingly uses his function, employment, trade or profession to authorize or permit the crime of money laundering.

118. Section 258 provides 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 receives money or other benefits in order to help or hurt to any of the parties to the proceedings shall be sentenced to three to six years in prison."

119. The offense covers explicitly the following material elements of the ML offenses as defined in the Vienna and Palermo Conventions: the conversion or transfer of property, knowing that such property is the proceeds of crime ("reasonably foreseeing"), for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offense to evade the legal consequences of his or her action; the concealment or disguise of the source, location, disposition, movement or ownership of or rights with respect to property, knowing ("reasonably foreseeing") that such property is the proceeds of crime; the acquisition, possession or use of property (the sole reception of the criminal proceeds is criminalized), knowing, at the time of receipt, that such property is the proceeds of crime .The concealment of the "true nature" of property derived from a predicate offense is not covered explicitly. However, there is firm jurisprudence which interprets the text as comprising that element. According to a Sentence of the Second Chamber on Criminal Matters of the Supreme Court of Justice of 16 December 2010: "*the aim of money laundering is to conceal the nature, location, source and ownership of the proceeds for the purpose of obstructing and avoid detection by the authorities.*"

120. The Laundered Property (c.1.2):

121. The offense of ML extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime.

122. Section 254 of the Criminal Code covers all types of property regardless of its value: "who, personally or through another person, receives, deposits, trades, transfer or convert money, securities, property and other financial resources, providing reasonably come from ...."

123. Additionally, Section 255 extends to "money, goods, securities or other financial resources, or help secure their advantage, when these come from or are obtained directly or indirectly from any of the illegal activities mentioned in the preceding article."

124. Although section 254 doesn't mention explicitly the indirect proceeds, it must be interpreted in accordance with Section 29 of Law 23 of 1986, as amended by Section 1 of Act 34 of 2010, which provides for the provisional seizure of the instruments, the movable and immovable property, securities, the derivatives or products related with the commission of (among other offenses) money laundering and terrorism. That provisional seizure must be ordered on the properties directly or

indirectly related to the abovementioned unlawful activities. The same provision is included in Section 252 of the Criminal Procedure Code.

125. It is important to note that, under Section 327 of the Civil Code, the concept of personal property includes rights and obligations, and actions, related to personal property; shares and participation shares in commercial and civil companies, even when they possess immovable property; and personal incomes and pensions.

126. Proving Property is the Proceeds of Crime (c.1.2.1):

127. Section 254 criminalizes money laundering as an autonomous offense. It establishes the list of predicate offenses as activities related with certain serious crimes and it is not necessary that a person be convicted of a predicate offense when proving that property.

128. Through case law it has been noted that money laundering is an autonomous crime and that a conviction on the predicate offense is not needed in order to proceed to trial, prosecute or sentence for money laundering. (e.g.: Sentences of the Second Chamber on Criminal Matters of the Supreme Court of Justice of January 2, 2005; July 7, 2009; and April 7, 2011).

129. For such purpose, the existence of a prior activity related with some of the predicate offenses listed in Section 254 can be inferred through indicia (cases of January 24, 2005 and July 7, 2009 sentenced by the Criminal Chamber of the Supreme Court).

130. The Scope of the Predicate Offenses (c.1.3):

131. The following FATF-designated categories of predicate offenses are covered under Panamanian law (Section 254 of the Penal Code):

- Participation in an organized criminal group and racketeering. This only involves the participation in an illicit association to commit drug-related offenses;
- Terrorism, including terrorist financing;
- Trafficking in human beings and migrant smuggling;
- Sexual exploitation, including sexual exploitation of children;
- Illicit trafficking in narcotic drugs and psychotropic substances;
- Illicit arms trafficking;
- Illicit trafficking in stolen and other goods. This only covers the illicit trafficking of stolen vehicles;
- Corruption and bribery;
- Fraud;
- Counterfeiting and piracy of products;
- Environmental crime;
- Murder, grievous bodily injury;
- Kidnapping, illegal restraint and hostage-taking;
- Robbery or TF. This only covers the theft of vehicles
- Extortion;
- Financial crimes (this includes insider trading and market manipulation – Sections 243 to 253 of the Penal Code);
- The following FATF-designated categories of predicate offenses are not covered:
- Counterfeiting currency;

- Smuggling;
- Forgery; and
- Piracy.

132. Threshold Approach for Predicate Offenses (c.1.4):

133. Panamanian law doesn't apply a threshold approach for predicate offenses.

134. Extraterritorially Committed Predicate Offenses (c.1.5):

135. Predicate offenses for money laundering extend to conduct that occurred in another country, which constitutes an offense in that country, and which would have constituted a predicate offense had it occurred domestically. Section 20 of the Penal Code provides that the Panamanian criminal law applies to offenses committed abroad, when they produce or must produce their effects in Panamanian territory.

136. Laundering One's Own Illicit Funds (c.1.6):

137. The offenses of money laundering established under Section 254 of the Penal Code (conversion or transfer of property) can be applied to persons who commit the predicate offense,, once there is no legal exemption or prohibition on that matter. However, Section 255, which criminalizes the conducts of concealment and disguise, explicitly provides that, in those cases, the offense of money laundering does not apply to persons who committed the predicate offense.

138. Ancillary Offenses (c.1.7):

139. Ancillary offenses are defined in the general section of the Penal Code and apply to all offenses, including ML. All ancillary offenses provided for under the Vienna and Palermo conventions are covered under Panamanian law as discussed below:

a) Illicit Association:

Section 320 provides that, when three or more persons agree for the purpose of committing crimes, each shall be punished for that fact alone with imprisonment of three to five years. If the association is to commit, among others, the crimes of money laundering or terrorism, the penalty will be six to twelve years in prison.

b) Attempt:

According to Section 82 of the Penal Code, attempt shall be sentenced to not less than half the minimum or more than two-thirds of the maximum sentence.

c) Aiding and abetting, facilitating and counseling:

Section 80 of the Penal Code provides that the author, the primary instigator and the primary accomplice will be punished with the same penalty that the law establishes for the offense.

Section 81 provides that the secondary accomplice will be punished with no less of half of the minimum or more of half of the maximum penalty that the law establishes for the offense.

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 (Section 44).

Secondary accomplice is who, in any other way, helps the author or the authors, to commit the crime or, who helps or conceals the product of the crime in compliance with an agreement mad prior to its execution (Section 45).

Instigator is whoever prompts other or others to commit crimes (Section 47).

140. Additional Element—If an act overseas which do not constitute an offense overseas, but would be a predicate offense if occurred domestically, lead to an offense of ML (c.1.8): An act overseas which do not constitute an offense overseas, but would be a predicate offense if occurred domestically, could lead to an offense of ML, as far as Section 254 refers to activities related to crimes, and it doesn't make any distinction on where the predicate offense is committed or persecuted.

141. Liability of Natural Persons (c.2.1):

142. For the acts criminalized under Section 254 of the Penal Code it is required that the perpetrator either knew or may have reasonably foreseen that objects are the proceeds of criminal activity. For the acts criminalized under Sections 255 to 257 it is required that the perpetrator knew that objects are the proceeds of criminal activity. Only the intentional commission of money laundering is criminalized, according to Sections 26 and 27 of the Penal Code, unless there is a legal exception.

143. The Mental Element of the ML Offense (c.2.2):

144. The Panamanian law permits the intentional element of the offense of ML to be inferred from objective factual circumstances. Section 376 of the Criminal Procedures Code (CPC) establishes the principle of evidential freedom. This principle states that the facts and circumstances related with the punishable facts may be proved by any means of evidence, except for the exceptions provided for in the laws. Additionally, Section 380 provides that Judges shall appraise and assess each of the evidence in accordance with sound judicial discretion (sana crítica). The assessment may not contradict the rules of logic, the maxims of experience or scientific knowledge.

145. Liability of Legal Persons (c.2.3):

146. Section 51 of the Penal Code establishes that: “when a legal person is used or created to commit a crime whenever it is benefited by it, any of the following sanctions shall be applied to it:

> *1. Cancellation or suspension of license or registration for a term not exceeding five years.*
>
> *2. Fine of not less than five thousand balboas (B5,000.00) and not more than twice the damage or the patrimonial benefit.*
>
> *3. Total or partial loss of tax benefits.*
>
> *4. Disqualification to contract with the State, directly or indirectly, for a term not exceeding five years, which will be imposed along with any of the above.*
>
> *5. Dissolution of the company.*
>
> *6. Fine of not less than twenty five thousand balboas (B25,000.00) and not more than twice the damage or the patrimonial benefit, in the case of the legal person being the provider of the service of transportation by which drugs enter the country.*”

This provision doesn't cover the hypothesis when a legal person is utilized to launder money but is not benefited by it.

147. Criminal Liability of Legal Persons should not preclude possible parallel criminal, civil or administrative proceedings and (c.2.4):

148. Additionally, Section 128 or the Penal Code provides that every criminal offense generates civil liability for its perpetrators, instigators and accomplices. However, the authorities have not informed what civil or administrative sanctions are applicable in these cases.

149. Sanctions for ML (c.2.5):

150. The Penal Code sanctions the different conducts of money laundering as follows:

- Sections 254 and 255: five to twelve years of imprisonment;
- Section 256: five to ten years of imprisonment;
- Section 257: five to eight years of imprisonment; and
- Section 258: three to six years of imprisonment.

151. The applicable sanctions for ML seem to be in line with the sanctions applicable to other serious criminal offenses under the Panamanian law. For example, fraud and robbery are sanctioned with up to twelve years of imprisonment. Drug trafficking is punished with up to fifteen years of imprisonment.

152. Moreover, sanctions for ML offenses are reasonably in line with the range for FATF countries, especially in the region (i.e., in Argentina=2–10 years of imprisonment, in Brazil=3–10 years of imprisonment, in Mexico=5–15 years imprisonment, in Italy=4–12 years imprisonment, in the United States=fine and/or imprisonment of up to 20 years or both, in the United Kingdom=fine, imprisonment of up to 14 years or both).

153. Statistics (R. 32):

154. Panamanian authorities provided the following statistics on prosecutions and convictions relating to ML:

a) Number of judicial investigations for money laundering from 2009 to 2012, indicating the origin:

Year	UAF Report	Judicial Assistance	From predicate Offense	National Police and/or DIJ	Private report	TOTAL
2009	12		82	2	1	97
2010	107	7	58		3	175
2011	31	1	42	4	5	83
2012	11	1	16			28
TOTAL	161	9	198	6	9	383

b) Number of judicial investigations for money laundering from 2009 to 1012, indicating the predicate offenses are presented below. It must be noted that under the title "against the economic order" are grouped all the cases reported by the FIU, whose predicate offenses are unknown.

Year	Number of cases	Offense
2009	**97**	Against the Economic Order (15) Against the Public Administration (2) Drugs (80)
2010	**175**	Against the Economic Order (111) Drugs (63) Fraud (1)
2011	**83**	Against the Economic Order (41) Drugs (42)
2012	**28**	Against the Economic Order (11) Qualified Fraud (1) Drugs (13)
TOTAL	**383**	

c) According to the Ministerio Público, the number of judgments/verdicts for money laundering from 2009 to 2012 are the following (ACC. Means "accused"):

	2009		2010		2011		2012		TOTAL	
	Files	**Acc.**	**Files**	**Acc.**	**Files**	**Acc.**	**Files**	**Acc.**	**Files**	**Acc.**
Mixed judgments	0	0	2	9	2	12	1	6	5	27
Sentences	5	18	10	20	8	21	15	41	38	100
Acquittals	5	24	3	7	1	1	9	21	18	53
TOTAL	10	42	15	36	11	34	25	68	61	180

155. However, the Judiciary Organ reported that there were nine sentences and nine acquittals in 2010–2011. This information clearly contradicts the figures provided by the Ministerio Público.

156. The authorities reported that there are only definitive judgments for money laundering which involve drug-trafficking as a predicate offense.

Analysis and Effectiveness

157. From a legal standpoint, the money laundering offense does not have serious structural deficiencies which could pose formal difficulties in the prosecution of this crime. However, the number of prosecutions seems to be relatively low, taking into account the size of the financial and economic system of Panama, as well as the risks posed by the varied services provided in the country and its strategic geographic situation. This could be due to, inter alia, the following issues:

- Deficiencies of the preventive system;
- Insufficient resources and training provided to the competent authorities; and
- The law enforcement authorities in Panama focus their investigative efforts mainly on drug-trafficking related money laundering.

158. The authorities haven't provided information on the following issues:

- Differentiation between prosecutions and convictions relating to money laundering in conjunction with a predicate offense and those for autonomous stand-alone money laundering offenses;
- Third party laundering and self-laundering; and

- The respective number of foreign and domestic predicates.

159. Additionally, the statistics provided by the authorities are not explicit enough regarding the range of penalties effectively applied. Therefore, it cannot be appropriately assessed whether the sentences are effective and dissuasive or not.

160. Finally, the poor maintenance and the lack of concordance of statistics at all stages of law enforcement authorities prevent an adequate and thorough assessment of the effectiveness of the enforcement of money laundering in Panama. Post mission, the authorities stated that they only maintain hard statistics on sentences ("fallos") for drug-related cases and that other ML cases linked to other crimes are still under investigation.

3.1.2. Recommendations and Comments:

- The following FATF-designated categories of crime should be included as predicate offenses to money laundering: counterfeiting of currency, smuggling, forgery, and piracy.
- Illicit association as a predicate offense to money laundering should cover a wider range of crimes, not only drug trafficking.
- Trafficking in stolen goods as a predicate offense to money laundering should cover a wider range of property, not only vehicles.
- The offense of money laundering should apply to persons who committed the predicate offense with respect to the conducts of concealment and disguise regulated under Section 255 of the Penal Code.
- Widen the scope of the criminal liability of legal persons in order to cover the hypothesis of such person being utilized to launder money whether it is benefited by it or not.
- Establish clear parallel criminal, civil or administrative proceedings applicable when a legal person is convicted for money laundering.
- Strengthen statistics for ML offenses throughout the chain of procedures from investigation to court decisions.

3.1.3. Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating[15]
R. 1	**PC**	• Some FATF-designated categories of crime are not included as predicate offenses to money laundering: counterfeiting of currency, smuggling, forgery and piracy. Illicit association and trafficking in stolen goods have a limited scope. • The offense of money laundering doesn't apply to persons who committed the predicate offense with respect to the conduct of

[15] These factors are only required to be set out when the rating is less than Compliant.

		concealment and disguise regulated under Section 255 of the Penal Code. • Lack of adequate ML statistics to monitor and assess effective implementation of this Recommendation.
R. 2	**LC**	• Liability of legal persons doesn't cover the hypothesis when a legal person is utilized to launder money but is not benefited by it. • There aren't clear parallel criminal, civil or administrative sanctions and proceedings applicable when a legal person is convicted for money laundering. • Lack of sufficient ML statistics to monitor and assess effective implementation of this Recommendation.

3.2. Criminalization of Terrorist Financing (SR. II)

3.2.1. Description and Analysis

161. Legal Framework:

162. Panama has ratified the International Convention for the Suppression of the Financing of Terrorism through Law 22 of 2002. It has also criminalized the financing of terrorism under Section 294 of the Penal Code, as adopted by Law 50 of 2003, under Book II, Title IX Crimes Against the Collective Security, Chapter I: Terrorism.

163. Criminalization of Financing of Terrorism (c.II.1):

164. TF is covered in Section 294: "whoever intentionally finances, subsidizes, hides or transfers money or other financial resources or of any other nature, to be used to commit any of the acts described in 293 of this Code, even though that person is not involved in its execution or the execution is not carried out, shall be sanctioned with 15 to 20 years of imprisonment."

165. Section 293 criminalizes and defines terrorism: "Whoever, for the purpose of disturbing the public peace, cause panic, terror or fear in the population or any segment thereof, use radioactive material, gun, fire, explosive, biological or toxic substance or any other means of mass destruction or element that has that potential, against the living, public services, goods or things shall be punished with imprisonment from twenty to thirty years. The penalty shall be twenty-five to thirty years in prison for heads of organizations or terrorist cells or who help its creation or causes the death of one or more persons."

166. The offense explicitly covers the material element of provision of funds as defined in the International Convention for the Suppression of the Financing of Terrorism: "finances, subsidizes, transfers." It doesn't cover the collection of funds.

167. Terrorist financing offense extends to any person who willfully provides funds with the unlawful intention that they should be used or knowing that they are to be used to carry out a terrorist act. The law doesn't cover the financing of a terrorist organization or an individual terrorist and doesn't contain a definition of the means by which the financing of terrorism can be carried out. Therefore, the commission by any means is punishable.

168. The indirect provision of funds is not explicitly covered and the authorities have not provided any jurisprudence or legal opinion upon that matter.

169. Terrorist financing offense extends to any funds as that term is defined in TF Convention. Section 294 refers to money, property, financial resources or any other nature. That includes movable and immovable property. As stated above, under Section 327 of the Civil Code the concept of personal property includes rights and obligations, and actions, related to personal property; shares and participation in shares in commercial and civil companies, even when these possess immovable property; and personal incomes and pensions. The definition includes funds whether from a legitimate or an illegitimate source.

170. Terrorist financing offense does not require the funds to be used to carry out or attempt a terrorist act. The action shall be punished "even though that person is not involved in its execution or the execution is not carried out."

171. Ancillary offenses are defined in the general section of the Penal Code and apply to all offenses, including TF.

a) Illicit Association:

172. Section 320 provides that, when three or more persons agree for the purpose of committing crimes, each of them shall be punished for that fact alone with three to five years of imprisonment. If the association is to commit, among others, the crimes of money laundering or terrorism, the penalty will be six to 12 years in prison.

b) Attempt:

173. According to Section 82 of the Penal Code, attempt shall be sentenced to not less than half the minimum or more than two-thirds of the maximum sentence.

c) Aiding and abetting, facilitating and counseling:

174. Section 80 of the Penal Code provides that the author, the primary instigator and the primary accomplice will be punished with the same penalty that the law establishes for the offense.

175. 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 (Section 44). Section 81 provides that the secondary accomplice will be punished with not less than half of the minimum or more than half of the maximum penalty that the law establishes for the offense. Secondary accomplice is who, in any other way, help the author or the authors, to commit the crime or, who helps or conceals the product of the crime in compliance with an agreement mad prior to its execution (Section 45).

176. Instigator is whoever prompts other or others to commit crimes (Section 47).

The scope of terrorist acts

177. Pursuant to Section 2 TF Convention, countries are required to criminalize the financing of "terrorist acts," whereby the term includes (1) conduct covered by the offenses set forth in the nine Conventions and Protocols listed in the Annex to TF Convention and (2) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

178. Section 293 covers, in a generic fashion, a range of offenses established in the Conventions and Protocols listed in the Annex to TF Convention as well as the hypothesis defined in paragraph 2. However, the regulation only applies when there is "the purpose of disturbing the public peace." Additionally, in order to commit any of the terrorist acts, the author must have used some of the instruments mentioned in the law: "radioactive material, gun, fire, explosive, biological or toxic substance or any other means of mass destruction or element that has that potential."

179. As far as those subjective and objective elements are not required in many of the offenses set forth in TF Conventions, their inclusion in the law limits the scope of the financing of terrorism crime in Panama.

180. Predicate offense for Money Laundering (c.II.2): Section 254 of the Penal Code establishes the activities related to the crimes of terrorism and financing of terrorism as predicate offenses to money laundering.

181. Jurisdiction for Terrorist Financing offense (c.II.3): It is not clearly established that terrorist financing offenses apply, regardless of whether the person alleged to have committed the offense(s) is in the same country or a in different country from the one in which the terrorist(s)/terrorist organization(s) is (are) located or the terrorist act(s) occurred/will occur. However, once the act of financing is committed as defined in the law in the Panamanian territory, it will be punished in accordance with the general rules set out by Sections 18 to 21 of the Penal Code.

182. Mental Element of TF offense (c.II.4) (applying c.2.2 in R. 2):

183. The Panamanian law permits the intentional element of the offense of ML to be inferred from objective factual circumstances. Section 376 of the Criminal Procedures Code (CPC) establishes the principle of evidential freedom. This principle states that the facts and circumstances related to the punishable facts may be proved by any means of evidence, except for the exceptions provided for in the laws. Additionally, Section 380 provides that judges shall appraise and assess the evidence in accordance with sound judicial discretion (sana crítica). The assessment shall not contradict the rules of logic, the maxims of experience or the scientific knowledge.

184. Liability of Legal Persons (applying c.2.3 and c.2.4 in R. 2):

185. As stated in relation to the offense of money laundering, Section 51 of the Penal Code establishes sanctions to the legal persons engaged in any criminal activity and also establishes that liability does not preclude possible parallel criminal, civil or administrative proceedings. This provision doesn't cover the hypothesis when a legal person is utilized to launder money but is not benefited by it. There aren't clear parallel criminal, civil or administrative sanctions and proceedings applicable when a legal person is convicted for terrorist financing.

186. Sanctions for TF (applying c.2.5 in R. 2):

187. The Penal Code sanctions the commitment of terrorism financing with 25 to 30 years of imprisonment. The applicable sanctions for TF seem to be in line with or above the sanctions applicable to other serious criminal offenses under the Panamanian law. For example, fraud and robbery are sanctioned with up to twelve years of imprisonment. Drug trafficking is punished with up to fifteen years of imprisonment and homicide is sanctioned with up to twenty years of imprisonment.

188. Statistics (R. 32):

189. Panama does not have statistics regarding terrorist financing.

Effectiveness of Implementation

190. According to the Panamanian authorities, there have not been any cases of terrorist financing; therefore, it is not possible to assess the effectiveness of the offense.

3.2.2. Recommendations and Comments

- The terrorist financing offense should extend to any person who willfully collects funds for terrorism.
- The terrorist financing offense should cover the financing of a terrorist organization and an individual terrorist.
- The indirect provision of funds should be explicitly covered by the law.
- All the offenses established in the Conventions and Protocols listed in the Annex to TF Convention as well as the hypothesis defined in paragraph 2 must be explicitly covered under the terrorist financing offense.
- In order to commit any of the terrorist acts, it shouldn't be required that the author must have used some of the instruments mentioned in the law: "radioactive material, gun, fire, explosive, biological or toxic substance or any other means of mass destruction or element that has that potential," unless it is explicitly required by the international treatises.
- Clearly establish that terrorist financing offenses apply, regardless of whether the person alleged to have committed the offense(s) is in the same country or a in different country from the one in which the terrorist(s)/terrorist organization(s) is (are) located or the terrorist act(s) occurred/will occur.
- Establish clear parallel criminal, civil or administrative sanctions and proceedings applicable when a legal person is convicted for terrorist financing.

3.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR. II	**PC**	• The terrorist financing offense does not extend to any person who willfully collects funds for terrorism. • The terrorist financing offense does not cover the financing of a terrorist organization and an individual terrorist. • The indirect provision of funds is not explicitly covered by the law. • Not all the offenses established in the Conventions and Protocols listed in the Annex to TF Convention are explicitly covered under the terrorist financing offense. • Not all the hypothesis defined in paragraph 2 of TF Convention are explicitly covered under the terrorist financing offense. • It is required that the author must have used some of the instruments mentioned in the law in order to commit any of the terrorist acts.

		• It is not clearly established that terrorist financing offenses apply, regardless of whether the person alleged to have committed the offense(s) is in the same country or a in different country from the one in which the terrorist(s)/terrorist organization(s) is (are) located or the terrorist act(s) occurred/will occur. • There aren't clear parallel criminal, civil or administrative sanctions and proceedings applicable when a legal person is convicted for terrorist financing.

3.3. Confiscation, Freezing and Seizing of Proceeds of Crime (R. 3)

3.3.1. Description and Analysis

191. Legal Framework:

192. The legal basis for freezing and seizing of the instruments and proceeds of crime is included in Section 29 of Law 23 of 1986 (amended by Section 1 of Law 34 of 2010) and Section 252 of the Criminal Procedures Code. Forfeiture is provided in Sections 50 and 75 of the Penal Code.

193. Confiscation of Property related to ML, TF or other predicate offenses including property of corresponding value (c.3.1):

194. The above-mentioned provisions explicitly provide for the seizing and forfeiture of: "the instruments, property and real estate, securities and derivatives of the commission, or related to the offenses against public administration, money laundering, financing of terrorism, drug trafficking and related crimes. The Panamanian law doesn't provide for the confiscation of property of corresponding value.

195. Confiscation of Property Derived from Proceeds of Crime (c.3.1.1 applying c.3.1):

196. Seizure and forfeiture extend to property that is directly or indirectly derived from proceeds of crime, including incomes, profits or other benefits from the proceeds of crime. Sections 50 and 75 of the Penal Code provide for the forfeiture of the property, assets, securities and instruments used or derived from the commission of the offense. Those provisions don't mention explicitly the property indirectly derived from crime. However, Section 252, of the Criminal Procedures Code, second paragraph, provides for the seizure of the property directly or indirectly related to illicit activities. Therefore, once the Penal Code doesn't make an explicit distinction, they are covered.

197. Provisional Measures to Prevent Dealing in Property subject to Confiscation (c.3.2):

198. Section 29 of Law 23 and Sections 252 and 253 of the Criminal Procedures Code provide for provisional measures, including the freezing and/or seizing of property, to prevent any dealing, transfer or disposal of property subject to confiscation. According to this provisions, the instruments, assets, securities and derivatives related to crimes against the public administration, money laundering, financial, against intellectual property, terrorism, drug trafficking and related crimes will be temporarily seized, until the case is decided by the competent court.

199. Ex-Parte Application for Provisional Measures (c.3.3):

200. The abovementioned legal provisions don't establish explicitly that the freezing and seizing is made ex-parte or without notice. However, according to the authorities it is done in practice and that the subject of the investigation or his legal defense is not informed beforehand.

201. Identification and Tracing of Property subject to Confiscation (c.3.4):

202. Law enforcement agencies, the FIU or other competent authorities have powers to identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of crime. However, the authorities have restrictions on access to information on legal entities and arrangements held by lawyers, registered agents and others subject to the FATF Recommendations (see analysis on Recommendations 26, 27, and 28).

203. Protection of Bona Fide Third Parties (c.3.5):

204. Section 75 of the Penal Code excludes from the confiscation the property belonging to third parties not responsible for the offense. Additionally, Section 252 of the Criminal Procedures Code provides that provisional measures must be adopted respecting the rights of bona fide third parties, consistent with the provisions of the Palermo Convention.

205. Power to Void Actions (c.3.6):

206. Section 270 of the Criminal Procedures Code provides that, when there are reasonable grounds for concern that the situations that facilitate the commission of the offense may continue during the trial, the judge can implement the appropriate measures for protection or suspension in order to prevent the effects of crime. However, this doesn't provide for voiding contracts and arrangements entered into prior to trial that would prejudice identification, tracing, investigations, freezing, seizure and confiscation.

207. Statistics (R. 32):

208. Seized and Forfeited Property in money laundering cases:

209. BANK ACCOUNTS

YEAR	PREDICATE OFFENSE	NUMBER AND CATEGORY OF SEIZED PROPERTY	VALUE (B)
2010	Against the Economic Order	Bank accounts in three banks	5,201,293.27
2012	Against the Economic Order	Bank accounts	22,326,93
		TOTAL	**5,223,620.20**

210. CASH

YEAR	PREDICATE OFFENSE	NUMBER AND CATEGORY OF SEIZED PROPERTY	VALUE (B)
2009	Drugs	Cash	12,294,807.61
2010	Drugs	Cash	8,209,290.83
2011	Drugs	Cash	11,306,748.06
2012	Drugs	Cash	4,100,936.00
		TOTAL	**35,911,782.50**

211. MOVABLE AND IMMOVABLE PROPERTY

Description	2009	2010	2011	2012	Total
Parcels	11	00	04	11	**26**
Houses and apartments	07	01	04	07	**19**
Vehicles	61	10	106	07	**184**

212. Additional Elements (R. 3)—Confiscation of Property which Reverses Burden of Proof (c.3.7):

213. Section 257 of the Criminal Procedure Code provides that the person accused on charges of money laundering, corruption of public servants, unjust enrichment, terrorism and drug trafficking must demonstrate the lawful origin of the property seized to request the lifting of the measure.

214. Panama doesn't have any provisions for a) Confiscation of assets from organizations principally criminal in nature; or b) Civil forfeiture.

Effectiveness of Implementation

215. The volume of forfeited property for money laundering seems to be relatively small, taking into account the size of the financial and economic system of Panama, as well as the risks posed by the varied services provided in the country and its strategic geographic situation. It is noted that confiscations are largely cash and other money instruments and that other forms of confiscation are relatively insignificant e.g., real estate considering its importance in the local economy. It is also noted that the AML/CFT Law does not cover all real estate intermediaries. The small volume of confiscations could be due to the following:

- Deficiencies of the preventive system;
- Insufficient resources and training provided to the competent authorities; and
- The law enforcement authorities in Panama focus their investigative efforts mainly on drug-trafficking related money laundering and cash.

216. The competent authorities have restrictions to access to information on legal entities and arrangements held by lawyers, registered agents and others that should be subject to the FATF Recommendations.

217. Inadequate maintenance and the lack of concordance of statistics at all stages of law enforcement authorities prevent the assessment of the effectiveness of the enforcement of money laundering in Panama.

3.3.2. Recommendations and Comments

- Laws should provide for the confiscation of property of corresponding value.
- Establish explicitly in the law that the freezing and seizing is made ex-parte or without notice.
- Laws should permit voiding contracts and arrangements entered into prior to trial that would prejudice identification, tracing, investigations, freezing, seizure and confiscation.
- Enhance prosecutions and confiscation for non drug-related ML.

- Enhance the powers of the competent authorities to access to information on legal entities and arrangements held by lawyers, registered agents and others that should be subject to the FATF Recommendations.

3.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R. 3	**PC**	• Panama does not provide for the confiscation of property of corresponding value. • The freezing and seizing ex-parte or without notice is not established explicitly in the law. • The competent authorities have restrictions to access to information on legal entities and arrangements held by lawyers, registered agents and others that should be subject to the FATF Recommendations. • There is no possibility of voiding contracts and arrangements entered into prior to trial that would prejudice identification, tracing, investigations, freezing, seizure and confiscation. • Low level of confiscations in light of country risks, especially for non-drug-related offenses.

3.4. Freezing of Funds Used for Terrorist Financing (SR. III)

3.4.1. Description and Analysis

218. Legal Framework:

219. The legal basis for freezing and seizing of the instruments and proceeds of crime are included in Section 29 of Law 23 of 1986 (amended by Section 1 of Law 34 of 2010) and Section 252 of the Criminal Procedures Code. Forfeiture is regulated in Section 75 of the Penal Code.

220. Freezing Assets under S/Res/1267 (c.III.1):

221. Panama doesn't have effective laws and procedures to freeze without delay terrorist funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999). Terrorist funds only can be frozen in the context of a criminal trial, through the application of the general rules for seizing the instruments and proceeds of crime.

222. Freezing Assets under S/Res/1373 (c.III.2):

223. Panama doesn't have effective laws and procedures to freeze without delay terrorist funds or other assets of persons designated in the context of S/RES/1373(2001). Terrorist funds only can be frozen in the context of a criminal trial, through the application of the general rules for seizing the instruments and proceeds of crime.

224. Freezing Actions Taken by Other Countries (c.III.3):

225. Panama doesn't have effective laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions.

226. There aren't any provisions regarding the extension of c.III.1–III.3 to funds or assets controlled by designated persons (c.III.4).

227. Communication to the Financial Sector (c. III.5):

228. Panama doesn't have any freezing mechanisms referred to in Criteria III.1–III.3; therefore, there aren't effective systems for communicating to the financial sector actions taken under such mechanisms.

229. Guidance to Financial Institutions (c.III.6):

230. The financial intelligence unit (UAF) receives, on a regular basis, the updated lists of terrorists and terrorist organizations issued by the UN Security Council under Resolution1267 (1999) through the Ministry of Foreign Affairs. After receiving the updated lists, these are referred immediately to the supervisory for them to notify the obliged entities regulated by the AML law (Law 42 of October 2, 2000 for the Prevention of Money Laundering). These entities should issue a Suspicion Transaction Report in case they may be holding targeted funds or other assets. However, there is no provision regarding what would be the procedures after such report is issued.

231. De-Listing Requests and Unfreezing Funds of De-Listed Persons (c.III.7):

232. Panama doesn't have effective and publicly know procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations.

233. Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c.III.8):

234. Panama doesn't have effective and publicly know procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.

235. Access to frozen funds for expenses and other purposes (c.III.9):

236. Panama doesn't have appropriate procedures for authorizing access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.

237. Review of Freezing Decisions (c.III.10):

238. Freezing, Seizing and Confiscation in Other Circumstances (applying c.3.1–3.4 and 3.6 in R. 3, c.III.11):

239. Confiscation of Property Related to Terrorist Financing (c.3.1.1 applying c.3.1):
Sections 50 and 75 of the Penal Code provide for the forfeiture of property, assets, securities and instruments used or derived from the commission of all offenses. Those provisions don't mention explicitly the property indirectly derived from crime. However, Section 252, of the Criminal Procedures Code, second paragraph, provides for the seizure of the property directly or indirectly related to illicit activities. Therefore, once the Penal Code doesn't make an explicit distinction, they are covered.

240. Provisional Measures to Prevent Dealing with Property subject to Confiscation (c.3.2): Section 29 of Law 23 and Section 252 of the Criminal Procedures Code provide for provisional measures, including the freezing and/or seizing of property, to prevent any dealing, transfer or disposal of property subject to confiscation. According to this provisions, the instruments, assets, securities and derivatives related to crimes against the public administration, money laundering, financial, against intellectual property, terrorism, drug trafficking and related crimes will be temporarily seized, until the case be decided by the competent court.

241. Ex-Parte Application for Provisional Measures (c.3.3): The abovementioned legal provisions don't establish explicitly that the freezing and seizing on an ex-parte basis or without notice. However, it is done in practice, according to the information provided by the authorities.

242. Identification and Tracing of Property subject to Confiscation (c.3.4): Law enforcement agencies, the FIU or other competent authorities should be given adequate powers to identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of crime.

243. Power to Void Actions (c.3.6): Section 270 of the Criminal Procedures Code provides that, when there are reasonable grounds for concern that the situations that facilitate the commission of the offense may continue during the trial, the judge can implement the appropriate measures for protection or suspension in order to prevent the effects of crime. However, this doesn't provide for voiding contracts and arrangements entered into prior to trial that would prejudice identification, tracing, investigations, freezing, seizure and confiscation.

244. Protection of Rights of Third Parties (c.III.12):

245. Section 75 of the Penal Code excludes from the confiscation the property belonging to third parties not responsible for the offense. Additionally, Section 252 of the Criminal Procedures Code provides that provisional measures must be adopted respecting the rights of bona fide third parties, consistent with the provisions of the Palermo Convention.

246. Enforcing the Obligations under SR. III (c.III.13):

247. Panama has established the Coordination Council for the Fight against International Terrorism, through Executive Decree No. 448 of December 28, 2011. This body is responsible for ensuring compliance with international conventions, resolutions of the General Assembly and Security Council of the United Nations (UN), on terrorism. The Council is comprised of representatives of the Ministry of Foreign Affairs, which presides the body, Ministry of Public Security, Ministry of Interior, National Police, Division of Judicial Investigation (DIJ), State Border Service (SENAFRONT), National Air Service (SENAN), National Immigration Service (SNM), Panama Canal Authority (ACP), Civil Aviation Authority, Panama Maritime Authority (AMP), National Customs Authority, Board of National Security, Finance Analysis Unit (UAF), Judicial Investigation Department and the Superintendency of Banks. The functions of the Council (Section 3 of the Executive Decree) are the following:

a) Discuss the strategy on effective implementation of the resolutions on terrorism of the Security Council of the United Nations.
b) Gather information from national public institutions about measures taken against international terrorism.

c) Report to international forums and organizations about the actions taken by Panama in combating international terrorism.
d) Recommend legislative and administrative measures to the Executive Branch in order to ensure the effective implementation of international obligations in the fight against international terrorism.

248. Statistics (R. 32):

249. Panamanian authorities haven't provided statistics related to freezing, seizing or confiscation of terrorist assets.

250. Additional Element (SR. III):

251. Panama hasn't implemented any measures in Best Practices Paper for SR. III (c.III.14).

252. Additional Element (SR. III):

253. Panama hasn't implemented any procedures to Access Frozen access frozen funds (c.III.15).

254. Assessment of Effectiveness: Panama does not have laws and procedures to comply with Special Recommendation III; therefore, it is not possible to assess the effectiveness of the system.

3.4.2. Recommendations and Comments

- Establish effective laws and procedures to freeze terrorist funds or other assets of persons designated by the United Nations, Al-Qaida, and Taliban Sanctions Committee in accordance with S/RES/1267(1999). Such freezing should take place without delay and without prior notice to the designated persons involved.

- Establish effective laws and procedures to freeze terrorist funds or other assets of persons designated in the context of S/RES/1373(2001). Such freezing should take place without delay and without prior notice to the designated persons involved.

- Implement effective laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. Such procedures should ensure the prompt determination, according to applicable national legal principles, whether reasonable grounds or a reasonable basis exists to initiate a freezing action and the subsequent freezing of funds or other assets without delay.

- Implement an effective system for communicating actions taken under the freezing mechanisms referred to in Criteria III.1–III.3 to the financial sector[16] immediately upon taking such action.

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[16]For examples of possible mechanisms to communicate actions taken or to be taken to the financial sector and/or the general public, see the FATF Best Practices paper entitled "Freezing of Terrorist Assets – International Best Practices."

- Provide clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms.

- Implement effective and publicly known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations.

- Implement effective and publicly known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.

- Adopt appropriate procedures for authorizing access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses. These procedures should be in accordance with S/RES/1452 (2002).

- Establish appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court.

3.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR. III	**NC**	• Panama does not have laws and procedures to freeze, without delay or prior notice, terrorist funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999). • Lack of effective laws and procedures to freeze, without delay and prior notice, terrorist funds or other assets of persons designated in the context of S/RES/1373(2001). • There are no laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. • Lack of an effective system for immediate communication to the financial sector of actions taken under the freezing mechanisms referred to in Criteria III.1 – III.3. • Need clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets. • Need to implement effective and publicly know procedures for dealing with de-listing requests. • Need to implement effective and publicly know procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism. • Need to adopt appropriate procedures for authorizing access to funds or other assets that were frozen pursuant to S/RES/1267(1999). • Need to establish appropriate procedures for persons whose funds or other assets have been frozen to challenge such measures in court.

3.5. The Financial Intelligence Unit and its Functions (R. 26)

3.5.1. Description and Analysis

255. Legal Framework:

256. The financial intelligence unit of Panama (UAF, Unidad de Analisis Financiero) was created in 1995 by Executive Decree 136 of 1995 within the Public Security and National Defense Council (C.S.P.D.N). Its main function at that time was money laundering associated with drug trafficking. Its functions were later amended as follows:

- Executive Decree 163 of October 3, 2000 in accordance with the newly adopted Penal Code definition of money laundering which expanded the definition of ML to include nondrug predicate offenses (article 389 of the Penal Code) and by extension also expanded the mandate of the UAF to these other crimes.
- Executive Decree 78 of June 5, 2003: Included the prevention of financing of terrorism among its principal functions based on Panama's ratification of the UN Convention for the Suppression of the Financing of Terrorism in 2002.
- Executive Decree 930 of November 27, 2009: the UAF is recognized as an administrative entity, with budget autonomy, and transferred it to the Ministry of the Presidency of which it is a part.

257. It is important to note that the Executive Decrees creating and amending prior Decrees do not link, in their preamble, the UAF's activities to those applicable provisions of the main AML Law (Law 42 of 2000), particularly those with respect to reporting entities and their supervisors. On the other hand, Law 42 (and its Executive Decrees) includes the UAF for purposes of STR and CTR reporting obligations.

258. In addition, while the financing of terrorism (TF) is a function of the UAF as provided by Executive Decree 78 2003, TF is not part of Law 42 which only deals with money laundering issues. It is acknowledged that TF is a predicate offense to money laundering under Panama's legislation and that administrative instruments issued by supervisory authorities do contain CTF elements, but this is not at issue here. Hence there is a disconnect between the functions of the UAF with respect to financing of terrorism and the provisions of Law 42 and its Executive Decrees applicable to reporting entities that do not include CTF elements.

259. According to Article 2 of Executive Decree 78 of 2003, the functions of the UAF are to:

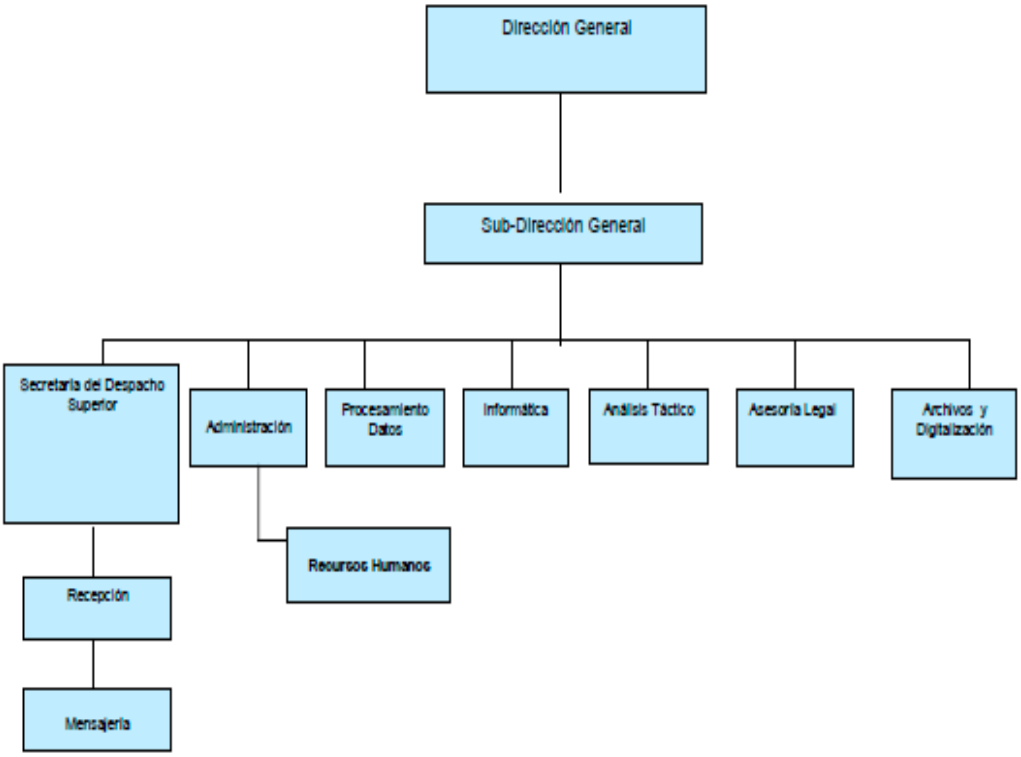
- Obtain from the public institutions and reporting entities all information relating to financial, trade or business transactions that could be linked to money laundering offense and financing of terrorism, as provided for under current laws in Panama on the these matters;
- Analyze the information obtained in order to determine suspicious or unusual transactions, as well as operations and patterns of money laundering and financing of terrorism;
- Maintain statistics of the cash transactions in the country with respect to money laundering and financing of terrorism;

- Exchange with foreign counterparts information for the analysis of cases that could be linked to money laundering and financing of terrorism, subject to the signing of MOUs or other cooperation agreements with such counterparts;

- Disseminate information directly to the Attorney General when the UAF believes that the Prosecutor should conduct an investigation; and

- Provide Prosecutors from the Attorney General's Office and to designated officials from the SBP (Superintendency of Bank of Panama) with any type of assistance requested, for the analysis and dissemination of intelligence reports which could assist in criminal or administrative investigations of acts and offenses related to money laundering and the financing of terrorism.

260. Establishment of FIU as National Centre (c.26.1): The UAF is part of the Ministry of the Presidency and is organized as follows:



261. The UAF has a total of 26 staff, including eight analysts in charge of analyzing the STRs. Under Law 42 of 2000 (and its Executive Decrees), reporting entities are required to send to the UAF STRs related to money laundering only, but NOT those linked to terrorism, terrorism acts, terrorism organizations, or terrorism finance (see c.13.2). Most of the supervisory administrative instruments issued under Law 42 mainly Agreements (Acuerdos) and Resolutions (Resoluciones) [both are considered OEMs], have included financing of terrorism issues but this requirement should be in law or regulation (see R. 13) and not OEMs, and should extend to terrorism, terrorism acts, terrorism organizations (see c.13.2). In addition, the legality of these OEMs with respect to CTF (and other scope issues) could be challenged on Constitutional grounds because under Art. 184 of the Constitution subsidiary instruments should not extend outside the text and spirit of the primary law.

262. Art. 2 of Executive Decree 78 states that the UAF can obtain any information from public institutions and reporting entities relating to ML and TF. This would include STRs and any other related information. This function is supported by Articles 1(5) and 2 of Law 42 that requires reporting entities to send to the UAF STRs and to provide it, at their own initiative or upon request by the UAF, with any information at their disposal relating to ML (not TF) to enable the UAF to examine and analyze such information.

263. It is noted that the FIU is not required to receive STRs from a number of financial institutions and DNFBPs not covered by the Law 42 including high risk sectors such as lawyers, accountants, notaries and company services providers. Law 42 applies to bureau de change for STR purposes but this is not a regulated sector and is in practice not supervised.

264. Although the legislation does not explicitly state that the UAF is the national center for receiving and requesting STR and related information, it is in fact the only agency acting in this capacity.

265. Guidelines to Financial Institutions on Reporting STR (c.26.2):

266. The UAF has issued templates for filling STRs, for each type of reporting entity. They are in Excel (1 page) and contain another page of guidelines on how to be filled in. Information on the beneficial owners is not specifically required to be reported on STRs. The UAF explained that the information on beneficial ownership is expected to be contained in the opening documentation related to the bank accounts reported to the UAF, as required by sectoral regulatory instruments.

267. The forms, compiled in the Circular UAF-01-2009 of November 11, 2009, have been disseminated to the Superintendency of Banks, the National Lottery, the Panama Pacifico Free Zone, the Securities Commission, the Insurance Commission, the Gaming Supervision, the Banco Hipotecario Nacional, the MICI (for finance companies, real estate brokers, and money remittance firms, casa de cambio), IPACOOP, and the Export Processing Zone Management (MICI). These STR forms are sent by the competent supervisory authorities directly to the compliance officers of the reporting entities. When STRs have been inappropriately completed, the UAF requests their accurate completion within 15 days. Any breach in the way the form is completed could lead to sanctions pursuant to Article 8 of Law 42 of 2000.

268. It is noted that some of the recipients of the STR reporting forms are not covered as reporting entities by Law 42 of 2000 but were initially covered under Art. 5 (adding a new Article 3-C to Executive Decree 1 of 2001) of Executive Decree 266 of 2010, where the STR obligation under Law 42 was applied to all reporting entities that were only subject to CTR obligations under Law 42. However, post mission the authorities informed that Executive Decree 266 of 2010 has been revoked reverting to the original scope of Law 42 with a more limited scope of STR reporting entities. Executive Decree 266 of March 23, 2010 was fully revoked on March 31, 2010 by Executive Decree 294. It is also acknowledged that supervisory authorities have issued OEMs ("acuerdos" and "resoluciones") that aim to extend the reporting obligations to other persons and entities under their jurisdiction. However, the STR reporting requirement under R.13 should be in law or regulations (e.g., Laws and Executive Decrees) and not in OEMs.

269. Access to Information on Timely Basis by FIU (c.26.3):

270. Pursuant Article 2(a) of Executive Decree 78 of 2003, the UAF can gather from public institutions and from reporting entities all information related to financial, commercial or business

transactions that may be linked to money laundering "and" financing of terrorism. As noted above, CFT is not covered under Law 42 but this provision aims to indirectly but inadequately expand the scope of the STR reporting requirement under the AML Law to include TF.

271. The UAF indicated that it has access to the following sources of information from public authorities:

- the Customs database of cross-border cash transportation (see SR. IX);
- the Immigration Agency database, about cross-border movements of persons;
- the Public Register ("Registro Publico") (legal entities/companies' register);
- Panama-Emprende: authority that licenses and approvals for the commencement of business operations; database of the credit bureau (Panama Credit Association ("APC"))
- the registries of vehicles, boats, and planes;
- the Civil Register;
- the Social Security register;
- the UNSC and OFAC lists; and
- the database of criminal records held by the police – access to ongoing investigations and/or intelligence reports was not clear.

272. According to the UAF, access to the different registers is direct, on line, and based on high level agreements with the respective authorities. Some of the authorities' representatives met by the assessors were not aware of these agreements and did not know that the UAF accesses their database (e.g., immigration and police).

273. Also, the type of applications available on the analysts' computers, according to the IT section of the UAF, refers only to: the UAF database, the Registro Publico (accessible by internet), the Civil register (Tribunal Electoral, accessible by internet and security code), the register of vehicles (Direccion Nacional de Transito, accessible by internet and security code), and Analyst Notebook. In addition to these sources, the UAF has access to Egmont Secure Web and to the internal system of Cases Management. It was shown to the assessors that the analysts can access the Immigration database.

274. There is a very strict protocol for each and every procedure and activity undertaken by the UAF (Manual de Procedimientos – Area de Analisis tactico). According to this protocol, the Head of the Analysis Unit is personally in charge of entering the STRs data into the database: date, reporting entity, person(s) concerned (but not beneficial owners), date of birth, ID, and a summary of the suspicion as it appears on the STR form.

275. The UAF is satisfied of its access to information in order to perform its functions. However, the existence of companies that issue bearer shares is a strong impediment to the ability of the UAF to access relevant information on the beneficial owner of such companies. This was also noted as a challenge for reporting institutions that are not required to hold bearer shares in custody but rely on client declarations only. In the same vein, the information contained in the Registro Publico does not record information on shareholders or beneficial owners of legal entities. Efforts to enact legislation to immobilize bearer shares for companies have been unsuccessful to date. This situation creates a systemic gap in the ability of the UAF to obtain (prompt) access to information on beneficial ownership and effective control of legal entities, including private foundations, for its intelligence gathering and generation functions. The UAF did not mention having tried to access information on numbered bank accounts that are still authorized since the 1959 legislation that provides for such

accounts, either directly or through the SBP. [Post mission, a new law (Law 47 of 2013) providing for the custody of bearer shares was approved in July 2013 and published on August 6, 2013. However, this law will come into force two years after its publication, and for bearer shares issued prior to the law coming into force there is an additional transition period of three years, that is, until August 6, 2018. It also noted that under this new law the UAF is not a defined competent authority that can request information from the custodian with respect to the underlying entity and bearer share ownership].

276. The recent Law 2 of February 1, 2011 on Resident Agents requires them to conduct identification procedures for its customers who request their services as Registered Agents, but these requirements do not extend to identifying the beneficial owners of legal entities for which they act as Registered Agents. The customers seeking such services are not always the owners or controllers of such entities and may be intermediaries such as lawyers and trustees. Importantly, Law 2 does not provide the UAF with access to the information on legal entities and arrangements represented by such Agents. (Only lawyers can act as Resident Agents for legal entities and they are not covered by the AML regime for compliance and reporting purposes). Law 2 of 2011 on Resident Agents contains confusing and inadequate customer due diligence and does not allow the UAF to have access. Art. 2(3) and Art. 12-16 of Law 2 provide limited and procedurally restricted access to the Prosecution and Judicial agencies for AML/CFT purposes, and the tax department of the Ministry of Economy and Finance for international treaties. To the extent that the resident agents do not maintain information on beneficial owners and controllers of legal entities they represent, that would be a significant impediment, even if the UAF has access to their information. No explanation was given on the fact that the UAF was excluded from the scope of this law as a competent authority for AML/CFT matters.

277. Art. 2 (b) of Executive Decree establishes as one of the primary functions of the UAF the analysis of information received to identify suspicious or unusual activities, transactions and trends, related to money laundering "**and**" the financing of terrorism.

278. Additional Information from Reporting Parties (c.26.4):

279. Article 2 of Law 42 of 2000 allows the UAF to obtain from all reporting entities any information they may have, beyond STRs, in order to enable the UAF to examine and analyze such information. In addition, UAF Article 2 of Executive Decree 78 also provides the UAF with a general function to obtain from public bodies and reporting entities any information it may require for its AML/CFT activities.

280. However, the UAF does not regularly require additional information from reporting entities or through their supervisors because it is of the view that the data contained in the STRs is now sufficient for its purposes. Post mission the UAF indicated that these are minimum requirements and that it can request additional information. The financial institutions confirmed that they attach all the documentation related to the account they report (including documentation on 80 percent of debits/credits on a one-year basis, even if not suspicious), which actually generates for the UAF a lot of work. The UAF states that it improves its analytical capacity to receive this information. But as indicated above, current information on beneficial owners or controllers of (bearer) legal entities may not be easily available or identifiable, especially when clients are represented by intermediaries such as lawyers, accountants, trustees and other trust and company services providers from Panama or overseas.

281. In addition, reporting entities are of the view that they have no feedback from the UAF after a STR has been sent out. As a general matter, the UAF does not give feedback on their STRs to the respective reporting entities on a bilateral and regular basis. Post mission, the UAF stated that feedback is provided in the course of their participation in training activities with reporting entities on various topics such as typologies and the quality of STRs. Confidential information cannot be divulged by the UAF.

282. The overall analysis of the STRs is also somehow impaired by the CTR reporting which is structurally deficient. Indeed, to date the entities located in the Free Zone of Colon, the Economic Area Panama Pacifico, Export Zone, and Free Zone of Baru do not identify the customers that perform above-the-threshold cash transactions. This lack of proper identification of the originators or beneficiaries of the cash transactions impede a throughout analysis of any suspicious financial information. Panama has included the Free Zones under their AML legislation because of the ML/TF risks they pose, as allowed under R. 20 of the FATF Recommendations.

283. Dissemination of Information (c.26.5): Article 2 (e) and (f) of Executive Decree 78 of 2003 (amending ED 163 of 2000 and ED 136 of 1995) establishes the UAF's dissemination function as follows:

- (e) Directly provide the Attorney General Office (Procurador General de la Nacion), information the UAF believes an investigation should be carried out by the Prosecutor's Office (Ministerio Publico). This provision does not specify that the grounds for disseminating such information (e.g., financial) are based on suspicion of ML or TF. The main recipient of the information provided by the UAF under this function is Organized Crime Unit the Prosecutor's Office or directly from the UAF when requested do so by the Organized Crime Unit.
- (f) Assistance to the Prosecutors by the Attorney General Office and designated staff of the Superintendency of Banks of Panama on their request on the analysis of cases and provision of intelligence to assist with criminal or administrative investigations related to ML/TF.

284. In practice, the Prosecutors explained that the UAF is asked to provide information when they are investigating primarily the predicate offense (drug cases), which can lead to charging the suspect with the money laundering offense, in addition to the predicate offense. In 2011, the Attorney General Office (AGO) requested the UAF to consult its database for information 56 times, and to assist them with financial analysis. The communication with the SBP seems to be adequate, with frequent contacts to discuss the reporting duties of the financial institutions. However, the fines imposed by the Supervisory bodies have mostly been grounded on late submission of CTRs, and never on poor quality of STRs.

285. Within the UAF, the management of the reception, analysis, and dissemination of the information held by the UAF is strictly defined by a protocol (manual de procedimientos). The Head of the Analysis can undertake analysis of the STRs himself "when the circumstances of the case justify that he deals with it personally." Otherwise, the STRs are assigned to the analysts by chronological order. The results of the analysis of an STR are later presented to a Consultative Analysis Committee (Comite Consultativo de Analisis) in charge of deciding on its dissemination or not.

286. The Committee comprises the Director of the UAF, the Head of the Analysis Unit, the Legal Adviser and the analyst in charge of the case. By vote the Committee decides if the case is to be

referred to the AGO or not. Based on this vote, the Director sends the case to the AGO, files the case or requests further analysis. The Committee also acts as a liaison body with the prosecutors, on urgent cases and cases sent by the prosecutors, when a swift reply is required.

287. When a report is transmitted to the AGO, the UAF does not attach the documentation related to it (e.g., bank account statements, etc.). Only the analysis is transmitted. This practice has evolved over the years. In the past, the UAF used to communicate all the information that it has obtained in the course of performing its functions for use as reference material to help them conduct their activities but not for use in their investigations records. Post mission, the UAF indicated that reporting entities often send information to the UAF under seal that such should only be used by the UAF for information security purposes. In addition, they indicate that Magistrates have ruled that the UAF was sending too much information to the investigation authorities beyond the intelligence mandate of the UAF. In addition the stated that the information sent by the UAF are only copies and not generally acceptable for evidentiary purposes. Notwithstanding, discussions with the Judicial authorities indicate that they do not see any legal impediment for the UAF to communicate to the Prosecutor the banking documentation legally gathered, even if it cannot be used for evidentiary purposes. So far, the lack of documentation attached to the UAF reports obliges the ML investigative unit of the Police to compel exactly the same documentation from reporting entities that was accessed by the UAF.

288. The Protocol contains a template to be used for dissemination of reports to the AGO. It expressly mentions that the information transmitted is the result of an intelligence analysis and that in consequence it has to be verified. The template also contains the identification of the reporting entity that filed the STR. Neither Law 42 of 2000 nor UAF Executive Decrees 136 and 78 contain any provision that prohibits the UAF for disclosing which entity filed the STR. Finally, the template is designed to match the information that is submitted by the banks, and is not readily applicable to operations and transactions processed by other reporting entities. The UAF maintains that the template is modified according to the reporting entity whose STR generated the case.

289. As a general matter, the strict formal procedures that guide all aspects of the UAF activities tend to restrict the scope of analysis of the collected information. There is little room e.g., for use of typologies work or for “outside-the-box” approach to analysis. As a result, all cases transmitted to the Prosecutor are based, according to the UAF, on inconsistencies between financial transactions and customer’s profile information, of which some may be “unusual” as opposed to suspicious.

290. The UAF has not provided detailed and yearly statistics about the origin (nature of the reporting entities) of the STRs that were transmitted to the AGO after analysis. The limited data that were shared tend to show that, based on the source of STRs and the results of analysis performed by the UAF, a large majority of reports to the AGO are probably based on banking information (75 percent), the remaining part being based on money remitters information (24 percent) and the rest mostly on information from casinos.

291. Operational Independence (c.26.6):

292. Art. 1 of Executive Decree 930 of 2009 amended Art. 1 of Executive Decree 136 of 1995 explicitly stating that UAF shall be an administrative agency with “budgetary autonomy” forming part of the Ministry of the Presidency. However, neither Executive Decree 136, which first established the UAF in 1995, nor subsequent Decrees or Regulations specify the operational rules for the functioning of the UAF to support its operational independence. The UAF depends on the legal framework of the overarching entity it is administratively attached to. Since the Executive Decree 930

of November 27, 2009 the UAF is part of the Ministry of the Presidency. Therefore, the "Reglamento interno" of the Ministry of Presidency, based on the Resolution 5 of January 25, 2008 provides for the administrative and ethics rules applicable to the UAF. Notwithstanding, the various functions of the UAF as indicated in the applicable Decrees (e.g., Executive Decree 78 of 2003) allows it to, inter alia, send reports directly to the judicial authorities. Its activities are to be conducted confidentially and there are sanctions for violations.

293. According to Article 8 of the Resolution 5 of 2008, the UAF director is named by the Ministry of the Presidency, for no precise duration of term, and can be revoked by the Minister. The UAF Director is directly accountable to the Minister. This positioning has raised some concerns from the reporting entities about the undue influence from the Executive on the UAF.

294. The UAF budget is partly composed by an allocation from the Ministry of Presidency, and partly by the sanctions imposed by the Supervisors to the reporting entities, in accordance with Article 8 of Law 42 of 2000. These sanctions can be imposed by a decision of the Supervisory body or upon request of the UAF, and the proceeds go to a Special Account.

Year	Fixed Budget, in USD (from the Ministry of Presidency)	Special Account funded by fines imposed by the Supervisors
2009	753, 443	22,000
2010	658,939	55,000
2011	675,599	12,500
2012	768,008	65,000

295. For 2012, the total budget was B768, 008 of which B667,708 was for salary related expenses and B100,300 for other operating costs, including travel participation in training events. Art. 8 of Law 42 states that the proceeds from sanctions are to be used exclusively for staff training, equipment and information technology/tools, and other resources to support its specialization.

296. Protection of Information Held by FIU (c.26.7):

297. The FIU is housed in a building located in a protected zone. The entrance of the whole area is guarded by armed officers from the SPI, and the rest of the compound serves as training center for the SPI (Sistema de Proteccion Institucional), in charge of the security of the public authorities. This zone also houses other security agencies of Panama and that access to the UAF's premises is strictly controlled and subject to tight security controls for staff and nonstaff persons designed to protect the information it possesses. In addition, the UAF has implemented security protocols in its information technology (IT) systems to protect its databases and other information it maintains on computers and otherwise. The assessors are not aware of any breach of security or confidentiality of the information held by the FIU.

298. Article 4 of Law 42 of 2000 states that the UAF staff should keep information confidential, or be subjected to the sanctions contained in Article 8 (fine from $5000 to$1.000.000) and to the Penal Code provisions and sanctions regarding breach of confidentiality. The only penal sanctions for breach of confidentiality however relate to the violation of secret of correspondence (Article 164 of the Penal Code). The authorities consider that in case of leak of information, the penal sanctions relating to corruption (Articles 258 and 348 of Penal Code) would also apply. The public agent would also be automatically removed from office and subject to other proceedings under the Penal Code (Executive Decree 136 of 1995, Article 6).

299. The analysts are recruited after a selection process that includes, inter alia, interviews, professional and academic documentation, background checks and a polygraph test. While working with the UAF, they are regularly submitted to unannounced polygraph tests and anti-drug tests. This provides some assurance to the UAF with respect to the integrity of its staff. The analysts have diverse advanced academic backgrounds (e.g., accountants, lawyers, finance, and economists, etc.)

300. Publication of Annual Reports (c.26.8):

301. The UAF publishes annual reports (the last two were provided to the assessors for 2010 and 2011). They contain a description of the UAF activities in terms of domestic cooperation, training, awareness raising and operational statistics. The reports are disseminated to both public and private entities during a one-day event, counted by the UAF as training to reporting entities**, and held jointly** with the Supervisory agencies. During these training events, the UAF takes the opportunity to present UAF statistics and typologies, and to emphasize the importance of compliance. The 2011 annual report also contains two examples of typologies of money laundering.

302. Membership of Egmont Group (c.26.9):

303. Panama has been a member of Egmont Group since 1997.

304. Egmont Principles of Exchange of Information among FIUs (c.26.10):

305. In addition to being a member, Panama requires its counterparts to sign a Memorandum of Understanding in order to exchange operational information. To date, 40 MOUs have been signed by Panama with Argentina, Australia, Bahamas, Barbados, Belgium, Bermuda, Bolivia, Brazil, Bulgaria, Canada, Cayman Islands, Chile, Colombia, Costa Rica, Croatia, Dominican Republic, El Salvador, Ecuador, France, Germany, Georgia, Guatemala, Haiti, Honduras, Israel, Italy, Mexico, Monaco, Netherlands Antilles, Paraguay, Peru, Portugal, Russia, South Africa, Spain, St Vincent, United Kingdom, United States, Ukraine, and Venezuela. In addition, in 2011 Panama signed a regional MOU with all Grupo de Accion Financiera de Sudamerica (GAFISUD) members' FIUs (adding Uruguay to the list of previously existing country agreements). The disproportion between the total number of countries in the Egmont network (131 members at the time of the on-site visit) and the limited number (40) of countries with which Panama actually cooperates using this network is noted.

306. The UAF provides cooperation to the countries it has signed MOUs with by searching its own databases and accessing public information related to the request. According to the UAF, where information is requested that is held by a specific financial institution (e.g., bank account), that financial institution is requested to file a STR with respect to that information to enable the UAF to conduct its analysis. Such practice has not been corroborated by the financial institutions met by the team during the assessment. In addition, if such requests for STRs are numerous, it can distort the STR statistics if no suspicion is involved. This practice is not contained in the Procedures Manual of the UAF.

307. The UAF indicates that it has provided information through Egmont's secure website and has also provided information in connection with international judicial assistance cases.

308. In the absence of MOU, the UAF does not disclose information contained in its database to an Egmont member but will share only publicly available information, and invite the requesting country to sign a MOU. Such practice is noncompliant with the Egmont Group principles as referred to by criterion 26.10. When there is a MOU, the UAF stated that it can request information from other

sources (and presumably share it with the requesting state) pursuant to legal proceedings ("solicitud motivada"). Statistics in terms of exchange of information through the Egmont Network are the following:

Year	Number of requests received	Origin (3 first)	Number of requests sent	Destination (3 first)
2007	82	Guatemala 13 Colombia 11 Bulgaria 6	43	Colombia (16) U.S. (5) Others (2)
2008	224	Colombia 27 Ukraine 20 U.S. 17	90	Colombia 21 Venezuela 12 U.S. 7
2009	145	U.S. 25 Bulgaria 11 Belgium, Ukraine 9	97	Venezuela 23 Colombia 21 U.S. 16
2010	188	U.S. 25 Ukraine 17 Bulgaria, Guatemala 9	56	U.S. 12 Venezuela 6 Colombia 6
2011	188	U.S. 16 Ukraine 12 Peru, Colombia 11	37	U.S. 7 Colombia 5 Venezuela 4

309. Adequacy of Resources—FIU (R. 30):

310. The UAF appears correctly structured, with specialized support units (including for international cooperation – Legal unit) and one operational unit (analysis Unit).However, the staffing could be reinforced, notably in the legal section in charge of international cooperation (one staff for the time being).

311. Article 3 of Executive Decree 136 of 1995 states that the UAF shall be composed of professional staff with adequate skills in finance, data management and data analysis in order to perform efficiently its functions. In addition, the UAF shall be equipped with adequate data management systems.

312. The staffing appears also to be insufficient with regard to the volume of CTRs that are not received/processed electronically (two persons are in charge of entering them in the UAF's database). More staffing would also allow undertaking a full-fledged analysis of the request from foreign counterparts. So far, seven analysts are in charge of analyzing the total of 652 STRs received last year. The software used by the analyst is Analyst Notebook.

313. The financial resources provided to the UAF seem to be insufficient to allow it to fully undertake its duties. So far all the STRs and a large amount of the CTRs are transmitted to the UAF in paper. The UAF is, therefore, obliged to file them into its database manually. There is a project to request the reporting entities for the electronic filing of STRs and CTRs. This should be done as soon as possible in order to allow more time for the actual analysis of the information.

314. Statistics (R. 32):

315. The UAF maintains statistics of the STRs and CTRs received. Over the last three years, the statistics of STRs were as shown in the table below. In 2009, the number of STRs was 956. The UAF explains the decrease of the overall number of STRs (956 in 2009, 815 in 2010 and 647 in 2011) by a

closer attention given to their quality by the reporting entities. The number of STRs filed by the Government (Gobierno) relates to the STRs made by the Supervisory bodies such as the SBP. The number of STRs filed by the remittances providers (remesas) also includes the STRs filed by the bureaux de change (casas de cambios) but no breakdown is available.

Financial Institutions	2009	2010	2011	2012 (Jan.-Sep.)
Banks	853	664	481	403
Bureau de changes and money remitters	81	120	110	64
Cooperatives	6	13	11	3
Insurance and reinsurance companies	2	8	18	29
Stock exchange brokers and companies	8	7	4	1
Finance companies	0	1	6	0
Total Financial Institutions				
DNFBPs				500
Casinos and Lottery	4	2	17	47
Trustees (*fiduciaries*)	2	0	0	0
Real Estate Brokers	0	0	0	0
Total Non-Financial Institutions				47
Total	956	815	647	549

Source: UAF.

316. The UAF cannot give details on the underlying suspected activities detected through the STRs. The reporting entities send STRs as soon as they notice a discrepancy between the transactions and what they know about their client. According to the Prosecutor's office, lots of cases detected by the banks are related to families sending money abroad for family assistance (to students in Colombia for instance). Also, the bank accounts are frequently closed by the banks after a STR has been filed, which impedes an effective subsequent investigation.

317. As far as banking institutions are concerned, they reported 853 STRs in 2009, 664 in 2010, and 481 in 2011. Therefore, there has been a decreased of 43.6 percent of STRs between 2009 and 2011 in the banking sector, which coincides with the dissemination of the new STR form in November 2009. Such decrease is not visible for the other reporting entities which, due to the nature of the transactions, do not need to attach a voluminous documentation to the STR.

318. The number of STRs coming from the banking sector appears quite elevated in comparison with the feedback given to the assessors by the banking institutions themselves, during the on-site mission. The most important banks explained filing a maximum of 20–30 STRs by year in average. As the breakdown by financial institutions was not communicated to the assessors, it is difficult to reconcile the numbers to that respect.

319. The UAF does not maintain statistics on the localization of the suspicious activity, being located in or out the Free Zones that exist in Panama. In terms of its own activity, the UAF maintain the following statistics:

Year	STRs disseminated (*con merito*)	STRs archived (sin merito)	Analysis upon request from the Attorney General Office	Replies to Egmont request
2009	311	535	143	140
2010	208	563	196	188
2011	146	167	56	226

320. For the nine months ending September 2012, the number of STRs received from banks was 403, reversing a sharply declining trend since at least 2010.

321. With regard to the follow-up on the reports transmitted by the UAF to the Attorney General Office, the DIJ explained that it receives on average three or four cases a month from the UAF (through the Prosecutor's Office) for a total of about 48 cases by year

Year	Number of cases transmitted to the AGO by the UAF (source UAF)	Number of cases open for investigation after preliminary checks by the DIJ (Judicial Police in charge of money laundering) (Source PGN)
2009	311	12
2010	208	107
2011	146	31

Effectiveness of Implementation

322. So far, it has not been established that the functions of the UAF in generating financial intelligence through the collection, analysis and dissemination of information has led to the detecting, prosecuting and conviction of significant money laundering cases. Most of the cases submitted for investigations are closed at prosecutorial level and, according to the judicial authorities, they are not aware of any case originating from a UAF report that has led to a conviction for money laundering. The number of cases transmitted to the judicial authorities (Prosecutor that refers cases to the Ministero Publico) (146 in 2011) represents 22 percent of the total number of STRs received (652 in 2011). This ratio tends to suggests that the analysis performed at the UAF level could be improved significantly. Only 31 cases were opened in 2011 following UAF reports. While the Panama's 2006 assessment report showed that the UAF was mainly used as an intermediary conduit for STR information to the Prosecutor, there have been improvements from that time but the ratio of 22 percent still appears to be high. It is acknowledged while successful investigations, prosecutions, and convictions are not the responsibilities of t the UAF and lack of ML convictions could be due to these processes. However, improvements in UAF's analysis could add significant value to the information/intelligence needed for the successful prosecution of ML/TF offenses and generation of such intelligence is the main function of the UAF.

323. The current practice of not disseminating the documentation legally gathered may impede timely, more efficient and successful investigations by the Prosecutor's Office, even when such information cannot be used for evidentiary purposes for which other processes are available. In the same vein, the limited actions taken by the UAF in the context of the Egmont requests are an impediment to successful international cooperation. Panama is very often requested by its counterparts to provide information, partly due to its standing as an international financial center. In response, Panama has not always provided sufficient assistance. On the other hand, the limited use of international cooperation arrangements by Panama (37 outgoing requests out of 652 STRs received so far) tend to limit the added value by the UAF to its analysis and hence the quality of disseminations.

324. The UAF's ability to undertake a comprehensive analysis of the suspicious financial information is grossly undermined by legal restrictions. The UAF has no access to information maintained by noncovered entities, and in particular, by the lawyers acting as resident agents for companies and other legal entities for which they act, which is a major deficiency in the context of Panama.

325. In addition, the lack of identification data in CTR reports submitted by some sectors (e.g., free zones) limits the value of the CTR reporting system for purposes of the UAF's intelligence generating functions. The Free Zones and the Colon Free Zone, in particular, are of systemic importance to Panama's economy and are considered to be of high risk by virtue of its legal inclusion in the AML/CFT preventive regime.

326. Insufficient guidance/feedback given by the UAF to the reporting entities also impedes enhancement of the quality of the STRs. According to the UAF, many STRs are not well supported and involve insignificant amounts of money. One main risk of ML in Panama lies in the use of legal structures, due to their opacity. This risk is not reflected in the STRs filed to the UAF, and the UAF does not seem to pursue this matter with the reporting entities and their designated supervisors. Enhanced enforcement of compliance by the reporting entities would increase the quantity and quality of STRs, disseminations, and would provide additional funding for the UAF if fines were applied. Increased feedback from the UAF to the supervisors not only on the number of STRs but also on quality of such institution-specific reports (e.g., through a quality rating system) would assist in this process.

327. Finally, the attachment of the UAF to the highest level of the Executive (Ministry of Presidency) may contribute to a perception of lack of independence that could, inter alia, adversely affect effective STR compliance by the reporting entities.

3.5.2. Recommendations and Comments

- The legal framework including for setting up the FIU should be updated, in order to include (i) proper TF requirements for reporting entities and consequential powers for the UAF and (ii) legal power of dissemination of information, with no contradiction with the legal obligations of confidentiality. The UAF should have access to the information maintained by all DNFBPs according to the standard, including the lawyers, registered agents, accountants, and real estate agents. The amendment to the law on Resident Agents providing access to the UAF would, therefore, be a priority.

- The UAF should amend the guidelines to fill the STRs in order to request only the relevant documentation supporting suspicion of money laundering or financing of terrorism, and not the whole documentation attached to the disclosed bank accounts.

- The UAF should consider transmitting to the AGO along with the intelligence report all the relevant documentation gathered in the course of the analysis. It would save time to the investigative authorities, enhance efficiency and contribute to more successful investigations and prosecutions.

- The UAF should ensure adequate staffing to perform its full range of functions that include the maintenance of statistics, international cooperation and enhanced feedback to the reporting entities.

- The UAF should provide a wider range of assistance to foreign counterparts and not limiting its assistance to the consultation of its own database, as requested by the Manual de Procedimientos.

- The UAF should make more systematic use of international cooperation in order to enhance the quality of its analysis.

- The UAF should maintain more accurate and relevant statistics in order to better support the activities of competent authorities, including the supervisors e.g., provide a breakdown of statistics related to bureau de change and money remitters for instance.

- The UAF should be able to rely almost exclusively on budgetary resources other than fines which are unpredictable.

- The appointment (and removal) of the Director of the UAF should be statutorily independent and not subject to perceived political considerations for nomination and revocation. And administrative reporting obligations should be more independent of the Ministry of the Presidency.

3.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R. 26	**PC**	• Need to enhance the legal framework (e.g., Law 42) to ensure that, inter alia, all reporting entities are required to report suspicion of TF, UAF has access to all required information including information on legal entities and arrangements held by lawyers, registered agents and others subject to the FATF Recommendations. • Effectiveness of the UAF adversely affected by not receiving STRs from key sectors subject to the FATF recommendations including: lawyers, notaries, accountants, dealers in precious metals and stones, company services providers and financial institutions not subject to reporting requirements (see R. 5 and R. 23). Need to enhance STR reporting guidelines to require all information in support of suspicious activities. • The UAF does not give sufficient feedback to reporting entities, including institution specific information on the quality of STRs. • Need to enhance the value added to the analysis of STRs to improve the quality of disseminations, even if the number of disseminations declines from its current level. • UAF disseminations to law enforcement do not include all relevant supporting data to enable more efficient and timely investigations and prosecutions. • Insufficient staff to adequately carry out the UAF's core functions, and need to rely less on fines for budgetary resources. • Need to enhance the autonomy of the UAF that now requires the Director to report directly to the Ministry of the Presidency for administration purposes.

3.6. Law Enforcement, Prosecution and Other Competent Authorities—the Framework for the Investigation and Prosecution of Offenses, and for Confiscation and Freezing (R. 27 and 28)

3.6.1. Description and Analysis

328. Legal Framework:

329. The following authorities are playing a role in the investigation and prosecution of money laundering offenses in Panama: the Supreme Court, the Attorney General's Office (AGO (Procuradoria General de la Nacion (PGN), several Prosecutors' Offices (Fiscalias - Ministerio Publico) under the authority of the AGO, the Judicial Police (Direccion de Investigaciones Judiciales), the Customs Administration, the Migration Administration, and the Judicial Authority (Poder Judicial). No authority has been specially designated to investigate terrorism financing offense.

330. The Judicial Branch is comprised of the Supreme Court, courts of Appeal, and trial courts established by law. Starting September 2011, Panama is transitioning from the inquisitorial system to the accusatorial system, and as a consequence the judicial system reads unclear for the time being (one penal code, but two procedural codes are currently used in the country). The judges stressed to the assessors that their main challenge lies in capacity building and expertise in financial matters, both at the judicial level and at the prosecutorial level. Any judge in Panama can be attributed a money laundering case, by territorial competence.

331. The function of Public Prosecution is exercised by the Attorney General, the Attorney for Administration, and the prosecutors, representatives, and other public officials established by law. Following are the duties of the Public Ministry (Ministerio Publico) (Article 220 of the Constitution of the Republic of Panama):

- Defend the interests of the State or the Municipality.
- Promote compliance with the law, judicial decisions, and administrative provisions.
- Oversee the official conduct of public officials and ensure that they fully carry out their duties.
- Prosecute crimes and violations of Constitutional or legal provisions.
- Serve as legal advisors to administrative officials.
- Fulfill the other functions set forth in the law.

332. The Attorney General of the Nation and the Attorney for Administration are appointed in keeping with the same eligibility and ineligibility requirements established for Supreme Court Justices. The prosecutors and representatives are appointed by their superiors. Alternates are appointed by the respective prosecutor or representative (Article 219 of the Constitution of the Republic of Panama).

333. In 2008 the Prosecutor's Office in charge of Organized Crime was revamped by a Resolution 29 taken by the PGN on November 12, 2008. Since that date, this Office has been in charge of investigating money laundering offense when the offense is not already under investigation along with the predicate offense by the other Specialized Sections Fiscalias (point 2 b. of the abovementioned resolution of the PGN). This Office was established at the same time a Financial Investigative Unit within the section (Fiscalia) of Organized Crime which is composed of law enforcement agents with special qualification. The section has a national competence.

334. Articles 1988 and 2031 of the Penal Procedural Code of Panama enable the Prosecutor's Offices to direct police activity in order to search for the truth, obtain witness declarations, complete the investigations, obtain evidence, and order the freezing of assets connected with the crimes. Law 79 of 2011 (Art. 75) empowers the Specialized Organized Crime Unit (Fiscalia Execializada contra la Delincuencia Organizada) to commence investigations and other procedures for various crimes including ML (when the procedures have not been undertaken by other specialized units (fiscalias)

that deal with other predicate offenses) and TF. This Specialized Unit also participates in processing international judicial assistance under the UN Convention against Transnational Organized Crime and its Protocols.

335. The Immigration Directorate (Servicio Nacional de Migracion) is an agency within the Ministry of Public Security. Created by a Decree-Law 3 of February 22, 2008, it is in charge of regulating and implementing the migration policy of the State, with regard to Panama's citizens and foreigners. It delivers visas and can also revoke them, per Article 50 of the Decree-Law 3 of 2008.

336. The Migration Directorate relies on the Advanced Passenger Information System (APIS) to check on the passengers who travel to Panama. The APIS is an electronic data interchange system established by U.S. Customs and Border Protection (CBP). APIS governs the provision of a limited number of data elements (identification details from the passport and basic flight information) from commercial airline and vessel operators to the computer system of the destination state.

337. The Migration Directorate maintains its own database of entries/departures of the country that is accessible to investigative authorities upon request. UAF also accesses it in order to perform its analysis. This information may be valuable to the UAF in case of analysis of financial information related to foreigners/nationals making frequent travels to/from Panama as it may reveal a link between their travels and financial transactions.

338. The Customs Administration is also an agency involved in the fight against money laundering. It has presence throughout Panamanian territory, primarily at points of entry into the Republic of Panama (airports, ports, and borders). The border with Colombia is mostly a jungle and hardly accessible, and, therefore, porous. Many activities of drugs, cash, weapons and human trafficking are known to take place in that region.

339. The Decree Law 1 of February 13, 2008 creates the National Authority of Customs and is in essence the Customs Code. Article 34 of this Decree defines the Special authority to investigate and prosecute Customs code offenses. Smuggling and other customs offenses are investigated and judged in first instance by the Customs Administration (Article 1249 of the Fiscal Code). Smuggling is a predicate offense to ML, and, therefore, the information obtained by the Customs administration is useful to the UAF is performing its analysis. In addition, Customs authorities are in charge of enforcing the provisions related to cross-border cash transactions and share the statistics with the UAF.

340. The legal framework with respect to cross border cash transaction was revamped in July 2012 and now contains penal sanctions (see SR. IX for more information). The legal basis for customs powers of seizure and investigations are contained in Law 30 of November 8, 1984 and in Decree-Law 1 of February 13, 2008, Articles 33 and 34.

341. Designation of Authorities ML/TF Investigations (c.27.1):

342. The Direccion de Investigaciones Judiciales (DIJ) within National Police is specifically responsible for investigating money laundering offenses. Financing of terrorism offense is investigated by the Prosecutors and the Judicial Police since this offense was criminalized under the Penal Code. No special unit within the Judicial Police has been created to deal specifically with this type of offense, which would fall under the competence of the DIJ. The assessors were informed that Panama has never dealt with a financing of terrorism case.

343. Within the DIJ, a special section in charge of investigating money laundering was created by Resolution DG-202-05 of June 16, 2005 (Seccion de Investigacion Financiera – SIF), with national competence. The section is composed of 16 agents, including the Director, an Executive Director, an analyst (in charge of preparing flow charts to illustrate cases) and a lawyer. Except the Director of the SIF who is a civilian, they are all police agents, with an accounting background and/or qualified experience.

344. By Article 14 of Law 69 of December 27, 2007, the DIJ is also in charge of maintaining the database of Criminal Records (Gabinete de Archivo e Identificacion personal).

345. For investigating money laundering, the DIJ counts with a network of public entities where it can access information from administration of the Colon Free Zone, Ministry of Economy and Finance, Social Security Agency, Public Registry, Transportation Administration, Panama Emprende (companies' declaration of business by the MICI), Migration Authority, Customs Administration, SBP, SVN and IPACOOP (Credit Association of Panama). The DIJ also maintains close contacts with the US DEA and with Western Union representatives, in order to access relevant information when needed. At international level, the DIJ uses the Interpol network, through the National Bureau. The DIJ is the Interpol liaison in Panama.

346. When the DIJ is given a UAF dissemination report by the Prosecutor in charge of Organized Crime, it conducts the same type of data gathering and analysis that the UAF has done because the file sent by the UAF does not contain any supporting documents associated with the report. (See R. 26 above). Consequently, the DIJ has to request from the financial and other reporting institutions the same documentation that has been obtained by the UAF.

347. According to the investigators and the Prosecutors, the DIJ has a maximum of 90 days to perform the preliminary investigations (Law 69 of December 2007). Once a suspect has been notified of the charges by the Prosecutor, the investigation phase shall last maximum 6 months (Article 291 of the Penal Procedural Code), but can be extended to one to two years in case of organized crime, upon authorization by a judge (Article 502 and 504 of the Penal Procedural Code). The revised Procedural Code (to be implemented in 2014 in all the territory) will expand the preliminary investigation phase to four months, and an unlimited time for money laundering cases but upon authorization by a judge (Article 2033 of the Codigo de Procedimiento Penal).

348. These proceedings are not appropriate for large and complex ML and TF cases, especially those with international connections. Indeed, the DIJ reported to the assessors that the financial institutions often delay the process by not replying on a timely fashion to their requests, impeding the DIJ to perform useful investigation within the initial period of 60 days. However, no charges have yet been brought against the financial institutions or their representatives in such cases.

349. By Law 2 of February 1, 2011, the competent authorities, strictly defined as the Prosecutors, the Judicial Authority, and the Tax administration, can request Resident Agents (lawyers) for legal entities, following due process, for information they hold on their clients or to provide information maintained in any form or document that has been obtained under the provision of Law 2 of 2011. Art. 13 of this Law states that the request for information or documents shall require that (i) the notification shall state the reasons why the competent authorities require such information or documents, (ii) the time within which the authorities require such information or documents which shall not be earlier than five days, and (iii) the office of the competent authority where such information or documentation should be delivered.

350. The five days delay to provide information seems inappropriate in case of a sensitive and urgent ML/TF case. It allows for loss of evidence, suspect's alert, and does not seem justified by any practical reasons.

351. Art. 14 of Law 2 further states that "with respect to the attorney-client privilege, the lawyer shall not be required to submit any information or documents required by this Law covered by the attorney-client privilege, unless such information is strictly limited to that which is required by this Law with respect to its know your client obligations."

352. The right to require information (not documents) by the competent authority shall not be considered as an authorization to search (raid) the offices of the resident agent or to confiscate files or file maintenance and records registers, such as computers and databases. These actions on behalf of the competent authority shall be undertaken in accordance with the applicable rules (procedures) for such purposes established en the ordinary Panamanian legislation."

353. Under Law 2 above, the requirements of Resident Agents (including customer identification) will enter into force six months from the law coming into effect with respect to incorporation of new legal entities. For clients and relationships established before the Law came into effect, any registered agent that does not have in custody the required data, documents or information has five years to comply with the requirements, that is until around 2016. During this lapse of time, the investigative authorities will still face challenges when trying to identify the beneficial owners of companies represented by registered agents/lawyers.

354. The investigative authorities, Public Prosecutors and DIJ alike, did not mention to the assessors how they were dealing with this new law and how it was implemented in practice by the resident agents.

355. Ability to Postpone/Waive Arrest of Suspects or Seizure of Property (c.27.2):

356. Since the Law 63 of August 28, 2008, the Prosecutor has the ability to conduct undercover operations, controlled deliveries, analysis and infiltration of a criminal organization and surveillance and tracing of persons during the course of an investigation, with the objective to collect evidence on the offense and on the perpetrators and participants (Article 315 of Codigo Proceso Penal).

357. This provision applies to any type of offense under investigation, including money laundering and financing of terrorism. However, Article 317 adds that such investigative measures are subjected to the control of a judge (Juez de Garantias), within a maximum timeframe of 10 days. The parties can object in front of the judge to the measures taken by the Prosecutors, their substitutes (of the Prosecutors), or the police agents, during an oral hearing.

358. The Article 317 does not provide for the postponement of seizure of property, and the judicial control during the 10-day window coupled with the ability of affected parties to object, does not seem appropriate for complex and sensitive investigations like money laundering or financing of terrorism.

359. Undercover operations are performed by unit in the DIJ other than the money laundering unit. Neither the prosecutors nor the DIJ provided any statistics regarding the use of these faculties in money laundering cases.

360. The legislation does not provide with the possibility to postpone or waive the arrest of a suspected person, although the police and/or the prosecutor leading the investigation can decide the appropriate timing for any arrest.

361. Additional Element—Ability to Use Special Investigative Techniques (c.27.3):

362. Per Administrative Resolution 093-R-49 of 2008, implementing the Law 69 of December 27, 2007, the DIJ is habilitated to undertake surveillance, wiretaps, and mailing interceptions, upon a judicial authorization. The authorization should be requested by the Commissioner of the National Police and the Prosecutor's Office (Article 64 of the Resolution abovementioned).

363. The legal framework for wiretaps is detailed at Article 311 of the Penal Procedural Code. They cannot exceed 20 days, except judicial authorization (no mention for what maximum period it could be prorogated).

364. Additional Element—Use of Special Investigative Techniques for ML/TF Techniques (c.27.4):

365. The assessors were not given statistical elements to ascertain the use of special investigative techniques in money laundering cases. Prosecutors noted that it is less relevant to use them on the cases that come from the UAF because the cases are "dead," meaning that the bank accounts are usually closed and the surveillance of the funds is, therefore, complicated (need to re-trace the assets first).

366. As far as predicate offenses are concerned, it seems that such investigative techniques are more commonly used in drug trafficking cases. However, no statistics were given.

367. Additional Element—Specialized Investigation Groups and Conducting Multi-National Cooperative Investigations (c.27.5):

368. Both the Prosecutors and the Police (DIJ) mentioned the good relationships with a couple of foreign countries (US, Canada, and Colombia), allowing for multi-national cooperative investigations in specific cases.

369. Neither the Prosecutors nor the DIJ mentioned any permanent or temporary groups specialized in investigating the proceeds of crime apart from the anti-money laundering section of the DIJ.

370. Additional Elements—Review of ML and TF Trends by Law Enforcement Authorities (c.27.6):

371. The law enforcement authorities do not review ML and TF methods, trends and techniques on a regular and interagency basis. The interagency cooperation seems to happen only at the initiative of the US Drug Enforcement Agency, which provides for technical assistance to different competent authorities in Panama.

372. Each agency like UAF and DIJ issues an annual report which contains information on their activities. However, the information on methods, trends and techniques contained is very limited in

the UAF report for 2011, and the typology shared by the police with the assessors relates to the Black Market Peso Exchange scheme, which is relatively dated.

373. In 2005, a Tripartite Coordination Commission has been created between the Judicial Authority, the Prosecutor' Office, and the UAF. Its objectives are to coordinate actions for the adoption of measures to promote the analysis, investigation and judgment of the offenses of money laundering and financing of terrorism. The TCC was reactivated in 2009 according to UAF website. There is no mention of any meetings of the TCC in the 2011 UAF report, and none of the interlocutors mentioned this Commission during the on-site mission.

374. Ability to Compel Production of and Searches for Documents and Information (c.28.1):

375. The ability to compel production of and searches for documents and information has not been specifically envisioned in the Penal Procedural Code (PPC) for ML/TF and the underlying offenses. Therefore, the general provisions of the PPC apply.

376. Article 293 and 294 of the PPC provide for the search of houses and offices, upon authorization by a judge, after request from the Prosecutor. Article 325 provides for the search of persons and vehicles, when there are sufficient reasons to presume that the proceeds of a crime could be hidden in the vehicle or in a person.

377. Article 307 provides for the seizure of documentation as evidence, with exception for the persons holding such documents under legal privilege. In such case, if the Prosecutor wants to seize the documents, he should request a judge's authorization

378. By Law 2 of February 1, 2011, the competent authorities, strictly defined as the Prosecutors, the Judicial Authority, and the Tax administration, can request Resident Agents (lawyers) for legal entities, following due process, for information they hold on their clients or to provide information maintained in any form or document that has been obtained under the provision of Law 2 of 2011. Art. 13 of this Law states that the request for information or documents shall require that (i) the notification shall state the reasons why the competent authorities require such information or documents, (ii) the time within which the authorities require such information or documents which shall not be earlier than five days, and (iii) the office of the competent authority where such information or documentation should be delivered.

379. Art. 14 of Law 2 further states that "with respect to the attorney-client privilege, the lawyer shall not be required to submit any information or documents required by this Law covered by the attorney-client privilege, unless such information is strictly limited to that which is required by this Law with respect to its know your client obligations.

380. The right to require information (not documents) by the competent authority shall not be considered as an authorization to search (raid) the offices of the resident agent or to confiscate files or file maintenance and records registers, such as computers and databases. These actions on behalf of the competent authority shall be undertaken in accordance with the applicable rules (procedures) for such purposes established en the ordinary Panamanian legislation."

381. Under Law 2 above, the requirements of Resident Agents (including customer identification) will enter into force six months from the law coming into effect with respect to incorporation of new legal entities. For clients and relationships established before the Law came into effect, any Registered Agent that does not have in custody the required data, documents or information has five

years to comply with the requirements, that is until around 2016. During this lap of time, the investigative authorities will still face challenges when trying to identify the beneficial owners of companies represented by Registered Agents/Lawyers.

382. Power to Take Witnesses' Statement (c.28.2):

383. Article 320 of the PPC provides with the power to take witnesses' statements, including for use in investigations and prosecutions of ML/TF and other underlying offenses or in related actions. Article 332 provides authorities with a range of protection measures for witnesses.

384. Statistics (R. 32):

385. The DIJ was only able to provide statistics for its activity between 2006 and 2009. These statistics were previously communicated to the Organization of the American States, and are only related to money laundering of drug trafficking proceeds.

Year	Number of persons indicted for ML	Number of persons sentenced for ML	Ratio indicted/sentenced
2006	732	147	20%
2007	73	49	67%
2008	71	39	54.9%
2009	80	61	76.2%

386. Additionally, the DIJ mentioned that it receives an average of three to four cases by month that the UAF originated and transmitted to the PGN for further investigations. This small number (between 36 and 48 cases by year) hardly matches with the statistics given by the UAF of 146 cases transmitted annually. Actually, not all the UAF reports sent to the PGN are making their way to the DIJ, which is the AML specialized unit. Other law enforcement units may receive them, in particular anti-drug Units.

387. The statistics given by the Prosecutor's Office do not detail between the assets that were frozen, seized or confiscated. All refer to laundering of drug trafficking proceeds.

388. Between 2009 and 2012, around $36 million were seized in cash in drug trafficking cases and later confiscated. During the same period, 45 real estate properties (farms, apartments, and lots, etc.,) and 184 vehicles were also seized.

389. There is no statistics related to persons or entities and amounts of property frozen pursuant to or under UN Resolutions relating to terrorist financing.

390. There is no statistics for STRs resulting in investigation, prosecution or convictions for ML/TF or the underlying predicate offense. There is no statistics for criminal sanctions applied to persons convicted of ML or TF offenses.

391. The following statistics were compiled by the assessors and are based on the numbers given by the Judiciary authority (Organo Judicial). All the cases are related to money laundering of drug trafficking.

Year	Total of cases	Dismissals	Convictions	Others (statute of limitation, lack of court jurisdiction)	Pending	Confiscation in USD
2010	21	7	7	7	-	430,646
2011	43	15	6	2	20	1,166,383
TOTAL	64	22	13	9	20	1,597,029

392. The following statistics were given by the Prosecutor's office (PGN) and are related to court decisions on money laundering cases. They are slightly different from the statistics given by the Judiciary authority. Post mission the authorities provided aggregated statistics for the following years: 2006–2009 (32 ML-specific sentences were issued of which 13 were guilty verdicts, 14 not guilty, and five mixed verdicts); 2010–2011 (18 ML-specific sentences of which nine were guilty verdicts and nine not guilty). Statistics for other ML related crimes were also provided.

Year	Convictions	Dismissals	Mixed decisions	TOTAL
2009	7	2	00	**09**
2010	6	3	00	**09**
2011	8	3	01	**12**
2012	3	03	01	**07**
TOTAL	**24**	**11**	**02**	**37**

393. There are deficiencies in the maintenance of statistics at the judicial level. Indeed, Panama does not have a computerized system that would allow for a tracking of the cases along the penal chain. There also seems to be a merge of data related to drug cases where money laundering offense is prosecuted in addition to the drug offense with data on cases where money laundering is prosecuted autonomously. It is not clear if this second aspect already happened, and whether there are money laundering cases in Panama that are not drug related. Many money laundering cases also appear to be linked to cash seizures at the airport.

394. Adequacy of resources—LEA (R. 30): The DIJ is composed of 16 staff, including the management and support staff. The profile of the agents seems adequate. However, the number of agents seems to be insufficient for the DIJ to perform its functions adequately and in a timely fashion. With a total of 146 cases sent to the Prosecutor last year by the UAF, in addition to the financial investigations on drug cases that are the "bread and butter" of the Unit, the current staffing does not allow for a throughout investigation of the cases, much less take on complex and longer term ML cases involving non-drug predicate offenses

395. In terms of trainings, there seems to be limited in-house opportunities for the DIJ to be adequately trained and updated on new criminal trends in Panama and overseas. Capacity building is mostly made by external agencies or in the context of bilateral foreign assistance: participation to international events, Interpol meetings, and US DEA technical assistance.

396. According to UAF data, there was no training delivered in 2011 and 2012 to the Police in charge of money laundering cases (DIJ). The attendance of the DIJ to the public release of the UAF annual report cannot be counted as training to that respect.

397. The situation seems to be similar at the judicial level. The general lack of domestic coordination between agencies in Panama does not provide for adequate and relevant training opportunities. Once a year the UAF presents its annual report. The event is counted as training by the

judicial authorities and lasts half a day. On September 27, 2012, the 2011 annual report was presented in the morning to reporting entities and supervisors and in the afternoon to public agencies.

398. The judges (Organo Judicial) provided for information regarding the training they received over the last five years.

Year	Topic	Organizer/Speakers	Audience	Number of persons trained
2007	Seminar on organized crime, Mar. 29–30	Interpol Panama Organo Judicial Public Prosecution Min Rel Ext	Public Prosecutors Judges Police	6 27 4
2008	Seminar on the offense of Money laundering, Feb. 14–15	Supreme Court of Peru	Judges UAF	34 2
2011	Seminar on Money laundering, Nov. 24	Super de Bancos Fiscalia Instituto Bancario international UAF	Judges PGN	34 12
	The role of banks in the prevention of ML, Oct. 10–27	BLADEX Instituto Bancario International	Judges and assistants	35
2012	Prevention of ML/TF in financial institutions – the risk based approach, Jun. 4–21	Instituto Bancario international Super de Bancos Associacion Bancaria	Judges Public Prosecutors	33 35

399. It should be noted that most of the training over the last two years was organized and delivered by the industry. It is also noted that the number of training programs is limited. The agendas provided to the mission indicated a focus on awareness raising rather than more hard tangible training on techniques and best practices for investigating and prosecuting money laundering and terrorism financing cases.

400. None of the trainings focused on financing of terrorism.

401. The judges met by the assessors did not mention any training or educational programs concerning money laundering and financing of terrorism offenses or concerning seizure, freezing and confiscation of property that is the proceeds of crime or is to be used to finance terrorism.

402. There is only one Prosecutor in charge of organized crime who is also in charge of receiving all the UAF reports. This appears to be insufficient, even if after preliminary investigations by the DIJ the reports can be dispatched to other Prosecutors

403. By Executive Decree 246 of December 15, 2004, a Code of Ethics was established for all public servants in Panama. A breach of the principles contained in the Code shall be sanctioned by verbal reprimand, written reprimand, and removal from office, etc., (Article 44 of the Executive Decree). Beside these administrative sanctions, the public servants remain liable for penal sanctions in case of commission of a penal offense. All public servants, including the Judiciary, are requested to disclose their assets when they enter and when they leave their functions (Article 304 of the Constitution of Panama).

Effectiveness of Implementation

404. The law enforcement authorities in Panama use the money laundering offense primarily with respect to drug trafficking offenses. In this regard, during 2011 the AGO requested the UAF for assistance in conducting financial analysis and provide financial information (its core area of expertise) 56 times. Article 2(f) of ED 163 of 2000 provides for this possibility for the AGO to request UAF assistance, and should be related to money laundering offenses only. It remains unclear whether the AGO is using the UAF in drug cases in order to assess if there are grounds to charge the defendant for money laundering as well (or to estimate the assets of the defendants), or whether money laundering charges are notified prior to the request to the UAF. According to the ED 163 of 2000, the requests should happen only on the second hypothesis.

405. The police is constrained by the very tight timeline for its preliminary investigations that does not seem adequate for financial crime investigations. In addition, the access to financial information is challenging, and the new law on resident agent, a significant area of financial and corporate activity, constrains timely access to information and documentation for investigation and prosecution purposes (five days delay minimum between the request and the time the information should be provided). In addition, the five year grace period provided to resident agents to comply with customer identification requirements for existing clients creates a significant information source lacuna. As the authorities did not mention any real cases of implementation of the law, it is difficult to analyze the effectiveness of its implementation by law enforcement authorities.

406. Capacity building is also an issue at all stage of the judicial chain.

407. The poor maintenance and the lack of concordance of statistics at all stages of law enforcement authorities prevent the assessment of the effectiveness of the enforcement of money laundering in Panama. It remains unclear to what extent the money laundering offense is used as an additional tool to deter crime (i.e., all categories of predicate offenses), or solely as a substitute to the drug trafficking offense in the circumstances of cash seizures.

408. Statistics on number of investigations of ML/TF, on those that led to prosecutions, on those that led to convictions, statistics on application of special investigation techniques, statistics on production orders, searches and seizures, for example, are missing.

3.6.2. Recommendations and Comments

- Panama should ensure that the provisions of the Procedural Penal Code allow for throughout investigations in money laundering and financing of terrorism cases, in particular by allowing appropriate time for performing complex investigations.

- Panama should make use of the special investigative techniques in money laundering cases on a regular basis and keep statistics of such use.

- Panama should have immediate access to the information detained by Resident Agents upon request, without the uncompressible delay of five days.

- Panama should maintain updated statistics on the money seized, frozen, confiscated, in money laundering cases, with a breakdown by type of predicate offenses.

- The law enforcement authorities in Panama, including the AGO, and the Judiciary, should be more adequately trained, on a regular basis, and should develop in-house capacities on financial investigations.

- The law enforcement authorities should access relevant information to investigations in a timely fashion. When information is not provided in a timely fashion by the requested parties (financial institutions for instance), sanctions should be pronounced.

3.6.3. Compliance with Recommendations 27 and 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R. 27	**PC**	• Absence of designation of the competent authority to investigate TF offense. • Limited time (10 days) for undercover operations and controlled deliveries before informing the suspect through public hearing is a limitation to the power to postponement of arrest and seizures. • Limited information on the effectiveness of the implementation of the legal framework for ML purpose • No implementation for TF purpose.
R. 28	**PC**	• Limited access to relevant information, in practice (delays in responding to the requests) and by law (resident agents). • Absence of statistics on the use of investigative techniques. • Absence of statistics on money frozen, seized and confiscated in ML/TF cases. • Limited training and capacity building amongst the different actors in law enforcement authorities.

3.7. Cross-Border Declaration or Disclosure (SR. IX)

3.7.1. Description and Analysis

409. Legal Framework:

410. By a Cabinet Decree of March 9, 1994, Panama introduced the obligation for travelers to declare cross border cash transportation, through filing a written declaration, for amounts above $10,000. The requirement was only for passengers entering Panama until July 2012.

411. Modified by Law 29 of June 2, 2008, the current Article 18(5) of Law 30 of 1984 (Customs law) reads as follows: Constitutes a customs fraud: (5) The absence of declaration, or false declaration by travelers, when they enter (*not when leaving*) the customs territory, of cash (dinero), negotiable instruments or other convertibles assets, above B10,000 or equivalent in foreign currency at the day of the declaration. It will not be considered a false declaration when the difference between the assets disclosed and the assets effectively carried is not superior to 3 percent of the total of assets carried.

412. The scope of negotiable instruments is not clearly determined and seems to encompass only letters of change and checks, by Law 52 of 1917.

413. The sanctions are provided for Article 24 of Law 30 of 1984, modified by Law 28 of June 2, 2001 and by Law 49 de 2009, Article 35, regarding the perpetrators of customs fraud and contraband. The Article 24 of Law 30 of 1984 now reads as follows:

- 1) imprisonment of one (1) to three (3) years in case of committing the crime of smuggling and customs fraud, and a fine of two (2) to five (5) times the value of the subject merchandise
- 2) imprisonment of four (4) to six (6) years, in case of repeated offense, and a fine of five (5) to ten (10) times the value of the goods subject of wrongful if exceed the value of fifty thousand dollars (B50, 000.00).

414. In 2010, by Law 67 of 2010, this legal framework was completed by a penal offense which reads as follows: "Those, when entering or leaving the country, who omits to declare or wrongly declares money, assets or negotiable instruments above the threshold of B10,000 will be sentenced to two to four years in jail."

415. The Penal Code was very recently modified by Law 40 of July 4, 2012, and now reads as follows, per Article 375 A of the Penal Code:

- "Those, when entering or leaving the country, who omit to disclose or falsely disclose money (dinero), assets (valores) or negotiable instruments (documentos negociables) that they carry, above the amount of B10,000 will be sentenced by two to four years in prison and the seizure (decomiso) of the money, assets or negotiable instruments that were not disclosed. In case of a foreign citizen, in addition to the seizure, his/her immediate deportation and the permanent prohibition to enter to the country will be ordered, once the sentence above will have been served."

416. By amending the Penal Code, and with no reference to the existing provisions of the Customs law, this new provision does not repeal the existing provisions and just duplicates (and expands) them. However, the coexistence of dual requirements, and of two sets of sanctions, could create operational issues.

417. Mechanisms to Monitor Cross-border Physical Transportation of Currency (c.IX.1):

418. The declaration system described above in place to monitor cross-border physical transportation of currency is very new. Before July 2012, only inflows of currency transportation were monitored. Law 15 of 2007, Article 32, established as a contraband offense the concealment of money, negotiable instruments or other values convertible into cash or a combination of these, within goods or cargo to any customs destination. This law also adds to Article 16 of Law 30 de 1984 the definition of customs fraud (and not Article 18 (5) of Law 30 of 1984, as modified by Law 29 of 2008 establishing the cross border declaration system). It does not cover the mailing of currency or bearer negotiable instruments by a legal or natural person. In addition, by not being linked to the Article 18(5), there is no threshold applicable and thus the provision provides for a complete prohibition of transporting cash or negotiable instruments in cargo. The mission was not told how this provision is enforced, if it is.

419. The declaration requirement is mostly enforced at Tocumen International airport. The Customs authorities met during the on-site mission did not mention the recent regulation regarding cross-border physical transportation of currency.

420. It remains unclear how the penal provisions interplay with the Customs Code and the ability of Customs officers to control outflows of currency by passengers leaving the country, as the sanction is only a penal sanction, not a Customs one, for outbound transportation. The sanctions are, therefore, both administrative and penal, including the deportation at the penal level. It remains unclear how the different authorities in charge of enforcing these provisions communicate. The Customs administration informed the mission about enforcing the offense through the Customs proceedings (which include a special prosecution), but did not mention the role of the regular Prosecutor, if any, in bringing charges for the violation of the criminal offense and, upon conviction, the application of sanctions under the Penal Code.

421. Request Information on Origin and Use of Currency (c.IX.2):

422. Under the Customs regulation (Ley 30 de 1984, modified), and upon the discovery of a false declaration or in the case of failure to declare, the Customs authorities undertake “in-depth” controls, in which the Customs official is entitled to ask for additional information, including with regard to the origin of the cash and its intended use.

423. Since the 2010 introduction in the Penal code of sanctions related to outbound transportation of cash, it seems that the practice has not changed and that the requirement for outbound transportation is not being enforced.

424. Restraint of Currency (c.IX.3):

425. The Customs and the Penal provisions do not specifically provide for the possibility for the competent authority to stop or restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain evidence of money laundering or terrorist financing where there is a suspicion of ML/TF. Only in case of a false declaration the competent authorities will be able to restrain the discovered assets, according to the Customs Law of 1984.

426. Retention of Information of Currency and Identification Data by Authorities when appropriate (including in Supra-National Approach) (c.IX.4). The current form used by the Customs authority for passengers entering Panama contains details on the declaration of the name of the carrier and of the monetary instruments above the threshold. It does not contain data on the type of currency. The written declarations are filed by the Customs into a computerized database on a monthly basis and transmitted to the UAF. The processed data is held for a period of five years. Physical archives are held both at Tocumen airport (after 2011) and at the Customs Headquarters. There is no such declaration form for outbound transportation of cash.

427. Access to Information by FIU (including in Supra-National Approach) (c.IX.5):

428. The UAF has access to the information collected by Customs, and also to the cross-border transportation incidents (lack/false declaration). The communication is made electronically by the Customs on a monthly basis. The UAF then integrates the data to its own database. However, this information is readily available only with respect to the International Airport of Tocumen (Panama City). The data is transmitted directly by the Customs authorities at the airport to the UAF. As far as the other airports and other points of entry and exit are concerned, the Customs mentioned that the UAF has to liaise directly with each responsible authority in order to access the relevant data. However, according to the Customs authority, the legal framework regarding cross-border transportation of currency is not enforced at other border points of entry and exit other than at the main airport.

429. Domestic Cooperation between Customs, Immigration and Related Authorities (c.IX.6):

430. The mission was not informed of specific coordination arrangements among customs, immigration and related law enforcement authorities on issues related to the implementation of the cross-border transportation of currency. There is coordination at Tocumen airport between Customs and Migration, but not on this topic in particular.

431. International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (including in Supra-National Approach) (c.IX.7):

432. The arrangements (International Customs Cooperation and Mutual Administrative Assistance Agreements) for international cooperation between customs administrations are also applicable for cross-border physical transportation of currency. In addition to the international administrative international mutual assistance, there is a customs agreement between customs administrations from Latin America, Spain and Portugal (COMELAP). The mission was not informed of particular actions undertaken under the aegis of this agreement in relation with cross-border physical transportation of cash. However, lack of national coverage and implementation of the cross-border declaration regime would limit the scope of such cooperation.

433. As a member of GAFISUD, Panama participated in the annual exercises related to cross-border cash transactions. In this context, Panama shared the results of the controls and statistics related to the monitoring of cross-border cash transactions.

434. Sanctions for Making False Declarations/Disclosures (applying c.17.1-17.4 in R. 17) c.IX.8:

435. The new Article 375-A of the Penal Code provides for the confiscation of the undeclared assets, meaning not the totality of the cash, securities and monetary instruments, and for jail time between two and four years. Consequently, in the case of under-declaration, say only $1 million undeclared out of a total of $5 million being transported only $1 million would be subject to confiscation. In case of a foreign citizen, in addition to the confiscation, his/her immediate deportation and the permanent prohibition to enter to the country will be ordered, once the sentence above will have been served."

436. Although they may appear dissuasive, these sanctions do not appear to be effective or proportionate. In addition they do not apply to legal persons. The latter is relevant with respect to confiscation of transportation by a legal person through e.g., containerized cargo and through the mail system as opposed to only the physical transportation by natural persons.

437. By referring to the Article 18(5), Article 27-A of Law 30 of 1984 (Customs Law) states that the cash, negotiable documents and other negotiable assets, seized or confiscated by the General Directorate of Customs, will not be restituted in any circumstances. However, this provision has been declared unconstitutional by decision of the Supreme Court on June 23, 2010. The authorities did not inform if the text has later been amended to take into account the Supreme Court ruling.

438. The sanctions provided by the Customs code are the following:

- 1) imprisonment of one (1) to three (3) years in case of committing the crime of smuggling and customs fraud, and a fine of two (2) to five (5) times the value of the subject merchandise.

- 2) imprisonment of four (4) to six (6) years, in case of repeated offense, and a fine of five (5) to ten (10) times the value of the goods subject of wrongful if exceed the value of fifty thousand dollars (B 50, 000.00).

439. In addition, the Customs provisions allow a tolerance of 3 percent for false declaration.

440. It remains unclear how the existing two sets of sanctions (Customs and penal) interplay and are applied in practice. According to the Customs authorities, the Public Prosecutor sanctions the offense of absence of or false declaration by using the related offense of falsification of public documents. Such practice was not mentioned by the Public Prosecutor and would go against the provisions of article 375-A of the Penal Code which already provides for the offense and its sanction.

441. Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c.17.1–17.4 in R. 17, c.IX.9):

442. The sanctions described above apply in the case of absence of declaration or false declaration. They are not necessarily applied when such cross border transportation is also tied to ML or TF. However, if the circumstances of the case reveal a ML or TF scheme, then the offense of ML or TF can be prosecuted and the related sanctions will apply separately.

443. Confiscation of Currency Related to ML/TF (applying c.3.1-3.6 in R. 3, c.IX.10). Confiscation of Currency Pursuant to UN SCRs (applying c.III.1–III.10 in SR. III, c.IX.11). Provisional measures and confiscation (as described under R. 3) can be applied in the case of cross border transportation of cash that are related to ML/TF if and only if ML/TF offense is also prosecuted. If not, the legal framework as described above applies.

444. The mission has no information on the use of the cross-border cash transportation framework in relation with UNSCR lists. The current legal framework does not allow implementation for TF suspicion.

445. Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c.IX.12):

446. The mission was not informed of any specific framework or initiative regarding the communication to foreign authorities of the discovery of unusual cross-border movement of gold, precious metals or precious stones. A couple of weeks after the on-site mission, Panama joined the Kimberley Process and now participates in the international efforts for monitoring diamonds trade (Decree 43 of November 13, 2012).

447. Safeguards for Proper Use of Information (including in Supra-National Approach) (c.IX.13):

448. The information collected daily at Tocumen Airport in Panama City is digitalized on site on a daily basis. In other check-points, the information about money above $10,000, duly declared when entering the country, is not digitalized.

449. Training, Data Collection, Enforcement, and Targeting Programs (including in Supra-National Approach) (c.IX.14):

450. The Customs authority did not mention any specific training provided to the agents in charge of implementing the cross-border cash transactions requirements. In any case, as the law is enforced

only at Tocumen airport and to a very limited extent at the border with Costa Rica, it is unlikely that regular training and data collection are organized on that particular topic.

451. Supra-National Approach: Timely Access to Information (c.IX.15):

452. Non-applicable.

453. Additional Element—Implementation of SR. IX Best Practices (c.IX.16):

454. Panama did not provide any information regarding the implementation of measures set out in the Best Practices Paper for SR. IX.

455. Additional Element—Computerization of Database and Accessible to Competent Authorities (c.IX.17):

456. Declarations are computerized and the data are made available to the UAF and transmitted to it, and are available to the Prosecutor's Office, upon request.

457. Statistics (R. 32):

458. The UAF shared with the assessors a comprehensive set of statistics, on the basis of the declarations made by the travelers when entering Panama.

Year	Amounts declared in USD	Most common countries/nationals
2009	384,364,116	Colombia Haiti Panama
2010	1,243,919,126	U.S. (almost $ 1 billion) Haiti Colombia
2011	281,624,808	U.S. Haiti Panama
TOTAL	1,909,908,050	

459. There is no statistic regarding outbound movements of cash. During the on-site mission, the Customs administration shared the following statistics related to its own enforcement:

- 2012: 38 sentences to date, for non or false declaration of cash, around $2 million as fines and confiscations
- 2011: 83 sentences, and $4,343,223 as fines and confiscations
- 2010: 68 sentences, for an amount confiscated of $3,523,884,000

460. Adequacy of Resources—Customs (R. 30). By lack of resources, the regulation is only implemented at the international airport of Tocumen, leaving large parts of the country uncontrolled (in particular the southern border with Colombia). The Customs authorities mentioned some controls for money entering the country on the northern border with Costa Rica at the airport of Albrook.

461. Despite the fact that the regulation changed in 2010 to include the requirement to declare outbound movements of cash, no statistics are provided, raising doubts on the enforcement of the regulation for outbound movements.

Effectiveness of Implementation

462. The current legal framework is not effective in terms of monitoring the outbound transportation of cash in Panama because the law is not enforced to that respect. No statistics are maintained on the outbound flow of cash.

463. As far as the inbound transportation is concerned, the limited geographical enforcement of the regulation (mostly in Tocumen and limited enforcement on the north of the country) leaves loopholes that could be easily exploited by criminals.

464. The sanctions do not allow a proportionate response to the breach of the offense when it is not related to ML/TF. On the contrary, the legal framework as provided for by the Penal Code does not allow restraint and full confiscation of undeclared illicit money in case it is linked to ML/TF.

465. The Customs agents are not able to restrain the declared assets if they have suspicion that they could be linked to ML/TF, and the declaration form does not contain information on the type of currency declared.

466. From a general standpoint, the combination of the legal sanctions and the Customs provisions is unclear in practice. The Customs authorities did not even mention to the assessors the existence of the July 2012 reform of the Article 375 A of the Penal code during the on-site mission, providing for sanctions against false or absence of declaration.

467. On substance, neither the Customs authorities nor the UAF explained the typologies of the cash transportation in Panama. For instance, one could question the presence of Haiti, one of the poorest countries in the world, amongst the first four countries declaring cash entering Panama over the last three years. The total amount of cash declared by travelers originating from Haiti is around $200 million.

3.7.2. Recommendations and Comments

- Panama should review the whole legal framework in order to ensure consistency and applicability of the legal provisions regarding cross-border cash movements. The interplay between the penal and administrative provisions (and sanctions) should be clarified.

- Panama should enforce the legislation for outbound movements of cash and properly include the requirement for transportation of cash and bearer negotiable instruments by mail or cargo.

- Panama should provide for proportionate, dissuasive and effective sanctions, and should maintain comprehensive statistics regarding the implementation of the sanctions.

- Panama should adapt the legal framework regarding cross-border cash movements to the fight against ML/TF, by enabling the competent authorities to restrain and seize assets that are related to ML/TF.

- Panama should coordinate internally on the topic of cross-border cash movements and should ensure international cooperation through appropriate channels. Panama should provide statistics regarding international cooperation in this domain.

- Panama should use the valuable data collected to train and raise awareness amongst competent authorities on this topic of cross-border cash transportation. Patterns of money-laundering or tax evasion could be shared with foreign competent authorities.

3.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR. IX	**NC**	• Despite the legal provision, the outbound transportation of cash is not enforced in Panama. • The inbound transportation of cash is enforced only at Tocumen International Airport, and to a very limited extent at the airport located at the border with Costa Rica. • The legal framework does not allow for proportionate sanctions. • The legal framework does not allow for the restrain/seizure of declared cash that may be related to ML/TF. • The information transmitted to the UAF is limited to the information collected at Tocumen International Airport. • Absence of statistics on international cooperation. • Absence of training or knowledge sharing regarding cross-border cash transaction and patterns of ML or tax evasion at domestic and international level.

4. PREVENTIVE MEASURES—FINANCIAL INSTITUTIONS

4.1. Law, Regulations, and Other Enforceable Means

468. **Laws and Regulations:** The cornerstone of the legal framework of preventative measures in the financial sector are Law 42-2000 (the AML Law) and various Executive Decrees. Laws ("leyes") can be passed by the Legislative Assembly ("Asamblea Legislativa"), or under certain circumstances may be issued by the Executive (e.g., when the Legislative Assembly is not in session, in which case they are called Law Decrees ("decreto ley"). Law Decrees are subject to discussion and amendment or revocation once the Legislative Assembly resumes its sessions. For purposes of this assessment, Regulations are Executive Decrees issued by the President which were issued to regulate the AML Law. Three such Decrees have been issued namely: Executive Decree 1-2001, Executive Decree 266-2010, and Executive Decree 55-2012. Executive Decree 1-2001 designated the Supervisory agencies and activities they supervise, and established their responsibilities. It also detailed the cash and quasi-cash reporting obligations of the covered persons and entities which were also listed in this Decree. Executive Decree 266-2010 amended the first Executive Decree 1-2001 with respect to the CTR reporting obligations and added a new Article 3-C that applied the suspicious transaction reporting (STR) obligation to all the entities that were covered with respect to CTR obligations (see R. 13). It is important to note that under the AML Law certain insurance activities only have a narrow AML obligation to report CTRs, and under Art. 7 not all insurance intermediaries are covered. Executive Decree 266-2010 (issued 23 March 2010) sought to impose STR obligations on the covered insurance activities as well as on other non-financial activities covered by Art. 7 of the AML Law, contrary to the provisions of Art. 184 of the Constitution. However, this Executive Decree 266 of 23 March 2010 was fully revoked on 31 March 2010 by Executive Decree 294. Executive Decree 55-2012 mainly amended Executive Decree 1-2001 with respect to the list of designated Supervisory agencies and the persons and entities under their supervision.

469. The persons and entities that conduct financial activities covered under the law and regulations, hereinafter "covered FIs," are required under the AML Law to implement preventative measures (CDD, CTR reporting, monitoring, STR reporting, internal controls, record keeping) in compliance with the agreements and provisions issued by the competent authorities (AML Law).

470. **Other Enforceable Means (OEM):** For purposes of this assessment, OEMs are the enforceable administrative instruments issued by the various supervisory agencies designated by the Executive Decrees for, inter alia, purposes of supervision of compliance and sanctions. These OEMs are principally in the form of Agreements (Acuerdos) and Resolutions (Resoluciones). Some of the competent authorities have also issued Circulars (Circulares) that provide general or specific guidance and information for various prudential and AML issues relating to the financial sector, including CDD and record keeping provisions. These, however, are not OEMs. For purposes of this assessment, Agreements and Resolutions are *other enforceable means* as that term is defined by the FATF to the extent that they establish enforceable requirements with sanctions.

471. Notwithstanding the above, it is noted that many of the provisions of OEM instruments go beyond the requirements of the AML Law in some significant respects, including adding entities and primary provisions not subject to the primary AML Law. While these provisions may be unconstitutional, they are considered enforceable until such time as they have been declared as such by the courts.

472. See chart below for a current list of laws, regulations, OEMs, and guidance considered in this section.

LEGAL AND REGULATORY INSTRUMENTS FOR BANKS AND TRUSTEES		
Law or Regulation	**Other Enforceable Means (OEM)**	**Guidance**
Law 42-2000 Executive Decree 1-2001 Executive Decree 266-2010 (revoked) Executive Decree 55-2012	Agreement 8-2000 (replaced by Agreement 10-2000) Agreement 4-2001 Agreement 5-2003 Agreement 2-2005 Agreement 12-2005 Agreement 8-2006 Resolution JD No. 32-2005	Circular 1-2005 Special Agreement 12-2005E
LEGAL AND REGULATORY INSTRUMENTS FOR SECURITIESECURITIES ENTITIES **Superintendencia del Mercado de Valores:** **Agreement 5-2006** **Agreement 9-2001**		
LEGAL AND REGULATORY INSTRUMENTS FOR MONEY EXCHANGE, MONEY REMITTERS, AND FINANCIAL LEASING)		
Law 42-2000 Executive Decree 1-2001 Executive Decree 266-2010 (revoked) Executive Decree 55-2012	Resolution 41-2009	
REGULATORY INSTRUMENTS FOR CERTAIN INSURANCE ACTIVITIES)		
Law 42-2000 Executive Decree 1-2001 Executive Decree 266-2010 (revoked) Executive Decree 55-2012	Resolution 8-2008	

Customer Due Diligence and Record Keeping

4.2. Risk of Money Laundering or Terrorist Financing

473. **Size of Financial Sector – Scope of Application:** The AML Law applies to a broad range of financial institutions, but does not cover all financial activities that fall within the scope of the FATF Recommendations. The following financial institutions are covered under Article 1 of the AML Law: banks (onshore and offshore), bureau de change (casas de cambio), money remitters (natural and legal persons whether or not this is a principal line of business), finance companies, savings and loan cooperatives, stock exchanges, clearing houses, brokerage houses (which are also the only entities recently authorized to conduct FOREX, stock brokers, (natural persons), and investment (mutual) fund managers/administrators. Collectively, all of the above financial institutions (FIs) are referred to as "covered FIs." Trustees (fiduciaries) are also covered under Article 1. However, when conducted by banks or other FIs, that activity will be assessed as a FI. Trust business conducted by non-FIs will be assessed as DNFBPs.

474. There are other important financial activities operating in Panama as defined by the FATF Recommendations that are not covered by Article 1 of the AML Law. These are:

- Insurance companies and intermediaries (the underwriting and placement of life insurance and other investment related insurance), including insurance company and brokerage managers, insurance brokers, and agents (both natural and legal persons),
- Savings and loan associations ("asociaciones de ahorro y credito"),

- National Mortgage Bank (Banco Hipotecario Nacional) which regulates savings and loans associations,
- Multi-service cooperatives, (cooperativas de servicios multiples),
- Issuing and managing means of payment (e.g., credit and debit cards),
- Financial leasing,
- Factoring, and
- Safekeeping/custody of cash and other liquid assets (e.g., gold).

475. No assessment or explanation has been provided to justify the exclusion of these financial activities (e.g., based on risk). The failure to incorporate any one of these individual financial activities in the law may only be minor if the size and scope of each financial activity is not significant. However, even if individually they are not significant, when taken together, their exclusion would be significant and create an important gap in the AML system that should be rectified.

476. Article 7 of the AML Law establishes that insurance and reinsurance companies, as well as reinsurance brokers (no mention of insurance managers, brokers, and agents) are reporting entities (for CTRs-cash and cash equivalent reports), but they are not subject to the full range of AML obligations established in the AML Law. The authorities were unable to point to any regulation of issuers and managers of payment systems (especially credit and debit cards). Executive Decree 46-2008 states that financial leasing and factoring falls under the control of the MICI for purposes of compliance with AML prevention, however, financial leasing and factoring are not covered entities under the AML Law. Also, there exists a type of cooperative in Panama called a "multiple service cooperative" (cooperativa de servicios multiples) which offers savings and loan as one of its services. There are 25 "multiple service cooperatives" operating in Panama as of the date of this report that, because of their specific designation and definition under the cooperatives law, fall outside the scope of Art. 1 of the AML Law with respect to savings and loan cooperatives. It is unclear if there is any regulation of the safekeeping/custody of cash and other liquid assets (e.g., gold).

477. In addition, while casas de cambio are covered under Art. 1 of the AML Law, this activity is not regulated in Panama, unlike money remitters who can engage in currency exchange activities. This situation makes implementation of the AML requirements less effective than for those sectors that are otherwise regulated and supervised. Likewise, while investment fund managers are covered, regulation and supervision of private investment funds and investment funds with only foreign subscribers (offshore type of funds) are overall subject to a lighter system of regulation and supervision by the SMV which may also result in the implementation of a less rigorous system of AML supervision in potentially higher risk scenarios.

478. It is worth mentioning that the AML Law only deals with AML issues and does not address CFT. Panama has criminalized TF under the Penal Code and has implemented the UN Convention for the Suppression of the Financing of Terrorism through Law 22 of 2002. Consequently, this shortcoming has a negative impact on some of the recommendations applicable for the financial sector.

479. The following table provides a summary of these activities and their regulators/supervisors.

Financial Institutions in Panama							
Entity	Law 42-2000 Covered Entity[17]	Law 42-2000 Reporting Entity (CTRs)	Competent Authority	Regulations or OEM Issued for Law 42-2000	Supervised for AML by Comp. Authority	Licensing Regime	Notice of Operation[18]
Banks	Yes	Yes	SBP	Yes	Yes	Yes	No
Trustees (banks with trustee licensees)	Yes	Yes	SBP	Yes	Yes	Yes	No
Stock Exchanges	Yes	Yes	SMV	Yes	Yes	Yes	No
Clearing Houses	Yes	Yes	SMV	Yes	Yes	Yes	No
Brokerage Houses	Yes	Yes	SMV	Yes	Yes	Yes	No
Stock Brokers	Yes	Yes	SMV	Yes	Yes	Yes	No
Investment Fund Managers (including Pension Administrators)	Yes	Yes	SMV	Yes	Yes	Yes	No
Money Exchanges	Yes	Yes	MICI	No	No	No	Yes
Money Remitters	Yes	Yes	MICI	Yes	Yes	Yes	Yes
Financing Companies	Yes	Yes	MICI	Yes	Yes	Yes	Yes
Leasing Companies	No	No	MICI	N/A	No	No	Yes
Factoring Companies	No	No	MICI	N/A	No	No	Yes

[17] Covered entities are those that have broader AML obligations under the AML Law as opposed to "reporting" entities that are only subject to the CTR requirements under this the AML Law. As noted earlier, Executive Decree 266 of 2010 extended the STR obligations to all of the "reporting" entities, less the tipping off prohibition and the exemption from liability for good faith reporting that apply to the accountable entities.

[18] This requirement is a general requirement for all commercial activities in Panama and is not specifically for AML purposes.

Savings and Loan Cooperatives	Yes	Yes	IPACOOP	Yes (repetitive of Law 42)	Yes	Yes	No
Savings and Loan Associations	No	No	BHN[19]	No	No	Yes	Yes
Banco Hipotecario Nacional	No	No	No	No	No	No	No
Multiple Service Cooperatives (who offer savings and loan)	No	No	IPACOOP	No	No	Yes	No
Savings Bank (Caja de Ahorro)	Yes	Yes	SBP	Yes	Yes	Yes	No
Insurance Companies	No	Yes	SSRP	Yes*	Yes	Yes	No
Reinsurance Companies	No	Yes	SSRP	Yes*	Yes	Yes	No
Insurance Brokers	No	No	SSRP	Yes*	Yes	Yes	No
Reinsurance Brokers	No	Yes	SSRP	Yes*	Yes	Yes	No
FOREX Dealers (by Brokerage Houses only)	Yes	Yes	SMV	Yes	Yes	Yes	No
Issuer/Manager of Payment Systems	No	No	None	No	No	Unknown	Unknown
Safekeeping/custody of cash and other liquid assets	No	No	None	No	No	Unknown	Unknown
*SSRP has issued Resolution 8-2008 for Insurance and Reinsurance companies, and Insurance and Reinsurance Agents, which goes beyond the scope of Law 42-2000.							

[19] Banco Hipotecario Nacional (BHN) is the national mortgage entity that regulates the four operating savings and loan associations. Neither the BHN nor the associations are subject to the AML Law.

480. **Competent Authorities:** For the purposes of this report, the covered entities will be referred to as outlined below. The SBP is the competent authority for banks and trust companies (FIs) "Bank and Trust Companies," unless specified one of the other. The SMV is the competent authority for stock exchanges, clearing houses, brokerage houses (including FOREX activity), stock brokers, and investment fund managers (FIs) ("Securities"). The MICI is the competent authority for bureau de change (*casas de cambio*), money remitters (natural and legal persons providing this service), and financing companies ("Bureau de Change, Money Remitters, and Finance Companies"). The IPACOOP is the competent authority for savings and loan cooperatives ("Cooperatives"). While not an obligated entity per Article 1 of the AML Law, the SSRP is the competent authority for insurance and reinsurance companies and brokers "Insurance."

4.3. Customer due Diligence, including Enhanced or Reduced Measures (R. 5 to 8)

4.3.1. Description and Analysis

481. Legal Framework:

482. The first paragraph of Art. 1 of the AML Law sets the broad AML requirement for all covered FIs (hereinafter those FIs listed in the first para. are referred to as "covered" entities to distinguish them from the list of entities (FIs and non-FIs) under Art. 7 that only have a CTR obligation under this law). This paragraph states that all covered entities shall maintain diligence and care in the conduct of their operations to prevent ML. Per Article 1(1) of the AML Law, all covered FIs are required to adequately identify their clients by requiring them to provide references and other documentation, and with respect to ("sociedades") require certification and current status of incorporation, including identification of their directors, officers, controllers and legal representatives. Note that this requirement would technically not extend to legal entities that are not "sociedades" e.g., foundations and trusts companies. Such identification should enable them to document and adequately establish the real owner or beneficiary, whether acting in such manner directly or indirectly. Article 7 of the AML Law, which applies only to declaratory (or "reporting" entities (e.g., insurance and reinsurance companies), requires that these entities maintain in their records the name, address, and identity document number of their clients. Executive Decree 1-2002 and Executive Decree 55-2012 (which regulate the AML Law) do not further elaborate CDD requirements. Executive Decree 266 of 2010 also seeks to extend the STR obligation under the AML Law to CTR reporting entities However, this Executive Decree 266 of March 23, 2010 was fully revoked on March 31, 2010 by Executive Decree 294.

483. For **banks**, the primary regulatory instrument regarding CDD is Agreement 12-2005. For **securities entities**, the primary regulatory instrument regarding CDD is Agreement 5-2006.

484. MICI has issued two regulatory instruments regarding CDD: Resolution 14-2001 for **finance companies** and Resolution 328-2004 for **money remitters**. In addition to this section, the application of preventative measures for money remitters is also discussed under SR. VI. While MICI is the competent authority for **exchange houses** (**casas de cambio**), they have not issued any additional regulatory instruments for these institutions. The lack of regulation of exchange houses is a scope issue for preventative measures. As stated above, financial leasing and factoring are not covered by the AML Law (though they are mentioned in the Executive Decree 46-2008 regarding MICI), and therefore, are an additional scope issue for preventative measures.

485. For **savings and loan cooperatives**, Resolution 41-2009 is the primary regulatory instrument regarding CDD; however, this Resolution merely repeats, verbatim, the requirements outlined in the AML Law and does not add any additional detail to those requirements. As savings and loan cooperatives do not have any additional regulations outside of the obligation identified in the AML Law, their requirements will not be addressed in detail in Section 3.2.

486. While outside of the purview of the AML Law other than for CTR reporting, SSRP has issued Resolution 8-2008 regarding CDD for **insurance entities**. A brief description of this Resolution will follow the detailed analysis for Recommendations 5-8.

487. Prohibition of Anonymous Accounts (c.5.1):

488. Banks are allowed to maintain numbered accounts, and the identity of the beneficial owner of the account must be known to senior bank officials (Law 18-1959). The obligation to adequately identify the client in Article 1(1) of the AML Law applies to all accounts whether numbered or nominative. Securities are explicitly prohibited from maintaining anonymous accounts or accounts in fictitious names (Agreement 5-2006, Art. 5.a.6).

489. When CDD is required (c.5.2):

490. **Banks:** Bank must conduct due diligence on clients which will be the object of the business relationship, regardless of the amount of the transaction. In addition they must pay special attention when performing transactions in excess of ten thousand balboas (used interchangeably and on par with US dollars in this report), when detecting unusual operations, when there is a suspicion of money laundering, of terrorism financing or of other illicit activities, as well as when the bank has doubts regarding the veracity or adequacy of the information gathered or held on the customer's identity (Agreement 12-2005, Art. 4 and 5).

491. **Securities:** Securities entities must conduct due diligence on client (a natural person or legal entity) on whose behalf a transaction is conducted by a SMV FI with respect to one-off transactions, occasional transactions or in a habitual manner, independent of the existence of more general contractual relations previously established between the parties (Agreement 5-2006, Art. 5). SMV FIs must also pay special attention to and conduct more exhaustive due diligence when there is a suspicion of money laundering or terrorism finance (Agreement 5-2006, Art. 11).

492. **Finance Companies and Remitters:** Finance companies and money remitters are required to adequately identify their clients (does not distinguish between occasional or business relationships), but the other elements of c.5.2 are not contemplated, particularly when there is suspicious of ML or TF regardless of the amount, and when there are doubts about the veracity or adequacy of previously obtained identification data.

493. For all of the covered FIs, these requirements are set out in OEM, not law or regulation (Law or Executive Decree) as required by the FATF Methodology.

494. For all of the covered FIs, there is no requirement to conduct CDD when carrying out occasional transactions that are wire transfers.

495. Identification measures and verification sources (c.5.3):

496. **Banks:** Banks must include documented evidence in the respective files of due diligence executed to accurately verify the identity of their customer. For natural persons, the information the banks must include in the client profile includes the following details (Agreement 12-2005):

- The customer's full name, marital status, profession or occupation, adequate identity document, nationality, domicile, and residence;
- Recommendations or references of the account holder or authorized signatories;
- True copy of the passport or equivalent document (for nonresidents present in Panama);
- Purpose of the relationship;
- Type, number, volume, frequency and habitualness of the banking relationship;
- Financial profile, the personal or commercial background, and source of the funds; and
- For domestic and foreign legal entities and legal arrangements (e.g., foundations, trusts, NGOs, and NPOs): incorporation documents, and the identification of directors, executive officers, controllers (for powers of attorney) and legal representatives when applicable, to identify the real or ultimate beneficial owner of the account, directly or indirectly (Agreement 12-2005, Art. 4.1 and 5.1).

497. **Securities:** Securities entities must use their reliable judgment to verify that the identification information provided by the client is accurate. The information the securities entity must include in the client profile includes the following (Agreement 5-2006, Art. 5) for all covered entities:

For natural persons:

- Full name, date of birth, marital status, and profession or occupation;
- Professional and personal address;
- Phone number, address, email address, and fax number;
- Copy of identification document (ID or passport), or other ID document that sufficiently verifies their identity of the person(s) that apply to open the account and the beneficiaries of the account, and a copy of the passport with entrance stamp (for non-Panamanian clients);
- Copy of the passport with entrance stamp (for nonresidents present in Panama); and
- Any other document deemed necessary to identify the client.

For legal entities:

- Complete data on incorporation documents, address and registered office;
- Description of the activities of the entity;
- Exact details of the physical location of the activities;
- Telephone numbers, address, email, fax number;
- A copy of the identification document (ID or passport) of the final beneficiary and/or effective owners of the accounts In the case of trusts or legal entities, including entities with nominatives or bearer shares.

498. The SMV FI must require certifications evidencing the incorporation and validity of the trust and company through certification issued during the previous 30 days, as well as identifying officers, directors, controllers (for power of attorney) agents and legal representatives of such corporations and trusts. Exceptions to the latter requirement on individuals apply when the information can be obtained from public sources through access to an electronic database established in an official registry in the jurisdiction of origin of the entity.

499. **Finance companies and remitters:** Entities regulated by MICI must identify their clients with the following details:

500. **For finance companies** (Resolution 14-2001, Art. 1):

- Complete name of the natural or legal person;
- Personal identification card or passport, and Tax Registration Number (Registro Unico del Contribuyente);
- Residential or commercial location, or registered office;
- Residential or commercial phone numbers, P.O. Box number, and email; and
- Copies of checks or utility bills e.g., electricity, water, and telephone bills.

501. **For legal entities**

- Certification from the public registry; certification from a public accountant, and the validity of legal status that shows the officials, directors, controllers (powers of attorney), legal representative and validity of the company;
- Commercial and banking references;
- Description of activity; and
- Declaration of source of funds.

502. **For money remitters** (Resolution 328-2004, Art. 1):

- Complete name of the natural or legal person;
- Personal identification card or passport, and Tax Registration Number (Registro Unico del Contribuyente);
- Residential and commercial location; and
- Residential and office telephone numbers, P.O Box number, and email.

503. Identification of Legal Persons or Other Arrangements (c. 5.4):

504. As stated in Article 1(1) of the AML Law, all covered FIs are required to adequately identify their clients by requiring them to provide references and other documentation, including with respect to the directors, officers, controllers and legal representatives with respect to legal entities (sociedades). Such identification should enable them to document and adequately establish the real owner or beneficiary of such entities, whether acting in such manner directly or indirectly. Note that references here to “sociedades” would limit its application to e.g., companies and partnerships (sociadades anonimas and sociedades de responsibilidad limitada). It is unclear whether such requirement would extend to e.g., trusts and foundations that are governed under separate legal regimes with different parties to such arrangements.

505. **Banks:** For banks, in the case of national or foreign legal persons, trusts, private interest foundations, nongovernment organizations, welfare institutions and/or nonprofit organizations, the bank must require the corresponding certifications that are evidence of incorporation, as well as the identification of directors, executive officers, proxies, and legal representatives when applicable, in such a way that they can properly identify and document the final beneficial owner of the account, whether direct or indirect (Agreement 12-2005, Art. 4.1.g and 5.1.e).

506. **Securities:** For securities entities, in the case of administrative powers given to someone other than the client, the entity must verify the identity of the person acting on behalf of the entity, and should apply reasonable measures and due diligence to identify the incorporation documents and the directors and legal representatives (Agreement 5-2006, Art. 5.b.6 and 5.b.7).

507. **Finance companies:** For legal persons or legal arrangements, finance companies must require a public registry certification, certification of a certified public accountant identifying the officers, agents, persons appointed to act on behalf of the entity, and a description of activity of the legal entity (Resolution 14-2001, Art. 1.a, e, and g).

508. **Remitters:** For legal persons or legal arrangements, money remitters must obtain a complete name and tax ID number (Resolution 328-2004, Art. 1.a)

509. Identification of Beneficial Owners (c.5.5, 5.5.1, and 5.5.2):

510. As stated in Article 1(1) of the AML Law, all covered FIs are required to adequately identify their clients by requiring them to provide references and other documentation, including with respect to the directors, officers, controllers (under powers of attorney "apoderados") and legal representatives with respect to legal entities. Such identification should enable them to document and adequately establish the real owner or beneficiary, whether acting in such manner directly or indirectly. This article, however, is somewhat incoherent as the identification of directors, controllers and legal representatives would not necessarily result in the identification of beneficial owners, e.g., significant shareholders, and specific parties to trusts and private foundations. In addition, the article does not establish verification of identity requirements for beneficial individuals when customers are acting on behalf of others; reference to beneficial owners here is only with respect to legal entities.

511. **Banks:** The bank must properly identify and document the real or final beneficial owner of the account, whether direct or indirect. Note that while under Art. 1(1) of the AML Law there is no limitation on the type of service provided by the covered entities; Agreement 12-2005 Art. 4.g limits it to account holding customers. Art. 4.d of this Agreement requires the customer is required to state if he is acting as the intermediary of another person who is the final beneficiary or usufructuary of the account and, in the affirmative case, the bank must execute due diligence on the latter. The bank must determine the applicable identification of executive officers, controllers (under powers of attorney), proxies, and legal representatives, in such a way that they can properly identify and document the final beneficial owner of the account, whether direct or indirect (Agreement 12-2005, Art. 4.1.d, 4.1.g and 5.1.e). Note that this limits such identification to account holders, and with respect to legal persons, it does not specify the key parties to important legal entities or arrangements such as trusts and private foundations. It is also important to specify that banks should identify all parties to a trust client (and foundations), where the trustee and settlor are key parties with the former having effective control of the trust. It is not clear which of the listed individuals would apply in such cases, or how their identification would also lead to the identification of beneficial owners.

512. There is no requirement in this Agreement or the AML Law to understand the ownership and control structure of a customer, e.g., a company that is owned through another company, trust or foundation structure whether domestic or foreign. Some of these entities maybe owned by purpose trusts established in other jurisdictions.

513. **Securities:** Securities entities are required to identify the beneficial owner of all natural and legal person accounts; in the case of administrative powers given to someone other than the client, the obligated entity must verify the identity of the person acting on behalf of the entity, and should apply reasonable measures and due diligence to identify the incorporation documents and the directors and legal representatives (Agreement 5-2006, Art. 5.a.6, 5.a.7, 5.b.6 and 5.b.7). Art. 6.a.5 also contains similar information for investment fund administrators. In addition, under Art. 5.b.8, FIs shall take reasonable measures to understand the ownership and control structure of the client and to ascertain who own or control the client and/or the effective owner. Similar limitations/lack of clarity exist with respect to the ability of securities to identify ultimate beneficial owners of companies (and all the key parties of legal arrangements) through the identification of the listed persons, i.e., officers, directors, legal representatives, and persons acting on their behalf under powers of attorney.

514. **Finance Companies and money remitters:** For MICI FIs, 5.a.6, 5.a.7, 5.b.6 and 5.b.7). While **finance companies** must collect information on legal entities as indicated above, there is no explicit requirement to identify the beneficial owner, nor on the ownership and control structure of legal entities and arrangements. **Money remitters** have no explicit requirement to identify the beneficial owner.

515. It should be noted that aside from the general requirement mentioned in Art. 1(1) of the AML Law, the specific requirements mentioned here regarding identification of the beneficial owner for all of the covered FIs are set out in OEM, not law or regulation (Law or Executive Decree) as required by the FATF Methodology.

516. Given the existence of bearer share companies in Panama (see Recommendations 33 and 34), the requirements to identify the beneficial owner in Law and OEM in all sectors are insufficient and ineffective. Officials of financial institutions who were interviewed indicated that they do offer services to bearer share companies, and consider themselves in compliance with this requirement once they have obtained a signed declaration of the beneficial owner of the bearer share company in the client file. This declaration could be signed by the purported beneficial owner in the presence of the FI or provided by a legal representative of the beneficial owner. However, that declaration is only effective for the moment it is signed, as the share may be passed to another owner at any time and there is no guarantee or reliance that the FIs will be notified. There was no reasonable explanation provided as to why there is not a broad-based requirement or commercial policy to hold physical custody of such shares by FIs. This situation is further exacerbated when such companies or part of such companies shareholding are held in trust or through foundations established locally or abroad.

517. Information on Purpose and Nature of Business Relationship (c.5.6):

518. **Banks:** Banks are required to collect information on the purpose of the business relationship, the type, number, volume, frequency, and habitualness of the banking and trust operations, products or services reflected on the customer's account, the financial profile, personal or commercial background, and the source and origin of the resources used by their clients (Agreement 12-2005, Art. 4.1.e, f, and h, 5.1.e, g with respect to trustee services provided).

519. **Securities:** When establishing the client profile, securities entities are required to collect information the source of funds, and the objective of the investment (Agreement 5-2006, Art. 5.c.1). Art. 6.d.1 contains similar requirements for pension and retirement fund administrators to obtain information on customer profile including source of income, net worth and investment profile.

520. **Finance companies and money remitters:** Entities regulated by MICI are not explicitly required to collect information on the purpose and nature of the business relationship.

521. Ongoing Due Diligence on Business Relationship (c.5.7; 5.7.1, and 5.7.2):

522. The AML Law does not address ongoing due diligence on the business relationship.

523. **Banks:** Banks are required to keep CDD information updated during the course of the business relationship, and to conduct a review every six months (Agreement 12-2005, Art. 4, 4.2, 4.3, and 4.4). More limited requirements apply for banks acting as trustees under Art. 5 para. 1 with respect to updating information. There is no requirement for ongoing due diligence of the business relationship nor transaction monitoring for banks acting as trustees. In addition, for both banking and trustee business there is no requirement that such ongoing CDD and data/customer profile information update be conducted in accordance to risk.

524. **Securities:** Securities entities are required to conduct ongoing due diligence during the business relationship and include examination of transactions to ensure it corresponds with KYC information, source of funds and risk profile. They should also update this information annually during the relationship or when there is evidence of a transaction outside the client profile, and they should maintain systems to manage and keep this information up to date (Agreement 5-2006, Art. 7).

525. **Finance companies and Remitters:** Entities regulated by MICI do not have an explicit requirement to conduct ongoing CDD on the business relationship.

526. This requirement should be established in law or regulation for all Accountable FIs, and it is currently only in OEM for SBP and SMV FIs.

527. Risk—Enhanced Due Diligence for Higher-Risk Customers (c.5.8): (Correspondent banking and PEPs will be covered under R. 7 and 6, respectively)

528. Banks**:** Banks have a narrow transaction based requirement to conduct enhanced due diligence with respect to higher risk customers. Agreement 12-2005 Art. 4.4 requires banks to conduct special monitoring of clients that have demand or term deposit accounts, whether local or foreign, nominative or coded, opened with cash for amounts in excess of B 10,000 or its equivalent in foreign currency, and of customers that tender checks (cashiers, travelers or others) and bearer payment orders, blank endorsement and issued on the same day or nearby dates and/or by the same bearer or by bearers of the same marketplace, for amounts that exceed 10 thousand balboas or its equivalent in foreign currency. In Art. 5.3 of Agreement 12-2005 there is a requirement to take the level of risk into account when acting as a trustee but this can apply to both high and low risk scenarios. There is no other requirement to conduct enhanced CDD when dealing with e.g., nonresidents (relevant to international/offshore business), private banking, clients that are legal persons or arrangements, particularly those entities that have bearer shares, and clients that use numbered or coded accounts.

529. **Securities:** In Art. 14 of Agreement 5-2006, securities entities are required to have internal procedures manuals that take account of the degree of complexity of their operations, and can categorize their clients in accordance with potential risk of illicit activity associated with their accounts and clients. They are also required to obtain from clients under contractual arrangements

information that would enable them to maintain client data up to date with emphasis on higher risk clients e.g., nonresidents and legal persons with bearer shares. While this is useful, it is not an explicit requirement to conduct broader based EDD for higher risk clients. See Banks above.

530. **Finance companies and money remitters:** Entities regulated by MICI do not have an explicit requirement to conduct enhanced due diligence on high-risk customers. There is a general requirement in Resolution 328 for money remitters and Resolution 14 for finance companies to take into account ML risk in their internal controls, but this is insufficient for purposes of c.5.8 and c.5.9.

531. **Risk—Application of Simplified/Reduced CDD Measures when appropriate (c.5.9)**: **Banks:** Banks can take risk into account when acting as a trustee and may use simplified CDD, although the likely focus here would be higher risk scenarios, although this is not specified (see Agreement 12-2005 Art. 5.d and R. 5.8 above). Similar provisions are made under Art. 3 of this Agreement with respect to inter-banking relationships which could apply to both enhanced and simplified CDD measures.

532. **Securities:** Securities entities are exempted from the identification requirements with respect to clients under the supervision of the SBP and SSRP; however, it is up to the covered entity to determine through the course of their internal controls, what procedure is necessary for these clients (Agreement 5-2006, Art. 5, final paragraph). However, given that SSRP entities are not subject to the full array of AML requirements, this exemption for entities supervised by SSRP is a deficiency for securities entities. See also Art. 14 of this Agreement where risk should be taken into account by internal controls which may include CDD. However, this is insufficient for purposes of this criterion. Art. 5.b.6 provides that, in the case of legal persons, including companies with nominative or bearer shares, FIs do not need to obtain the incorporation certifications when the information can be obtained from an electronic database in the official register of the jurisdiction of origin. This information is to be maintained by the FIs.

533. **Finance companies and money remitters:** Entities regulated by MICI are not specifically permitted to conduct reduced CDD measures in any circumstance.

534. Risk—Simplification/Reduction of CDD Measures relating to overseas residents (c.5.10):

535. To the extent that FIs are permitted to conduct reduced CDD measures under c.5.9 above, there is no explicit provision that this reduced CDD allowed for FIs is limited to countries that Panamanian FIs are satisfied are in compliance with and have effectively implemented the FATF Recommendations (e.g., in Agreement 5-2006, Art. 5.b.6 and Art. 5, final paragraph).

536. Risk—Simplified/Reduced CDD Measures Not to Apply when Suspicions of ML/TF or other high-risk scenarios exist (c.5.11):

537. To the extent that FIs are permitted to conduct reduced CDD measures under c.5.9 above, there is no explicit provision that the reduced CDD is not acceptable whenever there is suspicion of money laundering or terrorist financing or specific high risk scenarios apply (e.g., in Agreement 5-2006, Art. 5.b.6 and Art. 5 final paragraph).

538. Risk Based Application of CDD to be Consistent with Guidelines (c.5.12):

539. To the extent that FIs are permitted to conduct reduced CDD measures under c.5.9 above, no guidelines have been issued by any of the supervisory bodies or other competent authorities for the application of reduced CDD measures.

540. Timing of Verification of Identity—General Rule (c.5.13):

541. **Banks:** There is no explicit requirement regarding the timing of verification for banks. Most banks interviewed indicated that they complete the CDD collection and verification process prior to account opening. However, given the lack of clarity in Agreement 12-2005, it is not required that banks verify client identity prior to account opening.

542. **Securities:** For securities entities, the process to identify the client is considered complete when the required information has been verified by the covered entity; this verification must be completed before the opening of the account (Agreement 5-2006, Art. 5). Similar requirements are contained for administrators of pension and retirement funds under Art. 6.d of this Agreement albeit worded in a less direct manner.

543. **Finance companies and money remitters:** There is no explicit requirement regarding timing of verification for entities regulated by MICI.

544. Timing of Verification of Identity—Treatment of Exceptional Circumstances (c.5.14 and 5.14.1):

545. There are no provisions allowing completion of verification after establishing a business relationship, hence there are no requirements or conditions regarding the basis under which such delay can occur.

546. Failure to Complete CDD before commencing the Business Relationship (c.5.15) and Failure to Complete CDD after commencing the Business Relationship (c.5.16): There is no explicit requirement that FIs do not establish a business relationship or perform a transaction when they cannot complete the required CDD processes, nor to file a STR in such cases. There is also no similar explicit requirement to terminate a business relationship and consider sending an STR in cases where that relationship has commenced and the requisite CDD process cannot be completed. With respect to covered securities entities, they should not open an account prior to verification. However, there is no requirement to consider filing a STR should verification not be possible (although the guidelines (item 4 of Annex to Agreement 3-2006) for considering suspicious transactions include failure to provide the necessary customer information). Section 6 of suspicious transaction guidelines (Special Agreement 12-2005 E for banks and trustees, which is considered guidelines, not regulation) contains similar examples.

547. Existing Customers—CDD Requirements (c.5.17):

548. When the AML Law, the Executive Decrees, Agreements and Resolutions were introduced they did not contain any transitional provisions with respect to clients existing at that time. Consequently, FIs were not required to apply CDD requirements, e.g., during a reasonable transitional period or at appropriate times (e.g., when the client visits the FI or request additional or new services), nor were there materiality or risk provisions for such CDD measures. It may also be assumed that the CDD requirements under the law and CDD measures were to be applied as soon as

they went into effect. Any updating of information would be required as part of a FIs ongoing CDD under c.5.7, however, this is not sufficient for the purposes of c.5.17.

549. **One possible exception applies.** For FIs that provide company services or that have clients that are company services providers, including trustees, lawyers, accountants and registered agents, the registered agents representing legal entities and arrangements had five years to comply with their customer identification requirements under the provisions of Law 2 of 2011. Consequently, FIs would not be able in some cases to conduct CDD on the officers, directors, and beneficial owners, etc., of the underlying companies if the intermediary clients do not have the information.

550. Existing Anonymous-account Customers – CDD Requirements (c.5.18):

551. **Banks:** As stated above, banks are allowed to maintain numbered accounts, per Law 18-1959. There is no additional requirement to perform CDD measures on existing customers at the time the law and regulations were issued with respect to who hold numbered or coded accounts.

552. Foreign PEPs—Requirement to Identify (c.6.1):

553. **Banks:** Banks must pay special attention and take the pertinent measures for those customers identified as Politically Exposed Persons (PEPs), either national or foreign individuals who fulfill or have fulfilled prominent public functions. They should also establish appropriate risk management systems and carry out enhanced due diligence (Agreement 12-2005, Art. 4.5 and 5.3 with respect to trust activities). In addition, through Circulars 40 and 50-2010, the SBP reiterated the need for banks to establish these risk management systems to determine if clients or final beneficiaries are PEPs. It is noted that Agreement 12-2005 does not include beneficial owners. The Circular makes reference to FATF R. 6 on examples of ways to determine if a client is a PEP including final beneficial owners. However, this Circular is not an OEM.

554. **Securities:** Securities entities are required to have risk management systems in place to identify if a potential customer (a priori), a customer (ex post), or beneficial owner is a PEP. The Agreement, as worded, requires the risk management and other measures for those clients already identified as PEPs applying an ex post approach. As part of CDD, securities entities should require that clients declare whether they are PEPs or related to a PEP. During the ongoing monitoring process the securities entity must have appropriate risk management measures in place to determine if a potential client is a PEP, a client or usufructuary (broadly similar to a beneficial owner) is a PEP (Agreement 5-2006, Art. 5.c.7 and 7, para. 4, and Art. 6.d.6 for pension fund administrators). Art. 7 also gives examples based on FATF guidelines of what type of persons should be considered as PEPs.

555. **Finance companies and money remitters:** Entities regulated by MICI have no explicit requirements regarding the identification of PEPs.

556. Foreign PEPs—Risk Management (c.6.2 and 6.2.1):

557. **Banks:** There is no requirement in Agreement 12-2005 for banks to obtain the approval from senior management to establish commercial relations with a PEP. Circular 1-2005, (which is not an OEM) reminds banks of the requirements of R. 6 with respect to, inter alia, obtaining senior management approval to establish relations with PEPs. However, there is no provision anywhere for

SBP FIs to obtain senior management approval to maintain a relationship with a client if the client becomes a PEP after account opening.

558. **Securities:** In the cases where a securities entity determines a prospective client is a PEP, or a current client becomes a PEP, it must be approved by management to open the account (Agreement 5-2006, Art. 7, para. 4). According to the Securities Market Law, Article 49, the management of a securities entity should be a chief executive.

559. **Finance companies and money remitters:** Entities regulated by MICI have no explicit requirements regarding PEPs.

560. Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c.6.3):

561. **Banks:** For banks there are no requirements to take reasonable measures to determine the origin of the funds of a client who is a PEP. Circular 1-2005, which is not an OEM, reminds banks of FATF R. 6 requirement to take reasonable measures to establish the origin of wealth and funds of PEPs. Notwithstanding, there is a general CDD requirement for banks (and trustees) to include in the customer profile his financial profile, the personal or commercial background, and source of the funds used by all of their clients. In a broad sense this would also apply to PEPs (Agreement 12-2005, Art. 4.1.h and 5.1.g) The requirement for securities entities to establish the source of funds of a client applies equally to non-PEP and PEP clients (Agreement 5-2006, Art. 5.6). Entities regulated by MICI have no explicit requirements regarding PEPs.

562. **Securities:** The requirement for securities entities to establish the source of funds and wealth of a client are only indirectly addressed for both non-PEP and PEP clients. For legal entities, Agreement 5-2006, Art. 5.b.10, there is a general CDD requirement to obtain any other documentation to determine the source of funds (not wealth). Art. 5.c.5 and 7 also require that part of the customer profile includes source of income and a net worth analysis to determine existence of funds from unknown sources.

563. **Finance companies and money remitters:** Entities regulated by MICI have no explicit requirements regarding PEPs.

564. Foreign PEPs—Ongoing Monitoring (c.6.4):

565. **Banks:** Banks are required to carry out enhanced CDD of PEP clients. (Agreement 12-2005, Art. 4.5 and 5.3) Circular 1-2005, (d) reminds banks of R. 6 requirements to conduct permanent and enhanced diligence of PEPs.

566. **Securities:** Securities entities are required to perform ongoing due diligence of the business relationship (see c.5.7) including but not limited to those clients who are PEPs (Agreement 5-2006, Art. 7, para. 1).

567. **Finance companies and money remitters:** Entities regulated by MICI have no explicit requirements regarding PEPs.

568. Domestic PEPs—Requirements (Additional Element c.6.5):

569. For banks, the definition of PEP is understood as national or foreign individuals who fulfills or have fulfilled prominent public functions (Agreement 12-2005, Art. 2.5). For securities entities, the definition of PEP is understood as a person who carried out or is carrying out prominent public functions within or outside of the jurisdiction (domestic or foreign) (Agreement 5-2006, Art. 7). Entities regulated by MICI have no explicit requirements regarding PEPs.

570. Domestic PEPs—Ratification of the Merida Convention (Additional Element c.6.6):

571. Panama has ratified the UN Convention against Corruption through Law 15-2005. Panama has also ratified the Inter-American Convention against Corruption through Law 42-1998.

572. Cross Border Correspondent Accounts and Similar Relationships:

573. **Banks:** Article 3 of SBP Agreement 12-2005 requires banks to apply due diligence measures to operations and transactions pursuant to cross-border inter-bank relationships in accordance to the level of risk. This requirement would broadly cover transactions in the context of both respondent and correspondent relationships (see R. 18 and R. 21). This article prohibits this type of relationship with banks that lack a physical presence in their home country jurisdiction or are not affiliated with a financial group that is subject to consolidated supervision. It also requires special attention to be given to banks located in jurisdictions with weak AML/CFT standards. The specific requirements for these relationships are further outlined in Resolution JD No. 32-2005.

574. **Securities:** Securities entities are allowed to establish cross border correspondent relationships, but there are no additional AML/CFT requirements outlined. Entities regulated by MICI and IPACOOP are not permitted to establish cross border correspondent relationships (Law 17-1997, Art. 18). Consequently, the assessment of R. 7 would focus mainly on banks.

575. Requirement to Obtain Information on Respondent Institution (c.7.1):

576. **Banks:** Banks are required to conduct due diligence to any operation or transaction between a bank and a foreign bank. This due diligence includes collection information on the banking institution in question, the management, its main commercial activities, the nature of the business of the institution, using publicly available information, and the institution's reputation (Board of Directors Resolution "Resolution JD" No. 32-2005, Art. 1.a).

577. Assessment of AML/CFT Controls in Respondent Institution (c.7.2):

578. Banks are required to confirm that the respondent institution has AML/CFT measures and controls in accordance with international standards (can meet the requirement of "adequate" controls). There is no explicit requirement to ascertain whether these are effective (Resolution JD No. 32-2005, Art. 1.b).

579. Approval of Establishing Correspondent Relationships (c.7.3):

580. Banks are required to obtain the bank's Board of Directors' approval before establishing a new correspondent relationship (Resolution JD No. 32-2005, Art. 2).

581. Documentation of AML/CFT Responsibilities for Each Institution (c.7.4):

582. Banks are required to establish clearly and document, if necessary, each bank's respective responsibilities on the due diligence processes regarding the underlying customers in the correspondence businesses. The terms "if necessary" suggest that there may be circumstances where this may not be necessary and no examples are given. Consequently, this requirement is not totally met. (Resolution JD No. 32-2005, Art. 1.d).

583. Payable-Through Accounts (c.7.5):

584. There are no explicit provisions concerning "payable-through accounts" for banks; however, when questioned about these relationships the banks who were interviewed indicated they did not provide this service. This view was shared by the SBP. However, a simple internet search provides information regarding Panamanian banks advertising "payable through accounts" as services available at their institutions.

585. Misuse of New Technology for ML/TF (c.8.1):

586. **Banks.** The SBP has issued two Agreements which address technological developments: Agreement 5-2003 concerning electronic banking (includes internet banking) and Agreement 7-2003 concerning credit card transactions. Agreement 5-2004 requires that banks receive authorization from the SBP to offer electronic banking services, and that the banks must provide the SBP information documenting the implementation, structure, and measures established to be in compliance with the Agreement. The SBP requires banks to delineate in their Operations Manual the procedures, policies, and internal controls necessary to maintain administrative and operative control over electronic banking products, including effective mechanisms for the supervision of risks associated with electronic banking. The risk unit required by Agreement 7-2001 shall be responsible for the identification, evaluation and control of associated risks. There is also an audit requirement to review this operation. Security controls are also required for verification of identity and approval of new clients and of existing clients wishing to have electronic banking services. In particular, Art. 13 requires banks to prevent abuse of electronic banking by maintaining current, functioning, effective, and strict procedures for the identification and monitoring of suspicious transactions, as well as the implementation of the CDD policy, due diligence procedures and other measures contained in Agreement 9-2000 (this agreement has since been revoked and replaced by Agreement 12-2005). These instruments do not address the risk of TF.

587. Agreement 7-2003, through Article 13, requires banks to have strict procedures and effective security measures in place for credit card services and transactions regarding CDD, and identification and monitoring of transactions.

588. No similar enforceable instruments have been issued regarding the misuse of new technologies for entities regulated by **SMV, MICI, or IPACOOP.**

589. Risk of Non Face-to-Face Business Relationships (c.8.2 and 8.2.1):

590. While all covered FIs who were interviewed indicated a client must be present face-to-face to establish a business relationship, there is no explicit provision requiring physical presence in any sector. Agreement 5-2004 regarding electronic banking requires that the bank have in place methods for the verification of identity and authorization of new clients, as well as the authentication of identity and authorization of existing clients wishing to initiate transactions through the electronic

banking service (Art. 10.a). Art. 13 in particular requires AML measures to be in place, including the application of CDD policies.

591. **Recommendations 5–8 for SSRP FIs:** As mentioned above and indicated in the above chart of FIs, underwriting and placement of life insurance and other investment related insurance are not mentioned in Article 1 of the AML Law. Article 7 of the AML Law establishes that insurance and reinsurance companies, as well as reinsurance brokers (no mention of insurance brokers) are declaratory entities (for cash and cash equivalent reports), but they are not subject to the full range of AML obligations established in Article 1 of the same law. However, in practice, the SSRP has issued a Resolution imposing, among other requirements, obligations to identify and know the client (CDD) on insurance companies, insurance company administrators, reinsurance entities, reinsurance brokers, captive insurance, captive insurance administrators, insurance brokers or producers, broker or producer societies, insurance broker administrators, and insurance adjustors or damage inspectors [inspectores de averias]. Article 6 of Resolution 8-2008 specifies the information which must be collected for each client (natural persons and legal entities). Article 6, final paragraph, also imposes a requirement to identify clients who are PEPs, to pay special attention and take measures for these clients, such as establishing appropriate mechanisms to manage the risk and apply a more profound due diligence. Resolution 8-2008 does not address the requirements of Recommendations 7 and 8.

Effectiveness of Implementation for Recommendations 5–8

592. **Banks:** Banks that were interviewed were aware of their obligations to conduct CDD on natural persons and legal entities, to identify and pay special attention to PEPs, to comply with cross border correspondent banking requirements, and to have policies in place for electronic banking and credit card transactions. Banks expressed serious concern about risks associated with clients who maintained numbered/coded accounts or who were bearer share companies, including such business conducted through financial intermediaries and bearer share entities formed and managed in other jurisdictions. This concern appears to emanate from difficulty to establish the beneficial owners and controllers of these accounts and services including after the relationship has been established. The situation would be more challenging for one-off transactions where accounts may not be opened. Some banks even indicated a willingness to require changes to those accounts (requesting numbered/coded accounts be changed to nominative accounts; requesting bearer shares be converted to nominal shares) and/or to phase out providing business relationships with such clients. They did not generally appear to consider the possibility, as an interim measure, of maintaining physical custody of bearer shares while the relationship lasts.

593. This raises some doubt concerning the seriousness and extent of analysis conducted of the inherent risks in such business and the necessary controls required to mitigate such risks. Neither was it apparent that banks have implemented specific policies to prohibit business with clients with those characteristics. This view is supported by FIs' position. However, banks indicated that if they cut ties with such high-risk customers (numbered accounts; bearer share clients), it is certain such clients can go elsewhere in the Panamanian banking system to obtain services. This suggests that banks are willing to accept and continue such high-risk business in pursuit of income, even in the absence of some risk mitigating controls e.g., keeping physical custody of bearer shares.

594. Banks believe that they are in compliance with the requirements of the SBP if they obtain a sworn legal declaration of owner for the file of bearer share clients even though the share may be passed to a different owner after that declaration is signed, a high probability when clients and money

launderers are fronting for the real owners or controllers of others. In general banks felt they could comply with the requirements currently in place to identify beneficial owners of accounts.

595. Banks have been sanctioned for noncompliance with CDD requirements, indicating that the SBP is verifying compliance with the requirements that are in place. However, the number and severity of sanctions issued by SBP for noncompliance with CDD requirements is rather low given the size and nature of the Panamanian banking system, and the complexity of legal entities operating in the jurisdiction.

596. **Securities:** Securities entities interviewed were aware of their obligations to conduct CDD on natural persons and legal entities, and to identify and pay special attention to PEPs. Implementation of such requirements appeared greater for securities entities who are operating as part of a financial group. While the SMV has not issued any fines for noncompliance with CDD and PEP requirements, SMV FIs interviewed indicated that SMV on-site inspections focuses heavily on verifying the completeness of client files, especially identification information.

597. **Finance companies and money remitters:** Entities regulated by MICI were lacking awareness of CDD and PEP requirements. The level of implementation varied greatly amongst entities regulated by MICI who were interviewed but for most it was generally very weak. MICI is not verifying compliance, on a regular and proportional basis mainly due to capacity constraints.

598. **Cooperatives:** Awareness of savings and loan cooperatives of CDD and PEP requirements was lacking. Certain cooperatives demonstrated very rudimentary systems for collecting and verifying client information, while others demonstrated more advanced systems. Given that there are no detailed requirements issued from IPACOOP regarding CDD, there is a wide and varied range of implementation in this sector. IPACOOP is not verifying compliance, on a regular and proportional basis, mainly due to capacity constraints.

4.3.2. Recommendations and Comments

599. Most covered FIs are required to implement CDD measures; however, the specific requirements vary among the sectors. Additionally, there are certain covered FIs that have no specific CDD requirements in place outside of those outlined in the AML Law (money exchange and savings and loan cooperatives), and other FIs that are not obligated entities under the AML Law (insurance and reinsurance companies, insurance and reinsurance brokers, factoring companies, and leasing companies). Banks are subject to the most explicit requirements, followed closely by securities entities. Entities regulated by MICI are subject to much more limited CDD requirements, taking into account the specificities of those markets. MICI and IPACOOP should issue further detailed CDD requirements for those sectors, and all competent authorities should take steps to ensure that all CDD requirements are being implemented effectively (e.g., by issuing guidance, where appropriate).

600. Recommendation 5 (<u>all FIs</u>):

- Panama should amend its legislation to include all FATF defined financial activities that operate in Panama and are not currently included in the law as covered entities (insurance companies and intermediaries, savings and loan associations, Banco Hipotecario Nacional, issuers/managers of means of payment financial leasing and factoring, multi-service financial

cooperatives, and entities that provide the safekeeping/custody of cash and other liquid assets).

- Many CDD requirements in the financial sector are established in Agreements and Resolutions (OEM). Panama should amend its legislation to ensure that all basic CDD obligations (i.e., those marked with an asterisk) are set out in law or regulation, not just in OEM, as is required by Recommendation 5.

- Panama should require all covered FIs to conduct CDD when carrying out occasional transactions that are wire transfers (c.5.2).

- Panama should clarify in the law whether the references to "sociedades" in the AML Law limits the application of the law to "sociedades anonimas" and "sociedaes de responsiblidad limitada" in terms of the identification of legal persons and other arrangements. If this does not extend to trusts and foundations, the law should be amended to include them (c.5.4).

- Panama should amend the AML Law to clarify the obligation to identify the beneficial owner. As it is currently written, the AML Law requires identification of the client including directors, officers, controllers, and legal representatives with respect to legal entities. However, identification of directors, controllers, and legal entities would not necessarily result in the identification of the beneficial owner, e.g., significant shareholders, and specific parties to trusts and private foundations. Additionally, the requirement to identify the beneficial owner of an account is in law only for legal entities; Panama should amend its legislation to ensure that the requirement to identify the beneficial owner is also in law for natural persons (c.5.5).

- To assist FIs comply with CDD requirements, Panama should also implement measures to prevent the abuse of bearer share companies (addressed in Recommendations 33 and 34), with a focus on being able to identify the beneficial owner.

- Panama should amend its legislation to require ongoing due diligence of the business relationship (currently only required in OEM for banks and securities entities) (c.5.7).

601. **Banks:** Agreement 12-2005 addresses the majority of the criteria outlined in Recommendation 5. However, certain changes should be made:

- SBP should specify that banks should identify all parties to a trust client (and foundations), where the trustee and settlor are key parties with the former having effective control of the trust (c.5.5.1).

- SBP should impose a requirement to understand the ownership and control structure of a customer, e.g., a company that is owned through another company, trust, or foundation structure, whether domestic or foreign (c.5.5.2).

- SBP should require enhanced due diligence for certain additional high risk categories of customer, e.g., nonresidents (relevant to international/offshore business), private banking, clients with legal persons or arrangements (particularly those entities that have bearer shares), and clients that use numbered or coded accounts (c.5.8).

- SBP should clarify when verification of the identity of the customer and beneficial owner must occur for banks; and if delayed verification is allowed, SBP should further clarify the risk management procedures required by the FI (c.5.13).

602. **Securities:** Agreement 5-2006 addresses the majority of the criteria outlined in Recommendation 5. However, certain changes should be made:

- SMV should require enhanced due diligence for certain additional high risk categories of customer, e.g., nonresidents (relevant to international/offshore business), private banking, clients with legal persons or arrangements (particularly those entities that have bearer shares), and clients that use numbered or coded accounts (c.5.8).

603. Securities entities are allowed to conduct reduced CDD in certain circumstances:

- SMV should issue further regulations prohibiting reduced CDD in certain circumstances (when the customer is a resident in a country that does not effectively implement the FATF Recommendations, or when there is a suspicion of money laundering or terrorist financing) (c.5.10, 5.11, and 5.12).

604. Bureau de Change, Finance Companies and Money Remitters:

- MICI should issue comprehensive CDD regulations for bureau de change (casas de cambio), who are currently unregulated obligated entities under the law.

605. While Resolution 14-2001 and Resolution 328-2004 address certain CDD requirements for finance companies and money remitters respectively:

- MICI should issue more comprehensive Resolutions for finance companies and money remitters which address the full range of requirements set forth in Recommendation 5.

606. **Cooperatives:** The only CDD requirements for savings and loan cooperatives are those put forth in the law and Resolution D.E. 41-2009 (which merely repeat the requirements in the law).

- IPACOOP should issue comprehensive CDD regulations for savings and loan cooperatives.

607. **Recommendation 6: Banks and securities entities** have certain requirements with regard to PEPs, including both domestic and foreign.

608. SBP has issued Circular 1-2005 as guidance for relationships with PEPs.

- This guidance should be put in to OEM (e.g., SBP Agreement).

- Banks requirements should be amended to include the requirement to obtain senior management approval to continue a business relationship, should a customer become a PEP after being accepted as a client (c.6.2).

- Banks and securities entities should be required to identify the source of funds and wealth (currently only required to identify the source of funds) for clients identified as PEPs (c.6.3).

609. MICI and IPACOOP:

- MICI and IPACOOP should issue comprehensive requirements regarding business relationships with PEPs.

610. **Recommendation 7:** Banks have comprehensive requirements regarding cross border banking and other similar relationships. While securities entities are authorized to establish cross border correspondents, there are no additional AML/CFT requirements in place.

- Banks should be required to determine if the respondent institution's AML/CFT measures and controls are effective (currently only required to confirm they are in accordance with international standards) (c.7.2).

- The words "if necessary" should be removed from the SBP requirement to establish clearly and document each bank's respective responsibilities on the due diligence processes regarding the underlying customers in the correspondence business (c.7.4).

- SBP should issue guidance regarding the requirements for a bank to maintain "payable through accounts" (7.5).

- The SMV should issue comprehensive requirements regarding cross border banking and other similar relationships.

611. **Recommendation 8:** The SBP has issued requirements regarding electronic banking and credit card services but:

- The SMV, MICI and IPACOOP should issue requirements for their FIs to have policies in place for the misuse of technological developments in money laundering or terrorist financing schemes (c.8.1).

612. There is no explicit provision requiring physical presence in any sector, therefore:

- All competent authorities should issue requirements for FIs to have policies and procedures in place to address any specific risks associated with non face-to-face business relationships and transactions (c.8.2).

4.3.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R. 5	**PC**	• Systemic limitations in scope of application of AML regime: the AML legislation does not apply to, inter alia, insurance companies and their intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives savings and loan associations, Banco Hipotecario National, and entities that provide the safekeeping/custody of cash and other liquid assets. • Many CDD requirements that should be in law and regulations are in OEMs. • No CDD requirement when carrying out occasional transactions that

		are wire transfers (c.5.2). • CDD requirements for legal persons do not clearly apply to trusts and foundation clients. (c.5.4) • Identification requirements for beneficial owners are insufficient for legal persons and arrangements. The requirement to identify the beneficial owner of an account is in law only for legal entities (companies) and not for clients that are natural persons. (c.5.5) • Lack of measures in place to prevent the abuse of bearer share companies constrains ability to conduct ongoing CDD. (c.5.1) • Lack of legal requirement for ongoing due diligence of the business relationship (currently only required in OEM for banks and securities entities) (c.5.7). • Not all parties to a trust client (and private foundations) are required to be identified (c.5.5.1). • No requirement to understand the ownership and control structure of a customer, e.g., a company that is owned through another company, trust, or foundation structure, whether domestic or foreign (c.5.5.2). • No enhanced due diligence requirements for high risk categories of customer, e.g., nonresidents (relevant to international/offshore business), private banking, clients representing legal persons or arrangements (particularly those entities that have bearer shares), and clients that use numbered or coded accounts (c.5.8). • Securities entities are allowed to conduct reduced CDD in certain circumstances in the absence of appropriate guidelines (c.5.10, 5.11, 5.12). • No comprehensive CDD regulations for high risk unregulated bureau de change firms (casas de cambio) by MICI. • Lack of comprehensive regulations from MICI for finance companies and money remitters to address the full range of requirements set forth in Recommendation 5. • Lack of comprehensive CDD regulations for savings and loan cooperatives.
R. 6	**PC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries (limited scope coverage), issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan services associations, the national mortgage bank, the savings bank, and entities that provide the safekeeping/custody of cash and other liquid assets. • Guidance on PEPs in Circulars and not in law, regulations or OEMs. • Banks: No requirements to obtain senior management approval to continue a business relationship, should a customer become a PEP after being accepted as a client (c.6.2). • Securities: No requirement to identify the source of wealth of PEPs. (c.6.3). • No comprehensive requirements for entities regulated by MICI and IPACOOP for PEPs.

R. 7	**PC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries (limited scope coverage), issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan services associations, the national mortgage bank, the savings bank, and entities that provide the safekeeping/custody of cash and other liquid assets. • Banks: No requirement to determine if the respondent institution's AML/CFT measures and controls are effective (currently only required to confirm they are in accordance with international standards) (c.7.2). • Inadequate CDD provisions/requirements ("if necessary") for banks to establish and document each bank's respective responsibilities regarding the underlying customers (c.7.4). • SBP should issue guidance/requirements regarding the requirements for a bank to maintain "payable through accounts" (7.5). • Securities: No comprehensive requirements regarding cross border relationships.
R. 8	**PC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries (limited scope coverage), issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan services associations, the national mortgage bank, the savings bank, and entities that provide the safekeeping/custody of cash and other liquid assets. • No requirements to prevent misuse of technological developments for entities regulated by SMV, MICI and IPACOOP. (c.8.1). • No specific provisions or guidelines on non face-to-face business and physical presence requirements for clients. (c.8.2).

4.4. Third Parties and Introduced Business (R. 9)

4.4.1. Description and Analysis

613. Legal Framework:

614. There is no provision in law, regulation or OEMs that allows or prohibits FIs to rely on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business. All supervisory authorities reaffirmed that while there is no explicit prohibition, covered FIs understand that it is their direct obligation to collect and verify CDD information and not that of any intermediary or third party. Art. 1 (1) of the AML Law and similar provision in the various Agreements and Resolutions also indicate that it is the FIs obligation to obtain all of the required documentation with respect to identification in particular and other CDD measures. These requirements/documentations are to be met/obtained generally before or at the time of opening an account/relationship. Many FIs acknowledged that it is common practice in Panama for clients, natural or legal persons, to be introduced by a lawyer acting as an intermediary. In fact, many company services providers advertise/offer introduction services to their clients for opening bank accounts. Given this acknowledgement, and the fact that there is no provision allowing or prohibiting it, this represents a gap in compliance with R. 9. When interviewed, FIs confirmed they consider the FI ultimately responsible for collecting and verifying CDD information as per the legal and regulatory

requirements. It was not possible to ascertain; however, whether or not in practice FIs rely on intermediaries or other third parties for certain aspects of the CDD process as contemplated under R. 9.

615. Requirement to Immediately Obtain Certain CDD elements from Third Parties (c.9.1):

616. There is no provision in place that allows or prohibits this activity. See previous paragraph under Legal Framework.

617. Availability of Identification Data from Third Parties (c.9.2):

618. There is no provision in place that allows or prohibits this activity. See previous paragraph under Legal Framework.

619. Regulation and Supervision of Third Party (applying R. 23, 24, and 29, c.9.3):

620. There is no provision in place that allows or prohibits this activity. See previous paragraph under Legal Framework.

621. Adequacy of Application of FATF Recommendations (c.9.4):

622. There is no provision in place that allows or prohibits this activity. See previous paragraph under Legal Framework.

623. Ultimate Responsibility for CDD (c.9.5):

624. There is no provision in place that allows or prohibits this activity. See previous paragraph under Legal Framework.

Effectiveness of Implementation

625. All covered FIs who were interviewed reaffirmed the competent authorities' view that, while there is no explicit prohibition from relying on third parties or intermediaries for elements of the CDD process, all covered FIs understand their respective requirements regarding the obligation to collect and verify CDD information to apply to the FI, not to any intermediary or third party. Many FIs acknowledged that it is common practice in Panama for clients to be introduced to a natural person or legal entity through a lawyer acting as an intermediary, however, those FIs also confirmed they consider the FI ultimately responsible for collecting and verifying CDD information. Given this acknowledgement, and the fact that there is no provision allowing or prohibiting it, this represents a gap in compliance with R. 9.

4.4.2. Recommendations and Comments

626. While covered FIs understand their respective requirements regarding the obligation to collect and verify CDD information to apply to the FIs, there is no provision in place that allows or prohibits FIs to rely on any intermediary or third party.

627. The supervisory authorities should decide whether to allow or prohibit FIs to rely on intermediaries or other third parties to perform some of the elements of the CDD process or to

introduce business, and according to that decision, issue the appropriate regulations to reduce the risk of this activity and comply with Recommendation 9.

628. The supervisory authorities of FIs should inquire and verify whether in practice their FIs do rely on CDD conducted by others especially in their international/offshore services. And, and whether such reliance conforms to the legislation and the criteria established under R. 9. One area of such inquiry is when foreign branches, subsidiaries or affiliates introduce such clients, including when they are clients of those foreign entities.

4.4.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R. 9	**NC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries (limited scope coverage), issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan services associations, the national mortgage bank, the savings bank, and entities that provide the safekeeping/custody of cash and other liquid assets. • The supervisory authorities should decide whether to allow or prohibit FIs to rely on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, and according to that decision, issue the appropriate regulations to reduce the risk of this activity and comply with Recommendation 9.

4.5. Financial Institution Secrecy or Confidentiality (R. 4)

4.5.1. Description and Analysis

629. Legal Framework:

630. Law 42/2000 (AML Law), Banking Law, Law 1/1984 (Trusts Law), Decree 16/1984, Decree 213/2000, Securities Market Law, Law 42/01 (Finance Companies), Law 48/02 (Money Remitters), Law 17/97 (Cooperatives), Law 12/2012 (Insurance Law). The AML Law does not cover the following FIs and/or activities: insurance companies and their intermediaries, issuers/managers of means of payment (e.g., credit and debit cards), financial leasing and factoring, multi-service cooperatives, savings and loans associations, National Mortgage Bank, and entities that provide the safekeeping/custody of cash and other liquid assets which negatively affects the compliance with the recommendation.

631. Inhibition of Implementation of FATF Recommendations (c.4.1):

632. Overall, the competent authorities have powers under the various laws to require financial institutions to provide whatever information they may require, and to carry out inspections with the right of access to all records held by institutions.

633. **Ability of competent authorities to access information:** Article 20 of Executive Decree 16 of 1984, amended by Executive Decree 213 of 2000, states that the information obtained by the SBP and other Government entities authorized by Law to perform inspections or collect documents related to trust operations could only be disclosed to the competent administrative or judicial authorities for performing their legal and regulatory duties.

634. Except for the issue of trust business conducted by FIs in their capacity/license of trustees, there are no impediments hindering the access to information for the effective implementation of the FATF recommendations, in particular for compliance with the AML/CFT obligations contained in the AML Law and regulations. The supervisory authorities (Superintendency of Banks, Superintendency of the Securities Market, the Ministry of Commerce and Industry, the Panamanian Autonomous Institute for Cooperation, and the Superintendence of Insurance and Reinsurance) as well as the FIU have unrestricted access to the information kept by reporting entities. All supervisory authorities are empowered under Article 5 to inspect the internal procedures of the financial institutions subject to their control in order to ensure compliance with the AML Law.

635. Pursuant to Article 3 of Law 42/2000 "all information that is communicated to the Financial Analysis Unit or to the authorities of Panama in compliance with the present Law or its implementing regulations (…) will not constitute a violation of the professional secret, neither a violation of the restrictions about disclosure of information derived from contractual confidentiality or from any legal or regulatory provision, and neither will it imply any responsibility for the natural or juridical persons mentioned in this Law nor for their dignitaries, directors, employees or representatives."

636. In addition, with regard to the power of the UAF to have access to information, Article 2 of the AML Law authorizes the Superintendency of Banks, and other supervisory authorities, as well as the reporting entities "*to collaborate with the UAF in the exercise of its duties and to provide it with any information in their possession, at the UAF's request or on their own initiative, conductive to prevent the commission of the crime of money laundering (...).*"

637. Article 2 of Executive Decree 78 states that the UAF can gather from public institutions and from reporting entities all information related to financial, commercial or business transactions that may be linked to ML or TF. This would include STRs and any other related information. The UAF indicated to have access to a number of sources of information from public authorities: e.g., the Customs database of cross border cash transportation, Panama Emprende (authority that licenses and approves the commencement of business operations), the UNSC, and OFAC list, etc.

638. The limitation for the UAF is to have access to information on beneficial ownership and effective control of legal entities and arrangements held by lawyers, and registered agents and others subject to the FATF Recommendations.

639. The SBP, as the competent supervisory authority for banks, has access to any documentation and information it may require for properly performing its functions. Article 113 of the Banking Law requests banks and other entities supervised by the SBP to submit the information required by law, decrees, and other regulations for AML/CFT, and other related crimes. It also states that those entities are obliged to submit such information to the SBP whenever it may so require. Similar powers are vested under Articles 59 and 86. The authorities informed that the powers granted under Article 113 are broad and apply to trust and any other institutions that may fall in the future under the supervision of the SBP.

640. The establishment of trusts is governed by Law 1/1984 and Decrees 16/1984 and 213/2000. Article 20 of Executive Decree 16/1984 was modified by Decree 213/2000 as follows: "The information obtained by the SBP and other entities authorized by law to execute inspection or collect documents related to fiduciary operations and their respective officials, can only be revealed to the competent administrative and judicial authorities, exclusively for the practice and fulfillment of their legal and regulatory functions."

641. The authorities informed than in practice any information obtained by the SBP related to fiduciary operations could be provided to administrative and judicial competent authorities. Competent authorities that can inspect or obtain information on trusts business are subject to strict secrecy obligations and can be sanctioned for unauthorized disclosure. The SBP was not able to inform the authorities, if any, with whom they would be able to share such information and whether this could be done outside a judicial procedure. It is unclear whether the SBP and the SSRP would be able to share such information with the UAF and other supervisory authorities.

642. The SBP and the SSRP do not have access to the nontrust business conducted by banks and insurance companies under trust licenses. Such limitation prevents the SBP and the SSRP to conduct a comprehensive supervision of all areas of risk and would be a cascading effect on the availability of information that can be provided to other competent authorities.

643. Assessors could not establish whether FIs can provide corporate services to their clients (e.g., acting as Resident Agents for companies and private foundations in connection with their private banking and/or trust business). To the extent that they can provide such services (e.g., through in-house lawyers or outsourcing), the law of registered agents would allow neither the supervisors nor the UAF access to underlying company information as they are not defined as "competent authorities" under the Resident Agent Law. This would also limit the scope of their compliance and risk supervision and may prevent their ability to share information with the UAF and other competent authorities.

644. Pursuant to article 5 of Law 18/1959 the information with respect to numbered accounts could only be revealed by banks in the course of criminal procedures. However, the SBP informed that such law was overridden by the AML Law and Article 113 of the Banking Law, since they grant full access by the SBP to any information they may require in light of its supervisory powers.

645. As for the rest of the supervisory authorities, the powers to have access to information are granted under the following articles: (i) Superintendency of the Securities Market, Articles 2, 3 and 329-331 of the Securities Law, (ii) Ministry of Commerce and Industry, Article 36 of Law 42/01 (finance companies) and Article 22 of Law 48/03 (money remitters), (iii) Panamanian Autonomous Institute for Cooperatives, Articles 117 to 119 of Law 17/97, and (iv) Superintendence of Insurance and Reinsurance, Article 232 of Law 12/2012.

646. The SMV has the power by means of Article 330 of the Securities Law to examine books, records, accounts and have access to relevant documents, if there is sound reason to believe that there is a violation to a provision under the Securities Law, which limits somehow the access to information. The authorities informed that pursuant to the powers granted under the AML Law the SMV has the ability to access all the necessary information to properly perform the supervisory functions.

647. Some legal provisions under the sectoral laws provide for confidentiality obligations for both supervisory authorities and financial institutions and establish civil, administrative and criminal sanctions in case of breaches to the secrecy duties. With the limitation highlighted with respect to trusts business conducted by FIs and conditions for the SMV to access information, financial secrecy does not constitute an obstacle for the supervisory authorities to access the information they require to properly perform their functions. Article 2 and 3 of the AML Law override any confidentiality obligation imposed on financial institutions.

648. As for the banking sector, the Banking Law clearly addresses the lack of financial secrecy for AML/CFT purposed. Article 111 of the Banking Law provides that "*banks may only release information about their clients or their operations with their clients' consent. Banks will not require the consent of the client in the following cases: (i) when the information is required by competent authority in accordance with the existing legislation and (ii) when, on their own initiative, banks must supply the information in compliance with criminal legislation on prevention of Money Laundering, the Financing of Terrorism, and related crimes, (...).*"

649. Article 110 of the Banking Law states that the information obtained by the SBP in the discharge of its functions, related to individual clients of the bank, shall be maintained under strict confidentiality and may only be revealed when required by competent authority, as per legislation in force, in the course of criminal proceedings. The SBP may not reveal such information to third parties, unless required by competent authority (…). Exceptions to these provisions are those reports or documents that (...) because of its nature, are of a public character and those that must be submitted in compliance with criminal legislation on prevention of Money Laundering, The Financing of Terrorism, and related crimes.

650. **Sharing of information between domestic competent authorities:** The SBP, the SMV and the SSRP are empowered under their sectoral Laws (Banking, Securities and Insurance Law) to enter into memorandum of understanding with other competent authorities in order to regulate the cooperation and exchange of information. However, no similar power has been granted to MICI and IPACOOP to allow for the sharing of information both domestically and internationally. In this regard, MICI informed that such power is provided by the Constitution under Section 4, but no specific reference was provided in this regard in order to ensure that such power is in place.

651. In 2005, the SBP, the SMV, and SSRP signed an MOU aimed at enabling the supervisors to exchange information in supervisory matters. No information has yet been exchanged on AML/CFT matters.

652. Pursuant to Law 67/2011 a Financial Coordination Committee (FCC) was established with the aim to improve inter-agency coordination and harmonize financial sector regulation. The banking superintendent serves as a permanent chair. The FCC comprises the SBP, SMV, IPACOOP, and the Finance Companies Directorate from the MICI, the SSRP and the Director of the public workers pension funds (SIACAP) which represents a step in the right direction to enhance domestic cooperation. The UAF and the Board of Accountancy also participate in the meetings of the FCC. The authorities informed that since its creation the FCC has conducted 15 meetings. However, it is unclear the number of meetings were AML/CFT issues were discussed. Due to the recent implementation, the assessors find difficult to assess the level of effectiveness.

653. Similarly, on March 2012, the SBP signed an agreement with IPACOOP with the aim to provide support to IPACOOP in the area of supervision, specially related to AML/CFT as well as to provide training but no exchange of information is contemplated

654. **Sharing of information with foreign competent authorities:** Pursuant to Article 65 of Decree Law 2/2008, the SBP shall enter into understandings with foreign supervisory bodies, by either bilateral or multilateral memoranda, that allow and facilitate consolidated, cross-border supervision and the global evaluation of banks and banking groups subject to the regulation and supervision under such Decree Law. The memorandums of understanding will specify, among other things, the applicable criteria to inspections, the interchange of information and cooperation among parties and will be based on principles of reciprocity and confidentiality and must adhere to banking supervision. The SBP has signed 24 MOUs as of the mission date. None of them cover trustees' supervision.

655. Similarly the SMV under Article 30 of the Securities Law is empowered to enter into understandings with other foreign supervisory bodies in order to regulate matters related to inspections, investigations, exchange of information and cooperation, among others. However, the SMV cannot disclose any information obtained through an investigation, inspection or negotiation, but to the Prosecutors or for consolidated supervision purposes which is a limitation for the exchange of information.

656. Both supervisory authorities have signed numerous MOUs with foreign competent authorities which according to the authorities may be used for AML purposes and allow access to information for the verification of compliance with AML requirements. Similarly, the authorities informed that an MOU was signed with members of GAFISUD but they have not yet exchanged information with foreign counterparts.

657. The SSRP is granted under Article 12 of the Insurance Law to sign MOUs both with domestic and foreign competent authorities. The authorities informed that no MOUs have been signed yet with foreign counterparts but that an MOU with Colombia and Ecuador is underway. As for IPACOOP, the authorities informed that the legal framework does not provide for the possibility to sign MOUs with domestic and foreign counterparts.

Effectiveness of Implementation

658. Meetings with representatives from the public sector revealed that access to information by the supervisory authorities seems to be unrestricted and that no secrecy provisions are imposed. With the exception of the lack of access to the nontrust business conducted by FIs, where some limitations exist, and the strict secrecy obligations on competent authorities that can obtain information on trustees, FIs generally concluded that the financial secrecy provisions in law do not inhibit the ability of the competent authorities to access information from the FIs they supervise, which the authorities require to properly perform their functions in combating ML. According to representatives from the private sector, existing secrecy provisions do not interfere with the ability of FIs to share information with one another as required by R. 7, R. 9, and SR. VII. However, in practice such sharing is not taking place.

659. Overall the UAF is satisfied with its access to information in order to perform its functions and informed that the data contained in the STRs submitted by financial institutions is usually comprehensive.

660. Work is already underway to facilitate enhance coordination and exchange of information between domestic competent authorities and the establishment of the Financial Coordination Committee has been a good step in such direction. However, due to its recent implementation effectiveness could not yet been assessed. The powers for the exchange of information at the international level have been granted to the core supervisors (banking, securities and insurance), but, some limitations exist within the SMV, and in all cases implementation has not yet taken place.

661. The domestic limitations to access information on nontrust business conducted by FIs, and the inability for competent authorities to openly share it, has a negative impact on the effectiveness of the system.

4.5.2. Recommendations and Comments

- The SBP and the SSRP should have access to the nontrust business conducted by banks and insurance companies respectively under their trust licensees and exchange such information with other competent authorities when needed.
- The SMV should broaden under its sectoral Law the powers to have access to information.
- It is still unclear whether FIs can act as Resident Agents for companies and private foundations in connection with their private banking and/or trust business which under the law of registered agents would allow neither the supervisors nor the UAF access to underlying company information.
- MICI and IPACOOP should be granted the power to share information with other competent authorities both domestically or internationally.
- Competent authorities should ensure implementation of the cooperation and exchange of information agreements both at the domestic and international level.

4.5.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R. 4	**PC**	• Confidentiality provisions and supervisory practice limit access by the SBP, and SSRP to the nontrust business conducted by banks and insurance companies under their trust licensees. • SBP and SSRP are unable to share information with respect to nontrust businesses (e.g., corporate services business) conducted by banks and insurance companies. • MICI and IPACOOP are not empowered to share information either domestically or internationally. • Uncertainty with respect to the information access and sharing by FIs that provide corporate services to clients e.g., as Resident

		Agents for companies and private foundations. • Effectiveness: Limited sharing of information between competent authorities, especially at the international level.

4.6. Record-Keeping and Wire Transfer Rules (R. 10 and SR. VII)

4.6.1. Description and Analysis

662. Record-Keeping and Reconstruction of Transaction Records (c. 10.1 and 10.1.1):

663. The AML Law does not apply to insurance companies and their intermediaries, issuers/managers of means of payment (e.g., debit and credit cards), financial leasing and factoring, multi-service cooperatives, savings and loan associations, the National Mortgage Bank, and entities that provide the safekeeping/custody of cash and other liquid assets. Such scope limitation negatively impacts the compliance with the Recommendation.

664. The record-keeping requirements can be found in the AML Law, which for the purpose of this assessment is considered as primary legislation. There are additional provisions under the Commercial Code with respect to the obligation to keep records. Article 93 also stipulates the obligation to keep accounting records for at least five years following the termination of business. The authorities were unable to indicate whether there are any additional recordkeeping requirements embedded in other laws to complement the existing requirements under the AML Law. The authorities informed that additional information on recordkeeping can be found in each of the individual Agreements or Resolutions issued by the SBP, SMV, IPACOOP, and SSRP. No specific record-keeping requirements are set out in Resolution 8/2008 for insurance intermediaries. However, the Agreements and Resolutions issued by the supervisory authorities are OEM and do not satisfy the requirements of the criterion.

665. According to Article 1 paragraph 9 of the AML Law, banks, trust companies (fiduciary), bureau de change (bureau de change), money remittances, natural and legal persons that exercise activity of money changing or remission of currencies, whether it is the main activity or not, finance companies, savings and loans cooperatives, stock exchanges, clearing houses, brokerage houses , stock brokers and investments fund administrators are obliged to keep for a period of five years, the documents that properly attest the performance of the operations and the identity of the individuals who performed the transactions or who had established business relations.

666. As it stands, the recordkeeping requirement set forth under the AML Law does not clarify that the five years recordkeeping retention period for transaction applies following the completion of the transaction. Article 1 paragraph 9 neither mentions that such requirement applies to both, domestic and international transactions and that the transaction record could be required for a longer period than five years if requested by a competent authority in specific cases and upon proper authority.

667. The supervisory authorities further elaborated those requirements in the Agreements and/or Resolutions but as they are OEM they do not comply with the criterion.

668. Pursuant to Article 7 of SDB Agreement 12/2005, all banks and trust companies (fiduciaries) must keep, by any means authorized by the law, for a minimum period of five years, following the

termination of the business relationship, a copy of all documents obtained through the CDD process, documentation evidencing verification of source of funds, transaction records and any other document that allows the reconstruction of customer's individual transactions, if necessary. In addition, it states that the forms and documents must be submitted at the request of the supervisor authorized by the Superintendency for this purpose. The record-keeping requirement outlined in Article 7 is tied to the termination of an account or business relationship not the completion of the transaction.

669. The SMV under Article 16 of SMV Agreement 5-2006 and IPACCOP under Article 1 paragraph 9 of Resolution 41/2009 mirror the requirement set forth under Article 1 paragraph 9 of the AML Law.

670. The Superintendency of Insurance and Reinsurance has not imposed recordkeeping requirements under Resolution 8/2008. Neither MICI has extended such obligation to money remitters under Resolution 328/2004 and 14/2001 to finance companies.

671. Record-Keeping for Identification Data, Files, and Correspondence (c.10.2):

672. The AML Law under Article 1 paragraph 9 requires the financial institutions covered under Article 1 to maintain records of the identification data for five years, but similarly to the records on transactions, it does not clarify that the recordkeeping retention period is five years following the termination of an account or business relationship. Article 1 paragraph 9 only refers to the obligation to maintain all documents obtained through the CDD process without any specification to the need to keep account files and business correspondence

673. Article 7 of the SDB Agreement 12/2005 requires banks and trust companies (fiduciaries) to maintain records of the identification data for a minimum period of five years following the termination of the business relationship. Similarly as in the AML Law the requirement is broad and does not include the obligation to keep account files and business correspondence.

674. The SMV under Article 16 of SMV Agreement 5-2006 and IPACCOP under Article 1, paragraph 9 of Resolution 41/2009 mirror the requirement set forth under Article 1, paragraph 9 of the AML Law. There are no requirements under the sectoral resolutions for insurance intermediaries, money remitters and finance companies. However, as mentioned above the Agreements and Resolutions are OEM and do not fulfill the requirements of this criterion.

675. Availability of Records to Competent Authorities in a Timely Manner (c.10.3):

676. The AML Law does not require financial institutions to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

677. Pursuant Article 7 of SDB Agreement 12-2005 all the documents, as required by law and regulations, should be available to the supervisory authorities. The same obligation is set forth under Article 16 of SMV Agreement 5-2006, but these Agreements are not considered primary or secondary legislation as required by the standard.

Effectiveness of Implementation with R. 10:

678. Meetings conducted with officials from the private sector revealed that they are knowledgeable of the recordkeeping requirements obligations imposed by the AML Law and it appeared to the mission that records on customers, transactions and accounts are maintained for the required minimum period and available to the competent authorities, including the supervisor and the financial intelligence unit. Overall all financial institutions stated that they keep the required scope of documents for at least five years. The assessment team found that, in practice, some FIs go beyond the record-keeping requirements for scope and term of document retention. Some institutions reported that they retain documents for up to 10 years; others reported they retain electronic documents indefinitely. The institutions indicated that records on transactions, identification data, account files and business correspondence are generally kept.

679. According to the supervisory authorities, compliance with the record keeping requirement is validated during the on-site inspections.

680. Obtain Originator Information for Wire Transfers (applying c.5.3 in R. 5, and c.VII.1):

681. Art. 1 of Law 42 (AML Law) requires FIs covered in para. 1 of this Article, including banks, to adequately identify all their clients. This provision does not distinguish between account holders and other clients so it may be assumed that it applies generally. Agreement 12-2005 issued by the Superintendency of Banks also defines a client as including any person that has a business relationship with a bank. It is not certain if this includes occasional customers. With respect to clients that are legal persons, it requires FIs to obtain the necessary certifications evidencing (verification) their incorporation as well as details of the directors, officers, authorized persons ("apoderados") and legal representatives. Agreement 12-2005 provides details of the identification documents that should be obtained including copies of passport or similar documents for nonresident persons that are present in Panama. No similar verification requirements are established for other customers and it is only implicitly required through the identification documentation information that should be recorded in a form for purposes of customer profiling.

682. Agreement 2-2005 issued by the Superintendency of Banks sets out the requirements for wire transfers conducted by all banks. No thresholds are established for wire transfers. In particular, Art. 3 requires banks that carry out a bank domestic or international wire transfer to conduct customer due diligence on its clients in accordance with Agreement 9-2000 (an Agreement which has since been replaced by Agreement 12-2005). Art. 4 (1) (a) requires identification documents and other customer details at the time an account is opened including inter alia, name and address and implicitly the account number. No provision is made with respect to customers that do not have accounts, e.g., occasional customers. This issue however is addressed more appropriately in Agreement 2-2005 on wire transfers as discussed below. Art. 3 (2) of Agreement 2-2005 requires banks to obtain full originator information including the following client information:

- Name or registered name of the originator;
- Physical address of originator, and in absence the post office address;
- Bank account number or full identification if bank account not available; and
- Explicit request from originator, amount of transaction and the date of the transfer.

683. Art. 3 (3) also requires information on the beneficiary of the wire transfer including name, account number, and name of the beneficiary bank. Art. 4 of Agreement 2-2005 also prohibits processing of wire transfers that are not received with the name of the originator and the ordering bank.

684. Art. 6 of Agreement 2-2005 states that banks shall keep information on wire transfers for five years from the date the transactions are executed. In keeping with the requirements of R. 10, this period should be from the date a business relationship or account is terminated for wire transfers that are conducted as part of a business relationship.

685. Inclusion of Originator Information in Cross-Border Wire Transfers (c.VII.2):

686. Art. 3 of Agreement 2-2005 does not explicitly require that the originator information listed above is included in all wire transfers. It only implicitly states that no wire transfer shall be made without complying with the applicable requirements which include to have, as a minimum, the above listed information on the originator ("debera contar, como minimo, con la siguiente informacion del ordenante") and the beneficiary. This requirement applies to both international and domestic wire transfers.

687. Inclusion of Originator Information in Domestic Wire Transfers (c.VII.3):

688. The same requirements that apply for international wire transfers apply to domestic transfers.

689. Maintenance of Originator Information ("Travel Rule") (c.VII.4):

690. There are no specific provisions with respect to intermediary and beneficiary financial institutions in the payment chain of wire transfers to ensure that all originator information is transmitted with the transfer. These terms are also not defined. Art. 2 and 3 of Agreement 2-2005 primarily refers to the ordering bank and its client ordering the transfers.

691. Risk Based Procedures for Transfers Not Accompanied by Originator Information (c.VII.5):

692. Art. 4 of Agreement 2-2005 prohibits processing any wire transfer that does not come with the name of the originator and the originator bank. This is not appropriate for international wire transfers that require full originator information, and for domestic transfers that should require at least the originator account number or unique identifier. When full originator information is not received, there are also no provisions in this Agreement for applying a risk-based approach for wires lacking the required information, considering whether to file a suspicious activity report, and considering restricting or termination relationships with ordering institutions.

693. Monitoring of Implementation (c.VII.6):

694. The Superintendency of Banks is the designated institution for monitoring compliance with Agreement 2-2005 and other AML/CFT requirements established under Panama's legislation. See Recommendation 23 for a fuller assessment of the supervisory regime.

695. Application of Sanctions (c.VII.7: applying c.17.1 – 17.4):

696. Art. 9 of Agreement 2-2005 states that failure by banks to comply with the wire transfer requirements shall be sanctioned pursuant to Art. 137 of Law Decree 9 of 1998 (Decreto Ley 9 de 1998). Sanctions under this Law depend on the severity of the offense, repeat offenses, and harm to third parties and can include:

- Private and public warnings and
- Fine up to B50,000.

697. Such sanctions can also apply to the officers and staff of the bank if they participated in the violation and can be applied progressively until the breaches stop. Note that the sanctions (fines from B5,000 to B1,000,000) provided under Art. 8 of AML Law (Law 42 of 2002) do not apply here.

698. Additional elements: elimination of thresholds (c.VII.8 and c.VII.9):

699. The requirements under Agreement 2-2005 apply to all wires irrespective of amount.

Effectiveness of Implementation

700. Meetings conducted with officials from the banking sector revealed that they are knowledgeable of the wire transfer obligations imposed by Agreement 2-2005. The financial institutions interviewed stated that they have systems in place to confirm that all the required information is included in both incoming and outgoing wire transfers, regardless of whether it is domestic or international. They confirmed that if the information is incomplete, their systems would reject the request; it would not be possible to process a wire transfer with incomplete information. They also confirmed that they apply the same requirements for all domestic and international wire transfers, regardless of the amount.

701. According to the supervisory authorities, they validated compliance with the wire transfer obligations during the on-site inspections.

4.6.2. Recommendations and Comments

702. Recommendation 10:

- Incorporate factoring and leasing companies, insurance companies and intermediaries, multi-service cooperatives, savings and loan associations, National Mortgage Bank, issuers and managers of means of payment, and entities that provide the safekeeping/custody of cash and other liquid assets to the requirements of the AML Law.

- Establish, by law or regulation that the five years retention period applies following the completion of the transaction and the termination of an account or business relation (or longer if requested by a competent authority).

- Clarify by law or regulation that the recordkeeping obligation applies to both domestic and international transactions.

- Include the obligation for financial institutions to maintain records on account files and business correspondence.

- Require FIs to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

703. Special Recommendation VII:

- Make it an explicit requirement that full originator information for wire transfers is included in all wire transfers.

- Explicitly require for intermediary and beneficiary financial institutions to ensure that all originator information is transmitted with the transfer.

- Expand the prohibition to process wire transfer in cases when full originator information is lacking, not only the name of the originator and the originator bank.

- Require FIs to apply a risk-based approach for wires lacking the required information, to consider filing a STR and to restrict or terminate business relationships with ordering institution.

- Apply the sanctions for noncompliance under the AML Law for breaches of the wire transfer obligations.

	Rating	Summary of factors underlying rating
R. 10	**PC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service cooperatives, savings and loan associations, the National Mortgage Bank, and entities that provide the safekeeping/custody of cash and other liquid assets. Such scope limitation negatively impacts the compliance with the Recommendation. • Bureau de change (*casas de cambio*) are neither regulated nor supervised to ensure compliance with the AMLC/TF framework. • No specification in the law as to when the five years recordkeeping retention period for both transaction and customer records should apply (five years following completion of transaction and the termination of an account or business relationship or longer if requested by competent authority). • No specific obligation in law or regulation for FIs to maintain records on both domestic and international transactions. • No obligation for FIs to maintain account files and business correspondence. • No obligation for FIs to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

SR. VII	**NC**	• No explicit requirement that full originator information for wire transfers is included in all wire transfers. • There are no specific provisions with respect to intermediary and beneficiary financial institutions in the payment chain of wire transfers to ensure that all originator information is transmitted with the transfer. • The prohibition to process wire transfer is too limited and only applies when the name of the originator and the originator bank is not included, not full originator information. • No requirement to apply a risk-based approach for wires lacking the required information, to consider filing a STR and restricting or terminating business relationships with ordering institution. • Sanctions for noncompliance should be those under the AML Law for consistency with other AML violations.

4.7. Monitoring of Transactions and Relationships (R. 11 and 21)

4.7.1. Description and Analysis

704. Legal Framework:

705. Art. 1(3) of the AML law (Law 42 of 2000) requires those FIs subject to this Law (not all FATF required FIs are covered) to examine with special attention any transaction, regardless of amount, that may be linked to the laundering of funds that are the proceeds of crimes as defined in law. This requirement does not meet some of the specific requirements of Recommendation 11 that also requires FIs to pay special attention to complex, unusually large transactions and unusual patterns of transactions (that have no apparent or visible economic or lawful purpose). Rather, Art. 1(3) is more directly related to R. 13 as it explicitly links such transactions to ML which would implicitly make it suspicious. It is recognized, however, that some (but not all) of transactions that meet the requirements of R. 11 may give rise to ML suspicion and subject to STR reporting under R. 13. The various competent authorities have issued additional guidance on monitoring of complex and unusual transactions, for purposes of suspicious transaction reporting, not the monitoring of complex, unusually large transactions and unusual patterns of transactions under R. 11.

706. Special Attention to Complex, Unusual Large Transactions (c.11.1):

707. In addition to the requirements under Law 42-2000 above, the following pertains to the financial institutions covered by this Law.

708. **Banks (and trustees):** Banks do not have further requirements, outside of what is mentioned in Art. 1.3 of the AML Law, to pay special attention to complex, unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. As part of CDD for banks, Art. 4 (Art. 5 for trustees) of Agreement 12-2005 (Acuerdo 12-2005), banks are required to pay special attention to, inter alia, unusual transactions. This is insufficient for purposes of c.11.1. The requirements set forth in Articles 10 and 11 of Agreement 12-2005 specifically reference suspicious operations. While the SDB also issued Special Agreement 12-2005E with examples of transactions that could be suspicious operations, this guidance, again, focuses on suspicious transaction reporting not the monitoring of complex, unusually large transactions or unusual patterns

of transactions, even if it provides as examples of potential ML and TF some elements of the requirements of c.11.1 (e.g., in para. 6 (unusual transactions) and para. 9 (b) on TF (transactions without economic or legal justification).

709. **Securities:** The additional requirements issued by the SMV also specifically reference suspicious operations and not the specific requirements of c.11.1. Securities entities are required to know the normal pattern of activities of their client, maintain a record of transactions by client and type in chronological order, and analyze and evaluate periodically with special attention (regardless of amount) that in some way it is suspected or indicated they could be linked to ML or TF (Agreement 5-2006, Art. 3(c) and 11(3). The SMV also provided guidance to securities firms on suspicious transactions similar to those for banks in the Annex to this Agreement, including examples of unusual transactions (para. 3) and for unusual and suspicious transactions (para. 5). In the case of the latter, they should both be analyzed, documented and justified which would meet the requirements of c.11.2 with respect to unusual transactions only.

710. **Insurance:** Insurance companies and intermediaries covered under Art. 7 of Law 42 only have CTR obligations under this law and do not have any additional requirements with respect to c.11.1.

711. **Cooperatives:** IPACOOP has not issued additional requirements to pay special attention to complex, unusually large transactions or unusual patterns of transactions.

712. **Other FIs:** MICI has not issued additional requirements for FIs under its supervision to pay special attention to complex, unusually large transactions or unusual patterns of transactions. However, money remitters do have a requirement to analyze unusual transactions, with respect to the normal pattern of behavior of the client, though this is also mentioned in the context of suspicious activity reporting requirements (Resolution 328-2004, Art. 11).

713. Examination of Complex and Unusual Transactions (c.11.2):

714. Given that there are no explicit requirements in any sector to pay special attention to complex, unusually large transactions or unusual patterns of transactions, there are also no requirements to establish the background and purpose of complex, unusually large transactions or unusual patterns of transactions for any sector.

715. Record-Keeping of Findings of Examination (c.11.3):

716. There are no requirements for any sector to make available such findings for the authorities and auditors for five years.

717. Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c.21.1 and 21.1.1):

718. Only banks are required to pay special attention to banks located in jurisdictions with weak standards for the prevention of money laundering and terrorism financing (Agreement 12-2005, Art. 3). However, there is no requirement for banks to pay special attention to transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. Outside of this requirement for banks, there are no other requirements issued from SMV, MICI, or

IPACOOP for FIs regarding special attention to jurisdictions which do not or insufficiently apply the FATF Recommendations.

719. Authorities indicated that, at least for lists originating at the United Nations and from the United States Office of Foreign Assets Control (OFAC), there is a mechanism in place for distribution. The Ministry of Foreign Relations receives notifications from the UN and transmits the notifications to the UAF. The UAF then sends the notifications to the competent authorities and those authorities are responsible for notifying their obligated entities.

720. Specifically with regard to lists posted by the FATF regarding jurisdictions which do not or insufficiently apply the FATF Recommendations, the SBP has inconsistently issued Circulars to inform banks of these jurisdictions (see e.g., Circular 74-2012 regarding the FATF June Plenary). The SBP issued Circular 26 in 2010, and Circulars 68 and 74 in 2012 (which both reference the June 2012 FATF Plenary). Circulars 68 and 74 contain a list of 18 jurisdictions, though the June 2012 FATF Plenary identified 22 jurisdictions. In addition, Circulars 68 and 74 only reference jurisdictions included on FATF's list entitled "Improving Global AML/CFT Compliance: ongoing process;" they do not mention the jurisdictions included on FATF's "Public Statement." There were no Circulars issued in 2011, though the FATF lists were updated during this time. For this notification system of the SBP to be effective, an accurate Circular, listing all jurisdictions identified by the FATF, should be issued following each update to the list (after FATF Plenary meetings which occur three times per year).

721. Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c.21.2):

722. While the SBP does inform banks by Circular of jurisdictions that do not or insufficiently apply the FATF Recommendations, there is no corresponding requirement to examine transactions originating in those jurisdictions, and keep written findings for a competent authority. The only requirement mentioned in Agreement 12-2005, Art. 3, applies specifically to banks paying attention to other banks (not individuals) which operate in jurisdictions with weak ML/TF standards.

723. Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c.21.3):

724. The SBP indicated it has the power to impose the following countermeasures in relation to jurisdictions with weak or insufficient AML/CFT controls, though the legal or regulatory provisions which provide this power are unclear:

- Strengthen the required CDD measures for persons (natural or legal) of those jurisdictions;
- Refuse permits for Panamanian institutions to operate in those jurisdictions;
- Refuse permits for institutions who have their headquarters or have a presence in those jurisdictions to operate in Panama; and
- To issue warnings about potential transactions with money laundering or terrorist financing.

725. Panama was unable to provide proof or statistics that any of these measures have been taken in practice and it is unlikely that any of these actions have been taken.

726. Implementation and Effectiveness for Recommendation 11 and 21:

727. **Recommendation 11:** There is confusion amongst competent authorities and FIs subject to the AML Law regarding monitoring complex and unusual transactions, reporting cash transactions, and reporting suspicious transactions. In general there is an over-emphasis on the cash reporting requirement in Panama, followed by a minimal emphasis on suspicious transaction reporting. There is little understanding of the requirements of Recommendation 11 outside the scope of suspicious transaction reporting – to pay attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. In practice, not all of these transactions would lead to STRs. Only certain large banks indicated an understanding of the purpose (although it is not required by the competent authorities) of monitoring complex, unusual large transactions, or unusual patterns of transactions.

728. **Recommendation 21:** Banks who were interviewed confirmed an awareness of the lists distributed by FATF (and the SBP in Circular format) of jurisdictions that do not or insufficiently apply the FATF Recommendations. Those FIs signaled that, in practice, transactions with banks and with individuals from or operating in those jurisdictions are marked as medium or high risk in their internal control procedures. In practice, the SBP indicated it discusses the issue of countries that do not or insufficiently apply the FATF Recommendation at the compliance officer trainings conducted by the SBP; and compliance officers of SBP FIs confirmed this is a discussion item at these seminars. Outside of SBP FIs, there was little acknowledgement of the risks associated with doing business with banks, individuals, or entities from or operating in such jurisdictions. Notwithstanding this, Panama did license an offshore bank affiliate with headquarters in Antigua and Barbuda (this bank recently failed due to financial abuse issues) even through Antigua and Barbuda has been and continues to be subject to FATF listings. This suggests that implementation of some of the above listed countermeasures is not effective.

4.7.2. Recommendations and Comments

729. Recommendation 11:

- While Art. 1.3 of the AML Law requires covered FIs to examine with special attention any transaction, regardless of amount, that may be linked to the laundering of funds that are the proceeds of crime, this requirement is more directly related to Recommendation 13 and not the requirements of Recommendation 11.

- All competent authorities should issue additional regulations or guidelines for covered FIs to pay special attention to complex, unusually large transactions and unusual patterns of transactions.

- These regulations or guidelines should require all FIs to examine as far as possible the background of such transactions, and set forth those findings in writing.

- These regulations or guidelines should also require all FIs to keep such findings available for competent authorities for at least five years.

730. Recommendation 21:

- While the SBP has a requirement that banks pay special attention to transactions with other banks in jurisdictions with weak standards for the prevention of money laundering and

terrorism financing, the SBP should extend this requirement for FIs to pay special attention to transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.

- While the SBP has a process in place (albeit inconsistent) to notify FIs of jurisdictions that do not or insufficiently apply the FATF Recommendations, the SBP should also require that FIs be required to examine the background of transactions with those jurisdictions that have no apparent economic or visible lawful purpose, and keep those written findings for competent authorities.

- The SBP should amend its Circular notification process to be in line with the updated FATF pronouncements/listings (three times per year).

- The SMV, MICI, and IPACOOP should require their FIs to pay special attention to transactions with banks and persons from or in countries which do not or insufficiently apply the FATF Recommendations, to examine the background of transactions with those jurisdictions that have no apparent economic or visible lawful purpose, and keep those written findings for competent authorities.

- SMV, MICI, and IPACOOP should also demonstrate an ability to apply appropriate counter-measures when a country continues not to apply or insufficiently apply the FATF Recommendations.

4.7.3. Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R. 11	**NC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries (limited scope coverage), issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan services associations, the national mortgage bank and entities that provide the safekeeping/custody of cash and other liquid assets. • Lack of sufficient regulations or guidelines for covered FIs to pay special attention to complex, unusually large transactions and unusual patterns of transactions. • No requirements for all FIs to examine as far as possible the background of such transactions, set forth those findings in writing, keep them for at least five years, and to make them available for competent authorities.
R. 21	**NC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries (limited scope coverage), issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan services associations, the national mortgage bank, the savings bank, and entities that provide the safekeeping/custody of cash and other liquid assets. • No requirement for banks to pay special attention to transactions with persons (only banks) from or in countries which do not or insufficiently apply the FATF Recommendations.

		• Insufficient requirement for banks to examine the background of transactions with those jurisdictions that have no apparent economic or visible lawful purpose, and to keep those written findings for competent authorities. • Inadequate notification process by the SBP on countries that do not or insufficiently apply the FATF Recommendations. • For SMV, MICI, and IPACOOP FIs, no requirement to pay special attention to transactions with banks and persons from or in countries which do not or insufficiently apply the FATF Recommendations, to examine the background of transactions with those jurisdictions that have no apparent economic or visible lawful purpose, and keep those written findings for competent authorities. • No demonstrable capacity by the SBP, SMV, MICI, and IPACOOP to apply appropriate counter-measures when a country continues not to apply or insufficiently apply the FATF Recommendations.

4.8. Suspicious Transaction Reports and Other Reporting (R. 13–14, 19, 25 and SR. IV)

4.8.1. Description and Analysis[20]

731. Legal Framework:

732. FIs subject to Art. 1 (first paragraph, does not address all of the FIs required by the FATF to be covered) of AML Law (Law 42 of 2002) are required to file STRs pursuant to Article 1 (5) which states that, "the financial institutions shall communicate directly and by their own initiative, to the Financial Analysis Unit, any fact, transaction or operation suspected to be related to the money laundering offense. Regulations will determine the hypothesis or specific transactions that, in a mandatory way, shall be communicated to the Financial Analysis Unit, as well as determine the persons that shall convey the information and the manner of doing it."

733. For instance, the Agreement 2005-E issued by the Banking Supervision provides for hypothesis about when the banks should file an STR and other guidance. This Agreement also includes the obligation to report suspicious transactions related to financing of terrorism or any other illegal activity. However, the expansion of the scope of the Law 42 of 2000 by way of Agreement does not provide for a solid legal basis to the new requirement. The supervisory agencies responsible for oversight of compliance under Law 42 have issued agreements (acuerdos) or resolutions (resoluciones) which are OEMs for purposes of this report and are not law or regulations (e.g., Executive Decrees).

[20] The description of the system for reporting suspicious transactions in section 3.7 is integrally linked with the description of the FIU in section 2.5 and the two texts need not be duplicative. Ideally, the topic should be comprehensively described and analyzed in one of the two sections, and referenced or summarized in the other.

734. The STR obligation in Law 42 only applies to the group A of reporting entities, per Article 1 of the Law 42 of 2000. Group B is not covered by law for STR reporting but only for CTR reporting under Art. 1 (2) via Art. 7 of Law 42.

Group A (STR and CTR)	Group B (CTR only)
Financial Institutions Banks Stock brokerage companies Stock brokers (individuals) Mutual fund managers Stock exchanges Stock registries Bureau de change (casas de cambio)[21] Money remittance firms Cooperatives: savings and loans[22] Finance companies DNFBPs Trustees (fiduciaries)	Financial Institutions Insurance companies (insurance brokers and agents are not covered) Reinsurance companies Reinsurance brokers DNFBPs Casinos National lottery Real Estate developers and brokers (legal entities only) Others Companies established in free zones and export processing zones

735. Notwithstanding the requirements and scope of coverage of STR reporting institutions under Law 42, Art. 4 of Executive Decree 266 of 2010 attempted to extend the STR reporting obligations to all entities covered by Law 42 including those defined above as Group B that only had a CTR obligation. (However, this Executive Decree 266 of 23 March 2010 was fully revoked on March 31, 2010 by Executive Decree 294). However, applying this requirement in an Executive Decree goes beyond the provisions of Law 42 and, as described at the beginning of this Section of the DAR, would be in breach of Art. 184 of the Constitution. Some of the supervisory bodies of the entities of group B have issued resolutions requiring them to file STRs: for the insurance sector, Resolution 8 of October 29, 2008. (Similar requirements were issued by supervisors for non-financial businesses including: lotteries and casinos, Resolution 30 of August 28, 2003; real estate companies and brokers, Resolution 327 of August 9, 2004. The Supervisory bodies for the various Free Zones and export processing zones issued regulations in accordance with the Law 42 of 2000, regulating only the transmission of CTRs. (See R. 16).

736. In practice, entities from both groups do file STRs, as shown in the following table, despite the legal deficiencies identified above. (Real estate companies and brokers never filed any STRs, according to UAF data). Below is a table with the number of STRs filed by type of entities over the last three years.

[21] Casas de cambio are not a regulated activity in Panama, other than their inclusion for AML purposes under Law 42.

[22] Savings and loans cooperatives that carry on multiple activities ("de servicios multiples") are not covered by Law 42.

Financial Institutions	2009	2010	2011	2012 (Jan.–Sep.)
Banks	853	664	481	403
Bureau de changes and money remitters (no breakdown available)	81	120	110	64
Cooperatives	6	13	11	3
Insurance and reinsurance companies	2	8	18	29
Stock exchange brokers and companies	8	7	4	1
Finance companies	0	1	6	0
Total Financial Institutions				
DNFBPs				500
Casinos and Lottery	4	2	17	47
Trustees (*fiduciaries*)	2	0	0	0
Real Estate Brokers	0	0	0	0
Total Non-Financial Institutions				47
Total	956	815	647	549
Source: UAF.				

737. Requirement to Make STRs on ML and TF to FIU (c.13.1 and IV.1):

738. Art. 1 (5) of Law 42 of 2000 requires STRs to be filed with respect to suspicion of ML, and does not include TF. The main reason is that Law 42 only deals with AML issues and does not address CTF even though under the Penal Code has criminalized TF and Panama has implemented the UN Convention for the Suppression of the Financing of Terrorism through Law 22 of 2002. Consequently, the requirements for SR. IV are not met by Law 42. Executive Decree 136 of 1995, that established the UAF and the amending Executive Decree 163 of 2003, only provided a mandate with respect to money laundering.

739. Notwithstanding, the scope of the UAF activity was amended to include TF by Executive Decree 78 of June 5, 2003.

740. In addition, the shortcomings identified in the scope of predicate offenses in Panama do have an impact on the scope of the requirement to make STRs. The reporting obligation is indeed tied to a potentially criminal conduct, and by extension, to the defined predicate offenses.

741. The provision states that STRs should be communicated directly to the UAF and by initiative of the entities listed in Article 1. In addition, financial institutions file STRs to the UAF when requested to do so by the UAF. This is consistent with the requirements of Art. 2 of Law 42 (AML law) that authorizes the supervisory agencies as well as reporting entities, to provide the UAF at its request or on their own initiative, with any information that they possess relating to AML that would enable the UAF to examine and analyze such information. In practice, however, the UAF stated that the reporting entities often only file STRs in cases when the UAF has asked them for information on clients or transactions. This would not in essence qualify as reporting on their own initiative.

742. **Banks (and trustees):** In addition to the STR requirements under Law 42 above, the Agreement (Acuerdo) 12-2005 and particularly Art. 10, issued by the SBP, expands the scope of the requirement to TF suspicion or any other illegal activity. However, this Agreement is an OEM while the requirements of c.13.1-c.13.3 should be in laws or regulations (the latter Executive Decrees). Consequently, it does not meet the technical legislative requirements of R. 13.

743. R. 13 requires that FIs "report promptly" their suspicion to the UAF. The Law does not provide for any specific wording related to the timeliness of the reporting. In the Agreement 12-2005 quoted above, STRs should be sent **within 60 days of the compliance officer internally recording the suspicious transaction.** (Art. 9 (3 and 4) of the Agreement). This period of time is too long and cannot be considered to be prompt. CTF is included, but not terrorism and terrorism acts in the STR reporting requirement.

744. **Securities:** In addition to the STR requirements under Law 42 above the STR requirements established under Agreement CNV 5-2006 (Art. 3, 11, and 12) for covered securities intermediaries is generally similar to those for banks above, including the incorporation of CTF elements, but not terrorism and terrorism acts, and the reporting obligation of filing STRs within 60 days of the compliance officer internally recording the suspicious transaction. In addition, the STR requirement under Art. 3 (d) of this Agreement states that STRs that should be communicated should especially be those related to CTRs under Art. 1(2) of Law 42. As this Resolution is also an OEM, it does not meet the law or regulation requirements of this criterion.

745. **Insurance:** In addition to the STR requirements under by Executive Decree 266 of 2010 (revoked), above, through Resolution 8 of 2008 issued by the Technical Council for Insurance of MICI (now Superintendency of Insurance), STR obligations similar to those contained in Law 42 are established, including for intermediaries not covered by Law 42, and includes CTF issues also, but not terrorism and terrorism acts. Consequently, the legal issues mentioned above with respect to the Resolution going beyond the law apply (e.g., insurance brokers both legal entities and individuals), and that the Resolution is an OEM and not law or regulation as required by this criterion. However, the 60 days STR reporting timeframe is not included in the STR provisions, namely Art. 14 of this Resolution. (However, this Executive Decree 266 of March 23, 2010 was fully revoked on March 31, 2010 by Executive Decree 294).

746. **Cooperatives (financial):** In addition to the STR requirements under Law 42 above, through Resolution 41-2009, IPACOOP established the reporting of suspicious activities directly to the UAF under Section 1 (5). This resolution applies to both savings and loans cooperatives and all others that engage in financial intermediation. It does not extend its scope to CTF issues and similar to insurance above, does not impose the 60-day STR reporting period. As this Resolution is also an OEM, it does not meet the law or regulation requirements of this criterion.

747. **Money Remitters:** In addition to the STR requirements under Law 42 above through Resolution 328 of 2004, the Directorate of Financial Companies of MICI requires under Art. 12 that STRs be send directly to the UAF. The STR obligations include CTF and also establish the 60-day reporting period as for banks and securities entities, which is not appropriate. As this Resolution is also an OEM, it does not meet the law or regulation requirements of these criteria.

748. **Finance Companies:** The Directorate of Finance Companies of MICI did not include in its Resolution 14 of 2001 any STR requirements. Similar to Finance Companies, for **Casas de Cambio** no STR obligations have been issued other than the general requirement under Law 42.

749. STRs Related to Terrorism and its Financing (c.13.2).

750. As previously said, the STR requirements created by Law 42 of 2000 has not been amended to include STRs related to terrorism and its financing, and their inclusion in OEMs do not meet the requirements of c.13.2.

751. Executive Decree 78 of 2003 (Art. 2) expanded the scope of the UAF's functions to include financing of terrorism but this Decree also goes beyond the text and spirit of Law 42 with respect to CTF even if it was not issued pursuant to Law 42 explicitly.

752. **Banks, Securities, Insurance, and Money Remitters:** As previously stated, there are CTF element**s, but not terrorism and terrorism acts**, are covered under the various STR obligations of the Agreements and Resolutions even if they go beyond the requirements of Law 42. There no specific CTF obligations for **cooperatives, finance companies and casas de cambio** under the STR requirements**.**

753. Overall, the inclusion of CTF reporting obligations in OEMs does not meet the requirement that they be in law or regulation of R. 13. In addition, because CTF is not covered under Law 42 (main AML law), its validity is questionable on constitutional grounds as mentioned above.

754. In practice, the UAF has never received any STR related to terrorism financing.

755. No Reporting Threshold for STRs (c.13.3):

756. There is no reporting threshold for STRs. In addition, Law 42 (main AML law) provides for the possibility to report a fact that may give rise to suspicion which in its broadest interpretation can include attempted transactions. However, all of the implementing agreements and resolutions, with the exception of insurance entities, refer explicitly or implicitly to transactions that have been carried out.

757. Making of ML and TF STRs Regardless of Possible Involvement of Tax Matters (c.13.4, and c.IV.2):

758. The AML Law 42 of 2000 does not provide for specific restriction on the scope of the STRs and does not exclude tax matters explicitly. However, as tax evasion is not a predicate offense in Panama, the reporting entities may unduly restrict themselves from reporting suspicious transactions that they think are linked to tax evasion, thus impeding the full effectiveness of the reporting system.

759. Additional Element—Reporting of All Criminal Acts (c.13.5):

760. The law does not provide for specific restriction, so is may be interpreted that financial institutions are required to report to the UAF when they suspect that funds are the proceeds of all criminal acts that would constitute a predicate offense for money laundering in Panama.

761. Protection for Making STRs (c.14.1):

762. Article 3 of Law 42 of 2000 states that all information that is communicated to the UAF or to the authorities of the Republic of Panama, in compliance with Law 42 of 2000 or any instruments regulating it, by natural or legal persons or their officers, directors, employees or representatives, will not constitute a violation of the professional secret, nor a violation of restrictions over disclosure of information imposed by contract or other legal or regulatory provision, In addition, such reporting

would not attract any liability for the natural or legal persons subject to this Law nor for their officers, directors, employees, or representatives.

763. Notwithstanding the above, there are no provisions to state that such protection applies when reporting of suspicion is done in good faith. The absence of such good faith provision could result in protection from liability when a person or entity reports on the basis of *mala fide* intentions, including for personal or political reasons.

764. Prohibition against Tipping-Off (c.14.2):

765. Art. 1 (6) of Law 42 of 2000 requires all reporting natural and legal persons listed in the first two paragraphs of Art. 1 of this Law to refrain from disclosing to the client and to third parties that information has been transmitted to the UAF pursuant to this Law, or that a transaction or operation is being examined for money laundering suspicion. The provision covers STR and related information and is tied to the liability protections under c.14.1 described above.

766. Two issues are relevant for purposes of this criterion. One, Art. 1 (6) that establishes the tipping off prohibition has to be read in conjunction with the first two paragraphs of Art. 1. In particular, para. 2 states that "all natural and legal persons mentioned here (meaning paragraph one listing the financial institutions and trustees covered by the Law), are subject to the following obligations." The tipping off prohibition number six that follows refers to these financial institutions and trustees (whether natural or legal persons) and does not extend to their directors, officers and employees, as is done under Art. 3 which also extends the liability protection to directors, officers and employees, in addition to the protection of the reporting entities themselves. The tipping off prohibition (Art. 1 (6)) states however, that "compliance with this provisions falls under the protection of the exemption from liability under Art. 3 of the Law." One interpretation, and the one the assessors adopt, is that the liability protection under Art. 3 only applies if the persons subject to Art. 1 (6) comply with the tipping off prohibitions In other words, if the covered persons disclose STR related information, they would not be protected under Art. 3 and the tipping off prohibition would also not apply to officers, directors and employees of the reporting entities covered under Art. 1 (paragraphs one and two).

767. Only Agreement CNV 5-2006 for Securities includes similar provision on tipping off and protection from legal liability similar to those in Law 42.

768. It is also noted that Art. 4 of Executive Decree 2010 extended the STR obligation contained in Art. 1 (5) of Law 42 to all CTR reporting entities covered by this Law. (e.g., Insurance companies do not have a STR obligation in Law 42, only CTR. However, this Decree did not apply the prohibition against tipping off nor the liability protections that Law 42 provides for STR reporting obligations.

769. Additional Element—Confidentiality of Reporting Staff (c.14.3):

770. There is nothing in the law or in regulations ensuring that the names and personal details of staff of financial institutions that make a STR are kept confidential by the UAF.

771. In practice, the UAF template for disseminating the reports to the Attorney General Office contains a paragraph to identify the reporting entity but not staff. Point B of the "intelligence report" clearly specifies the reporting entity which originated the STR.

772. It has been reported to the assessors that the identification of the originator of the STR is a concern for financial institutions in a high risk environment and in a relatively small country, notably due to the access to the information report by the defense lawyer during the course of the investigation. Even without naming the compliance officer, the identification of the reporting entity is sufficient to create fear of retaliation amongst the staff in the financial institutions.

Effectiveness of implementation

773. The scope of reporting system for suspicious transactions is narrow as not all of the required financial (and DNFBP) entities are covered under the AML Law. This in practice deprives the UAF from significant sources of STR and related information with cascading effect on disseminations, investigations and prosecutions. Some of the STR obligations that should be in law or regulations are in OEMs and not appropriate for purposes of R. 13, and may also not be enforceable as they go beyond the primary AML law.

774. The existing overemphasis on CTRs (see below) by FIs undermines the STR system. The reporting entities have been so far supervised and sanctioned mostly with respect to CTR reporting breaches and not for default of STR related issues.

775. In practice, financial institutions in Panama often file STRs after they receive a subpoena from the police regarding one of their clients, or after the UAF asks them for information about one of their client. While filing STRs after such requests for information is in order, it suggests that FIs may not be diligent enough to detect suspicion on their own which would weaken the STR regime and deprive the UAF with timely information for their analytical and intelligence generating functions.

776. There is no STR quality assessment system by the UAF or any other authority to ascertain the usefulness and effectiveness of the STR regime. Most of the banks file a STR as soon as they identify inconsistencies in (unusual) transactions which may lead to reporting of e.g., unusual transactions that are not necessarily suspicious. This can lead to defensive over reporting and low quality of STRs.

777. There is a sharply declining trend in the number of STRs sent by the banks over the last three years. This decrease is concomitant to the dissemination of a revised STR form that requires banks and other reporting entities to include in their reports sent to the UAF all the debit/credit details of the accounts that are subject to such reports (not only of the identified suspicious transactions, but also the minor day-to-day transactions of little relevance). Some banks representatives met during the on-site mission clearly explained that this was the reason for not filling more STRs, as the current requirements are too burdensome. To the extent that this is one of the reasons for the decrease, it suggests gross systemic noncompliance based on customer confidentiality issues. It may also suggest that the legal liability protection for reporting entities may not be sufficient as described above as it could discourage reporting.

778. Consideration of Reporting of Currency Transactions above a Threshold (c.19.1):

779. Panama has implemented a system of CTRs for banks, other financial institutions and non-financial entities. This requirement was established by Art. 1 (2) of Law 42 of 2000 (main AML Law) for one set of institutions (for this purpose group A) and under Art. 7 for another set (for this purpose group B). These are described below.

780. A very important point of the CTR system is the evolution of the regulation about the nature of the reporting. The Article 3 of the Executive Decree 1 of January 3, 2001 indicated that the reporting entities had to submit a report with an aggregated amount of operations, with details consisting only of the number, date and amount of each transaction/invoice. The rest of the documentation, including the name of the client, had to be kept by the reporting entities and to be made available to competent authorities during five years. This limitation on the disclosure names of the clients was removed by the Executive Decree 266 of March 3, 2010. However, this Executive Decree 266 of March 23, 2010 was fully revoked on March 31, 2010 by Executive Decree 294. Below are the statistics provided by the UAF.

Entities	Number of active entities	Number of CTRs	Amounts (in USD)
CTRs transmitted electronically			
Banks	93	271,325	7,381,318,944.53
Cooperatives	186	3,934	162,767,293.83
Agencia Panama Pacifico (Free Zone)	110	1,403	118,201,278.28
National Lottery	11	18,481	77,493,734.00
Casinos	41	4,979	72,229,049.44
Money remitters and bureau de change (casas de cambio) (no breakdown available)*	34	41,734	48,373,659.86
Stock brokerage companies Stock brokers (individuals) Stock exchange and registries	140	142	42,708,746.14
Real Estate brokers and companies	846	465	23,247,337.21
Insurance and reinsurance companies	60	80	3,559,250.08
Pawn shops	295	37	1,163,911.43
Finance companies	162	30	548,015.48
Sub-total	1,978	342,610	7,931,611,220.28
CTRs transmitted on paper			
Colon Free Zone	4015	14,495	558,906,414.80
Trustees	68	726	188,920,908.68
Saving and loans associations[23]	4	61	1,115,379.59
Export processing Zones	99	120	1,022,573.46
Baru Free Zone	12	10	403,249.87
Sub-total	4198	15,412	750,368,526.40
TOTAL	6176	358,022	8,681,979,746.6

Source: UAF.

[23] While these are to subject to the AML regime, the UAF and the Banco Hipotecario Nacional (BHN is the regulator for savings and loan associations, as distinct from cooperatives whose regulator is IPACOOP) have entered into a cooperation agreement for the associations to send STRs to the UAF through BHN.

781. Bureau de change does not file CTRs electronically. According to the UAF, the number of bureau de change's CTRs counts for 80 percent of the total CTRs was filed by these two sectors. The UAF did not provide for separate statistics.

782. Additional Element—Computerized Database for Currency Transactions above a Threshold and Access by Competent Authorities (c.19.2):

783. While Panama implemented the CTR system as soon as it designed the AML legislation in 2000, it has not fully implemented an electronic automated system for the receipt and recording of CTR data.

784. The UAF maintains a CTR database and does not provide direct access to the information to any other authority. It can however share the information contained in the database upon request from the Attorney General Office or the Supervisors.

785. Additional Element—Proper Use of Reports of Currency Transactions Above a Threshold (c.19.3):

786. At the time of the mission some reporting entities still file CTRs on paper which does not permit strict safeguards to ensure proper use of the information as would an electronic reporting system.

Effectiveness of implementation (R. 19)

787. Panama implemented a CTR reporting system as soon as it passed its AML legislation in 2000. However, it has not fully automated the reporting system (CTRs are still being filed on paper 12 years later) which limits the utility of the whole system in light of the very large number of CTRs and staffing capacity.

788. The monthly reporting process, including the requirement to report through the designated supervisory agencies, delays the time the UAF could use CTR information for its analysis and intelligence generating function. Such timeliness would be critical, e.g., in the case of a CTR associated with terrorism finance.

789. Despite these major shortcomings that affect the usefulness and efficiency of the system, Recommendation 19 requires only the authorities to consider establishing a cash transaction reporting system, Panama is, therefore, compliant with this requirement.

790. Feedback and Guidelines for Financial Institutions with respect to STR and other reporting (c.25.2) [Note: guidelines with respect other aspects of compliance are analyzed in Section 3.10]:

- The guidelines provided to reporting entities by the UAF are very limited. The STR form itself contains an additional page for explanation on how to fill in the form. Some Supervisors (e.g., SBP and SMV) have provided examples of suspicious activities as part of the Agreements (Acuerdos) they have issued to FIs under their supervision.

- The UAF has few bilateral relationships with the reporting entities. The main communication is made during the presentation of the annual report, which is a multilateral event. This report

contains statistics and typologies and trends (two were exposed in 2011 report) that constitute the more important feedback that the reporting entities are receiving.

- The UAF follows very strict procedures, contained in the Protocol manual, to acknowledge of the receipt STRs. It does not inform reporting entities once the case is closed, or if the case has been transmitted to the Attorney General's Office. Communication with DNFBPs seems to be minimal at best.

- A key area where the UAF has not provided feedback to reporting entities and their supervisors is on the quality of STRs received. Such feedback would be critical to improve compliance and supervision of the reporting obligation and improve over time the quality of information received by the UAF for its intelligence generation function. It would also help with the preventive measures of reporting entities.

791. Statistics (R. 32):

792. Statistics for only two banks (in 2011 and in 2012) that received individual feedback were provided. In terms of guidelines and feedback given to the reporting entities, the UAF communicated the following activities that it performed over the last three years. While these trainings events may provide the opportunity to provide reporting entities with feedback, the assessors could not establish whether the content of these programs included feedback. The following statistics on these training programs were provided by the UAF.

Year	Date	Institutions
2009	September 17	Compliance officers from banking sector Compliance officers from insurance sector
2010	January 10	Compliance officers from banking sector and trusts
	February 1-5	Cooperatives sector
	March 18	Entities from stock exchange industry
	July 16	Casino Crown Plaza
2011	January 12	Insurance and reinsurance companies
	February 17	Real estate agents
	April	Companies from Baru Free Zone
	July 21	HSBC staff
	August 18	Banks, trusts, stock exchange brokers, insurance and reinsurance
	October 19	Association of compliance officers of Panama, Finance companies
	November 17	Finance companies, money remitters, casinos, bureau de change, loans and savings companies, companies from the Free Zones
	December 14	Companies from the Colon Free Zone
2012	January 24	Free Zones, MICI
	April 11	Banco Panama
	April 16-19	Free Zones
	April 15-17	Free Zones (Chiriqui, Veraguas, Colon)
	June 19	Real estate agents
	September 27	Banks, stock exchange companies, insurance sector, money remitters, casinos

Effectiveness of implementation (R. 25)

793. The guidelines and feedback given to the reporting entities are insufficient. There should be much more proactive guidelines from the UAF, directed to each of the reporting entity as required (e.g., on STRs), and for broader sectoral groups (e.g., typologies). These are major shortcomings as per the FATF methodology.

794. In 2011, eight days of training for the reporting entities were provided which does not seem sufficient due to the size of the financial sector in Panama. The UAF also provides with training to the supervisory bodies and other public agencies.

4.8.2. Recommendations and Comments

- Extend the scope of the reporting obligations to all relevant entities by FATF standard.
- Require the STR to be filed promptly.
- Include legal specific requirement to report attempted transactions.
- Include in the AML Law CTF reporting requirements for STR. So far, UAF is granted ability to perform its functions in the case of financing of terrorism suspicion, but the reporting entities themselves don't have a legal requirement to file STRs in case of suspicion of financing of terrorism.
- Expand the scope of the tipping off prohibitions and extend the liability protections in the AML Law, and adding good faith reporting as a condition for the liability protection.
- Consider streamlining STR reporting by not, at first instance, requiring all account and related documentation to be attached to a STR, but emphasize more analysis on the part of reporting entities.
- Ensure that the names of reporting entity's staff are not included in reports sent to the Attorney General Office.
- Fully automate the CTR receipt and entry procedures and ensure that CTRs contain all relevant data to identify clients.
- Make the CTR database available to other competent authorities.
- Emphasize timeliness and quality of STRs over timeliness of CTRs.

4.8.3. Compliance with Recommendations 13, 14, 19, and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R. 13	**PC**	• Not all entities subject to reporting requirements. • Too narrow basis for reporting given the deficiency identified in the definition of the ML offense (scope of predicate offenses).

		• No obligation in the AML Law to report suspicion of TF. • The timeframe of 60 days to report a suspicious transaction once discovered by the reporting entities (except insurance companies) is too long. • Overemphasis on CTR reporting diminishes attention on STRs.
R. 14	**LC**	• Insufficient scope in the tipping off prohibitions provision and the liability protections in the AML Law. • Liability protection in the AML law does not include the condition of good faith reporting.
R. 19	**C**	•
R. 25	**NC**	• No feedback on quality of STRs to either individual entities, Supervisors and sectors. • Near absence of case-by-case feedback given by the UAF to the reporting entities. • Insufficiency of general guidelines/training given by the UAF to the reporting entities.
SR. IV	**NC**	• No reporting obligation for TF in the AML Law.

Internal controls and other measures

4.9. Internal Controls, Compliance, Audit, and Foreign Branches (R. 15 and 22)

4.9.1. Description and Analysis

795. Legal Framework:

796. Article 1.7 of Law 42 requires all covered FIs to establish internal control and communication procedures and mechanisms to prevent ML (not TF) The adequacy of such internal control procedures and mechanisms will be supervised by the competent authority of each entity, which shall be able to propose the appropriate corrective measures, in keeping with the viability of activities of legitimate clients. This requirement does not specifically include the adoption of broad AML/CFT policies that would provide, inter alia, the basis, scope, contents and other requirements to be included in the internal control systems, e.g., for risk management, codes of conduct, and governance, etc.

797. Neither the AML Law nor any of the Executive Decrees issued thereunder specify the need to have a compliance function or compliance officer to review compliance with the AML/CFT requirements, including having access to all related information and records. However, some of the Agreements and Resolutions issued by the respective supervisory agencies elaborate, to some extent, the requirements to implement internal control and communication procedures and mechanisms (not policies) to prevent ML and TF which includes compliance elements as discussed below.

798. The AML Law requires that all covered FIs adopt appropriate measures so that the employees of the entity have knowledge of the requirements in the AML Law. These measures will include education plans and courses for the employees, to train them to identify operations that may be related to the crime of money laundering and to know the appropriate procedures to deal with such cases (Law 42-2000, Art. 1.8).

799. The same scope issues, as described in Section 3.2, apply to Recommendations 15 and 22. While money exchanges (casas de cambio) are obligated entities in the AML Law, they do not have any regulation or supervision in practice. Also, factoring, leasing, multi-service savings and loan cooperatives, and the other financial activities listed at the beginning of this section that fall outside the scope of the law pose a significant limitation in scope of the AML/CFT regime. And again, while the underwriting and placement of life insurance and other investment related insurance is not a covered financial activity under Art. 1 of Law 42, the SSRP has issued limited internal control requirements for certain insurance entities.

800. Establish and Maintain Internal Controls to Prevent ML and TF (c.15.1, 15.1.1 and 15.1.2):

801. **Banks:** Under Executive Decree 52 of 2008 which adopted the Single Consolidated Law 9 of 1998 that establishes the SBP and regulates banking business, Articles 112-114 make provisions for the prevention of ML and TF. Art. 112 requires banks (and other entities subject to its supervision) to establish policies, procedures and internal control arrangements to prevent their services from being misused, to prevent ML, TF and other associated crimes (or of similar nature or origin). The SBP should establish the basis for the scope, functions and procedures of compliance with these requirements.

802. Art. 114 of Executive Decree 52 also requires banks to adopt policies, practices and procedures to enable them to know and identify their employees (and clients) to the greatest extent possible, as an element of the AML/CFT prevention obligation above and other regulations issued for such purposes. Notwithstanding the provisions under this Decree (and by extension Law 9), in practice the SBP uses Law 42-2000 and the Agreements issued thereunder as the primary basis for its AML/CFT supervision (and sanctions). Consequently, this assessment will focus on Law 42 and its Decrees, Agreements and other AML/CFT instruments.

803. In Agreement 12-2005, banks and bank's trust company operations must have a manual with the policies and procedures (in theory and in its broadest terms this could include internal control systems and procedures) approved by the Board of Directors for the implementation of the "know-your-customer" policy, which shall be updated periodically. These policies and procedures shall be formulated in accordance with the degree of complexity of their activities and could take into account different customer categories in accordance with potential risk of illicit activity associated with the accounts and transactions of its customers. There is no specific requirement to communicate such policies and procedures to their employees. In addition, the scope of these policies and procedures are primarily focused on CDD (and to policies on KYE (know your employee), and do not extend to recordkeeping, detection and reporting of unusual and suspicious transactions. Dissemination of information on "internal procedures with respect to the compliance program" only is contained in Art. 7 of Agreement 10-2000 but this is too indirect and narrow in scope.[24]

[24] Note that SBP has issued Agreement 4-2001 on Corporate Governance for banks which include an internal control system requirement. However, these do not address AML/CTF issues.

804. (Agreement 10-2000). Banks (not bank's trust company operations) must have a compliance program – understood to be the policies and procedures that guide the bank's employees in abiding by the legal provisions and internal policies in force – customized to the organization, structure, resources and intricacy of the institution's operations. Banks shall periodically review the effectiveness of the compliance program in order to identify deficiencies or the need to make adjustments due to changes in laws, regulations or applicable policies.

805. Under this Agreement, banks shall appoint one or more persons at the executive level inside their organization, as "compliance officer" who shall be responsible for oversight of implementation and management of the compliance program. Under Agreement 10-2000, the Board of Directors and General Management shall provide the Compliance Officer with sufficient authority, hierarchy, and independence vis-à-vis the other employees that would enable the implementation and management of the compliance program, and to institute effective corrective measures. There are no specific requirements that indicate the AML/CFT compliance officer and other appropriate staff at SBP should have timely access to customer identification data and other CDD information, transaction records, and other relevant information. It is, therefore, unclear whether they have the authority to have timely access to all data related, e.g., to number or coded accounts, trustee and other business conducted by banks under their trust licenses, including shareholding and beneficial ownership of companies (including bearer share companies) held under trust administration.

806. **Securities:** Law Decree 1 of 1999 (modified by later laws) authorizes the securities entities, under Art. 43, to issue requirements of conduct for stock brokerage houses (legal entities) and brokers (natural persons) to prevent activities related to drug trafficking and other illicit activities. This in theory may include ML and TF, and any of their predicate offenses. Art. 44 of this Law also authorizes the SMV to require brokerage houses to name a compliance officer with responsibility to oversee that the brokerage house, its directors, officials, brokers and employees comply with their obligations under this Law Decree and its regulations. The compliance officers shall be "key executives" which the SMV defines as an officer having key responsibilities on business, management, operations, accounting, finance or the control of operations or employees. The assessors are not aware of any requirements issued by the SMV pursuant to this Law and only those related to the AML Law (Law 42 and its subsidiary instruments) are considered for purposes of this assessment.

807. (Agreement 5-2006) Under Art. 14 of this Agreement, securities entities should have a Manual that develops the procedures to implement compliance with the "know your client" policy (implicitly there should be a policy but there is no policy requirement in this Agreement). This Manual should be updated according to changes that occur within the organization and laws that regulate this issue. The Manual should be appropriate to the complexity of the activities of the FIs, and can take into account distinct categories of clients, based on potential risk of illicit activity associated with the accounts and transactions of clients. Similar to Art. 7 of Law 42, this Agreement requires FIs to have internal procedures and internal control and communication systems to prevent money laundering (not TF). Art. 15 of this Agreement requires FIs to disseminate (and revise and update) the AML/CFT (note that CTF is included in this provision) policies, rules and procedures to all the members of the organization that are associated with transactions directly or indirectly (or can be used for (susceptible) its commission). The scope of the policy requirement is too narrow (KYC) and does not extend to e.g., recordkeeping, unusual and suspicious activity detection and reporting. However, procedures that should be in this Manual do address some of these issues (see bold items). In particular, the procedures Manual should contain at least the following:

- Description of its organizational structure and services offered;
- Declaration of organizational commitment regarding crime prevention of money laundering and terrorist financing;
- Operating procedures to implement and comply with the standards referred to in the Law 42-2000, Law 22-2002, Law 50-2003 and the provisions of Agreement 5-2006;
- Designation of an officer charged with holding the organization responsible for coordination and execution of the procedures referred to in this article;
- A description of the "know your customer" policy;
- Risk elements linked to the crime of money laundering and financing terrorist operations in the operations of the entity;
- A transaction log and file;
- Procedures for reporting cash or quasi-cash transactions to the effective supervisory authorities;
- A procedure for submitting reports to the Financial Analysis Unit;
- A program of staff training in order to detect AML/CFT activities;
- Procedures for dealing with requests and inquiries by authorities to the obligated entity; and
- Procedures for periodic evaluation of compliance with internal due diligence standards

808. (Agreement 9-01, 2001 as modified by Agreement 13-2001) Art. 2 of this Agreement defines Compliance Program as those policies and procedures formulated by the Compliance Officer of brokerage houses, investment advisors, investment administrators or self-regulatory organizations (SROs) that provides guidance to the staff of these entities with respect to compliance with current laws and internal policies. This Article also defines the Compliance Officer as a Key Employee (an officer having key responsibilities on business, management, operations, accounting, finance or the control of operations or employees) of these entities that has responsibility to oversee that these entities, their directors, officers and other employees comply with their duties in accordance with Law Decree 1 of 1999 (Securities Law) and its regulations, as well as the other applicable laws of Panama.

809. (Agreement 9-01-2001, Art. 5 and 6) Securities entities must formally notify the SMV of an individual that has been designated as Compliance Officer. This person's appointment shall be endorsed/ratified by the General Manager or similar officer and should indicate the next (higher) reporting level for the Officer. FIs can also contract the services of a Compliance Officer which must meet the requirements for Compliance Officer in Art. 3 and 4 of this Agreement with respect to qualifications and disqualifications. Such contracted Compliance Officer shall be contracted as a Key Executive (management level) within the organization in which he serves. Under Art. 3 of Agreement 9-2001, the Compliance Officer shall have a Principal Executive License per Art 6 of Agreement 7-2007 (modified by Agreement 17-2000). However, these Agreements have since been revoked by Agreement 2-2004 which, inter alia, (Art. 8) requires brokerage houses, as a condition to their license, to designate a Compliance Officer with similar qualification characteristics. Superintendencia del Mercado de Valores: The agreement 2-2004 was revoked by Agreement 2-2011 and the Article 9 kept the designation of the compliance officer as a condition to maintain the license.

810. Among the functions of the Compliance Officer's functions the following apply: draft and develop and oversee compliance of a KYC policy and draft policies and programs for detecting, preventing and reporting of ML (not TF) activities. There are no explicit provisions in Agreement 9-01-2001 that state that Compliance Officers shall have unrestricted access to all CDD, transaction and other information and records in a timely manner.

811. **Cooperatives:** Savings and loan cooperatives do not have any further requirements in Resolution D.E. 41-2009 regarding internal procedures, policies, and controls to prevent ML and TF, or the appointment of compliance officers, outside of what is outlined in Law 42-2000. In this Resolution, item 7 basically repeats the requirement under Art. 1 (7) of Law 42 that requires cooperatives to establish internal control and communication procedures and mechanisms to prevent ML.

812. **Finance companies and money remitters:** Apart from the requirements of Art. 1(7) of the AML Law, entities regulated by MICI have slightly different requirements with regard to internal control policies, as outlined in Resolution 14-2001, Art. 2, for finance companies and Resolution 328-2004, Art. 2, for money remitters. Both are required to implement internal control and communication procedures and mechanisms (not policies) to prevent ML (finance companies and money remitters) and TF (money remitters only), taking in to account he following:

- The obligation to combat ML (finance companies and money remitters) and TF (money remitters only);
- The adoption of an AML/CFT Manual of Procedures and Internal Control (money remitters only);
- The operational structure necessary to comply with AML (finance companies and money remitters) and CTF (money remitters only) requirements;
- Designation of a person within the firm to coordinate and carry out the functions of compliance; however, there is no requirement that such person be at management level;
- The risk of ML (finance companies and money remitters) and TF (money remitters only);
- Ongoing training program to prevent ML (not TF) consisting of conferences, discussions, and seminars, as well as the dissemination of information on this subject (Note: this is too prescriptive and restrictive); and
- Make management and staff of the entity aware of the AML (finance companies and money remitters) and CTF (money remitters only) policies (Note: there is no explicit requirement to have such policies), laws, and procedures.

813. Independent Audit of Internal Controls to Prevent ML and TF (c.15.2):

814. **Banks:** Banks (not bank's trust company operations) are required, as part of the corporate governance of their institution, to have internal and external auditing independent from Senior Management (Agreement 4-2001, Art. 3.k). Art. 11-15 also require establishment of an audit committee whose functions include verification of compliance with the system of internal controls, internal and external audit programs etc. This requirement can address AML/CFT issues in its broadest terms only.

815. **Securities:** Securities entities are required to establish, within their internal control manual, procedures for periodic evaluation of compliance with internal due diligence standards (Agreement 5-2006, Art. 14). This is not an explicit requirement for an adequately resourced and independent audit function to test compliance with AML procedures, policies and controls.

816. **Finance companies and money remitters:** There is no requirement for entities regulated by MICI to have an independent audit function to test compliance with AML/CFT obligations.

817. **Savings and loan cooperatives:** There is no requirement for savings and loan cooperatives to have an independent audit function to test compliance with AML/CFT obligations.

818. Ongoing Employee Training on AML/CFT Matters (c.15.3):

819. In addition to the training requirement in the law (which only addresses ML, not TF); the various sectors (with the exception of IPACOOP) have outlined additional training requirements.

820. **Banks:** Law 42 (Art. 1 (8)) requires banks and other covered FIs to take appropriate measures for staff to be aware of the requirements of Law 42, including training plans and courses to train staff to detect operations that may be associated with ML and on the procedures to follow in such cases. In addition, banks have a requirement to train their employees on the procedures for compliance with the provisions in Agreement 12-2005 (Agreement 12-2005, Art. 14).

821. **Securities:** Securities entities must have a continuous training program with respect to measures to prevent ML and TF. Such training should, inter alia: disseminate AML/CFT policies, rules and procedures to all staff members that are directly or indirectly related to transactions may be vulnerable to ML/TF and to test compliance with legal requirements on the subject should include speeches, seminars and conferences, within or outside the organization, and the provision of documentary material for staff that have responsibility to apply AML (not CTF) measures. FIs should hold 1 course, workshop, seminar or conference once a year for all members of the FI and two courses, seminars or conferences for the Compliance Officer. FIs shall inform SMV annually of their training programs delivered. (Agreement 5-2006, Art. 15).

822. **Finance Companies and Money Remitters:** In addition to the requirements under Law 42 Art. 1 (8), entities regulated by MICI are required to promote an ongoing training program to prevent ML (not TF), consisting of conferences, speeches and seminars, as well as the dissemination of information on this subject. They shall also make the directors and staff of these FIs aware of the policies, rules and procedures to prevent ML and TF (TF only for remitters). (Resolution 14-2001, Art. 2 and Resolution 328-2004, Art. 2).

823. Employee Screening Procedures (c.15.4):

824. **Banks:** (Agreement 4-2001 on Corporate Governance) Part of banks' corporate governance regime is to have a human resources policy that, inter alia, includes recruitment and promotion and staff development to mitigate risks associated with lack of professionalism or dishonesty. Banks must properly select and supervise their employees' conduct, especially those that deal with customers, receive money and control information. FIs shall also develop employee profiles which must be updated during the term of employment. (Agreement 12-2005, Art. 9).

825. **Securities:** Securities entities have a know your compliance officer procedure which requires that compliance officers obtain a license from the SMV, have at least two years of experience in the securities market, and basic knowledge of risk analysis, information systems, and compliance with AML policies (Agreement 9-2001, Art. 3). Securities entities also have requirements for senior executives, stock brokers, and members of the Board of Directors (Consolidated Text of the Securities Market Law Articles 51, 76, 77, 78 and 79, Agreement 2-2011, Articles 8 and 9; Agreement 2-2004, Articles 37, 38 and 43; Consolidated Text of the Securities Market Law Article 51, Agreement 2-2011 Articles 8 and 9).

826. **Finance companies, money remitters and cooperatives:** Entities regulated by MICI and IPACOOP have no requirements in place to properly screen employees for AML/CFT as part of the recruitment process.

827. Additional Element—Independence of Compliance Officer (c.15.5):

828. **Banks:** The Board of Directors and the General Management Office of each bank must ascribe to the Compliance Officer sufficient authority, hierarchy and independence with respect to the other employees of the bank, to allow him to implement and manage the enforcement program, as well as execute effective remedial measures. Each bank will set the administrative structure that supports the Compliance Officer, pursuant to the nature and volume of its activities (Agreement 10-2000, Art. 2).

829. **Securities:** Securities entity compliance officers should enjoy executive hierarchy within the organization in which he serves, have decision-making power and support of the institution or organization to adequately cover different areas of management, and be independent of the superiors of the organization (Agreement 9-2001, Art. 6).

830. **Finance companies, money remitters, and cooperatives:** While finance companies and money remitters do have the requirement to designate a person within the entity to coordinate and carry out the functions of compliance, there are no established requirements for the reporting lines of compliance officers. Cooperatives do not have the obligation to have a compliance officer, so this element is not applicable.

831. **Insurance:** Application of Recommendation 15 to insurance entities supervised by SSRP FIs: As mentioned above and indicated in the chart of FIs (see R. 5) , underwriting and placement of life insurance and other investment related insurance are not mentioned in Article 1 of the AML Law. However, in practice, the SSRP has issued a Resolution imposing, among other requirements, obligations for all SSRP FIs to design their own systems of prevention, consolidated in a Manual of Policies, Rules and Procedures for the Prevention of Money Laundering, adjusted to their operations, according to the programs mentioned in Resolution 8-2008. Those systems should be capable of providing such information to competent authorities as requested. Resolution 8-2008 also requires, though Article 10 that each insurance and reinsurance company designates a compliance officer responsible for overseeing the implementation of the external and internal control system required in the same Resolution. This compliance officer should be included in the Administrative Council of the company, but will not have a vote in that Council. The compliance officer will report only to the Administrative Council, and is not subordinate to any other organ of the company.

Effectiveness of Implementation for Recommendation 15

832. **Banks:** While there is no explicit requirement to have a manual which compiles the internal procedures, policies and controls to prevent ML and TF (the reference manual in Agreement 12-2005 only refers to a CDD manual), all banks who were interviewed indicated they maintain a manual of such procedures, policies and controls. All bank compliance officers who were interviewed indicated they have sufficient support from management and independence in reporting lines. While there is no explicit requirement for bank compliance officers to have timely access to information within their institution, no compliance officer mentioned this as an issue in practice. Smaller institutions did indicate certain resource constraints for maintaining internal audit and compliance officer functions.

833. **Securities:** All securities entities interviewed seemed knowledgeable of the requirements to have a manual of internal procedures, policies, and controls to prevent ML and TF. Securities entities confirmed there is no requirement for an internal audit function, though some (usually those operating as part of a financial group) have the function regardless of the lack of requirement from the SMV. Securities entities also confirmed that there are requirements to have procedures in place to ensure high standards for hiring employees.

834. **Finance companies and money remitters:** Entities regulated by MICI who were interviewed demonstrated a moderate understanding of their internal control obligations. Certain money remitters who operate as part of foreign operations are implementing the more comprehensive obligations of their foreign jurisdictions Additional requirements and awareness building of the obligations outlined in Recommendation 15 would be beneficial for entities regulated by MICI.

835. **Cooperatives:** Savings and loan cooperatives have the least comprehensive internal control requirements in place, and the entities interviewed varied greatly in their understanding of the obligations. Additional requirements and awareness building of the obligations outlined in Recommendation 15 would be beneficial for savings and loan cooperatives.

836. Application of AML/CFT Measures to Foreign Branches and Subsidiaries (c. 22.1, 22.1.1 and 22.1.2):

837. Article 1 of the AML Law (Law 42) incorporates banks, trust companies (trustees) bureau de change, money remitters, natural and legal persons that provide money and currency changing/the transfer of money or value services, finance companies savings and loans cooperatives, stock exchanges, clearing houses, brokerage houses, stockbrokers, investment fund managers as obligated entities subject to all the requirements of the Law. The AML Law does not apply to insurance companies and their intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service cooperatives, savings and loan associations, National Mortgage Bank, and entities that provide the safekeeping/custody of cash and other liquid assets. Such scope limitation negatively impacts the compliance with the Recommendation.

838. The authorities indicated that the requirements set forth under Recommendation 22 mainly apply to banks, securities and insurance intermediaries. In practice, except for the securities intermediaries, banks and insurance intermediaries do have branches and subsidiaries located abroad.

839. Article 4 of Agreement 3-2001 sets forth all the licensing requirements to operate in Panama and requires the applying bank or its promoting group to prove that the bank institution for which they are applying will have an administrative structure that clearly takes into consideration, among other things, the execution of the functions related to abiding by the laws, regulations and applicable internal policies, which extends to addressing the necessary control to prevent money laundering and terrorist financing. All those requirements are equally applicable to foreign branches and subsidiaries.

840. Pursuant to Article 61 of the Banking Law, the SBP will exclusively exercise the consolidated cross-border home supervision of Panamanian banks and banking groups that consolidate in Panama, according to the generally applicable provisions that may be adopted by the Board of Directors on the subject. (Home Supervisor). Further, Article 62 states that foreign banks, their branches, and subsidiaries shall be subject to the consolidated supervision of by the corresponding foreign supervisor.

841. The authorities informed that, any enforceable requirement for banks operating in Panama as the ones contained in the AML Law as well as the Agreements issued by the Superintendency (Agreement 12-2005) are equally applicable to their foreign branches and subsidiaries, to the extent that local laws and regulations permit. In addition, the authorities informed that this also applies to branches and subsidiaries in countries which do not or insufficiently apply the FATF standards. There was no indication by the authorities as to what measures they SBP could take if there is a conflict between home and host countries.

842. Pursuant to Article 63 of the Banking Law, the Superintendency will carry out the consolidated supervision of the activities of all nonbanking financial entities affiliated or related to banking groups, but that are not part of these, as provided for in such Law and its regulations, all of which include those related to AML. The Superintendency is empowered to require from these banking groups, including the bank holding companies that form part of them, those measures necessary to prevent or correct practices or conditions that, in its judgment, might represent a material risk to the banks owned by said banking groups.

843. The SBP is empowered to examine the bank, other companies of the banking group and to nonbanking or non-financial affiliates. Further, Article 86 of the Banking Law empowers the SBP to request information to banks or banking groups (holding companies, nonbanking affiliates, branches, and subsidiaries, etc.) in order to ensure that they comply with all the requirements set forth under the Law and regulations, included those for AML.

844. The SBP is empowered under Article 65 to enter into understandings with foreign supervisory bodies, by either bilateral or multilateral memoranda, that allow and facilitate the consolidate, cross-border supervision which should address the applicable criteria to inspections, the exchange of information and cooperation among the parties. This also allows both home and host supervisors to exchange any relevant information related to the financial institution, to ensure that, to the extent that local laws and regulations permit, the branches and subsidiaries apply the AML requirements according to the home requirements. In addition, this allows the supervisor to make an assessment of the consolidated risk management by banks.

845. According to Article 64, for the purpose of supervision, foreign bodies may request information from, and make inspections in Panama to those foreign banks of which they are the home supervisors.

846. As for insurance intermediaries, Resolution 8/2008 under Article 5 indicates that all entities must ensure that the AML/CFT provisions referred to in such resolution apply to their offices, branches, agencies and subsidiaries located in the country. Those entities with overseas subsidiaries and branches are required to apply the best practices to prevent money laundering and terrorist financing, especially for those located in countries which do not or insufficiently apply the measures to combat money laundering or terrorist financing.

847. The SSRP is also empowered under Article 12 of Law 12/2012 to enter into understandings with foreign supervisory bodies to allow the exchange of information and cooperation among the parties.

848. Requirement to Inform Home Country Supervisor if Foreign Branches and Subsidiaries are Unable Implement AML/CFT Measures (c.22.2):

849. There is no specific requirement to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (host country) laws, regulations or other measures.

850. Additional Element—Consistency of CDD Measures at Group Level (c.22.3):

851. The SBP is empowered under the Banking Law to apply the requirements at the group level and to supervise the banking group on consolidated basis. As for the insurance sector, no group-wide supervision takes place. The SMV informed that there is still a need to issue a regulation to set forth the requirements applicable to branches and subsidiaries.

Effectiveness of Implementation for Recommendation 22

852. **Banks:** The authorities indicated that prior to granting a license the SBP verifies that the bank as well as its foreign branches and subsidiaries have policies in place for addressing AML/CFT. They also informed that during on-site consolidated inspections they verify that foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and ensure that home and host AML/CFT procedures are consistent.

853. The Banking Law grants the SBP the power to supervise banks on a consolidated basis. Panama is an international financial centre where several regional banking groups have established their holding company. The SBP has become the home supervisor of those groups for consolidated supervision.

854. The authorities indicated that there are three banks where the SBP acts as home supervisor. These banks have a number of branches and subsidiaries located abroad.

855. **Insurance:** According to the information provided by the SSRP, there are 13 insurance companies and four reinsurance companies that have subsidiaries and branches in foreign countries. The shortcomings identified with respect to the AML/CFT framework for the insurance sector negatively impact the compliance with the requirements set forth under Recommendation 22.

4.9.2. Recommendations and Comments

856. Recommendation 15:

- The same scope issues, as described in Section 3.2, apply to Recommendations 15 and 22 (money exchanges, factoring, leasing, savings and loan cooperatives that are licensed as multiple service cooperatives, and the insurance sector).

- While the AML Law requires all covered FIs to establish internal control and communication procedures and mechanisms to prevent ML, it does not impose the same requirement for the prevention of TF.

- A number of the requirements for banks outlined in this section apply only to banks, not bank's trust company operations. The SBP should issue similar requirements for bank's trust company operations as it has issued for banks.

- There is no explicit requirement to allow for bank's trust company operations compliance officers to have timely access to customer identification data and other relevant information.

- SMV and MICI should implement requirements for their FIs to have internal audit requirements and MICI should implement procedures to ensure high standards when hiring employees.

- The reporting lines for compliance officers of entities regulated by MICI should be established.

- IPACOOP should issue more detailed requirements (in addition to what is required in the AML Law) regarding internal control procedures, policies, and controls; obligations to designate a compliance officer with timely access to information and clear reporting lines; obligations to establish internal audit requirements; and procedures to ensure high standards when hiring employees.

857. Recommendation 22:

- Include a specific provision within the regulatory framework requesting FIs to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (host country) laws, regulations or other measures.

4.9.3. Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R. 15	**PC**	• Scope limitation: The AML legislation does not apply to insurance companies and their intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan associations, the national mortgage bank, and entities that provide the safekeeping/custody of cash and other liquid assets. • No requirements for CTF. • Requirements do not extend to banks' trusts company operations. • No explicit requirement for bank's trust company operations for compliance officers to have timely access to customer identification data and other relevant information. • No internal audit requirements for entities regulated by SMV and MICI. • No employee standards requirements for entities regulated by MICI. • No reporting lines requirements for compliance officers for entities regulated by MICI. • Need more detailed policy, internal control, procedures, and compliance, etc., requirements for cooperatives.
R. 22	**PC**	• Scope limitation: Requirements do not cover a number of financial sectors/activities: The AML legislation does not apply to insurance companies and their intermediaries, issuers/managers of means of

		payment, financial leasing and factoring, multi-service cooperatives, savings and loan associations, the National Mortgage Bank, and entities that provide the safekeeping/custody of cash and other liquid assets. • Bureau de change (casas de cambio) are neither regulated nor supervised to ensure effective compliance with the AML/CFT requirements. • No requirement for FIs to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (host country) laws, regulations or other measures.

4.10. Shell Banks (R. 18)

4.10.1. Description and Analysis

858. Legal Framework:

859. Decree Law 2/2008, Decree Law 9/98 modified by DL 2/08 and reorganized by Executive Decree 52/08 (Banking Law), SBP Agreement 3-2001, Agreement 12-2005, Resolution SBP 032/2005.

860. Prohibition of Establishment Shell Banks (c.18.1):

861. The legal framework as established under Article 2 of the Banking Law, clearly states that only those persons who have obtained a banking license may engage in the banking business in or from Panama. The licensing requirements are set forth under Article 9 of Agreement 3-2001.

862. There are some licensing measures and requirements in place that attempt to prevent the establishment or continued operations of shell banks in Panama. However, none of these measures addresses the physical presence including that mind and management is located within Panama.

863. According to Article 11 of SBP Agreement 3-2001, banks that have been granted a license are subject to a pre-opening inspection. As such, the article indicates that "*every bank that has been granted a banking license (…) must start operating within the six (6) months following the date of the Resolution granting the license. To verify the bank's capacity to offer its services, the Banks will be subject to an inspection by the Superintendency personnel before they start their operation. Banks will communicate in writing when their operations begin and the place where their main offices will be located at least sixty (60) days before the opening.*"

864. Pursuant to Article 12 of SBP Agreement 3-2001 the banks constituted outside the country and their promoting groups must prove that the bank, which will be the holder of the applicable license, inter alia, maintains physical presence, management and substantial operations in its country of origin. It is also required to comply with the requirements of capital adjustment, liquidity and other prudential requirements established by the legislation and/or the respective foreign supervising entity.

865. However, Article 12 of SBP Agreement 3/2001 does not impose requirements on international banks operating in Panama that are not part of an international bank or group, e.g., a standalone private bank incorporated in Panama or elsewhere.

866. According to the information provided by the authorities, physical presence requires the establishment of the bank within the country, and is aimed at "*ensuring that the establishment or continued operations of shell banks is not approved/accepted*." They do not, however, explicitly state or define that the "mind and management" of banks also be located in Panama.

867. Prohibition of Correspondent Banking with Shell Banks (c.18.2):

868. Article 3 of SBP Agreement 12-2005 states that "any person or transaction that *arises* as a result of a relation between banks, that the Bank provides to foreign banks will be subject to the due diligence measures, which must be in *accordance* with the risk level it represents."

869. The same article prohibits banks from "establishing or keeping any type of relationship between banks or of correspondents that have no physical presence in their home country or are not affiliated with a financial group that is subject to consolidated supervision. Special attention must be given to banks located in jurisdictions with weak standards for the prevention of money laundering and terrorist financing."

870. Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks (c.18.3):

871. There is no specific requirement for financial institutions to be required to satisfy themselves that the respondent financial institution in a foreign country does not permit their accounts to be used by shell banks. Resolution 032/2005 under Article 1 obliges financial institutions to confirm that the banking institution which receives the service (the respondent financial institution), has measures and controls for the prevention and detection of money laundering and terrorism financing, conforming to international standards which may also include complying with the requirements set forth under Recommendation 18, but this is not clearly stated and does not capture the requirement set forth under the criterion.

Effectiveness of Implementation

872. The SBP officials informed that there are no shell banks operating in Panama. In addition, representatives from banking institutions also indicated to the assessment team that none of them have correspondent relationships with shell banks. The SBP officials reported that they review the agreements regarding correspondent banking relationships during their on-site inspections of banks and ensure that FIs do not enter into correspondent banking relationships with shell banks.

4.10.2. Recommendations and Comments

873. Authorities should:

- Establish an explicit licensing requirement for banks to have a physical presence including that mind and management is located in Panama. This should also explicitly apply to international banks operating in Panama that are not part of an international bank or group.

- Establish a clear obligation for FIs to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

4.10.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R. 18	**PC**	• No clear obligation for banks to have a physical presence, including that mind and management is located in Panama, including with respect to international banks/groups. • No obligation for FIs to ensure that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

Regulation, supervision, guidance, monitoring and sanctions

4.11. The Supervisory and Oversight System—Competent Authorities and SROs. Role, Functions, Duties, and Powers (Including Sanctions) (R. 23, 29, 17, and 25)

4.11.1. Description and Analysis

874. Legal Framework:

875. Law 42/2000 (referred interchangeably as the "AML Law"), Executive Decree 1/2001 as modified by Executive Decree by 55/2012, Law Decree 9/98 modified by DL 2/08 and reorganized by Executive Decree 52/08 (consolidated text of Banking Law), Securities Law, Law 17/97 (Cooperatives Law), Law 24/1980 for the IPACOOP, Executive Decree 137/2001 for cooperatives, Law 48/03 for money remitters, Law 42/01 modified by Law 33/02 for finance companies, Law 12/2012 (Insurance Law).

Competent authorities - powers and resources: Designation of Competent Authority (c.23.2); Power for Supervisors to Monitor AML/CFT Requirement (c.29.1); Authority to conduct AML/CFT Inspections by Supervisors (c.29.2); Power for Supervisors to Compel Production of Records (c.29.3 and 29.3.1); Adequacy of Resources – Supervisory Authorities (R. 30)

876. Art. 5 of Law 42/2000 (the AML Law) states that the supervisory authorities with general supervisory responsibility over FIs under their jurisdiction are expressly authorized to conduct inspections, particularly internal control procedures and mechanisms, in order to verify compliance with the provisions of the AML Law. In this regard, Article 6 states that AML supervision will be conducted "by the respective public entities or supervisory bodies, established by law for the correspondent activity." Similar powers are granted under Art. 1 (7) of this Law. Law 42/2000 only covers AML and does not address CTF issues.

877. Not all of the financial institutions/activities as defined in the FATF Recommendations are covered under the AML Law and, therefore, not subject to AML/CFT supervision. These include factoring and leasing companies, insurance companies and intermediaries, multi-service cooperatives that provide savings and loans activities, savings and loans associations, the National Mortgage Bank (Banco Hipotecario Nacional), issuers and managers of means of payment (e.g., credit and debit

cards), and entities that provide safekeeping/custody of cash and other liquid assets (Please see introduction to Section 3).

878. Under Law 42, some insurance intermediaries are subject to the CTR requirement but not to the rest of the obligations under the AML Law. This gap in the scope of the supervisory framework affects the ratings for Recommendations 17, 23, 25, and 29. Similarly, Law 42 only criminalizes money laundering. The criminalization of TF is through the Penal Code. It is worth noting that in some cases subsidiary regulations do address CFT. However, from a legal stand point when the sectoral laws applicable to financial institutions do a cross reference to the AML Law, they fall short of addressing TF. It is worth noting that where AML/CFT appears, it mainly addresses AML due to the shortfall in the legal framework.

879. Bureau de change (*casas de cambio*), are subject to the obligations set forth under the AML Law but are an unregulated activity in Panama and not subject to any effective AML/CFT supervision. Savings and loans associations are under the regulation and supervision of "*Banco Hipotecario Nacional*", but are not subject to the AML/CFT regime.

880. The authorities indicated that since this is a savings bank, it falls under the supervision of the Superintendency of Banks. However, the legal framework is not too clear on this and should be more explicitly stated.

881. Executive Decree 1/2001, issued pursuant to Law 4/2000, provides under Articles 2 and 4 a list of the supervisory authorities with responsibilities for ensuring that financial institutions comply with the AML provisions. This Decree was later modified by Executive Decree 55/2012, which complements the list of competent supervisory authorities. However, since Law 42 only relates to AML, the designation of competent authorities falls short of providing them with the adequate responsibility to supervise compliance with CTF requirements. Pursuant to Article 2 of Executive Decree 55/2012, the supervisory authorities for AML compliance in the financial sector are as follows: (Note the limitation in scope of FIs covered by the AML Law and the supervisory framework).

- The Superintendency of Banks (SBP): banks and trust companies (Trustees),
- Superintendency of the Securities Market (SMV): stocks exchanges, clearing houses, brokerage houses (including FOREX activity), stock brokers, and investment fund managers,
- The "Panamanian Autonomous Institute for Cooperatives" (IPACOOP): savings and loans cooperatives,
- The Ministry of Commerce and Industry (MICI): finance companies, money remitters and bureau de change (casas de cambio), and
- The Superintendence of Insurance and Re-Insurance (SSRP): insurance and re-insurance companies and brokers.

882. The authority granted to the above mentioned supervisory authorities is contained under relevant provisions of the sector legislation (the Banking Law, the Securities Market Law, the Insurance Law, the Cooperatives Law, and Law 42/01 for finance companies and Law 48/03 for money remitters). Money exchange is a financial activity not regulated in Panama except to the extent that it is conducted by other regulated entities such as bank and money remitters.

883. The sector laws have provisions which, in general, give the supervisory authorities a broad range of prudential regulatory powers as well as the power to supervise, request information and enforce the applicable legal framework.

884. The supervisory authorities are empowered under Articles 1(7), 5 and 6 of the AML Law to inspect the procedures and mechanisms of internal control of the entities subject to their control in order to ensure compliance with the provisions of the AML Law. Similar power is granted by Article 1, section 7 of the AML Law. The inspection powers are vested under Law 42/2000 (AML Law) as well as under the relevant sectoral laws. Such power is further elaborated under Executive Decree 1/2001 that states that supervisory authorities are obliged to conduct inspections to the reporting entities subject to their control in order to verify compliance with the obligation to maintain in the records the customer's name, address and identification number. In particular, Art. 1 requires the designated supervisory authorities to: oversee compliance with the CTR requirements; conduct inspections to verify that reporting (CTR) FIs are maintaining a record of client names, addresses and identification numbers (for the CTR requirement under Art. 7 of the AML Law); impose sanctions under Art. 8 of the AML Law; and to apply measures that are necessary so that the reporting (presumably for CTRs) FIs comply with the requirements of the AML Law. Note however, that these provisions are focused on the CTR reporting ("declarantes") obligations of FIs and not broadly to all of the requirements under the AML Law.

885. General supervision and inspection powers are also vested under the relevant sectoral laws for the covered FIs. Generally, all supervisory authorities have full access to the information they require to properly perform their functions and there is no restriction on the type of information that may be requested and there is no need for a court order.

886. **Superintendency of Banks of Panama (SBP) – Banking sector:** There are 48 banks with general licenses and 29 with international licenses operating in or from Panama. Article 4 of the Banking Law grants exclusive power to the SBP to regulate and supervise banks, the banking business and other entities and activities assigned to it by other laws. The SBP functions are defined under Article 6 of the Banking Law. In addition, pursuant to Article 36 of Law 1/1984 the SBP has been empowered to regulate and supervise trust companies (trustees) and to supervise and oversee the adequate functioning of the trust business. In practice such business can be conducted by banks, insurance companies, lawyers and any other natural or legal person that habitually engage in trust business. When conducted by banks or other FIs, that activity will be assessed as a financial activity under Section 3 of the report. Trust businesses conducted by non FIs will be assessed as DNFBPs under Section 4.

887. Article 5 of the Banking Law sets out the objectives of the SBP as follows: "to safeguard the soundness and efficiency of the banking system, to strengthen and foster auspicious conditions to the development of Panama and international financial/banking center, to promote public trust in the banking system and to safeguard the judicial equilibrium between the banking system and its clients."

888. The Banking Law grants the SBP broad general powers related to the supervision of banks.

889. Article 59 of the Banking Law provides that all banks that engage in the banking business in Panama are subject to inspection and supervision by the SBP "to confirm their financial stability and their compliance structure with the provisions contained in such Decree and its regulations."

890. Under Article 86 of the Banking Law (power to solicit information to banks or banking groups) the SBP is empowered to "request from any bank, from any firm in the banking group, from any holding companies, or from nonbanking affiliates the documents and reports regarding their operations and activities"

891. Further, the Banking Law contains a specific Chapter on "*Prevention of Money Laundering, Financing of Terrorism and related crimes*" which under Article 113 request banks and other entities supervised by the SBP to submit the information required by law, decrees, and other regulations for AML/CFT, and other related crimes in nature or origin in force in Panama. It also states that those entities are obliged to submit such information to the SBP whenever it may so require. As such, this obligation applies to banks and trust companies (trustees).

892. The SBP has issued specific Agreements as follows: (i) Agreement 12-2005 (AML/CFT), (ii) Agreement 5-2003 (Electronic banking), (iii) Agreement 12-2005 E (Guide for examples of suspicious transactions), (iv) Agreement 2-2005 (wire transfers), (v) Agreement 10-2000 (Compliance Officer), (vi) Agreement 8-2010 (Risk), and (vii) Agreement 4-2001 (Corporate Governance). For the purpose of this assessment, those Agreements are considered as OEMs.

893. The Banking Law gives the SBP the authority to conduct consolidated supervision both domestically and cross-border.

894. **Trustees:** Pursuant to Article 17 of Executive Decree 16/1984 the SBP is empowered to perform and order the inspections that it may deem convenient in order to verify compliance with the legal provisions regulating to trust business. In practice, such business can be conducted by banks, insurance companies, lawyers and any other natural or legal persons that habitually engage in trust business. There are currently 68 licensed trustees with the following breakdown:

- Government Banks: 2
- Private Banks: 28
- Insurance Companies:2
- Law Firms: 14
- Other Firms: 22

895. The two government financial institutions (one bank and one savings and loans) do not require trustee's licensees but fall under the supervision of the SBP for general trust and AML purposes.

896. In practice, trustees provide both trusts services and other nontrust business activities for clients. However, it appears that the SBP is only authorized to supervise trustees (fiduciaries) with respect to their trust business, and hence their AML/CFT oversight activities are limited to trust business. Other types of services offered by trustees either directly or through affiliates include: foreign company incorporation, administration of foreign trusts, private foundations, arranging of public and private securities issues, organization of private mutual funds and other collective investment schemes, nominee directors, corporate documentation and issue of share certificates, assistance in the opening of bank accounts, and registration of trademarks, licenses, patents and rights.

897. The authorities informed that regardless of the type of financial institution that performs the trust business, it will fall under the provisions of Law 1984, Article 1, Executive Decree 16/84 and Agreement 12-05. However, the SBP is not entitled to supervise the nontrust business conducted by FIs under their trust licenses or trust affiliates, which constitutes a significant limitation to AML/CFT supervision. Particularly with respect to trust affiliates, the SBP would not have access the nontrust business conducted under trustee licensees (e.g., corporate services) that would restrict its ability to effectively inspect banks. Similar limitations can apply for insurance companies that conduct trust business either directly or indirectly. The authorities informed that if a bank conducts trust-business under a separate legal entity (i.e., subsidiary), it will be supervised under the provisions applicable to financial groups. Under the trust law, however, the SBP is restricted to supervise only the trust business and the companies or firms over which the bank effectively controls their operations as trustees are exempted from the provisions of Article 66 of the Banking Law (ability for the SBP to conduct bank examinations).

898. **Structures and Resources of supervisory authorities (R. 30):** The SBP has its own budget which is funded from fees charged to supervise entities. It can also establish its own organizational structure and hire its personnel. As of the mission date the AML Directorate is in charge of supervising 48 general banks, 29 international banks, and 14 representative offices.

899. In February 2011, an AML (not CTF) specialized Unit was established within the organizational structure of the SBP. The Directorate of Prevention and Control of Illicit Activities (AML Directorate) was created with the responsibility to ensure that banks comply with the AML obligations. Prior to this, AML compliance was under the responsibility of a specific division within the Supervision Department comprising of nine staff. At the time of the mission the AML Directorate had 24 staff in total, indicating a marked increase in both financial and staff resources.

900. The Directorate is comprised of two divisions: (i) Prevention/Supervision which has 20 staff (14 inspectors and four coordinators) and (ii) Control of Illicit Operations: Prevention of Unlicensed Banking operations and misuse of banking services which has four staff and is mainly involved in preventing unlicensed banking operations and misuse of banking services. This second Division can provide support, if needed, to the Prevention/Supervision Division.

901. In 2012, the annual budget for the AML Directorate increased from $487,520 for 2011 to $683,733. For purposes of its current functions, the AML Directorate seems to be adequately funded and structured, and has sufficient technical and other resources to perform its duties. Additionally, staff participated in a number of training programs for AML/CFT during the last three years.

902. Supervision of Trust Companies (Trustees) falls under the “Trustees Supervision Unit” within the Supervision Department. This Unit is comprised of 12 inspectors responsible for supervising 69 licensed trustees made up as follows: two official banks, 24 private banks, 14 related to banks (affiliated trust companies) 15 related to law firms, two insurance companies, 12 other standalone trust companies).The budget for the Trust Supervision Unit is part of the budget of the Supervision Department.

903. According to the authorities there are plans to transfer responsibility of AML supervision from the “Trustees Supervision Unit” to the “AML Directorate.” However, the resources and capacity implications have not yet been considered.

904. The Trustees Supervision Unit over the last three years had the following budget: 2010–$289,850; 2011–$330,730; and 2012–$376,011. The authorities did not provide any information with respect to the number of staff devoted to AML supervision for the last three years.

905. As for the trainings for the Trustees Supervision Unit, the authorities informed that one training session was provided in 2010 and one in 2011. As of October 2012, the staff of the Trustees Supervision Unit had not been provided with training for issues relating to combating ML and TF and its supervision.

906. SBP staff should observe the obligations set forth under Executive Decree 246/2004 which contemplates a uniform "Code of Ethics" for all public servants who work in the central government. The Code includes principles related to, among other, the following: probity, prudence, dignity and decorum, justice, competence, accountability, transparency, equality, respect, training, discretion, proper exercise of functions, use of information, and collaboration, etc. All staff is subject to confidentiality standards.

907. In addition, the SDB pursuant to Resolution S.B No.02-2002 modified by Resolution No. SDB.JD-0046-2011 approves a Code of Conduct where it requires its employees to comply with ethics and professional standards. The Code of Conducts provide for a number of principles aimed at ensuring high professional standards and integrity, etc.

908. The SMV: The SMV is the designated competent authority responsible for ensuring that entities operating in the Panamanian securities market comply with the Securities and the AML Law. Pursuant to Article 2 of the Securities Law, the SMV shall have exclusive jurisdiction to regulate and supervise issuers, stock exchanges, investment companies, brokerage houses stockbrokers and other market intermediaries. Several other articles refer to the regulatory, supervisory and enforcement powers of the SMV. (Article 2, 3, Article 329-supervision and inspection regime, Article 330). Capital markets intermediaries have mainly an international securities business but their domestic operations are small. The SMV supervises the Bolsa de Valores and Latin Clear, both are self-regulated organizations (SROs) but the authorities informed that they do not have a supervisory role and that AML supervision is solely conducted by the SMV.

909. As for the requirements set forth under the AML Law, the SMV is the designated supervisory authority for the following entities: brokerage houses, stock brokers, stock exchanges, clearing houses and investment fund managers. Stock exchanges and clearing houses fall out of the scope of the definition of financial activities set forth under FATF's glossary and as such will be excluded from the current analysis, but the requirements equally apply to them under this Law.

910. Article 2, 3, and 329 of the Securities Law provide the SMV with a supervisory and inspection powers over all market participants.

911. The SMV has the authority to conduct inspections on market participants to ensure compliance with the requirements set forth under the applicable laws, both the Securities Law as well as the AML Law. The SMV has the power by means of Article 330 of the Securities Law to examine books, records, accounts and other relevant documents, if there is sound reason to believe that there is a violation to a provision under the Securities Law. This condition for the access to information and the conduct of inspections, that is, legal violations, limits the broad inspection powers which are necessary for purposes of AML/CFT which should also be conducted both to test compliance (not

only with respect to legal violations) and the application of good practice in the sector for the prevention and detection of ML/TF.

912. The SMV has issued specific Agreements related to AML. The current regulatory AML framework is contained under Agreement 5-2006 that set forth the requirements that brokerage houses, stockbrokers, investment fund managers, self-regulated organizations, and clearing houses should comply with in line with the obligations set forth under the AML Law.

913. Structures and Resources of supervisory authorities (R. 30): The supervised sector includes: 80 brokerage houses, 748 brokers, 28 investment companies, two pension fund managers, nine pension funds, 16 brokerage houses that do FOREX business, 44 investment advisors, one stock exchange, one clearing house, and eight credit rating agencies.

914. Pursuant to Resolution CNV-451-2010 the organizational structure of the SMV was modified with the aim to enhance and separate the supervision and surveillance functions. AML/CFT supervision falls under the responsibility of the "*Supervision Division*" which is also in charge of prudential supervision and as of the mission date was comprised of 15 staff, with the following breakdown:

- One Director,
- Three Deputy Directors (Deputy Director for on-site supervision, Deputy Director for offsite supervision and Deputy Director for financial analysis),
- 10 inspectors (four for offsite surveillance, four for on-site activities and three inspectors for financial analysis), and
- One analyst.

915. The Supervision Department, with a 15 staff as of the mission date was responsible for ensuring that 1,294 securities market participants comply with the prudential requirements set forth under the Securities Law and the AML Law. These limited human resources negatively impact the ability of the SMV to handle its supervisory role and ensure that the securities market participants comply with the AML obligations. The authorities also shared this view. The authorities later informed that as of April 2013 the number of staff was increased to 21.

916. Prior to the new organizational structure, the Legal Department was responsible for AML supervision which was mainly devoted to ensuring that financial institutions comply with the following obligations: (i) submission of CTRs, (ii) development of an AML program, and (iii) training. AML on-site inspections were conducted jointly with prudential inspections by one to two people from the Legal Department, jointly with the Market and Intermediaries Division.

917. As of the mission date there were only 15 staff in the Supervision Department responsible for ensuring that 1,294 securities market participants comply with the prudential requirements set forth under the Securities Law and the AML Law. These limited human resources negatively impact the ability of the SMV to handle its supervisory role and ensure that the securities market participants comply with the AML obligations. The authorities also shared this view.

918. With respect to the obligation to maintain high professional standards, including standards concerning confidentiality, SMV staff should observe the obligations set forth under the Executive

Decree 246/2004 which contemplates a Code of Ethics for all public servants. As for training activities, staff participated in two trainings in 2009, three in 2010, five in 2011, and three in 2012.

919. Ministry of Commerce and Industry (MICI) through its specialized department: Finance companies, money remitters, and bureau de change (casas de cambio) (for AML purposes only).

920. Under Article 1 of the AML Law and the Executive Decrees described above, money remitters, finance companies and bureaus de change (casas de cambio) fall under the supervision of the MICI. This is also prescribed in other legal instruments (Law 48/03 designates MICI as the supervisory authority for money remitters and Law 42/01–modified by Law 33/02–as the competent authority for finance companies. Other provisions under a number of Executive Decrees, 46/08 (Art. 52) and 213/2010 (Art. 1) further complement this.

921. The authorities informed that there are 18 money remitters, 162 finance companies, and an estimated 79 bureau de change (casas de cambio) operating in Panama. As indicated above, bureaus de change are not a regulated activity in Panama except for their inclusion in the AML Law. Consequently, MICI's supervisory regime has not been applied in practice for AML/CFT purposes and has so far been limited to the verification of compliance with the currency transaction reporting requirements. There are also 124 leasing companies, 282 pawn shops that fall under the supervision of MICI, but these are outside the scope of the AML Law and other instruments. With regards to bureau de change (*casas de cambio*), the situation is less clear. While Article 1 of the AML Law designates them as obligated entities and MICI as the supervisory authority, the activity is not per se a regulated financial activity in Panama, unlike money remitters which can engage in currency exchange activities. This situation makes implementation of the AML requirements less effective than for those sectors that are otherwise regulated and supervised.

922. Article 36 of Law 42/01, Article 29 of Decree 213/10, and Article 22 of Law 48/03 grant the MICI with powers to monitor and inspect finance companies and money remitters respectively to ensure compliance with the provisions of such Law. Pursuant to Law 42/2001, finance companies are inspected every two years and money remitters once a year (Law 48/2003) aimed at verifying the financial condition of these entities and the compliance with their legal obligations.

923. MICI has issued Resolutions imposing a number of AML obligations for finance companies, and AML and CTF obligations for money remitters, as follows: Resolution 328/04 for money remitters and Resolution 14/01 for finance companies that further elaborated the obligations set forth under the AML Law. No Resolution was enacted for bureau de change (bureau de changes). Furthermore, Resolution 14/01 (Article 8) for finance companies, Executive Decree 213/01 and Resolution 328/04 (Article 14) for money remitters have similar provisions that establish the functions of the "*Directorate of Finance Companies*" as including, inter alia: "*to obtain general information on these entities, follow up monthly on their compliance with their reporting to the UAF, issue recommendations for remedial measures on AML, periodically conduct inspections of the books that verify and establish the source of funds used by to evaluate and ensure compliance by the entities in their operations, and apply sanctions for noncompliance*" As such, the supervisor is entitled to inspect the legal books and verify and check the source of the funds. These inspections shall include the companies that are part of the economic group provided that those activities are authorized and regulated by MICI.

924. According to the information provided by the authorities, there are 79 bureau de change (*casas de cambio*) in Panama and their activities are not licensed or regulated in Panama, apart from their inclusion in the AML Law (Law 42). The authorities informed that like any other commercial business operating in Panama, they are required to submit a declaration "affidavit ("*aviso de operacion*") to the MICI, and inform the Government of their money changing activities in the country. After this declaration, MICI can conduct an inspection to verify the existence of the company in line with its affidavit, but they are neither regulated nor otherwise supervised.

925. Structures and Resources of supervisory authorities (R. 30): Within the MICI, the Directorate of Finance Companies Directorate is responsible for supervising finance companies, money remitters, pawn shops, leasing companies, credit rating agencies, for prudential matters. In addition, the Directorate is responsible for ensuring that finance companies, money remitters, pawn shops and money changers comply with the AML requirements set forth under the AML and implementing regulations. As for bureau de change, its control is currently limited to verifying that they submit the currency transaction reports.

926. As of the mission date, the Directorate had 20 staff of which eight are supervisors assigned to both off-site and on-site inspections both for prudential and AML matters. The Directorate has two liaison officers with the UAF. The eight supervisors have to supervise a total of 589 financial institutions (124 leasing companies, three credit agencies, 162 finance companies, 282 pawn shops, and 18 money remitters) all for prudential compliance and in addition, to finance. Finance companies, money remitters, and pawn shops which should also be supervised for AML compliance. In addition, there are 79 bureaus de change that also fall under the oversight of MICI (their control is currently limited to CTRs reporting).

927. In light of the scope of MICI's supervisory responsibilities, the resources devoted to verifying that the FIs comply with the AML obligations could not be regarded as sufficient. The authorities also acknowledge such resource limitation.

928. Similarly to other public servants, MICI officials are required under the Code of Ethics approved by Executive Decree 246/2004 to maintain high professional standards, including high integrity as required under criteria 30.2. MICI has a Code of Conduct that applies to all the employees.

929. Similarly to the rest of the public sector, the budget allocation for the Department is governed by Law 74 (State's general budget for 2012 which has not varied much during the last years: (i) 2010–B181,500.00; (ii) 2011–B181,500.00; and (iii) 2012–B186,227.00.

930. As for training activities, the authorities participated in local and regional AML trainings/workshops. The list of courses and workshops provided to the assessors reflect that staff attended three trainings in 2012, three in 2011, and one training in 2010 with a total of seven trainings for the last three years. The training sessions include two trainings provided by the UAF and two international AML workshops.

931. **Panamanian Autonomous Institute for Cooperatives (IPACOOP):** The AML Law incorporates "savings and loans cooperatives" under Article 1. However, there are 21 "*multipurpose cooperatives*" that also perform, among other functions, savings and loan activities, but since they are not licensed/registered as such ("savings and loans cooperatives"), they do not technically fall under

the AML Law. As of December 2011, the total assets of loan and savings cooperatives were B810,456,239, and contributions for B141,186,388. The four largest cooperatives hold 53 percent of the sector's assets and almost 60 percent of deposits.

932. According to Article 1 of Law 24, IPACOOP shall 'be responsible for the formulation, management, planning, and policy implementation of the cooperative sector in Panama and shall oversee the operation of cooperatives directly or may delegate this to cooperative associations" Art. 3 also provides it with authority to provide and suspend the legal status of cooperatives and apply sanctions for failures to comply with the laws, decrees and resolutions.

933. As the sector supervisor, it shall ensure that cooperatives comply with Law 17/97, Law 24/1980, Law 42/2000, Executive Decree 137/2001 and implementing regulations. The IPACOOP has issued Resolution 41/2009 which provides the requirements that cooperatives should observe to comply with the AML obligations under Law 42 (AML Law). In addition, IPACOOP issued Resolution 132-A/2010, which modifies Article 2 of Resolution 41/2009, and Resolution 23/2006 which approves the regulation for the enforcement of the requirements under Law 42/2000.

934. Law 17/1997, under Article 117 to 119, empowers IPACOOP to conduct on-site inspections to cooperatives and states that such entities are obliged to provide any information needed or deemed relevant and show their books and documents to inspectors. The law grants the inspectors full access to the premises of the cooperatives and to all relevant records and documents.

935. Structures and Resources of supervisory authorities (R. 30): AML supervision falls within the responsibility of the Department of Special Investigations within the Cooperative Audit Department. The Department of Special Investigations is comprised of 6 staff and is responsible for ensuring that all cooperatives, comply with the prudential requirements set forth under the Cooperatives Law and other legal regulations. In addition, it should ensure that the savings and loans cooperatives comply with the provisions set forth under the AML Law, and Resolution 41/2009. Currently there are 577 cooperatives and 167 savings and loans cooperatives.

936. As for number of staff, the Department has shown a decrease in the number of inspectors during the last three years, as shown eight inspectors in 2010, seven inspectors in 2011 and six inspectors in 2012. The resources allocated to the supervisory role are insufficient to adequately comply with the obligations set forth under the AML Law.

937. All staff in IPACCOP shall observe Executive Decree 246/2004 which contemplates a uniform "Code of Ethics" for all public servants who work in the central government.

938. As for training activities, the authorities informed that the relevant staff attended one AML training course from 2009–2012. The authorities also indicated that they provide AML training to cooperatives.

939. **Superintendency of Insurance and Reinsurance (SSRP) – for covered Insurance entities:** Pursuant to Law 12/2012, the SSRP is responsible for the regulation and supervision of 31 insurance companies, of which, all are authorized to provide pure life insurance and only 26 general (life and other policies) and bonding. Of these 31 insurance companies, 13 hold licenses for general reinsurance activities. The law also provides for the supervision of eight authorized reinsurance companies, 12 captive insurance companies, seven captive insurance managers,

2,489 insurance agents (natural persons), and 350 insurance brokers (legal persons), 9 reinsurance brokers, four insurance claims adjusters (natural person), and 29 insurance claims adjusters (legal persons).

940. (See beginning of R. 5 for the list of FIs that are not covered by the AML Law). Insurance companies, reinsurance companies, and reinsurance brokerage are only required to comply with the CTR obligations. Others such as captive insurers, captive insurance and their administrators, insurance brokers and agents are not covered.

941. The insurance sector is not covered by Article 1 of the AML Law. Under Article 7, certain insurance activities (Insurance companies, re-insurers and insurance brokers) have a narrow AML obligation to comply with the currency transactions reports (CTRs). However, the insurance sector is not subject to the broader AML requirements that apply to the FIs (and trustees) covered under Art. 1of this Law. Executive Decree 1/2001 and its subsequently amending Decrees further provide the list of the supervisory authorities for ensuring compliance with the AML legal framework. Notwithstanding the designation of the SSRP as the competent supervisory authority for the insurance companies, reinsurers and insurance brokers, the gap under Article 1 of the AML Law, negatively affects the compliance with the requirements under the standards.

942. The SSRP enacted Resolution 8/2008 which imposes a number of requirements that the institutions operating in the insurance sector must comply with in order to combat money laundering and terrorist financing. However, Resolution 8/2008 goes beyond the requirements established by the AML Law and its Executive Decrees, particularly under Art. 1 it attempts to expand the scope to cover TF issues. Likewise, under Art. 2 it states that this Resolution applies to a broader set of insurance entities and intermediaries including captive insurance companies, insurance company (including captive insurers) administrators, both natural and legal persons doing business as insurance brokers and "producers," insurance broker administrators, and natural and legal persons doing business as claims adjusters and/or damage inspectors.

943. Under the Insurance Law (Law 12/2012), the SSRP is responsible for the regulation and supervision of insurance companies, insurance agency administrators, insurance brokers administrators, adjusters, insurance brokers (individuals or companies) captive insurers, captive insurance administrators, reinsurers and reinsurance brokers. The SSRP also has the power to impose sanctions for noncompliance with the obligations set forth under the law.

944. Article 3 of Resolution 8/2008 and Article 232 of Law 12/2012 grants the SSRP, with one important exception, with AML supervision and broad powers to monitor and inspect insurance market participants to ensure that they comply with the requirements set forth under the legal framework. As such, the SSRP is empowered to review books, records and other documentation as deemed appropriate and have access and obtain copies of all relevant information. The exception referred to above in Art. 232 is that, to protect the privacy of the insured and contracting parties due to the confidentiality of information they provide when acquiring policies, the SSRP cannot request information of whatever nature, on confidential information contained in the files of the contracting parties held by the supervised entities. Because this exclusion applies generally and not only in certain cases e.g., personal medical information, it can limit the ability of the SSRP to request and review documentation with respect to life insurance policies and investment products. Failure to comply with the SSRPs inspection requests can result in fines.

945. Structures and Resources of supervisory authorities (R. 30): As indicated above, the total number of entities subject to SSRP supervision is as follows: 31 pure life insurance, 27 general insurance (life and other policies) and bonding, 15 general reinsurance, eight reinsurance companies, 12 captive insurance companies, seven captive insurance managers, 2,489 insurance brokers (natural persons), and 350 insurance brokers (legal persons), eight reinsurance brokers, four insurance claims adjusters (natural persons), and 29 insurance claims adjusters (legal persons). The authorities informed that legislation for insurance agents and insurance agencies have been created by Law 12/2012 but have not yet been licensed, and are not supervised as yet. This may be the reason why the 2000 AML Law did not cover them. The authorities informed the assessment team that a specific regulation for insurance agents and agencies, Agreement 9, was issued in August 2013.

946. AML/CFT supervision falls under the Legal Department which devotes three lawyers (Sub-director and two staff) to verifying compliance with the AML Law and Resolution 8/08. The authorities indicated that they supervise not only "declaring entities" a described in Executive Decree 1/2000 but that they extend the control to other insurance market participants as described under Resolution 8/09.

947. The resources allocated to the AML/CFT supervisory role could not be regarded as sufficient to effectively ensure that insurance market participants comply with the AML obligations. Existing challenges include the insufficiency of resources, as well as the need to bolster supervision and enforcement actions over insurance intermediaries.

948. All with the rest of the public servants, staff shall observe the provisions contained in Executive Decree 246/2004 which contemplates a number of obligations related to high integrity standards, and confidentiality, etc.

949. As for training, the information provided by the authorities shows that in 2009, 2011, and 2012 some staff attended one training session. No training activities were conducted in 2010.

950. **Sanctions:** Powers of Enforcement and Sanction (c.29.4); Availability of Effective, Proportionate and Dissuasive Sanctions (c.17.1); Designation of Authority to Impose Sanctions (c.17.2); Ability to Sanction Directors and Senior Management of Financial Institutions (c.17.3); and Range of Sanctions—Scope and Proportionality (c.17.4)

951. Article 8 of the AML Law states that: "*Without prejudice to the measures set forth in the Penal Code or in other laws, decrees or regulations in force in the Republic of Panama, non compliance with the dispositions established in this Law or the ones prescribed for its application by the respective supervisory authorities of each activity, shall be sanctioned only for this deed with fines ranging from five thousand (B5,000.000 to B1,000,000.00), depending on the importance of the violation and the degree of the recurrence, by the sectoral supervisory authorities, at their own initiative or at the request of the Financial Analysis Unit."* (Balboas are on a par with US$)

952. It addition it states that "*The deeds and behavior of the directors, executives, administrative and operational staff of the legal persons listed under Article 1 of the AML Law, are punishable to the legal person on whose behalf the perform."*

953. In addition, it indicates that "*the natural persons who perform such deeds and behavior will be subject to the civil and penal responsibilities, in the terms set forth by law."*

954. The AML Law only provides for a financial sanction but fails to include other disciplinary sanctions such as the power to withdraw, restrict or suspend the financial institution's license, where applicable and it is unclear as to whether sanctions also apply to directors and senior management of legal persons. Similarly, the sanctioning regime does to extend to TF.

955. The supervisory authorities listed under Article 2 of Executive Decree 55/2012 are the designated competent authorities with the power to apply sanctions for noncompliance with the AML Law and sector-specific laws (Banking Law, Trust Companies Law, Securities Law, Insurance Law, Cooperatives Law, Law 48/2003 for money remitters, and Law 42/2001 for finance companies, etc.).

956. The sector specific laws all grant the supervisory authorities with the power to apply sanctions for failures to comply with the requirements imposed on laws and regulations which, according to the authorities, could also apply to AML issues. (Article 6, 16, 131, 184-186 of the Banking Law, Articles 18 and 23 of Executive Decree 16/1984 for Trusts, Article 260 of the Securities Law, Article 3 of the Cooperatives Law, Article 52 of Law 42/2001 for finance companies, Article 29 of Law 48/2003 for money remitters). In most cases, the supervisory authorities have applied sanctions under the AML Law (fines), but in a few cases other available sanctions granted under the sectoral laws, such as private reprimand have been imposed.

957. The range of sanctions available varies according to the laws on which they are based. The AML Law provides a pecuniary sanction in case of a violation to the provision of such Law, but it does not provide for a wide range of sanctions for failures to comply with the AML obligations (i.e., administrative measures like restrictions, suspension, and revocation of licenses, etc.) nor is clear as to the power to impose sanctions on directors and senior management. Similarly, the sanctioning regime does not extend to TF. Failure to comply with AML measures that are contained in sector specific laws or regulations may be sanctioned on the basis of the powers granted to the supervisory authorities under the sector specific laws. As described further below, most sanctions imposed were related to failures to comply with the CTR obligation and few sanctions have been imposed for purely AML violations. According to the information provided by the supervisory authorities, in addition to the sanctions envisaged under Article 8 of the AML Law, all of them may enforce the AML obligations through the exercise of their general sanctioning powers contained under the sectoral laws and can impose the range of sanctions provided under those laws. However, with respect to money remitters and finance companies, the applicable sectoral laws and regulations clearly state that in case of violations to the provisions set forth under the AML Law, the applicable sanction is the one provided under Article 8 of such Law.

958. Overall the sanctions under the sectoral laws range from monetary penalties to suspension or cancellation of licenses.

959. The following table provides a description of the fines that can be applied under the various sectoral laws to financial institutions, as well as their directors and managers, etc.

SECTOR	LEGISLATION	AVAILABLE SANCTIONS UNDER THE SECTORAL LAWS
Superintendency of Banks Banks and Trust Companies (trustees)	Banking Law (Articles 16, 131/132, 185/Fines and 186/Generic sanctions) Articles 18 and 23 of	Seizure of administrative control, reorganization or forced liquidation of banks (Article 16, #4) Cancellation of banking licenses (Article 16, #5) Fines of up to one million balboa to: (a) Natural or judicial persons engaged in the banking

	Executive Decree No. 16/1984	business without a license, (b) anyone not complying with the provisions of Chapter XIII in Title III AML/CFT and related crimes Fines up to five hundred thousand balboas for violations of the provisions of Title III of Decree Law 52/08 related to the obligation to submit to examination, banking liquidity, documents and reports, prohibitions and the obligation of confidentiality. Generic sanctions: i) Private reprimand, admonition, (ii) Public admonition, and (iii) Fine of up to two hundred and fifty thousand B. Suspend/cancel the license/ intervention of the trust company/ penalty of confinement or prison to 6 months and a fine of up to fifty thousand balboas in case of violation with the trust secrecy provisions (Trust Companies).
Superintendency of Securities Market Securities Law	Article 269-274 The law contemplates the following circumstances: (i) Very serious breaches, (ii) Serious breaches, and (iii) minor infringements.	Sanctions include: fines of up to B1,000,000.00, suspension, withdrawal or cancelation of license, public reprimand, restricting the powers of managers, directors, barring individuals from holding administrative or management positions, and private reprimand, etc.
Ministry of Commerce and Industry	Law 42/01, Article 52 Resolution 14/2001 (Art. 8)-finance companies Law 48/03, Article 29 Executive Decree 213/2010 (Art. 32 and 36). Resolution 328/2004 (Art. 14)-money remitters	Money Remitters: (i) Written warning for first violation, (ii) Fine ranging from (B1000.00) to (B50,000.00) in case of recurrence in the same infringement, and (iii) Revocation of license in case of third time committing the same violation. In case of violations to the provisions set forth under the AML Law, the sanction applicable under such Law will apply. Finance Companies: (i) Written warning, (ii) Fine ranging from (B500.00) to (B10,000.00), and (iii) Revocation of license to act as a finance company. Violations to the provisions of the AML Law will be punished with fines ranging from (B5,000.00) to (B1,000.000.00) pursuant to Article 32 and 36 of Executive Decree 213/10)
IPACOOP	Law 17/97, Article 135, Article 3, Law 24/80, Article 65, Executive Decree 137/2001	(i) written warning, (ii) fine, and (iii) order of dissolution and liquidation of the cooperative, with the corresponding cancellation of Incorporation
Superintendency of Insurance and Reinsurance	Law 12/2012, Art. 275–283, Law 42/2000 Art. 8 Resolution 8/2008 (Art. 15).	(i) fine, (ii) temporary prohibition to perform certain operations, (iii) suspension of the license or authorization to operate, (iv) cancellation of license, and (v) cancellation of the registration in the appropriate register.

960. Superintendency of Banks of Panama: The Banking Law grants the SBP with broad powers to sanction the bank, its directors, officers, managers, employees, and other personnel that have participated in the violation of the provisions of the law. In the case of employees and directors, the bank shall be jointly and severally responsible for the fine imposed to these persons. The fines and sanctions imposed under the Banking Law are independent and without prejudice of other fines or

sanctions accruable for violations of any other applicable law, and the civil and criminal sanctions that may apply. (Article 188 of the Banking Law).

961. There are provisions in the Banking Law that can attract fines thereunder. The Banking Law incorporates a specific chapter for the prevention of Money Laundering, the Financing of Terrorism and related crimes, which require all banks and other entities supervised by the Superintendency, to establish policies and procedures and the internal control structure to prevent that their services are used unduly for criminal purposes. The SBP can enforce any of the obligations imposed thereunder.

962. Article 16 of the Banking Law grants the Superintendent, among other, with the power to order the seizure of administrative control, reorganization or forced liquidation of banks, the cancellation of banking licenses and to order the banks to remove its directors, officials or executives if, in his/her judgment, there is sufficient reason to do so.

963. Similarly, Articles 18 and 23 of Executive Decree 16/1984 regulate the applicable sanctions in case of violations by banks in their capacity as trust companies (trustees).

964. Article 189 of the Banking Law provides for the possibility to publish the sanctions imposed. The authorities indicated that it is also possible to publish the sanctions imposed based on the Agreements. As of the mission date, no sanctions were published.

965. According to Article 15 of Agreement 12-2005, “without prejudice to the sanctioning measures prescribed by the Banking Law and Executive Decree for trustees, the breach of the provisions of such Agreement will be sanctioned by the Superintendent with a fine of (B5,000.00) up to a maximum of (B1,000,000.00), according to the gravity of the offense or the recidivism degree (repetitive nature of the offense). The acts or omissions of an employee, director, officer, administrator or legal representative of a Bank or Trust Corporation can be attributed to the said entities on whose account they act as juridical persons, without prejudice to the sanctions stipulated in Law No. 45 of June 4, 2003 on Financial Crimes.”

966. The authorities indicated that in case of noncompliance with the AML obligations they could impose the sanctions under the AML Law, the Banking Law, and the ones provided under Agreement 12-2005 and 9-2000. However, as of the mission date all of the applicable sanctions by the SBP are those provided either under the AML Law and the applicable Agreements (12-2005, 8-2006, 10-2000).

967. Within the SBP, the Legal Department is responsible for determining the range of sanction that should be applied to the bank or trust company (trustees). If the AML Directorate or the Trustees Supervision Unit consider that a bank or trust company (trustees) fails to comply with the AML obligations imposed on them, and consider that a sanction is justified, they are obliged to file a form (*Report of Legal Infringements*) and submit all the relevant information to the Legal Department, which after following the legal procedures, shall determine the applicable sanction. Article 224 of the Banking Law sets forth the appeal procedures (reconsideration before the Superintendent and appeal before de Board of Directors). The above mentioned Report of Legal Infringement is reviewed and validated by the Area Manager and Director and is sent to the bank. The Bank must within 10 days after receiving the Report supply an action plan to rectify the findings and implement Recommendations of sound practices. There is a "disclaimer" saying that this does not exclude the possibility of a sanction.

968. As for banks, over the last years, the SBP has imposed one (1) sanction in 2008, one (1) in 2009, and three (3) in 2010. There were no sanctions in 2011 and two (2) were being considered at the time of the on-site mission. As for trust companies, (trustees), one (1) sanction was imposed in 2010 and nine (9) in 2011. However, the ones imposed in 2011 were related to failures to comply with the CTR obligation.

Year	Bank/Fiduciary Company	Legislation/Regulation violated	Violation	Type of sanction	Amount
2008	One bank	Art. 1 Law 42-2000; Art. 4 del Agreement 12-2005 and Agreement No. 8-2006	Failure to comply adequately with the CDD obligation.	Private reprimand	
2009	One bank	Art. 1(1, 7, y 8); and Art. 5 Law 42/2000; Art. 113 and 114 Banking Law	Failure to submit information to the SDB to verify compliance with Law 42/2000.	Fine	B25,000.00
2010	One trust company (trustee)	Law 1/1984; Executive Decree No. 16/1984; Law 42/2000 Agreement 12-20005	During a follow up inspection the SDB determined that the fiduciary company did not comply with the requested actions and within the timeframe assigned. The actions were related to: (i) Corporate Governance, (ii) Policies, Procedures and Internal Controls, including those related to AML, (iii) Accounting, and (iv) Conflict of Interest.	Fine	B30,000.00
2010	One bank	Law 42/2000	Failure to submit information related to a transaction/account that had been reported as suspicious.	Fine	B20,000.00
2010	One bank	Art. 1, 5, 8 Law 42/2000; Agreement 12-2005	Failure to comply with the actions required under the previous inspection, failure to include in the Compliance	Fine	B50,000.00

			Program, the review and monitor of the subsidiaries; update of the customer profile, use of the appropriate cash declaration forms, develop an organizational structure focused on the operational level of money laundering risk, keep updated legal regulatory requirements		
2010	One bank	Art. 2 Agreement 10-2000 Art. 4, section 1, b, g, h, and i; section 2 and 6 del Agreement 12-2005	Failure to comply with the requirements for the Compliance Office (hierarchy, Independence) CDD.	Private reprimand	
2011	Nine trust companies (trustees)	Agreement 12-2005	Failure to comply with the CTR requirement.	No data available.	
2012	As of October 2012, two cases were being processed	No data available			

969. The SMV: The Securities Law grants the SMV with comprehensive enforcement powers to impose sanction on the different market participants in case of violations to the requirements of the Law. The Securities Law provides for a wide range of sanctions (fines of up to B1,000,000, suspension, withdrawal or cancelation of license, public reprimand, restricting the powers of managers, directors, barring individuals from holding administrative or management positions, private reprimand). When deciding on the type of sanction, the SMV should take into consideration the seriousness of the offense, the damage caused, the duration, the severity of the violation, and the recidivism of the offender, etc.

970. The power extends to any market participant as well as to those persons who hold an executive or management position.

971. The decisions taken by the SMV are subject to both administrative and judicial review against the "*Sala de lo Contencioso Administrativo*" of the Supreme Court of Justice who has the final decision with regard to the sanction imposed by the SMV.

972. With respect to the obligated entities subject to Article 1 of the AML Law (stocks exchanges, brokerage houses, stocks brokers, and investment fund managers), the Superintendency has only imposed sanctions on brokerage houses. These sanctions only related to the lack of submission of the of the currency transactions reports in violation to the requirements set forth under Agreement 5-2006. (Publication in the Bulletin for the first violation, admonition for the second violation, and fine for two or more times). The minimum amount applied for fines was B5,000.00 and the authorities indicated that in some cases, the minimum amount for a fine was applied, while in other instances, fines were of a higher value. According to the authorities no other violations have been identified by the SMV with respect to AML obligations only. The breakdown is as follows:

973. Sanctions for failure to comply with the CTRs obligation:

- 2009 (13) sanctions, (12 publications in the Bulletin and one admonition).
- 2010 (25) sanctions (9 publications in the Bulletin, 10 admonitions, and 6 fines).
- 2011 (17) sanctions (6 publications in the Bulletin, 8 admonitions, and 3 fines).
- As of October, 2012 (11) sanctions (4 admonitions and 7 fines).

974. Ministry of Commerce and Industry (MICI): Article 52 of Law 42/01 empowers the MICI to impose sanctions on those finance companies that fail to comply with the obligations set forth under such Law. Similarly, Article 29 of Law 48/03 grants the MICI with the power to impose sanctions on money remitters that fail to comply with the obligations set forth under such Law. However, in case of violations to the provisions set forth under the AML Law, the provisions in both sectoral Laws and regulations for money remitters and finance companies: (i) Law 42/01, Art. 52, and Resolution 14/2001, Art. 8 for finance companies and (ii) Law 48/03, Art. 29, Executive Decree 213/2010, Art. 32 and 36, and Resolution 328/2004, Art. 14, for money remitters, stipulate that the applicable sanctions are those granted under the AML Law which are not broad and in the case of legal persons, do not extend to their directors and senior management.

975. As such, the legal framework does not provide for a broad range of sanctions and is not fully in line with Recommendation 17. Similarly, the AML Law only addresses measures aimed at preventing ML and do not include TF. From a legal standpoint the regime under Article 8 of the AML Law does not extent to TF.

976. Bureau de change (*casas de cambio*), is not a regulated activity in Panama, and there is no functional designated competent authority for ensuring compliance with the AML framework. MICI has limited powers to supervise and enforce the AML requirements. The AML Law does, however, designate MICI as the supervisor for AML but without a functional regulatory and supervisory regime, implementation is marginal at best.

977. Neither Law 42/01 for finance companies and Law 48/03 for money remitters grant the MICI the power to apply sanctions in relation to the directors and senior management of legal persons.

978. After a bureau de change (*casa de cambio*) has declared its business with MICI and obtains an "*aviso de operacion*", the MICI is entitled to conduct an inspection to verify the existence of the company. This "*aviso*" is not considered to be a license but rather an "affidavit" by which the institution informs the state that it will carry on business of money exchange. Since bureaus de change are neither regulated nor subject to regular and ongoing supervision, no inspections have been conducted and no sanctions have been applied.

979. The authorities informed that any natural or legal person that would like to conduct a legal commercial activity in Panama which is not regulated, including bureau de change, are required to disclose such activity and provide some information to MICI through an internal system (*Panama Emprende*). The authorities informed that Law 5/07 under Articles 18, 20, 21 and 22 specify the circumstances in which such affidavit may be cancelled (i.e. false information, inability/prohibition to conduct business, refusal to provide information), but this does not grant MICI or any other authority the power to impose sanctions in line with Recommendation 17.

980. According to the information provided by the authorities, six sanctions were imposed in 2012 on finance companies for failure to submit currency transactions reports in line with Article 2 of Law 42/2000and2000 and Resolution 14/2001.

981. There are no applicable sanctions on finance companies during 2009, 2010, and 2011. Money remitters and bureau de change (*casas de cambio*) have not been subject to any sanction by MICI.

982. The following chart reflects the sanctions that have been imposed on 6 different finance companies in 2012:

Year	Finance Companies	Legislation/regulation violated	Violation	Type of sanction	Total amount for all sanctions
2009	0	No			
2010	0	No			
2011	0	No			
2012	6	Law 42/2000, Law 42/2001, Resolution 14/2001	Failure to comply with CTR obligation	Fine	$35,000 under (Law 42/00 and Resolution 14/01) and 81,300 (under Law 42/01)

983. Panamanian Autonomous Institute for Cooperatives (IPACOOP): Article 8 of the AML Law states that the respective supervisory authorities are responsible for enforcing the AML provisions and applying sanctions to their supervised entities in case of violations to the legal requirements. Article 3 of Law 24/80 also grants IPACOOP the power to apply sanctions to cooperatives in case of failure to comply with laws, decrees and implementing regulations. The applicable fine according to such provision is a fine up to B1,000.00. Law 17/97, under Article 135 provides the range of sanctions to be applied by IPACOOP. The powers are broad and have no reference to AML.

984. Article 133 of Law 17/97 extends the responsibility to the directors, controller, and liquidators in case of violations to the legal and regulatory requirements.

985. Resolution 41/2009 under Article 2 has a range of applicable sanctions for violations to the AML requirements which include a warning, a publication of noncompliance and the application of sanctions similar to those under Article 8 of the AML Law.

986. Since September 2012, IPACOOP has imposed monetary sanctions (fines) on (9) nine cooperatives. In eight cases, the fine was the minimum contemplated under the AML Law (B5,000.00) and in one case the amount was $10,000.00. The authorities informed that the following number of requirements were not observed and resulted in the nine sanctions applied: (i) appropriate CDD measures, (ii) CTR, (iii) analysis of unusual transactions, (iv) submission of information, (v) internal procedures, and (vi) training.

987. Superintendency of Insurance and Reinsurance (SSRP): The SSRP as the supervisory authority for the insurance sector is responsible under Article 8 of the AML Law to enforce the AML obligations for the relevant insurance institutions. The sector specific Laws, Law, 63/1996 (Reinsurance Companies' Law) and Law 12/2012 grants(Insurance Companies Law) grant the SSRP with the power to apply sanctions for violations of the Insurance and Reinsurance Law (Law 63 of 1996) as well as to any other obligations imposed on insurance market participants. (Article 251). As for insurance companies, the range of sanctions is set forth under Article 283 of the Insurance Law and includes fines, suspension or withdrawal of the license, etc. Article 280 of the Insurance Law also states that sanctions are applicable not to only to the legal person but also to directors, managers, dignitaries, and representatives.

988. The range of sanctions under the sector Law can be applied for AML violations. In this regard, Article 15 of Resolution 8/2008 estate that in case of a violation to the provisions of such Resolution, the SSRP shall impose on "*the obliged financial institutions*" the fines set forth under Article 155 of Law 59, and Article 8 of Law 42. Law 59 was modified by Law 12/2012 and the applicable sanctions are provided under Articles 275-283 (fine, temporary prohibition to perform certain operations, suspension of the license or authorization to operate, cancellation of license, cancellation of the registration in the appropriate register).

989. For the last three years, the sanctions were imposed on insurance companies for failure to comply or comply in time with the CTR obligation. The breakdown is as follows: (i) 2010–one sanction, (ii) 2011–no sanctions, and (iii) 2012–five sanctions. In all cases, the minimum amount for a fine was imposed (B5,000.00).

990. Market entry: Fit-and-proper Criteria and Prevention of Criminals from Controlling Institutions (c.23.3 and 23.3.1); Licensing or Registration of Value Transfer/Exchange Services (c.23.5); Licensing of other Financial Institutions (c 23.7):

991. The competent supervisors for each sector are responsible for enforcing market entry requirements.

992. Superintendency of Banks of Panama (SBP) – Banks: The Banking Law provides the framework for the licensing of banks and the revocation of such licenses. It grants the SBP with broad powers to issue or to deny a banking license when applications do not meet the standards and criteria. Pursuant to Article 41 (Banking licenses) "*No one may engage in the banking business within or from the Republic of Panama without possessing the correspondent banking license or without having been properly authorized by law*." There are sanctions for unauthorized banking business. The SBP is entitled to impose the respective sanction to those parties "*guilty of engaging in the banking industry*" without proper authorization.

993. Three types of licenses may be issued: (i) General License which allows domestic and international banking activities, (ii) International License which allows the licensee to engage from an office established within Panama, in transactions that are perfected, completed or have their desired effect outside the territory of the Republic of Panama, and to carry out any other activity authorized by the SBP, and (iii) Representation License which allows licensed foreign banks to establish a representation office in the Republic of Panama and carry out whatever other activities that may be authorized by the SBP. Representation offices must always include the expression "representative office" in all of their operations. A representation license has to be requested directly by the bank that will be represented and may only be issued to the said bank.

994. According to Article 51 of the Banking Law, the SBP should publish the petitions for banking licenses in a newspaper with wide national circulation in the country.

995. Agreement 3-2001 establishes basic criteria for bank's applications and Resolution 1-2005 sets out internal procedures for assessing the requests for new licenses. In case the proposed owner or parent organization is a foreign bank, the prior consent of its home country supervisor should be obtained. The SBP has issued an internal regulation (Resolution 19-2001) which provides all the necessary internal procedures for granting license to banks.

996. Articles 5 and 6 of Agreement 3-2001 provide for the prohibition for both domestic and foreign banks to have their capital in whole or in part in bearer shares. As such, Article 5 states that "*No license of any kind will be issued to the Banks in process of being formed, constituted according to Panamanian legislation, whose capital is represented in whole or in part by bearer stocks. Neither will licenses of any kind be issued to the Banks in process of being formed, constituted according to Panamanian legislation, if the capital of legal person who has the control of the Bank is represented in whole or in part by bearer stocks."* The same restriction is set forth under Article 6 for foreign banks. This is a very good control provision to help prevent criminals from assuming control of banks. The authorities informed that in case a legal company is a shareholder of a bank, those shares need to be identified and the identity of the beneficial owner is always verified.

997. Shareholders, directors and senior management of banks are evaluated on the basis of "fit-and-proper" criteria including those related to expertise and integrity.

998. Pursuant to Article 2 of Agreement 3-2001 "natural persons that apply for a banking license to the Superintendency on behalf of a foreign-based bank or as promoters of a new bank, as well as their directors, officials and main stockholders, must possess a sound moral and financial solvency. Therefore, a banking license will not be granted if any of the previously mentioned persons:

- has been convicted of money laundering, illicit traffic of drugs, fraud, illegal traffic of arms or persons, kidnapping, extortion, embezzlement, corruption of public servants, acts of terrorism, international traffic of vehicles, or of any crime against property or legal authority;
- is disqualified to practice commercial activities, in Panama or in another country;
- has been declared bankrupt or in civil contest of creditors; and
- has been identified by the Superintendency as responsible in the Bank for the acts that lead to the compulsory liquidation of the Bank. The authorities indicated that the acts of terrorism include the financing of terrorism."

999. Article 9 sets forth the documents that are required under the licensing process which include general information of the stockholders, directors and officials of the applicant and its promoter (detailed and precise information to confirm irrefutably the identity, residence, address, nationality (ID and/or passport), occupation and participation percentage in the capital of the stockholders of the applicant, its promoter and the promoter's directors and officials, and their stock participation), and resumes of the bank's responsible personnel (officials, directive, executive and administrative personnel who will be responsible for the banking institution in Panama, banking, commercial and personal references.

1000. The SBP has the authority to review the organization's ownership structure to prevent criminals and their associates from holding or being the beneficial owner of a significant or controlling interest, or holding a management function. The SBP is empowered to review and reject any proposals to transfer significant ownership controlling interests in existing banks to other parties. The source of funds, for de novo banks as well as those foreign banks that require a Panamanian license is verified.

1001. Pursuant to subparagraph 7 of Article 16 of the Banking Law the Superintendent is empowered to authorize the acquisition or transfer of stock of banks, bank holdings companies or banking groups when, as a result of the acquisition, the buyer or persons related to the buyer will become total or majority owners or will acquire a controlling interest, as defined by the Superintendency.

1002. Article 4 of Agreement 1-2004 states that "transfers of shares of Banks and Economic Groups of which Banks are a member, shall require prior authorization by the Superintendent, whenever the acquirer or other natural or juridical persons, acting individually or in concert, obtain a significant interference by controlling 25 percent or more of the total shares as a result of said transfer."

1003. According to Article 43 of the Banking Law, foreign banks must have the authorization or no objection of their home supervisor to request a license to engage in the banking business within or from Panama or to request a representative office. The SBP informed that Agreement 3/2001 provides for information with respect to the financial conglomerate, and affiliates, which would assist the authorities in conducting consolidated supervision of such structures.

1004. Article 12 of Agreement 3-2001 states that banks constituted outside the country should have a strong background and recognized reputation in their local banking system.

1005. Trust business can be conducted by banks, insurance companies, lawyers, and any other natural or legal persons that habitually engage in trust business. The latter provision is wide ranging and could include other FIs that engage in trust business. Government banks are exempt from trust licensing requirements but they are supervised by the SBP in line with the provisions stipulated in Law 1/1984. Article 4 of Executive Decree 16/1984 states that a trust company (trustees) must obtain the prior authorization from the SBP before starting trusts businesses.

1006. Legal persons that intend to act as a trust company (trustees) in or from Panama shall accompany, among others, the following: (i) curriculum vitae and documents evidencing the professional qualifications and expertise of the Directors, officers, managers, and other persons to conduct the company, (ii) personal and commercial references of the shareholders, directors, officers, who will conduct the company, (iii) sworn statement of not having been disqualified for the exercise

of commerce, (iv) certification issued by a Certified Public Accountant attesting the shareholders and their share of participation, and (v) duly audited financial statements.

1007. Similarly to banks, the application for Trustees' licenses shall be published, three times in a newspaper of wide national circulation (Article 7, Executive Decree 16/1984).

1008. In the case of companies that are to be organized for the purpose of conducting trust businesses in or from Panama, the license application shall be presented by a Lawyer and should be accompanied with the Articles of Incorporation.

1009. The SBP is entitled under Article 23 of Executive Decree 16/1984 to cancel the license, among other reasons, if the trustee, becomes disqualified to conduct business, or when, by means of an executed judicial order is considered responsible for failure to comply with the applicable legal framework. In the event of bankruptcy or dissolution of the corporation or for violating the prohibitions established in such Regulations, or noncompliance with any of the applicable provisions contained therein.

1010. The SBP does not conduct an ongoing review of the fit-and-proper conditions of the key positions within the FI after a license has been granted.

1011. The SMV: The licensing requirements for brokerage houses, stockbrokers, and investment fund managers are set forth under the Securities Law, Agreement 2-2011 (brokerage houses) Agreement 5-2004 (investment fund managers). These will be referred to as market participants. Agreement 5-2004 regulates the business of investment companies and investment managers and establishes the procedures for the authorization and license and the rules regarding their functioning and operation. Agreement 2-2004 regulates the functions and the activities of the brokerage houses, the stockbrokers, investment advisors, principal executives, and analysts.

1012. Securities market participants are overseen by the SMV .Any person that in or from Panama wishes to perform the activities and services of Broker-Dealer Houses, Broker Dealers, Investment Advisors, principal executives (CEOs) of Investment Fund Managers, as well as other market participants (Principal Executives and Analysts) pursuant to the Securities Law (in virtue of Decree-Law 1 of 1999) shall previously obtain the corresponding license issued by the SMV. Other securities market institutions, such as self regulated entities (Bolsa de Valores), Latin Clear, and credit rating agencies, etc., should also obtain a license.

1013. The SMV requires a reasonable set of documents and information in order to assess properly the background, capacity, fitness and propriety of shareholders, directors and managers.

1014. According to Article 56 of the Securities Law, the shares of brokerage houses must be issued in nominative form, that is, no bearer shares should be issued. Brokerage houses must report to the Superintendency the names of shareholders who have control over the firm and must obtain the Superintendency's consent prior to any transfer or change in this regard.

1015. According to Article 50 of the Securities Law, brokerage houses and investment advisors should obtain a license by the SMV before operating in the securities market. Brokerages houses are not required to obtain a license to act as investment advisors. Similar obligation is set forth under Article 76 of the Securities Law for the principal executives (CEOs) of investment fund managers,

compliance officers, and brokers. As a condition for obtaining a license as brokerage house or investment advisor, the following criteria should be met: (i) technical, administrative and financial capacity and necessary personnel to fulfill the obligations set for the under the Law, regulations and the rules imposed by the stock exchanges and (ii) comply with the obligations set forth under articles 78 (examinations) and 79 (eligibility to hold positions) of the Securities Law.

1016. Article 76 sets forth the obligation to obtain a license issued by the SMV to hold the following positions: principal executive (CEOs), CEOs of investments fund managers, compliance officers, stock brokers, and analysts. Pursuant to article 78 those persons should pass an examination to ensure that they have appropriate proficiency requirements, industry knowledge, skill, experience, ethical requirements, including for AML/CFT.

1017. Similarly, Article 77 imposes the requirements for hiring personnel. As such, there is an obligation for brokerage houses and investment advisors to ensure that stock brokers, analysts, CEOs and compliance officers, obtain a license by the SMV as a recruitment condition.

1018. Article 79 sets forth the incompatibilities to obtain a position as CEO, including for an Investment Fund Manager, brokerage houses and analysts, which includes:

- persons who in the last 10 years have been convicted in Panama or in a foreign jurisdiction for criminal acts against patrimony, crimes against the public faith, economic crimes against property, against the public administration, and the public safety,
- those shareholders, directors, managers who in the last five years have had revoked in Panama or in a foreign jurisdiction an authorization or necessary license to act as a member of a self-regulated organization, as a stockbroker, as an investment advisor, as an investment administrator, a credit rating agency, a price appraiser, a pension fund,
- persons whose license to perform functions as a principal executive, stockbrokers, compliance officer or as an analyst has been revoked in Panama or abroad in the last five years,
- those who have been declared bankruptcy, and
- persons subject to a compulsory liquidation.

1019. Article 8 of Agreement 2-2011 sets forth the licensing requirements for the brokerage houses, which include under section 5 and 6 the obligation to provide information with respect to professional experience and background of each of the directors, officers of the brokerage house, duly signed by each of them; names and identity of the owners who have direct and indirect control of the brokerage house applicant, regardless of whether the parent or direct owner of the applicant is a legal entity.

1020. In addition, they should submit shareholders of the applicant and information regarding the background, professional experience, business references, background, and country of origin of the owners of the applicant, duly signed by the legal representative of the company or other duly authorized Director.

1021. The applicant could provide any further information aimed at demonstrating the financial capacity as well as the trustworthiness of the controlling shareholders of proprietors, including but not limited to: tax returns, financial statements, bank statements, bank certificates, credit checks, police and criminal records.

1022. Similarly, Section 8 of Article 8 requires an affidavit signed by principal owners directors and dignitaries of the applicant, declaring that in the last ten years they have not been convicted in Panama or in a foreign jurisdiction for crimes against heritage, the public trust, offenses relating to money laundering and terrorist financing, false financial statements or financial crimes, or that they had not been revoked in the last five years in Panama, or abroad, a license to serve as a member of a bank, brokerage house, self-regulated organization, investment advisor, insurance company, investment fund manager, or investment fund, an issuer of securities, a securities depository, a custodian, a credit rating agency or any other financial institution or a senior executive, stock broker, analyst or compliance officer of a financial institution, who have been declared bankruptcy.

1023. All changes in shareholders shall be previously authorized by the SMV. There is a requirement and well-defined process for reviewing and approving the transfer of ownership (changes in shareholders). Pursuant to Article 25 of Agreement 2-2011 the SMV is in charge of authorizing any change of control. The term "control" is clearly defined, as follows "when a person individually or in concert with others, holds or exercises rights of not less than 25 percent of the share capital with voting rights."

1024. The brokerage house must disclose the information related to the principal owners who hold control of the company and the securities transmitted, the percentage of shares over which the change was made, name new people who exercise control of the brokerage firm or, if no change admission of new owners involves effective but increased participation shares by any of the beneficial owners, the name of the owner or owners who increase their shareholding. If there is a change in shareholders for a brokerage house without the proper authorization, the SMV may revoke, suspend or reprimand the brokerage house based on Article 52 of the of the Securities Law.

1025. The SMV should authorize the change in shareholders after verification of the applicable requirements. Approval may be refused if it is considered that the shareholder lacks moral fitness, experience, financial capacity and other factors set forth in Article 14 of such Agreement.

1026. Similarly, investment advisors and Investment Fund managers should comply with the requirements set forth under Agreements 2-2004, 5-2004, and 11-2005.

1027. The SMV indicated that the good conduct and the fit-and-proper requirements related to expertise and integrity should be observed and maintained on an ongoing basis by the brokerage house, stockbrokers, investment advisor and investment fund managers and are verified to ensure compliance with the legal requirements. Such requirements are verified at the licensing process and once authorized, during the on-site inspections.

1028. Ministry of Commerce and Industry (MICI): Pursuant to Article 4 of Law 42/01, MICI is the regulator and supervisor of finance companies and is empowered under Article 7 to grant licenses and ensure that they comply with the applicable requirements, including with the AML obligations. Articles 8 and 10 set forth some information that should be provided in order to obtain a license, both for natural and legal persons which include the obligation to provide police and criminal records of the applicant or from the directors, dignitaries, legal representative or authorized person stating that the person has not been punished for crimes against property, public faith, public administration or money laundering.

1029. As for money remitters, Law 48/2003 provides that MICI is responsible for registering money remitters and granting the authorization to operate in the country. Article 2 also stipulates the information to be provided as part of the registration process for money remitters, for both natural and legal persons which according to Article 4 should be submitted through a lawyer. There are no requirements in place to ensure that those persons who hold or are the beneficial owner of a significant controlling interest or hold a management function of money remitters do not have criminal records. The authorities acknowledge that there are no requirements in this respect but informed that in practice they do ask for criminal records as part of the due diligence process.

1030. MICI is responsible for registering, regulating and supervising these financial intermediaries. As such, they are subject to all the requirements set forth under Law 48/2003, Resolution 38/2004 and other implementing regulations. Additional information is provided under SR. VI.

1031. There is no ongoing review of the periodic fit-and-proper conditions after the license was granted.

1032. Bureau de change (*casas de cambio*) are not regulated in Panama. Bureau de change are not subject to a licensing process but, like any other commercial undertaking, are only obliged to submit an affidavit declaring their business activities under the "*Panama Emprende*" system. After such declaration, the MICI is entitled to conduct a post declaration inspection to verify the existence of the company but no functional or AML/CFT supervision is in place. There are no real supervisory and enforcement powers for MICI other than those provided through Law 42 (AML Law) and its Executive Decrees. Unlike for money remitters, there are no requirements to establish the integrity of those persons who own or have a controlling interest or management function in bureau de change as this sector is not regulated and supervisory operating licenses are not required.

1033. Panamanian Autonomous Institute for Cooperatives (IPACOOP): IPACOOP under Article 15 of Law 17/97 provides the "*legal person status*." Article 15 also sets forth the requirements that cooperatives need to fulfill in order to obtain the registration with IPACOOP.

1034. Executive Decree 137/2001 under Chapter III, (Articles 6–14) further elaborates on the requirements for the constitution and registration of cooperatives. However, the authorities confirmed that there are no integrity provisions in the legal framework in order to ensure that their members and directors comply with the fit-and-proper requirements.

1035. Superintendency of Insurance and Reinsurance (SSRP): The SSRP is the designated authority to grant licenses to those natural and legal persons that want to operate in the insurance sector. The licensing requirements are set forth under Chapter II of Law 12/2012, Articles 40 and 41. A license is required to carry out any insurance business in Panama pursuant to Article 39 of Law 12/2012. To receive an insurance license, applicants must provide information on shareholders and members of the board of directors, among other relevant information which include an AML/CFT internal manual in line with Resolution 8/08.

1036. The Law under Article 44 set forth the circumstances in which the SSRP may deny, postpone or withdraw a license. In addition, Article 45 states that a license for an insurance company should not be granted if during the last 10 years a shareholder, director or senior manager has been convicted for crimes related to drug trafficking, fraud, money laundering, or other related crimes. There are

additional requirements that apply to both insurance and reinsurance companies as well as to insurance brokers (Article 57).

1037. The SSRP undertakes some fit-and-proper review of shareholders, board members, managers. With respect to the procedures for changes in control over insurance and reinsurance companies and other insurance intermediaries, the authorities informed that pursuant to Law 12/2012 and Law 63/1996, the insurance, reinsurance, insurance brokerage companies are required to notify to the SSRP within a period not exceeding the 30 days, of any changes, especially those related to changes in ownership or transfer of shares of more than 10 percent of total shares under circulation. Within this term the shareholder should certify that all the requirements of the law were complied with. The shareholder may not exercise those rights until it is demonstrated that all requirements were fulfilled. If it is more than 50 percent of total outstanding shares, this requires the prior authorization of the SSRP, who must ensure that all the fit-and-proper requirements are in place. The authorities did not provide sufficient information as to what the requirements are, and how the SSRP evaluates on the basis of "fit-and-proper," including those relating to expertise and integrity. [Post mission the authorities indicated that the SSRP evaluates fit-and-proper criteria when considering changes under Law 12/2012 above including identification records, references, curriculum vitae, etc.]

1038. **Ongoing supervision:** Regulation and Supervision of Financial Institutions (c.23.1); Application of Prudential Regulations to AML/CFT (c.23.4); Monitoring and Supervision of Value Transfer/Exchange Services (c.23.6); AML/CFT Supervision of other Financial Institutions (c.23.7); Guidelines for Financial Institutions (c.25.1):

1039. Superintendency of Banks (SBP): The SBP, through the AML Directorate, has been conducting AML/CFT supervision of banks since 2011. Such Directorate was created in February 2011 with the aim to strengthen the overall AML/CFT supervisory framework of the SBP, including through a new arrangement and the adoption of a risk-based approach to AML/CFT supervision. Prior to that, AML/CFT supervision was conducted within a specific Division within the Supervision Department comprised of nine staff where AML/CFT inspections were conducted separately, not as part of the prudential inspections and were mainly compliance based.

1040. The AML Directorate is comprised by two Divisions: (i) Prevention/Supervision which has 20 staff (14 inspectors and four coordinators) and (ii) Control of Illicit Operations: Prevention of unlicensed banking operations and misuse of banking services which has four staff and provide support, if needed, to the Prevention/Supervision Division.

1041. The supervised sector includes 48 general banks, 28 international banks and 14 representative offices for the AML Directorate, and 68 trustees supervised by the Trustees Supervision Unit.

1042. The AML Directorate works jointly with the Supervision Department as well as with the Risk Department (Credit/Technological/Operative/Market) and conducts comprehensive inspections ("integrated inspections") which are aimed at addressing both prudential and AML/CFT supervision. The Directorate can also conduct targeted on-site inspections ("especiales"), at any time.

1043. Similarly, the Trustees Supervision Unit, as part of the Supervision Department conducts AML/CFT inspections of trust companies (trustees) as part of their prudential inspections of banks. The Trustees Supervision Unit also conducts integrated inspections where both prudential and AML/CFT supervision are covered. The Trustees Unit can conduct separate targeted ("*especiales*")

AML inspections but those are done jointly with the AML Unit. The supervisory tool is similar to the one used for banks: MUSBER, Team Mate.

1044. Since February 2011, the SBP has been working in the development and implementation of a risk-based approach to AML/CFT supervision that applies to both, banks and trust companies (trustees). A new methodology for prudential and AML/CFT supervision of banks and Trust Companies (trustees) was adopted. In March 2012, the SBP approved a new risk-based supervisory manual ("*Manual Unico de Supervision Basado en Riesgos-MUSBER*") and new risk-based tools for off-site and on-site inspections were developed addressing both qualitative and quantitative factors.

1045. The new risk-based methodology comprises a risk tool (*GREN*) designed to assess and rate the risk level of banks and trust companies (trustees) through an analysis of inherent risks and risk management quality (inherent risks-internal controls/mitigants=residual risks). The tool addresses an analysis of "Corporate Governance," "Risks," "Economic and Financial Analysis," and "Legal framework." The methodology is designed to determine the residual risk for relevant business line through the risk assessment system ("*Sistema de Evaluacion de Riesgos/SER"*).

1046. The SBP has defined within MUSBER eleven categories of risks that should be evaluated for the purpose of supervision: (1) credit, (2) counterparty, (3) liquidity, (4) market (price, interest rate and exchange rate), (5) operational (includes legal risk), (6) reputation, (7) country (trade, political and sovereign), (8) contagion, (9) strategic, (10) information technology, and (11) concentration. ML/TF is not treated as a separate risk and the authorities informed that within the risk-tool (*GREN*) AML/CFT is captured under Corporate Governance and Legal framework "*Normatividad*").

1047. Inherent ML/TF risks are determined through 10 business lines that comprise the following: finance, treasury, retail banking, microfinance, private banking, cards, commercial banking, collections/charges, payments, trusts, and other financial services (i.e., general custody, escrow services, brokerage services, and asset management).

1048. While the development of the off-site risk-based tool to ascertain the overall risk of a bank has been an important step for the implementation of a risk-based supervision in the SBP, the tool is much oriented to prudential supervision and does not properly capture the ML/TF risks. If the decision is to assess all together the risks that the financial institution (either a bank or a Trust Company) is exposed to, (credit, legal, and reputational, etc.) greater emphasis should be placed on the ML/TF risk, including the application of specific risk assessment analytical tools, the results of which could then be incorporated into the assessment of total institutional risk. This approach and tools to ML/TF risk assessment and supervision can also be adapted to the consolidated supervision of financial groups. As it stands, the ML/TF risk is diluted within other risks that the institution may face and does not properly address all the necessary ML/TF inherent risk of the bank/trust company. According to the authorities, the weight provided to ML risk is only 10 percent, without distinction, e.g., for higher risk institutions such as those that conduct significant international businesses, trust business, and that have clients that operate in high business sectors such as the Free Zones, casinos, lawyers doing trust and company services business, and bearer share companies, etc.

1049. Since AML/CFT supervision is being conducted as part of the prudential activities, and the risk-based tool partially covers ML risk, it may not properly serve as a risk-assessment tool aimed at identifying the inherent ML/TF risks within FIs and the various risk mitigants and, therefore, allocate properly the resources and planning for the inspection program based on the real risks.

1050. The authorities expect to be able to conduct the off-site analysis for inspections planning purposes next year since they recognized that it may take some time to gather some information that is currently missing. The SBP is currently reviewing the procedures in order to include "financial conglomerates" into the “Supervision Manual” (MUSBER) and other changes that are necessary based on the recent application of the manual.

1051. Going forward and considering that the SBP is still in the process of implementing and testing the risk-based tool, the authorities would benefit from assigning greater weight and consideration to the ML/TF risks based on a proper identification and assessment of sectoral and institutional risk exposure.

1052. Since the adoption of the Risk-Based supervision Manual (April 2012), the annual plan of inspections is decided within a multidisciplinary group called SOTFCOM comprised by the following Departments: Supervision Department, Directorate of Prevention of ML/TF (AML Directorate), Trustees Supervision Unit, Technological Risk, Credit Risk, Operative Risk and Market Risk where the relevant Departments decide what banks and trust companies (trustees) will be supervised in the calendar year.

1053. Due to the recent adoption of the Manual, the SBP has not yet been implementing an off-site tool for planning purposes. Currently, the SBP considers various factors while short-listing the banks and trust companies (trustees) for inspections: the size (assets) type of license (General or International), the turnover volume, location of the FIs, products and clients, financial information received from each supervised entity, compliance with legal requirements, and follow-ups from previous inspections, etc. Going forward the planning for the calendar year of inspections will be based on the risk profiles of the banks and trust companies (trustees), as a result of the assessment of risks within each financial institution.

1054. The AML Directorate can also conduct “targeted inspections” (“*especiales*”) which could be tailored to include a bank that does not form part of the short-listing intermediaries for inspections prepared within SOTFCOM and that according to such Directorate, is justifies an inspection. This inspection could also be the result of a complaint, request by the UAF, Public Ministry or any public information available.

1055. All inspections are conducted on a standardized written procedure, contained in the Risk-Based Supervision Manual (*MUSBER*) which provides for a number of procedures and controls.

1056. The Supervision Manual has a specific procedure for addressing AML/CFT elements which is comprised of 18 objectives and 156 procedures. The objectives could be summarized as follows: (1) legal AML/CFT framework, (2) organizational structure, (3) information system, (4) policies, procedures, internal controls to conduct CDD, (5) reporting system, (6) customer acceptance policy, (7) PEPs, (8) simplified CDD, (9) correspondent banking, (10) non face-to-face relationships, (11) recordkeeping, (12) DNFBPs, (13) STRs, (14) monitoring systems, (15) training/hiring process/Audit Function, (16) internal controls in branches and subsidiaries in foreign countries, (17) whether bank informs home supervisor when foreign branches and subsidiaries are unable to observe AML/CFT measures, and (18) Corporate Governance.

1057. During the on-site inspection a number of selected objectives and procedures contained in the Supervision manual are assessed, as well as the business lines of the bank. The inspectors also assess

the quality of risk management and the level of compliance with the legal and regulatory framework. A matrix containing the findings and recommendations is elaborated at the end of the on-site visit. The GREN is elaborated with the consolidated information from the different Departments.

1058. As of the mission date, the SBP has conducted the following on-site AML/CFT inspections on banks:

Directorate on Prevention of ML (AML Directorate)
On-site inspections on Banks

	2009	2010	2011	2012
Comprehensive	11	34	29	37
Follow-up	1	1	37	4
Financial conglomerate	7	2	12	3
Special	18	19	16	11
TOTAL	**37**	**56**	**94**	**55**

1059. Inspections include reviews of procedures, books and records and include sample testing to ascertain effectiveness of compliance. The authorities indicated that on average, the inspection team will consist of two inspectors and last on average four weeks, but this could vary depending on the size of the financial institution.

1060. With regard to frequency of inspections, the authorities indicated that their inspection program includes on-site visits to banks on average once every two years and that the comprehensive inspections are conducted at headquarters but does also include selected branches and subsidiaries. Due to the high level of risk, inspections to branches and subsidiaries are mandatory if they are located in the Free Zone.

1061. The mission reviewed copies of examination reports for banks which reflected overall a good level of AML supervision. The SBP is still in the process of implementing the new risk-based approach to AML/CFT supervision and is expected that some adjustments will still have to be implemented taking into consideration findings arising from the current inspection plan.

1062. Trustees: The table below reflects the inspections conducted by the Trustees Supervision Department but the authorities did not inform if all the inspections relate to banks conducting trust business but it is assumed here that they involve all trustee inspections.

Year	Type of inspection	Total Number of inspections
2010	21 comprehensive inspection 13 special inspections (includes six pre-opening inspections required for the licensing process)	34 inspections. There was also one follow-up conducted.
2011	25 comprehensive inspections 18 special inspections (includes three pre-opening inspections required for the licensing process)	43 inspections. There were also seven follow-up conducted.
2012	13 comprehensive inspections. two special inspections	15 inspections. There were also 12 follow-up conducted.

1063. The information provided by the authorities is still unclear. As for Trust Companies (trustees) the authorities indicated that the inspection cycle is overall two years. The duration depends on the trust volume administered by the Bank or Trust Company.

1064. Supervision of trustees for AML/CFT is still evolving and in process of transition from the Trust Supervision Unit to the AML Directorate.

1065. It is unclear how the SBP organizes the AML inspections of the banking and trust operations as it is conducted still by two supervision units. The authorities indicated that such supervision is carried out in a coordinated way in line with the risk-based supervision system. However, little information was provided in this regard to explain how such coordination works in practice.

1066. The SBP does not inspect the nontrust activities conducted by banks under their trust licenses. This is recognized by the SBP as a significant gap in supervisory coverage and does not allow them to take a holistic and detailed review of all the risk areas that can affect a trustee. In addition, in practice the inspection procedures applied by the SBP do not extend to the trustees CDD, recordkeeping and other risk management activities of legal entities under trust management (i.e., comprising the trust property. See also the exemption from inspection in Art. 66 of the Banking Law with respect to such companies). This is, particularly important for CDD when such legal entities (e.g., companies and private foundations) are bearer share entities for companies and/or are domiciled in other countries. Similar CDD and supervisory challenges arise when complying with CDD requirements when trustees administer trusts governed by the laws of other jurisdictions. This creates supervisory and compliance challenges with respect to establishing the adequacy of, inter alia, CDD, recordkeeping, and reporting.

1067. In addition, there is no off-site ML/TF risk analysis to better inform the on-site work. The mission reviewed copies of examination reports for trust companies (trustees) which reflected that, despite the examination program being driven by a risk-based approach, supervision is still compliance based. The Unit follows their Supervision manual that directs their inspection process, however no in depth risk analysis is currently taking place and the authorities should consider taking advantage of the new approach that has recently been adopted and a better use of the tools and procedures in place to better reorganize the AML/CFT supervision for trust business.

1068. The SMV–Securities Firms: AML/CFT supervision falls under the responsibility of the Supervision Department since 2010. The SMV started conducting AML/CFT inspections in 2008, but till 2010 AML/CFT fell under the responsibility of the Legal Department. From 2006 to 2008 there was only an off-site revision of the AML manuals and procedures. General inspections include both prudential and AML/CFT compliance which are conducted jointly. The Supervision Department can also conduct targeted AML/CFT inspections, if needed. As such, the Department is responsible for ensuring that market participants comply with the requirements set forth under the Securities Law as well as with the AML Law and implementing regulations. The SMV oversees the self-regulatory organizations, but the stock exchange plays no role in overseeing compliance with the applicable requirements.

1069. There are no specific formalized written procedures or tools in place used for AML/CFT supervision. Off-site supervision mainly consists of an assessment of the financial information received from each supervised entity, in compliance with legal requirements (i.e., number of transactions, volume, turnover, financial analysis, and financial statements).

1070. The SMV uses a couple of questionnaires that inspectors should follow during their on-site examinations but these are mainly checklists and do not include procedures for identifying specific business activities, products, services and clients in accordance to risk for purposes of determining the scope and depth of inspections.

1071. The authorities informed that the inspection plan is elaborated every quarter and among other factors is based on the following: (i) last time when the financial institution was inspected, (ii) size, (iii) whether they are member of the Stock Exchange or not, (iv) financial information received from each supervised entity, and (v) whether there are any complaints against the financial institution, etc.

1072. As part of the planning process some forms are submitted to the financial institution in order to request some information for AML/CFT purposes: (1) services offered, (2) number of clients both natural and legal persons, (3) identification and verification process, (4) risk assessment tools in place, (5) customer classification, (6) AML Manual, (7) responsibilities of the Compliance Officer, (8) training program, (9) transaction monitoring, (10) electronic systems in place, (11) recordkeeping, (12) CRTs, and (13) STRs.

1073. The approach is mainly compliance based and focuses only on a review of: CDD obligation for both natural and legal persons, customer risk profile, policies and procedures, recordkeeping, and STRs. The authorities informed that since stockbrokers are not independent professionals and must be part of a brokerage house, they are not subject to a separate inspection regime.

1074. The mission reviewed copies of sanitized examination reports to assess the scope and adequacy of inspections. The review showed that the inspections are not comprehensive and are mainly oriented to verifying the compliance with the legal requirements following the procedures contained in the questionnaires, but no in depth analysis is conducted. This is could be partially explained by the fact that currently the SMV does not have formal standardized AML/CFT procedures and the questionnaires they are currently using as guidance are not sufficient and risk-based.

1075. The table below shows the number of AML/CFT on-site inspections conducted from 2009–2012.

Year	Brokerage House (legal persons)	Fund managers/Advisors
2009	9	-
2010	11	1
2011	10	-
2012	17 (16 comprehensive and 1 special)	1 (special)

Total number of market intermediaries from 2009–2012, the information is as follows:

Year	Brokerage houses	Investment fund managers
2009	52	14
2010	68	17
2011	71	17
2012 (As of October)	81	16

1076. Ministry of Commerce and Industry (MICI): The Finance Companies Directorate is responsible for supervising finance companies, money remitters, pawn shops, leasing companies, credit rating agencies, for prudential matters. In addition, the Directorate is responsible for ensuring that finance companies, money remitters, pawn shops and bureau de change (*casas de cambio*) comply with the AML requirements set forth under the AML and implementing regulations.

1077. Pursuant to the powers granted under Law 48/2003, MICI enacted Resolution 328/2004 establishing a number of requirements that money remitters should comply with in line with the requirements set forth under the AML Law. However, despite the designation of competent authorities for the purpose of monitoring those financial institutions, the level of monitoring on money remitters is limited, mainly by a way of checklist where MICI ensures that those institutions comply with some basic AML requirements. Institutions (c.23.7). Additional information is provided under SR. VI.

1078. For bureau de change (*casas de cambio*), supervision is limited to verifying that they submit the currency transaction reports. For the other FIs, the Directorate has been conduction AML/CFT supervision as part of its prudential oversight function.

1079. As of the mission date, the Directorate had 20 staff of which seven are supervisors assigned to both off-site and on-site inspections that integrate both for prudential and AML matters ("inspecciones integrales"). The off-site analysis is limited to reviewing financial information submitted by the FIs (prudential only) and to verifying compliance with the CTR requirement. On-site inspections are conducted by two inspectors and last on average two weeks. There are some formal procedures but these are limited in their scope as they only mention some basic verifications (e.g., CDD, policies and procedures, recordkeeping, CTR). This was confirmed by the mission when reviewing some examination reports related to finance companies and money remitters.

1080. The following table reflects the number of on-site inspections conducted by MICI during the period 2009–2012, both with respect to money remitters and finance companies. This includes the AML/CFT component. No AML/CFT on-site inspections were conducted on bureau de change.

Finance Companies

Year	No. of on-site inspections	Total number of Finance Companies registered
2009	35	150
2010	10	156
2011	14	160
2012	23	162

Money Remitters

Year	No. of on-site inspections	Total number of Money Remitters registered
2009	4	15
2010	9	15
2011	2	13
2012	13	13

1081. **Panamanian Autonomous Institute for Cooperatives (IPACOOP) – Savings and Loans Cooperatives Only:** The authorities indicated that AML/CFT supervision is included as part of the

integrated on-site inspection activities of cooperatives conducted by the Department of Special Investigations within the Cooperative Audit Division. The authorities indicated that their AML/CFT inspection program includes all of the cooperatives (as of the mission date there were a total of are 577 cooperatives including multi-service cooperatives and 167 savings and loans cooperatives). Inspections are conducted every three years. The authorities informed that targeted AML/CFT inspections are also conducted by the Department to verify compliance with the requirements set out in the AML Law. There was little information as to how the AML/CFT component is integrated within the broader supervisory plan and the coordination that is in place. On average on-site inspections last three weeks but duration depends mainly on the size of the cooperative. As for large cooperatives, two inspectors participate in the inspection but for medium/smaller ones only one.

1082. On-site inspections are carried out following a supervision manual that sets out some internal procedures, and which contains a number of forms and questionnaires that the inspector should follow during the on-site visit. These documents include topics such as: (i) legal framework, (ii) internal manual and procedures, (iii) Compliance Officer, (iv) CDD, (v) CTRs, (vi) monitoring of unusual transactions, (vii) STR reporting, (viii) technological developments, (ix) training, and (x) internal audit.

1083. The authorities informed that since 2010 IPACOOP has conducted 90 on-site inspections (AML/CFT) on savings and loan cooperatives as reflected in the chart below:

2010	2011	As of Sept. 2012	TOTAL
29 inspections	35 inspections	26 inspections	90

1084. The authorities indicated that even though multipurpose cooperatives (there are currently 25) (which conduct a significant proportion of savings and loans business) are not technically subject to the provisions of the AML Law, IPACOOP expects that they apply the AML requirements applicable to the other saving and loans cooperatives and reviews this during on-site inspections. During the last three years, IPACOOP conducted the following number of inspections of multipurpose cooperatives.

2010	2011	Sept. 2012	TOTAL
7 inspections	2 inspections	9 inspections	18

1085. The authorities also conducted follow-up inspections as follows: 17 in 2010, 23 in 2011, and 15 as of October 2012.

1086. The mission reviewed a copy of a sanitized examination report. Such report was mainly oriented to verifying the legal requirements and ensuring the procedures set forth under IPACCOP examination manual, which do not in practice cover the necessary AML elements.

1087. Superintendency of Insurance and Reinsurance (SSRP): Under Law 42/2000 the insurance sector is partially covered. Certain insurance activities only have a narrow AML obligation to report CTRs but insurance companies and intermediaries (agents and brokers) are not covered under Article 7.

1088. According to the information provided by the authorities AML/CFT supervision commenced after the enactment of Resolution 8/2008. The authorities informed the mission that in 2009 the Resolution started to be implemented through the submission of a self-assessment questionnaire with

respect to the AML/CFT controls that the insurance intermediaries have in place. In 2012, the SSRP started to conduct on-site inspections which were mainly intended to verify if the insurance intermediaries comply with the requirements of Resolution 8/08. Inspections are compliance-based using a checklist approach to verify if the insurance intermediary complies among others, with the following obligations: (i) KYC, (ii) KYE, (iii) training, (iv) monitoring of transactions, (v) internal procedures and controls to prevent ML and TF, (vi) corporate governance, and (vii) Compliance Officer, etc.

1089. AML/CFT supervision falls within the Legal Department and inspections are conducted by one of the lawyers in charge of AML/CFT matters. As of October 2012, only five insurance companies have been inspected.

1090. Application of Prudential Regulations to AML/CFT (c.23.4):

1091. Banks, securities market intermediaries (brokerage houses, stockbrokers) and insurance intermediaries and agents are all subject to prudential supervision by the SBP, the SMV, and the SSRP respectively. These financial institutions are required under the respective sectoral laws to have risk management systems, internal controls that are appropriate to their risks, adequate recordkeeping systems, and to have internal audit programs to test compliance with the requirements imposed by sector specific laws and regulations. Many of these financial institutions are required to comply with strict accounting, auditing and disclosure requirements

1092. Panama is an offshore financial centre where there are currently 29 international banks. The Banking Law regulates the consolidated cross-border supervision. There are a number of financial groups operating in Panama that include, especially a bank and a securities firm which are subject to consolidated supervision. The powers granted under the Banking Law allow the SBP to review the holding company and affiliates of banking groups.

1093. The SBP will exclusively exercise consolidated, cross-border home supervision of Panamanian banks and banking groups that consolidate in Panama. Foreign banks, their branches and subsidiaries shall be subject to consolidated supervision of the corresponding foreign supervisor. Such entities will be subject to individual and sub-consolidated supervision by the SBP. In addition, the SBP will carry out the consolidate supervision of the activities of all nonbanking or non-financial entities affiliated or related to banking groups, but that are not part of these in order to evaluate the risk that said activities might pose for the banks belonging to those banking groups and the quality and scope of the management and control of said risks. (Articles 61–65 of the Banking Law, Law 2/2008).

1094. Guidelines for Financial Institutions (c.25.1):

1095. The SBP and the SMV have both provided their institutions with guidance on examples of potential suspicious transactions and activities (SBP Agreement 12 E-2005 and SMV Agreement 5-2006) to help their FIs identify and report suspicious activities. However, this guidance dates back to 2005 and 2006, respectively, and has not been updated. Although in broad terms, the Agreements and other instruments issued by the supervisory authorities are quite clear according to representatives of the private sector, no further explanation on how to comply with a number of requirements are provided. Representatives from the private sector indicated that further guidance on PEPs would be

useful. There are no guidance with regard to the implementation on a risk-based approach and how FIs could identify and manage ML/TF risks, or guidelines on ML/TF techniques, methods and trends.

1096. No specific AML/CFT guidelines have been provided by MICI and SSRP as to inform FIs on ML/TF techniques, methods and trends. Some guidance was provided by IPACOOP pursuant to Resolution 23, this also dates back to 2006.

1097. All FIs could benefit from guidance on how to implement the AML requirements as well as on updated ML/TF typologies/methods/trends.

1098. Statistics (applying R. 32):

1099. Overall all supervisory authorities maintain statistics on the total number of on-site examinations conducted relating to or including AML/CFT. The authorities also provided the assessors with the statistics related to the number of breaches detected and the types of sanctions imposed, which most relate to failures to comply with the CTR obligation.

Effectiveness of Implementation

1100. Overall the statutory powers provided to the supervisory authorities to regulate, supervise and enforce the AML requirements are generally appropriate, but the supervisory approach and the level of implementation are not equally effective across sectors. The absence of CFT provisions in the AML Law limits the scope of supervision by the designated AML supervisory authorities under the AML Law. Consequently, from a legal standpoint, the references below will be limited to AML to reflect legal framework falls short in granting the current situation supervisory authorities the power to supervise the CFT requirements.

1101. Recommendation 17

1102. For most sectors (with the exception of money remitters and finance companies that only apply the sanctions envisaged under the AML Law which only apply to legal persons), there is a sufficient range of sanctions available under the various financial regulatory laws to deal with natural and legal persons who violate the AML provisions. However, none of the supervisors are implementing the available sanctioning powers effectively as most sanctions are monetary in nature under the AML Law and subsidiary instruments. All of the supervisors are overly focused in verifying compliance with the CTR requirement as opposed to the broader range of AML obligations, particularly STRs.

1103. The data on the sanctions applied by the regulators for AML deficiencies clearly indicate that the sanctioning regime is not proportionate and dissuasive, does not appear to be effective as even the monetary fines applied are at or are close to the minimum amount provided in the AML Law. Almost all of the sanctions that have been applied relate to failure to comply with the CTR obligation. Sanctions were only imposed on financial institutions and none on their directors and senior management. Given the relatively large number of financial institutions, the complexity and international nature of a significant proportion of such business, and the fairly well developed supervisory regime, at least with respect to banks, the assessors would expect more stringent enforcement of the laws and the application of proportional sanctions.

1104. Recommendation 23 and 29

1105. Overall all supervisory authorities have broad powers to conduct on-site inspections and request all necessary information. However, the procedures in place for targeting on-site inspections do not take adequate account of the ML/TF risks of individual financial institutions and sectors, and little analysis is done in this regard. Overall the level of on-site AML inspections could not be considered sufficient especially in the nonbanking sector, and including the trust business conducted by banks and insurance companies. The level of supervision for FIs subject to the AML regime is being implemented to a much lesser extent by SMV, MICI, IPACCOP, and SSRP. This is due in fact to the lack of adequate resources to effectively supervise all the financial institutions. On a systemic basis, overall AML supervision is not considered to be sufficient and effective because a number of FIs that should be covered by the AML/CFT regime under FATF are not covered by the applicable legislation, these FIs are, therefore, not supervised or adequately supervised, and the application of sanctions is weak or non-existent for AML purposes.

1106. Resources constraints, in particular in staffing, made it challenging to deliver the desired quality of supervision.

1107. As indicated above, some financial activities that should be covered by the AML/CFT regime are not covered: insurance companies and their intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan associations, the National Mortgage Bank (BHN), Savings Band entities that provide the safekeeping/custody of cash and other liquid assets.

1108. Bureau de change (*casas de cambio*), are covered by the AML Law but the activity is neither regulated nor supervised which renders general supervision of this sector as virtually non-existent and ineffective, even if the MICI has been designated as the AML supervisor under the AML Law. In practice it only acts as a conduit for reports sent to the UAF.

1109. The total number of staff in the SMV, MICI, IPACOOP, and SSRP assigned to prudential and AML supervision is insufficient and do not allow the supervisory authorities to effectively conduct ongoing AML supervision. The lack of resources, coupled with the deficiencies relating to sanctions, adversely impacts the overall effectiveness of AML supervision.

1110. In general, AML inspections are largely focused on regulatory compliance and, in this regard, a disproportionate degree of attention is placed on compliance with CTR requirements.

1111. The SBP has a fairly comprehensive system for AML supervision for banks but less comprehensive with respect to the trust businesses (trustees). It has developed risk-based supervisory tools and updated its examination procedures to incorporate a risk-based approach to supervision. These tools include an AML component. Given the recent adoption and implementation of the SBP's new risk-based supervisory approach, the mission was not able to fully assess the adequacy and effectiveness of its implementation for purposes of AML.

1112. Going forward the authorities should consider reviewing their risk-based tools in order to better capture the ML/TF risks, especially to determine FIs' compliance with the enhanced CDD requirements established under Recommendation 5 (c.5.8). Similarly, the authorities could consider transferring AML trust supervision to the AML Directorate that currently only supervises banks. This

would provide for a more efficient, effective and less fragmented system of AML/CFT supervision, in coordination with prudential supervision. In practice, there seems to be little coordination between the AML Directorate and the Trustees Supervision Unit. Lastly, it is necessary to ensure that the SBP is able to supervise the nontrust businesses conducted under a banking license in order to take a holistic and detailed review of all risk areas of a trustee.

1113. With regards to the SMV, since 2010 when AML/CFT supervision was transferred from the Legal Department to the Supervision Department, more emphasis and resources have been assigned to AML supervision. However, the large number of institutions operating in Panama and the lack of resources assigned to this Department, adversely impacts on the effectiveness of implementation. In addition, AML supervision is purely compliance based and lacks analytical depth and scope. There is almost no offsite analysis with respect to AML, and on-site inspections procedures are too basic for potentially complex financial activities and related risks.

1114. Similarly, IPACOOP, MICI, and SSRP need to strengthen their AML supervision in all areas. Additional resources are needed and authorities should develop offsite analytical systems to complement enhanced on-site procedures. To the extent possible these supervisory systems should also prioritize the riskier institutions, customers and activities (Re: c.5.8).

1115. The licensing process is quite comprehensive for the SBP and the SMV to ensure that license requirements and procedures are adhered to. The SBP and the SMV verify through "*Worldcheck and Word Compliance*" the information with regard to the shareholders, directors and managers of financial institutions. Similarly, they do search through internet to verify if there is any relevant information with regard to such persons. All licensing petitions are published in a newspaper with wide national circulation in the country for three working days in order to allow the public to oppose to the granting of the requested license in case of justified reasons that deal with economic capacity and moral solvency. The publication contains information related to: (i) the name of the petitioner for the license, (ii) name of directors and officials of the petitioner, (iii) operative background of the petitioner, and (iv) names and identifications or passports of the directors, officials, and executive of the banks, indicating the respective positions.

1116. Notwithstanding, the SBP should periodically review the licensing regime and practice, and consider implementing a system of ongoing or periodic review of the fit-and-proper conditions of key persons after a license has been granted. (Similar to the requirement for ongoing CDD and updating of information on customers by FIs). This would make the system more effective. For all supervisors, they should particularly review the licensing procedures applied for FIs whose licenses were suspended or revoked due to the FIs, their owners and controllers later established as not fit-and-proper. This ex-post review would help identify possible areas of improvement in the licensing regime. The case of the bank affiliated with the Antigua and Barbuda based Stanford Bank would be one such FI.

1117. With regards to IPACOOP, MICI, and SSRP, the licensing procedures and controls are not comprehensive. IPACCOP is both an industry promoter and at the same time is responsible for enforcing the legal requirements and there are no fit-and-proper requirements in place for the "founders" and directors. As for MICI, especially for money remitters, the controls they implement are not considered sufficient to ensure that applicants comply with the minimum licensing and fit-and-proper requirements.

1118. Bureaus de change (*casas de cambio*) are not licensed and are unregulated, and in practice no AML/CFT supervision takes place even though they are subject to the AML Law.

1119. Recommendation 25

1120. SBP, SMV, and IPACOOP issued some guidance on examples of potential suspicious transactions and activities. However, these guidelines were issued in 2005 and 2006 respectively and are in need of updating especially in view of the notable growth and transformation of Panama's economic and financial sectors, and the ever changing ML and TF risks. In addition, Panama's standing as an international financial, trust and corporate sector requires leading edge and current information on, intern alia, international ML/TF risks, trends, methods and crimes. In addition, there is a need for all sectors to be issued general sector specific guidelines with respect to ML/TF techniques, methods and trends. A key source of information for developing such guidelines can be recent cases of ML/TF and noncompliance with AML requirements involving banks and other FIs operating in or overseas FIs affiliated with Panamanian FIs.

1121. MICI and SSRP, have not issued any guidance to assist the financial institutions under their responsibility with the implementation of the AML/CFT requirements.

1122. Overall while some regulations enacted by the supervisory authorities are clear (SBP, SMV) there may still be a need for guidelines on some issues that could benefit the private sector. Some of these guidelines could address issues of CDD compliance with respect to e.g., bearer share companies, both domestic and international, trust business, foundations, identification of PEPs, introduction of clients by third parties and foreign affiliates, professional intermediate clients (e.g., lawyers, resident agents, and accountants, etc). clients that are FIs and DNFBPs not subject to the AML regime, etc.

1123. Recommendation 30

1124. Overall the human, financial and technical resources allocated to the different supervisory authorities are not satisfactory to effectively conduct AML supervision on an ongoing basis. The number of staff assigned to AML supervision for the SMV, MICI, IPACOOP, and SSRP is limited in light of the many institutions under their supervision. Staff is subject to satisfactory rules of confidentiality and integrity standards. As for training, there is a need to make sure that all relevant staff is provided with more frequent training for combating ML and TF.

4.11.2. Recommendations and Comments

- Include in the AML Law: factoring and financial leasing, insurance companies and intermediaries, multi-service cooperatives, savings and loans associations ("asociaciones de ahorro y credito"), the National Mortgage Bank (BHN), issuers and managers of means of payment (e.g. credit and debit cards), entities that provide the safekeeping/custody of cash and other liquid assets.

- Increase the range of sanctions under the AML Law in order to provide for effective, dissuasive and proportionate sanctions.

- Ensure that sanctions under the AML Law also apply to directors and senior management of legal companies.

- MICI should consider applying the range of sanctions under its sectoral Law for dealing with AML violations since the range of sanctions under the AML Law does not seem broad and dissuasive.

- Include in the AML Law provisions for CFT that would also apply for CFT supervision and sanctions by the designated supervisory authorities.

- MICI should ensure that sanctions are available to directors and senior management of finance companies and money remitters.

- MICI should ensure the integrity of shareholders and executives at the time of licensing money remitters to ensure that criminals cannot own or hold a management function in the financial institution.

- IPACCOP should put in place appropriate licensing requirements to ensure the integrity of their "founders" and executive directors.

- Bureau de change (*casas de cambio*) should be licensed, regulated and subject to effective AML/CFT supervision.

- SBP should be able to supervise the nontrust business (e.g., corporate services and safekeeping) conducted by banks and insurance companies under trustee licenses granted to them directly or to affiliates. A comprehensive supervisory framework should be put in place and the sharing of information with competent authorities should be explicitly granted notwithstanding any limitations to access and trust supervision under the Trust law.

- SMV, MICI, IPACCOP, and SSRP should strengthen AML/CFT supervision, develop formal examination procedures for AML/CFT matters and ensure that their procedures for targeting on-site inspections take adequate account of the ML/TF risks within individual institutions.

- All supervisory authorities should review the licensing procedures applied on FIs on an ongoing basis to ensure a periodic review of the fit-and-proper conditions of key persons after the license has been granted.

- SMV should broaden in the Securities Law its inspection powers, without any limitation to the existence of legal violations.

- SSRP should have no limitation to access information.

- All supervisory authorities (SBP, SMV, MICI, IPACCOP, and SSRP) should issue guidelines to entities they supervise in order to assist them in complying with the AML/CFT requirements.

- SMV, MICI, IPACOOP, and SSRP should be provided with adequate human, financial and technical resources to effectively perform their supervisory functions.

- All supervisors should be provided with more training. Enhanced training for risk-based supervision including for offsite surveillance of ML and TF risks should be provided.

4.11.3. Compliance with Recommendations 17, 23, 25, and 29

	Rating	Summary of factors underlying rating
R. 17	**NC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service cooperatives, savings and loan associations, National Mortgage Bank (BHN), entities that provide the safekeeping/custody of cash and other liquid assets. • The activities of bureaus de change (*casas de cambio*) are neither licensed nor regulated, or supervised, and there is no effective AML/CFT supervision by MICI. • The sanctioning regime under the AML Law does not extend to TF. • Limited scope of sanctions under the AML Law which are mostly applied for breaches of CTR requirements. • The sanctions under the AML Law have been limited to legal persons, but not to their directors and senior management. • Few and low fines are not dissuasive and most sanctions are monetary. • Limited range of available sanctions to money remitters and finance companies. • Sanctions under the sectoral laws are not available to directors and senior management of finance companies and money remitters. • Ineffective sanctioning regime due to weak AML/CFT supervision overall, but particularly for the securities market intermediaries, the insurance intermediaries, cooperatives, money remitters, finance companies, and bureau de change.
R. 23	**PC**	• Scope limitation: The AML Law does not apply to insurance companies and intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service cooperatives, savings and loan associations, the National Mortgage Bank (BHN), entities that provide the safekeeping/custody of cash and other liquid assets. • The activities of bureaus de change are neither licensed/regulated nor supervised, and there is no effective AML supervision by the designated AML supervisor under the AML Law (MICI). • Absence of CFT provisions in the AML Law limits the scope of supervision by the designated supervisory authorities under the AML Law. • The SBP does not in practice supervise the nontrust business conducted by FIs under their trust licensees held either directly or through affiliates. • Insufficient AML/CFT supervision over securities and insurance market participants, money remitters, finance companies, and cooperatives due, among other things, to insufficient budgetary and human resources.

		• The number and quality of AML/CFT inspections for SMV, MICI, IPACCOP and SSRP is limited. • No AML/CFT inspections for bureau de change by the MICI. • No examination program available for the insurance sector and the inspections program is not comprehensive for the securities sector. • No legal or regulatory requirements to ensure that criminals cannot own or hold a management function in money remitters and in cooperatives. • No licensing and functional regulation and supervision of bureaus de change to prevent criminals from owning or controlling their operations. • No effective systems in place for ensuring that money remitters comply with the AML/CFT requirements.
R. 25	**PC**	• Insufficient guidance has been issued for most financial institutions that will assist them to implement and comply with the AML/CFT requirements.
R. 29	**PC**	• Scope limitation: The AML Law does not apply to insurance companies and intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service cooperatives savings and loan service associations, the National Mortgage Bank (BHN), , entities that provide the safekeeping/custody of cash and other liquid assets. • Bureau de change (*Casas de Cambio*) is neither licensed and regulated, nor supervised as an activity and the designated AML supervisor (MICI) under the AML Law does not supervise them for compliance. • SBP ability to adequately inspect FIs that have trust licenses, either directly or through affiliates is restricted due to lack of access to nontrust businesses (e.g., corporate services) conducted under trust licenses. • SRRP needs broad-based legal access to information and documentation for effective supervision of insurance companies and their intermediaries. • The Securities Law limits access to information for the conduct of inspections by the SMV to issues involving legal violations. MICI, IPACOOP and SSRP do not exercise their AML/CFT supervisory powers, few AML/CFT inspections and conducted and sanctions applied and inspections are not in-depth. • MICI has no power to apply sanctions to directors or senior management of money remitters and finance companies.

4.12. Money or Value Transfer Services (SR. VI)

4.12.1. Description and Analysis (summary)

1125. Legal Framework: (See beginning of Section 3 for legal requirements above with respect to other FIs that also apply to money remitters)

1126. **Art**. 1 of Law 42 (**Ley No. 42 of 2002 hereinafter referred to as the "AML Law" or Law 42**) requires money remittance firms (casas de remesas) whether natural or legal persons, to maintain due diligence and care in their operations to prevent the use of funds that are the proceeds of activities related to ML (not TF) in carrying out such operations. Law 42 requires money remitters to, inter alia:

- Adequately identify their clients.
- File currency (cash and quasi-cash) transaction reports (CTRs) to the UAF for transactions above B10,000 (equivalent to $10,000).
- File the abovementioned CTRs to MICI and any related information for analysis (by MICI).
- Pay special attention to any transaction that may be related to ML irrespective to the amount.
- On its own initiative, file suspicious transaction reports (STRs) directly to the UAF and abstain from tipping off.
- Establish internal control procedures and mechanisms (policies?). MICI shall supervise the adequacy of these controls and apply corrective measures as appropriate.
- Implement training programs to make employees aware of the AML Law, and to detect and deal with transactions that may be related to ML.
- Preserve records for a period of five years.

1127. Art. 2 of the AML Law authorizes MICI (designated supervisor of money remitters) and money remitters to cooperate with the UAF and to provide it, on request or on its own initiative, with any information they have for the UAF's AML functions. Any information provided to the UAF pursuant to the AML Law or other regulating instruments shall not violate any professional secrecy or confidentiality restrictions on disclosure, and those involved shall not be subject to any liability, including officers, employees and representatives of money remitters. No provision is made in this article that such protection applies when such information or disclosure is provided in good faith.

1128. Art. 5 and 6 of the AML Law expressly authorizes MICI to supervise the activities of money remitters and to inspect the abovementioned internal control procedures and mechanisms in order to verify compliance with the applicable requirements of the AML Law.

1129. Failure to comply with comply with the AML Law or any other regulatory instrument issued by MICI can attract a fine ranging from B5,000 to B1,000,000, depending on the severity of the violation and the number of previous offenses. These fines shall be applied by MICI.

1130. Analysis and Summary of Legal Issues:

- No requirement to identify beneficial owners, including to inquire whether applicants are acting for third parties with respect to natural person applicants.
- No identification requirements of the shareholders and where applicable the beneficial owners of legal entities.
- No requirement to conduct police and criminal background checks on the applicants and other related parties.
- No requirement to interview the applicants/principals as the legal requirement is that application for licensing be made through a lawyer.

- No provisions are made for money remittance businesses existing at the time Law 48 was passed. The focus of the Law is on new businesses, contrary to the apparent broad scope of Art. 1.

1131. Designation of Registration or Licensing Authority (c.VI.1):

1132. The main licensing requirements are as follows. Law No. 48 (Ley No. 48) of June 23, 2003 regulates the activities of Money Remittance Firms. Articles 1 and 2 of Law No. 48 requires all persons, natural or legal, that carries on the business of money transfers on an ongoing basis by whatever means to obtain the authorization of the Ministry of Commerce and Industry (MICI) through its Division of Finance Companies (DEF) ("Direccion de Empresas Financieras"). The postal service and telegraphic firms are exempted from this Law. Hereinafter, both will be referred to as MICI.

1133. **Any natural person** that proposes to conduct money remittance business shall apply to MICI, through a lawyer. MICI states that the natural person in this case is the ultimate beneficiary and owner of the business. The person shall provide details including full names, personal identity number, address of applicant, name of firm, physical address and other contact details for the business firm, and capital for the proposed remittance firm. The application shall include certification by an authorized public accountant that the applicant has a minimum initial fund ("capital") of B50,000 free of any encumbrances, for purposes of starting the business, certified or cashier's check for B1,000 payable to MICI as a licensing processing fee. There is also an annual supervisory fee of B500. A description of the business objectives and financial projections for the remittance firm is also required including but not limited information on market supply and demand, knowledge of the market, business strategy, business structure and financing, investments, and profitability, etc.

1134. **Any legal person** that proposes to conduct money remittance business shall apply for a license from MICI through a lawyer. The application shall include: registered name of the applicant; type of company or entity; date and details of registration with the Public Registry ("Registro Publico"); names of directors, officers and legal representatives; address of the applicant; trade name, physical address, and contact details of the company; and indication of the capital with which it will operate the business. This application shall be accompanied by copy of registration Certificate issued by the Public Registry (shows the founders or shareholders of the business) , certificate of good standing from the Public Registry including registration details, share capital, names of directors, officers, and legal representatives, certification by an authorized public accountant that the minimum subscribed and issued paid-up share capital is B50,000, certified or cashier's check for B1,000 payable to MICI for license processing fee, copy of personal identification of directors, officers, legal representative and description of the objectives and financial projections for the company.

1135. Once all the licensing requirements are met including due diligence by MICI, a license can be issued within 30 working days and MICI shall keep a register of such licensees and a file for each of the licensed entities. Failure to meet the requirements will result in refusal of licenses.

1136. All licensed money remitters are required under Art. 9 of Law 48 to be domiciled in Panama. The authorities maintain that domicile means that the operations will take place in Panama (as implied in the operating license ("Aviso de Operacion") and be subject to the supervision of the local authorities. It does not specify "mind and management" requirements to be in Panama. MICI shall

conduct the necessary investigations to verify the authenticity of information provided. Each licensee is charged an annual supervisory fee of B500.

1137. Any changes relevant to the application shall be reported to MICI within 15 working days.

1138. In addition to above, any person that carries on any commercial or industrial business in Panama must declare its activities to MICI, including money remitters, in accordance with Art. 1 and 2 of Law 5 of January 2007. (Ley No. 5). Executive Decree 26 of July 2007 regulates the requirements of Law 5 and requires the provision of details to MICI with respect to the natural or legal persons that carry on such activities, broadly in line with the requirements of Law 48. Regulated entities such as money remitters must show that they have been duly authorized by MICI at the time they declare their activities (Art. 15 of Executive Decree No. 26).

1139. Art. 31 of Law 48 further states that if it is found that a person is carrying on remittance business without the necessary authorization, MICI can examine its books and records to establish the facts. Failure to provide such information would result a fine of up to B25,000. If it is proven that remittance business is being carried out without authorization, Art. 32 provides for a sanction of B100,000 including the cancellation of operating license ("Aviso de Operacion). There are no procedures in place to identify and close down unauthorized money remitters.

1140. Application of FATF Recommendations (applying R. 4–11, 13–15, and 21–23; and SR. I–IX) (c.VI.2): [See assessment of R. 4–23 for Financial Institutions above.]

1141. **(R. 4):** The mission did not identify any financial secrecy laws that would inhibit the implementation of the AML requirements governing the activities of money remittance firms. The AML Law 42, in Art. 2, authorizes all supervisory bodies and the entities subject to this Law to provide the FIU with any information they require for their functions.

1142. As indicated in the introduction above, Art. 1 of Law 42 (Ley No. 42 of 2002) requires money remittance firms (casas de remesas) whether natural or legal persons, to maintain due diligence and care in their operations to prevent the use of funds that are the proceeds of activities related to ML in carrying out such operations. (This Law does not include provisions with respect to combating the financing of terrorism (TF). Law 42 requires money remitters to, inter alia:

1143. Identification of clients: (see also assessment above with respect to R. 5–9):

1144. Art. 1 of Law 42 requires remitters to adequately identify their clients by requiring them to provide references and other documentation, including with respect to the directors, officers, controllers and legal representatives with respect to legal entities. Such identification should enable them to document and adequately establish the real owner or beneficiary, whether acting in such manner directly or indirectly. Law 42 nor Executive Decree 1 of 2002 (Decreto Ejecutivo No. 1 Enero 2001) (which regulates the AML Law) does not distinguish between occasional and business relationships and does not explicitly require that money remitters conduct customer due diligence measures in all the circumstances required under c.5.2 particularly when there is suspicious of ML or TF regardless of the amount, and when there are doubts about the veracity or adequacy of previously obtained identification data. With respect to individual customers, Art. 1 para. 1 does not establish verification of identity requirements as it does for legal entities. These requirements should be in law or regulations that are laws or executive decrees (leyes o decretos ejecutivos).

1145. Resolution No. 328 of August 2004 (Resolucion No. 328 Agosto 2004) issued by MICI are "Other Enforceable Means" that established more detailed customer identification requirements to prevent both ML and TF. Note that neither Law 42 nor Executive Decree No. 1 of 2001 includes terrorism financing. Hence, Resolution 328 goes beyond the umbrella legislation. (Please refer to the constitutionality issues at the beginning of Section 3 of the DAR for a discussion about the implications of this issue. As indicated in Section 3, even when the subsidiary instruments go beyond the primary laws contrary to the constitutional provisions, they are not illegal or unconstitutional until declared as such by the courts. In the meantime, they are considered enforceable). In particular, Art. 1 of Resolution 328 requires remittance firms to identify their clients on the basis of the following details:

- Complete name of the natural or legal person.
- Personal identification card or passport, and Tax Registration Number (Registro Unico del Contribuyente).
- Residential or commercial address.
- Residential and office telephone numbers, P.O Box number, and email.
- Filing of reports to MICI for the UAF as required under Art. 2 of Resolution 328. (This is not an identification issue and its relevance for identification is unclear. In addition, Art. 2 does not deal with reports to MICI and the UAF, rather Art. 3 deals with CTR requirements.

1146. There are no other customer identification requirements with respect to R. 5–11 in either Law 42, Executive Decree 1 of 2001 (and the modifying Decree 55 of 2012), or MICI Resolution 328 of 2004. Art. 12 (f) of Resolution 328 deals with procedures to be taken by money remitters when there is suspicious of ML or TF and provides 6 requirements when dealing with such cases. Only one (item (e) deals with customer due diligence requiring money remitters to update the profile of the customer when there is suspicion.

1147. Note that there are other indirect or implicit customer data requirements for purposes of reporting CTRs under Executive Decree and Resolution 328, and for STRs under Resolution 328. However, these are specific for such purposes and are insufficient for all of the applicable requirements under R. 5–9.

1148. Suspicious Activity Reporting, Internal Policies, Controls, Compliance, Audit, and Training: (see also assessment above with respect to R. 10–11, 13–15, 21–22) Art. 1 of the AML Law (Law 42) requires money remitters to retain for five years (period can be varied) the documents that adequately record its operations and the identity of clients that carried out transactions, or with whom it established business relationships. This requirement only applies to the retention of identification documents that are mandatory.

1149. While the Executive (Organo Ejecutivo) can vary the retention period of five years, the law does not explicitly require money remitters to retain it for a "longer" period if requested by a competent authority in specific cases. Neither does it require that transaction records should be sufficient to permit the reconstruction of individual transactions in a way that is sufficient for criminal prosecutions. There are also no requirements to retain business correspondence records for the required period and there is no guidance in the law or executive decrees with respect to the start of the five year period, that is, from the time a transaction is executed or a business relationship is

terminated. No provisions are made in Law 42 or Executive Decrees No. 1 of 2001 and No. 55 of 2012 with respect to ensuring that records and information are available to competent authorities on a timely basis.

1150. Art. 13 of Resolution 328 does require that money remitters retain a copy of CTRs and STRs and customer identification documents for a period of five years, starting from when the relation with the client was established ("… contados a partir de la relacion de negocios con el cliente"). This requirement is unclear and insufficient for purposes of c.10.2. In any event, such a requirement should be in law or regulations. The mission was not aware of whether money remitters conduct wire transfers for clients hence the requirements of SR. VII would not apply if that is the case.

1151. Art. 1 (3) of Law 42 requires money remitters to examine with special attention any transaction, regardless of amount, that may be linked to the laundering of funds that are the proceeds of crime. This requirement is more directly related to R. 13 and not the requirements of R. 11 that also require special attention to complex, unusually large transactions and unusual patterns of transactions. Neither does it require remitters to establish the background and purpose of such transactions and to keep and make available such findings for the authorities and their auditors. Notwithstanding, as part of the suspicious activity reporting requirements, Art. 11 of Resolution 328 requires money remitters to analyze unusual transactions that with respect to the normal pattern of behavior of a client. This requirement would indirectly and partly meet the requirements of c.11.1.

1152. There are no requirements in Law 42 or the two Executive Decrees to report suspicion of terrorism financing. Art. 1 (5) of Law 42 requires money remitters to inform the UAF directly and on their own initiative of any activity, transaction or operation that is suspected to be related to ML. Regulations will establish who and the form to send reports to the UAF as well as the basis for or the specific transactions that should be reported to the UAF. Art. 1 (6) further requires money remitters to abstain from revealing, to the client or third parties, that information has been sent to the UAF pursuant to Law 42, or that a transaction or operation is being examined, due to suspicion that it may be linked with ML. Directors, officers and employees of money remitters are not included by this provision. Any information submitted to the UAF in compliance with Law 42 and its regulations by money remitters, directors, officers, employees or representatives does not breach any professional secrecy or restrictions on disclosure of information imposed by law, regulation or contract, and such persons shall be exempt from liability. There are no provisions in this Law or the Executive Decrees with respect to the UAF that ensure that the names and details of staff of money remitters involved in making and reporting STRs are kept confidential by the UAF. Art. 4 of Law 42 does requires all public officers that receive or know of information with respect to the requirements of Law 42 shall maintain confidentiality and shall provide it only to competent authorities in accordance with the law. Any public officer who breaches this requirement shall be subject to the financial sanctions established under Art. 8 of Law 42 without prejudice to any other applicable sanctions under the Penal Code with respect to the violation of professional secrecy.

1153. The two Executive Directives (No. 1 of 2000 and 55 of 2012 issued with respect to Law 42) do not establish any obligation to report suspicious transactions. Art. 11 of Resolution 328 (2004) requires money remitters to report to the UAF suspicion of ML and TF. Although it is currently enforceable, the requirement is not part of Law 42 and the two Executive Decrees mentioned above. Prior to reporting to the UAF, money remitters shall analyze transactions and client information and

any other issue that would establish suspicion. Once a suspicion is determined, money remitters shall, through its compliance staff, follow a number of procedures including: recording details of the transaction, notification of suspicion to the compliance officer and review and verification of the transaction, recording the observations of staff involved in the transaction and those of the compliance officer, and recording such observations in the file of the person(s)[25] and transactions(s) that give rise to the suspicious transaction(s). The money remitter shall notify the Director of the UAF (note not the UAF per se) using the established form within 60 days of the recording of the suspicion (Art. 12 (c) of Resolution 328). The STR report shall also be recorded and filed, as well as the response note (acknowledgement of receipt) from the UAF. The client's profile is also updated as a result of the suspicious transactions.

1154. As indicated above, neither Law 42 nor the applicable Executive Decrees include TF. In addition, neither these nor Resolution 328 require that attempted transactions are also reported. Art. 11 of Resolution 328 requires an analysis of transactions that would have already been concluded. There are no exclusions with respect to transactions that are believed to involve tax matters.

1155. Art. 2 of the AML Law authorizes MICI (designated supervisor of money remitters) and money remitters to cooperate with the UAF and to provide it, on request or on its own initiative, with any information they have for the UAF's AML functions. Any information provided to the UAF pursuant to the AML Law or other regulating instruments shall not violate any professional secrecy or confidentiality restrictions on disclosure, and those involved shall not be subject to any liability, including officers, employees and representatives of money remitters. No provisions are made in this article that such protection applies when such information or disclosure is provided in good faith.

1156. Art. 5 and 6 of the AML Law expressly authorizes MICI to supervise the activities of money remitters and to inspect the abovementioned internal control procedures and mechanisms in order to verify compliance with the applicable requirements of the AML Law.

1157. Failure to comply with comply with the AML Law or any other regulatory instrument issued by MICI can attract a fine ranging from B5,000 to B1,000,000, depending on the severity of the violation and the number of previous offenses. These fines shall be applied by MICI.

1158. Art. 1 (7) of Law 42 requires money remitters to establish internal control and communication procedures and mechanisms to prevent ML. The adequacy of such internal control procedures and mechanisms (not communication) will be supervised by MICI, which shall be able to propose the appropriate corrective measures, "in keeping with the viability of activities of legitimate clients." This requirement does not specifically include the adoption of broad AML/CFT policies that would provide, inter alia, the basis, scope, contents and other requirements to be included in the internal control systems, e.g., for risk management, codes of conduct, and governance, etc.

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[25] It is presumed that reference to person(s) here is to the clients.

1159. Neither Law 42 nor Executive Decrees (No. 1 of 2001and 55 of 2012) specify the need to have a compliance function or compliance officer to review compliance with the AML/CFT requirements, including having access to all related information and records. Resolution 328 requires money remitters to implement internal control and communication procedures and mechanisms (not policies) to prevent ML and TF, taking into account the following:

- The obligation to combat ML and TF.
- The adoption of an AML/CFT Manual of Procedures and Internal Control.
- The operational structure necessary to comply with the AML/CFT requirements.
- Designation of a person within the firm to coordinate and carry out the functions of compliance. However, there is no requirement that such person be at management level.
- The risk of ML and TF.
- Ongoing training program to prevent ML (not TF), consisting of conferences, speeches and seminars, as well as the dissemination of information on this subject. (Note this is too prescriptive and restrictive).
- Make management and staff of the money remittance firm and any other firm that forms part of an economic group, aware of the AML/CFT policies (note: there is no explicit requirement to have AML/CFT policies), laws and procedures.

1160. There is no requirement in the AML/CFT legislation and other requirements to have an independent audit function to test compliance with the AML/CFT obligations. Art. 20 of Law 48 that governs the general activities of money remitters to submit to MICI its annual financial statements duly authorized by an authorized public inspector ("…debidamente autorizados por un contralor publico autorizado." (The second paragraph of Art. 20 refers however, to audited financial statements). In addition, the requirements listed above for training do not specify the need to train staff on ML/TF techniques, methods and trends, laws and other obligations, including with respect to customer due diligence, and suspicious activity reporting.

1161. There is also no requirement to properly screen employees for AML/CFT as part of the recruitment process.

1162. There are no specific requirements established for the reporting lines of compliance officers.

1163. There are no requirements for money remitters to pay special attention to transactions with persons or countries neither with week AML/CFT regimes, nor of measures to be taken in such cases. Generally, the supervisory authorities inform financial institutions under their jurisdiction of persons designated by the US authorities and UN e.g., drug traffickers and terrorists.

1164. There is no requirement for money remitters to apply AML/CFT measures in their foreign branches or subsidiaries. It is noted that for purposes of AML/CFT awareness, Art. 2 (g) of Resolution 328 requires communication procedures and controls to take into account the need to make management and staff of both money remitters and other firms forming part of an economic group, aware of the AML/CFT policies, laws and procedures. This would include foreign branches and subsidiaries. While this is appropriate, it is insufficient for purposes of R. 22.

1165. Monitoring of Value Transfer Service Operators (c.VI.3): (see assessment above for R. 23 and R. 17)

1166. The MICI, through its Division of Finance Companies (DEF) ("Direccion de Empresas Financieras"), has been designated as the supervisory agency for money remitters. In particular, Art. 22–24 of Law 48 (law that regulates money remittance firms) authorizes MICI to conduct general supervision of money remitters including to inspect of each money remitter at least once every year to ascertain its financial position and compliance with Law 48 and laws with respect to **money laundering** (not financing of terrorism). Upon proper written authorization, staff of MICI are empowered to request and obtain any specific accounting, statistical and financial information from money remitters if they have well founded reason to make such requests ("…siempre que se tengan razones fundadas para ello) MICI can sanction remitters if they do not comply with such requests pursuant to an inspection.

1167. Art. 25 of Law 48 provides further powers to MICI to investigate money remitters and to issue resolutions ("administrative resolutions") for legal violations which can be reconsidered by MICI's division of financial entities (DGEF) at the request of the affected party and also appealed before MICI. License revocation by MICI is provided for under Art. 26 and 27 of this Law. Fines can be levied against the legal representative of a remittance firm (but not the officers and employees) for failure to appear before MICI when requested to do so without justification. Such fines are B100 for the first time and B150 for the second time. Failure to appear the third time would assume liability of the firm resulting in the issue of a resolution by MICI under Art. 25.

1168. Art. 5 and 6 of the AML Law (Law 42 of 2000) authorizes MICI to inspect the internal control (not communication) procedures and mechanisms of money remitters subject to its supervision to verify compliance with the AML Law. Art. 8 further authorizes MICI to apply sanctions ranging from B5,000 to B1,000,000 for breaches of Law 42 and other regulations issued thereunder. Such fines will be based on the gravity of the offense and any repeat offenses. Such sanctions can be applied on its own initiative or at the request of the UAF.

1169. Executive Decree 1 of 2001, modified by Executive Decree 55 of 2012 specifically identifies MICI as the supervisory agency for money remittance firms (Art. 2 (d) and 4 of Decree 55 of 2012). It is noted that while these two Executive Decrees relate primarily to the filing of CTRs (currency and quasi-currency reports) by remittance and other "reporting entities" or ("Entidades Declarantes"), they require (Art. 1(d) of Decree No. 1 of 2001) supervisors to take the necessary measures so that reporting entities comply with the requirements of the AML Law 42.

1170. Furthermore, Art. 14 of MICI's Resolution 328 of 2004 establishes the functions of its Division of Financial Entities to include: obtain general information on money remittance firms, provide the UAF with CTRs it receives from money remittance firms, conduct a monthly review of remittance firms that are reporting and those that do not comply with the reporting requirements of the UAF, issue recommendations as corrective measures to strengthen the system of internal controls, administration and prevention, periodically inspect for compliance with the AML/CFT requirements verifying the origin ("verifique y compruebe el origen de los fondos que…" of funds used to carry out transactions (such inspections can extend to other members of an economic group to which the remittance firm belongs), inform the UAF of potential cases of ML and TF identified during the course of its activities, and apply sanctions under Art. 8 of Law 42 (AML Law).

1171. List of Agents (c.VI.4):

1172. While there is not explicit requirement for money remittance firms to maintain a current list of their agents, Art. 17 of Law 48 that regulates the activities of money remitters expressly authorizes remittance firms to designate "subagents" and to provide MICI with copies of the contracts established with such subagents, including their addresses. Art. 17 also allows MICI to issue a resolution to regulate this issue including the supervision of subagents. To date such resolution has not been issued. Art. 15 of Law 48 also requires MICI to maintain a file for each money remittance firm that will include documents required under this Law and this should include the data on subagents. MICI indicates that in practice, the head office of each money remitter maintains a consolidated list of its agents/subagents and also consolidates all the transactions that they conduct at national level. This, they claim would make the issue of the abovementioned resolution unnecessary. Notwithstanding, there should be a specific requirement to maintain such list of agents to comply with criterion VI.4.

1173. Sanctions (applying c.17.1–17.4 in R. 17) (c.VI.5):

1174. (Please see sanctions provisions in the preceding sections and under R. 17 above) Art. 29 of Law 48 governing the activities of money remittance firms requires the application of sanctions under Law 42 (AML Law) for breaches of such law. Art. 8 of Law 42 provides for the imposition by MICI of fines ranging from B5,000 to B1,000,000 for breaches of Law 42 other related requirements. The actual fine will depend on the severity of the violation and on whether or not there have been repeat violations. MICI can apply such fines on its own account or on request by the UAF. This power to apply sanctions is also one of the functions of MICI under Art. 14 (f) of Resolution 328.

1175. Adequacy of Resources – MVT Registration, Licensing and Supervisory Authority (R. 30):

1176. MICI is grossly understaffed to undertake effective ongoing regulation and supervision of money remitters. See discussion above under R. 23 and the following paragraphs.

Effectiveness of Implementation

1177. At the time of the mission there are 18 money remittance firms authorized within the broader number of entities subject to MICI's supervision as shown in the following table.

Regulated Entities	2006	2007	2008	2009	2010	2011	9/2012
Finance Companies	144	142	149	150	156	160	162
Money Remittance Firms	7	7	11	15	15	17	18
Financial Leasing	105	106	112	116	116	123	117
Pawn Shops	190	236	257	260	265	293	282
Credit bureaus (Agencias de Información de crédito)	1	2	2	3	3	4	4
TOTAL	**447**	**493**	**531**	**544**	**555**	**597**	**583**

Source: MICI.

1178. It is noted that the number of money remittance firms has more than doubled in the last four years, and that the number of finance and leasing companies has been steadily rising even though the latter seems to have stabilized.

1179. **Licensing and subagents (VI.1 and VI.4):** Panama has designated the MICI through its Division of Finance Companies (DEF) ("Direccion de Empresas Financieras") as the competent

authority to license money remittance firms. It maintains a current list of all authorized money remittance firms which it publishes on its website. As of September 2012, there were 18 licensed firms. It does not publish the list of subagents working for each of these licensed money remittance firms. The mission was not aware of any unauthorized money remittance form operating in Panama.

1180. **Licensing and supervision (VI.2 and VI.3):** Law 42 (AML Law) covers remittance firms along with other financial institutions and trust companies (fiduciaries). MICI has established a DEF through its Department of Audit and Supervision which covers money remittance firms among other finance sectors. Part of its mandate is to supervise for compliance with the AML/CFT requirements under Law 42, the applicable Executive Decrees and Resolution 328.

1181. While there are 19 staff in the DEF (**from MICI website**), there are only seven professional staff in the Department of Audit and Supervision, of these only two positions are permanent. Salaries for these professionals run from B550–B1,000 monthly. There are 12 additional staff members in the administration (front office) of this Division for a total of 19. The audit staff is responsible for the general supervision (including non-AML/CFT issues) of all entities that fall under the Division of Finance Companies. At the time of the mission there were some 583 firms under supervision by this Division. (Responses from MICI state that total number of staff is 22 of which 10 can engage in AML/CTF supervision including eight auditors and two staff seconded by the UAF).

1182. Total budget for the Division of Finance Companies for the current year is only B163,211 or about B8,500 per staff member.

1183. Base on these statistics, it is concluded that the AML/CFT supervisory capacity of MICI is grossly inadequate.

1184. Since 2006, the Division of Finance Companies has participated in the annual AML/CFT conference (Congreso Hemisférico de Prevención del Blanqueo de Capitales y Contra el Financiamiento de Terrorismo) organized by local authorities in Panama and the Bankers Association. They also participate in training programs organized by the various sectors under its supervision. No statistics were provided on participation in such programs. MICI also reports that it participates in training for reporting entities particularly with respect to reports sent to the UAF. No statistics were provided for this activity.

1185. On-site inspections of all the entities under MICI's supervision with respect to AML/CFT have been steadily declining over the last four to five years declining from a high of 146 in 2008 to only two in 2011. It is not clear how many of these involved money remittance firms. Post mission, the authorities indicated that they inspected 12 remitters during 2012.

	2006	2007	2008	2009	2010	2011
All entities	94	104	146	73	19	2

1186. There is no formal manual for AML/CFT supervision and inspections. The Division is guided by the requirements in the AML/CFT laws to carry out its supervisory activities. Post mission, MICI stated that they have an AML/CFT operational manual in their website but the link provided ("directorio de servicios") only deals at pages 12 and 13 with license authorization procedures and requirements for financial firms and not with inspection procedures. And in this regard, natural persons applying are required to provide police record that show that they have not been convicted,

inter alia, of ML but not for TF. For the shareholders and officers of legal persons applying, such record applies to both ML and TF but only for foreigners, not nationals.

1187. (VI.5) **Sanctions**: According to this Division (Dirección General de Empresas Financieras) during 2006 to 2011, it sanctioned two finance firms (not remitters) for lack of compliance with AML Law (Ley 42) for the minimum allowed under the law, that is, B5,000.00 each. The law allows for fines from B5,000 to B1,000,000 depending on the severity and repeat nature of the offense, at the discretion of MICI. It is not clear whether any of these was applied to money remittance forms or other entities under its supervision. Nonetheless, the very low number of sanctions for a period of five years suggests that supervision and enforcement generally is very week. And the minimum fine applied could also suggest that the sanctions may not be sufficiently proportion and dissuasive but this would depend on the severity of the violations on which the mission did not get any information.

4.12.2. Recommendations and Comments

1188. Authorities should:

- Establish procedures to identify and close down unauthorized money remitters.
- Establish within the legal framework a requirement: (i) for the identification of the beneficial owners, including to inquire whether applicants are acting for third parties with respect to natural person applicants, (ii) the shareholders and where applicable the beneficial owners of legal entities, (iii) to conduct police and criminal background checks on the applicants and other related parties, (iv) to interview the applicants/principals as the legal requirement is that application for licensing be made through a lawyer, and (v) extend the provisions of Law 48 to existing money remittance business at the time the Law was passed.
- Require money remitters to conduct customer due diligence measures in all the circumstances required under c.5.2 particularly when there is suspicious of ML or TF regardless of the amount, and when there are doubts about the veracity or adequacy of previously obtained identification data.
- Require money remitters to retain records for a "longer" period than five years if requested by a competent authority in specific cases and that records should be sufficient to permit the reconstruction of individual transactions in a way that is sufficient for criminal prosecutions.
- Require money remitters to retain business correspondence records for the required period and there is no guidance in the law or executive decrees with respect to the start of the five year period, that is, from the time a transaction is executed or a business relationship is terminated.
- Ensure that records and information are available to competent authorities on a timely basis.
- Require money remitters to establish the background and purpose of unusual transactions and to keep and make available such findings for the authorities and their auditors.
- Require money remitters to report suspicion of terrorism financing and ensure that the names and details of staff of money remitters involved in making and reporting STRs are kept confidential by the UAF.
- Impose an obligation to report attempted transactions.

- Require money remitters to adopt broad AML/CFT policies and procedures.
- Require the Compliance Officer to be at a management level and to have an independent audit function to test compliance with the AML/CFT obligations.
- Impose a requirement to train staff on ML/TF techniques, methods and trends, laws and other obligations, including with respect to customer due diligence, and suspicious activity reporting.
- Impose a requirement on money remitters to properly screen employees for AML/CFT as part of the recruitment process.
- Require money remitters to pay special attention to transactions with persons or countries with week AML/CFT regimes, nor of measures to be taken in such cases.
- Strengthen the AML/CFT supervisory capacity of MICI and ensure that an adequate number of on-site AML/CFT inspections are conducted.

4.12.3. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR. VI	**NC**	• No procedures in place to identify and close down unauthorized money remitters. • No requirement to identify beneficial owners, including inquiring whether applicants are acting for third parties with respect to natural person applicants. • No identification requirements of the shareholders and where applicable the beneficial owners of legal entities. • No requirement to conduct police and criminal background checks on the applicants and other related parties. • No requirement to interview the applicants/principals as the legal requirement is that application for licensing be made through a lawyer. • No provisions are made for money remittance businesses existing at the time Law 48 was passed. The focus of the Law is on new businesses, contrary to the apparent broad scope of Art. 1. • The legal framework does not explicitly require that money remitters conduct customer due diligence measures in all the circumstances required under c.5.2 particularly when there is suspicious of ML or TF regardless of the amount, and when there are doubts about the veracity or adequacy of previously obtained identification data. • Lack of requirement for money remitters to retain records for a "longer" period than five years if requested by a competent authority in specific cases and those records should be sufficient to permit the reconstruction of individual transactions in a way that is sufficient for criminal prosecutions. • There are also no requirements to retain business correspondence

		records for the required period and there is no guidance in the law or executive decrees with respect to the start of the five year period, that is, from the time a transaction is executed or a business relationship is terminated. • No provisions are made in Law 42 or Executive Decrees No. 1 of 2001 and No. 55 of 2012 with respect to ensuring that records and information are available to competent authorities on a timely basis. • Lack of requirements for money remitters to establish the background and purpose of unusual transactions and to keep and make available such findings for the authorities and their auditors • There are no requirements in Law 42 or the two Executive Decrees to report suspicion of terrorism financing. • No obligation that attempted transactions are also reported. • No obligation to include the adoption of broad AML/CFT policies and procedures. • No requirement for the Compliance Officer to be at a management level. • There is no requirement in the AML/CFT legislation and other requirements to have an independent audit function to test compliance with the AML/CFT obligations. • No requirement to train staff on ML/TF techniques, methods and trends, laws and other obligations, including with respect to customer due diligence, and suspicious activity reporting. • No requirement to properly screen employees for AML/CFT as part of the recruitment process. • No requirements for money remitters to pay special attention to transactions with persons or countries neither with week AML/CFT regimes, nor of measures to be taken in such cases. • AML/CFT supervisory capacity of MICI is grossly inadequate. • The number of AML/CFT inspections is inadequate. • There is no formal manual for AML/CFT supervision and inspections.

5. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

5.1. Customer due Diligence and Record-Keeping (R. 12)

5.1.1. Description and Analysis

1189. Legal Framework:

1190. Panama has the full range of DNFBPs that carry on business activities in or from within Panama that should be subject to its AML regime but most are not. Lawyers, accountants, notaries, dealers in precious metals and stones, company services providers and real estate agents (natural persons) are not covered by the AML Law and hence are not subject to AML/CFT regulation and supervision. Because Panama is an important international financial and corporate services center, and in light of the very active real estate and jewelry sectors, this lack of coverage is a key systemic deficiency, notwithstanding the limited application of AML measures to Resident Agents of companies. Only casinos (including internet casinos), real estate brokers (and developers that can also conduct brokerage business) doing business as **legal persons** (hereinafter both referred to as real estate brokers or agents) (natural persons that conduct this business are not covered), and trustees ("fiduciaries" that are legal persons) are covered in Law 42 of 2000 (the main AML Law). However, only trustees are subject to all of the provisions of Law 42 while casinos and real estate brokers are only subject to cash and quasi-cash reporting (CTR) obligations under Law 42. As for the financial sector, Law 42 only covers AML and does not cover CTF issues. The licensing and supervision regime for the DNFBPs that are subject to Law 42 are analyzed under R. 24.

1191. Other non-financial businesses and professions subject to Law 42 are covered under R. 20 of this report. This section (R. 12 and R. 16) only cover the FATF DNFBPs that are subject to Law 42 and subsidiary instruments, that is, trustees, casinos and real estate brokers. The legal framework for each of these sectors are described in the following table and discussed.

DNFBP	GOVERNING LAW	AML REGULATOR SUPERVISOR	AML/CFT OEM	FURTHER OBLIGATIONS IN THE AML/CFT OEM
Casinos	Law of Casinos (Law Decree 02 of 1998), amended by Law 49 of 2009.	Gaming Control Board (GCB) from the Ministry of Economy and Finance (MEF)	Resolution 92 of 1997, amended by Resolution 31 of 2003 on MTRs, CTRs and STRs. Resolution 02 of 1998, for CTRs Resolution 65 of 2002, for internet casinos. Resolution 09 of 2003 for compliance officers. Resolution 373 of 2003, formats for RTMs, CTRs, and STR	File STRs to the FIU only for ML (Art. 83-A of Resolution 92 of 1997 and Art. 7 (f) of Resolution 09 of 2003)
Real	Real Estate Agents	Real Estate	Resolution 327 of	TF prevention

estate agents (legal persons)	Law (Law Decree 6 of 1999)	Technical Board (RETB) from the Ministry of Commerce and Industries (MICI)	2004	(throughout the document) Further identification data to be collected (Art. 1) File STRs to the FIU for ML and TF (Art. 8) Record keeping for five years (Art. 10)
Trustees (legal persons)	Trust Law (Law N°1 of 1984), developed by Executive Decree 16 of 1984 for the nonbanking institutions.	Superintendence of Banks of Panama (SBP)	Acuerdo N°12-2005	TF prevention (through all the document) File STRs to the FIU for TF (Art. 10(3)).

1192. As indicated above, only trustees are subject to the full AML requirements under Law 42 while casinos and real estate agents are only required to file CTRs above B10,000 ($10,000), including recording client name, address and document identification number. This would not include conducting due diligence at the time a transaction is conducted or customer relationship is established. On the other hand, the trustees have the same AML obligations in Law 42 as banks and other covered financial institutions, including customer due diligence and record-keeping requirements, as well as the reporting of STRs to the FIU only for ML (not TF).

1193. The designated supervisory authorities (appointed under of Executive Decree 1 of 2001 and its two subsequent modifying Decrees) for the covered DNFBPs have issued several administrative instruments such as Resolutions and "Acuerdos" (Circulars) that are for purposes of this assessment "other enforceable means" (OEM). Law 42 and its Executive Decrees are for purposes of this assessment laws and regulations, respectively.

1194. As for financial institutions, resolutions, and acuerdos issued by the designated supervisory agencies have imposed obligations on the covered DNFBPs that go beyond Law 42, e.g., CTF for real estate brokers, trustees, STR, other AML obligations for casinos, and real estate agents. (See discussion of this issue under section 3.1 for financial institutions).

1195. The mission is of the view that this practice of extending obligations through resolutions and Acuerdos (that are OEMs) beyond the requirements of Law 42 creates the opportunity for challenges (even though they are enforceable until such time as they have not been declared illegal or unconstitutional) under Art. 184 of the Constitution, which require such regulatory instruments to be within the text and spirit of the law (Law 42). The authorities state that these instruments are enforceable until they have been declared illegal or unconstitutional by the relevant courts.

1196. This issue was discussed with a number of lawyers and practitioners from both the private and public sectors who agreed that at least to the extent of the offending provisions, there is the risk of being declared illegal and void by the relevant court. The mission is of the view that this could discourage the designated supervisory agencies from applying proportional and dissuasive (high) sanctions for AML violations. Failure to comply with Law 42 and the OEMs can attract a fine from B5,000 to B1,000,000.

1197. **Trustees:** The establishment of Panamanian trusts are governed by Law 1 of 1984 (Trusts Law) and are broadly similar to common law trust in structure. A trust is defined as a legal act where a settlor (fideicomitente) transfers property to a trustee (fiduciario) to administer or dispose of them in favor of a beneficiary, who may also be the same settlor. Among its various features, trusts can be for any purpose, must be in writing and they are not required to be registered in a public register.

1198. **The SBP licenses trustees**: Trust business can be conducted by authorized trustees, which can include banks, insurance companies, lawyers, and any other natural or legal persons that habitually engages in trust business. Government banks are exempt from licensing requirements. There can be more than one trustee for a single trust, and there can be substitute or successor trustees. They can act as trustees for trusts established under foreign law. Panamanian trusts can also be subject to the laws of other countries. Government banks can act as trustees without authorization. Competent authorities that can inspect or obtain information on trusts business are subject to strict secrecy obligations and can be sanctioned for unauthorized disclosures including to prison and monetary fines.

1199. At the time of the mission there were 68 licensed trustees subject to the SBP's supervision with total assets under trust administration of **B7,518,024,000**.

Trustees			
Type	**No.**	**Assets under Administration (in thousands B$)**	%
Government banks	2	1,728,963	23%
Private banks	28	2,364,034	31%
Insurance companies	2	33,710	1%
Law firms	14	1,555,235	21%
Other firms	22	1,837,082	24%
Total	**68**	**7,518,024**	**100%**

Source: SBP.

1200. Article 1 of Law 42 requires trustees to in summary:

- Conduct their operations with diligence and care to enable them to prevent funds associated with ML (not TF) from being used in such operations.
- Adequately identify their clients.
- File currency (cash and quasi-cash) transaction reports (CTRs) to the UAF for transactions above B10,000 (equivalent to $10,000).
- Also file the abovementioned CTRs to the SBP.
- Pay special attention to any transaction that may be related to ML irrespective to the amount.
- On its own initiative, file STRs directly to the UAF and abstain from tipping off.
- Establish internal control and communication procedures and mechanisms (not policies) to prevent ML. SBP shall supervise the adequacy of these controls and apply corrective measures as appropriate.
- Implement training programs to make employees aware of the AML Law, and to detect and deal with transactions that may be related to ML.
- Preserve records for a period of five years.

1201. Executive Decrees No. 1 of 2001, No. 266 of 2010, and No. 55 of 2011 provided further instructions and procedures for completing and filing the CTR requirements above. However, this

Executive Decree 266 of March 23, 2010 was fully revoked on March 31, 2010 by Executive Decree 294.

1202. The SBP has issued a number of Acuerdos related to the AML obligations established under Law 42 and its Executive Decrees. These will be discussed below under the applicable sections.

1203. Casinos: For purposes of this assessment only casinos that are defined in Article 7 of Law Decree No. 2 of 1998 as "**complete casinos,**" in the sense that they are gaming rooms that offer a combination of tables and slot machines type "A" (machines with no specific limits for the amount of the prize). Other casinos are of smaller slot machine operations with smaller betting and winning limits under B3,000. According to the licensing and supervisory authority, the Gaming Control Board (GCB is an arm of the Ministry of Economy and Finance), there are 18 complete casinos currently operating in Panama. Licensing and supervision of casinos will be analyzed in R. 24). Some mainstream casinos offer a variety of services including receipt of wire transfers, gaming accounts, check cashing and credit lines. Cash payments are allowed on gaming account balances. Casinos also pay large winnings by cash or check, and provide winning certificates to facilitate deposit of checks in bank accounts.

1204. **Internet casinos** are allowed to operate in Panama and are also included in this assessment. They are authorized under GCB Resolution 65 of 2002 by the GCB under Law Decree No. 2 above. According to the statistics provided by the GCB, one internet license has been granted to a local nonoperating company. In turn, this licensee subleases its license to five internet casinos (in the past there were up to about 10 internet licenses operating under this arrangement). The licensing and supervision will be analyzed in R. 24, although the authorities indicated post mission that the licenses and subleased licenses where all cancelled and there were no internet casinos operating in Panama anymore while a new improved regulation is being considered. The authorities indicated post mission that there are currently three subleases.

1205. Under Chapters VII and X of Resolution 92 of 1997, casinos can receive cash or give credit to their clients. For internet casinos, Articles 47 to 55 of Resolution 65 of 2002 states that an account for the player must be opened after his/her registration before the operator, and that it is forbidden to give credit. Funds must be transferred to the client upon his/her request. Obligations regarding the CTRs and STR for internet casinos are established in Articles 95 to 101 of this Resolution. Note: (Art. 55 of Resolution 65 of 2002) provides that accounts with credit balances can remain open for up to one year. Thereafter, the casino should pay back the customer, and if that cannot be done, the casino shall transfer the balance to a special account under its administration and will be handled in the same manner as inactive accounts held by banks. It has to be noted that holding accounts with credit balances for that long is a high risk activity not dissimilar to banking activities.

1206. Art. 68 of Resolution 65 requires internet casinos to maintain at least two bank accounts for specified purposes, namely an escrow account and a reserve account for the payment of bets. In practice at least some internet casinos have not been allowed by banks to open accounts in Panama and hold accounts overseas.

1207. Casinos are considered to be high risk for ML by many banks operating in Panama and some do not do business with them as a matter of practice. However, there are some that do provide banking facilities and it is presumed that they would also accept casino checks as deposits from casino clients.

1208. Real estate agents (companies only): The business of real estate agents are governed by Law Decree 6 of 1999 (Real Estate Agent Law). Art. 1 states that a real estate agent can be a natural or legal person who perform professionally and in a regular basis as a mediator, broker, agent, representative or intermediary between the owner of real estate and third parties, for the purposes of sale or lease. Although the Real Estate Agents Law allows natural and legal persons to perform this activity, Law 42 and further Resolution 327 of 2004 only covers the real estate agents that are legal persons. It is important to mention that real estate agents that are natural persons do not have to be affiliated to a real estate company to perform this activity.

1209. Real estate agents are licensed by the Real Estate Technical Board (RETB) of the Ministry of Commerce and Industry (MICI) (licensing and supervision will be analyzed in R. 24). According to the statistics provided by the RETB, there are 3,113 natural persons and 911 legal entities authorized to perform this activity. In that sense, there is an important portion of real estate agents with no AML/CFT obligations in a country that has experienced a real estate boom in recent years.

1210. CDD Measures for DNFBPs in Set Circumstances (Applying c.5.1–5.18 in R. 5 to DNFBP) (c.12.1):

Complete Casinos

1211. Art. 7 of Law 42 of 2000 (the main AML Law does not include provision for CTF) imposes an obligation on casinos to send, through their designated supervisory agency (the GCB) CTRs as defined under Art. 1 (2) of the same Law. To complete these CTRs a casino has to record the name and address of clients and the number of their identification document. Apart from this customer identification requirements for cash and quasi-cash transactions above the B10,000 threshold, there are no other customer due diligence requirements established in this Law to comply with full range of requirements of R. 5. In addition, R. 5 applies to all types of transactions irrespective of type and amount, with the exception of occasional transactions where the threshold is the equivalent of $/€15,000. In addition, Law 42 and the resolutions issued for casinos dealing with large cash transactions only specify B10, 000 and not transactions in other currencies equivalent to this amount. For instance, it does not address wire transfer activity and ongoing due diligence for accounts opened for longer term relationships as opposed to occasional.

1212. The above CTR requirements are broadly similar to cash transaction identification, recordkeeping and reporting requirements established under previous casino resolutions that are still in force. In particular, Title V of Resolution 92 (Art. 74–80) of 1997 and its amendments impose broadly similar customer identification requirements under Art. 7 of Law 42, including the details of transactions for above B10, 000. Resolution 2 of 1998 also imposes certain internal control requirements regulating, inter alia, the cash transaction identification and recording requirements under Title V of Resolution 92 of 1997.

1213. Resolutions 30 of 2003 mainly deals with suspicious transaction reporting requirements and modifies some of the CTR requirements established in earlier resolutions, adding recording of date of birth and verification of identification documents with the information provided on identity. Resolution 31 of 2003 modifies the customer identification requirements of Art. 75–83 of Resolution 92 of 1997 to bring it more in compliance with the requirements of Art. 7 of Law 42 (AML Law), with respect to CTRs. This Resolution (Art. 3–14) further defines the customer identification requirements to record the following information subject to a CTR: (a) date type and amount of

transaction, (b) name, date of birth, address and identification document number, (c) method used to verify identify, and (d) signatures of persons that handled the transaction for the casino. It also imposes restrictions on carrying out such transaction (B10,000) if the identification requirements are not completed. These CTRs are to be reported to the GCB and the UAF with the original going to the latter. (Art. 6).

1214. To assist with the implementation of the above large cash transaction identification and reporting requirements, the GCB issued Resolution 373 in 2003 providing detailed instructions and forms on how to complete the CTR requirements (Sections (a) to (c)). It also provided instructions for preparing and reporting suspicious transaction reports (Section (d) Report of Suspicious Transaction).

1215. Similar to provisions of Art. 7 of Law 42, these earlier provisions on customer identification mainly relate to large cash transactions (B10,000) and are not sufficient to meet the broader customer due diligence requirements of R. 5.

1216. It is noted that under the various casino resolutions, cash transactions involving multiple linked transactions (MTRs) under the B10,000 threshold, (MTRs should result in a CTR once they reach the B10,000 threshold) it is not mandatory to record the name of the client and a pseudonym can be used. This provision, if implemented, would not enable casinos to more readily identify linked transactions for purposes of the CTR reporting requirement thereby jeopardizing the main basis for the customer identification and CTR regime.

1217. Internet Casinos: Customer identification requirements are established Art. 47–55 of Resolution 65 of 2002. In particular, when opening a gaming account online, a customer should fill an application including name, address, nationality, age, sex, occupation/profession, and email address. Proof of identity, residence and age is required by giving an ID to enable a customer to be registered to play, that is, to open an account. Art. 95–97 require that customer identification and account opening requirements be met before conducting transactions exceeding $10,000 (these are not limited to cash transactions). Particulars of such transactions must be recorded by the casino. As for complete casinos, the customer due diligence requirements are insufficient to meet the broader customer due diligence requirements of R. 5 particularly those relating to c.5.2 (a), (c), (d), (e); adequacy of verification requirements of c5.3 with respect to non face-to-face customers; and c5.7 which should also be in law or regulations (resolutions are OEMs); and c.5.8, c.5.13–c.5.14.

1218. Real estate agents (companies only): Similar to casinos above, Art. 7 of Law 42 only imposes an obligation to file CTRs with respect to ML and not TF. However, this obligation only applies to real estate agents that are legal persons not individuals. There are some 3,113 individuals authorized as realtors and 911 legal entities, creating a huge gap in the scope of the AML requirements particularly in light of the real estate boom. For this purpose they must keep records with the names of their clients, their address and the identification document number.

1219. The only other AML related instrument issued for this sector is Resolution 327 of 2004 that provides further details and guidelines for complying with the obligations established under Law 42 and related Executive Decrees. In particular, this Resolution requires real estate agents (legal entities) to identify their clients, but without conducting the broader due diligence required by R. 5 and some of which should be in law and regulations, not OEMs like Resolution 327. Resolution 327 requires gathering the following information:

a) Complete name of the legal or natural person, ID or passport and registration number in case of a legal person.
b) Location of residence, work post or corporate address.
c) Telephone numbers from home and office, postal code and email.
d) Public Registry Certificate, certificate of a public an authorized public accountant certificate and validity of the legal personality that identifies the officers, directors, agents and legal representatives of the company.
e) Commercial and banking references.
f) Activity and source of income.
g) Declaration regarding the legal source of the funds.

1220. Resolution 327 also requires realtors to file currency transaction reports (CTRs) to the MICI's Real Estate Technical Board for transmission to the UAF in accordance with Art. 3 (the Resolution erroneously refers to Art. 2 which deals with internal control obligations).

1221. These customer identification requirements are more comprehensive than for casinos for purposes of R. 5 in that it requires, e.g., commercial and banking references, professional activity, and source of funds. These are important requirements but do not contain provisions inter alia, identifying beneficial owners, ongoing due diligence in case of business relationships and enhanced due diligence for high risk customers, reject and termination of business when customer due diligence is not completed and the filing of STRs in such cases.

1222. Trustees: Unlike for casinos and real estate agents, the customer identification and due diligence requirements for trustees are more comprehensive. Art. 1 of Law 42 (AML Law) provides the broad legal basis for trustees to apply diligence and care in the conduct of their operations to prevent ML (not TF). In particular, Art. 1 (1) requires trustees to adequately identify their clients including obtaining references or recommendations, incorporation documents (for legal entities) as well as identification of directors, officials, legal representatives and authorized persons of legal entities. They should be able to document such information and adequately establish the real owner or beneficiary, whether direct or indirect.

1223. Acuerdo 12-2005 (this is an OEM instrument. Note that some of the key CDD criteria under R. 5 should be in law or regulation e.g., Law and Executive Decrees) issued by the Superintendence of Banks (SBP) details the main obligations of trustees with respect to customer due diligence. This Acuerdo revoked previous OEMs issued by the SBP. The main CDD provisions with respect to trustees are contained in Art. 5 of Acuerdo 12-2005 for purposes of R. 5.

1224. It is noted that some trustees provide both trusts services and other nontrust business activities for clients. However, the SBP is only authorized to supervise trustees (fiduciaries) with respect to their trust business, and hence their AML/CFT oversight activities are limited to trust business. Other types of services offered by trustees either directly or through affiliates include: foreign company incorporations, foreign trusts, private foundations, arranging of public and private securities issues, organization of private mutual funds and other collective investment schemes, nominee directors, corporate documentation and issue of share certificates, assistance in the opening of bank accounts, and registration of trademarks, licenses, patents and rights, among others. (Assessors identified the provision of such activities through the website of some of the licensed trustees).

1225. **(c.5.2 – c.5.18)** Art. 2 of Acuerdo 12-2005 (hereafter "Acuerdo 12") defines the concept of client of trustees as including natural and legal persons that receive trust services from a the trustee. This would include both occasional and long term business relationships with trust settlors and could also include trust beneficiaries especially when it is the same as the settlor. No threshold applies for this.

1226. Art. 5 of Acuerdo 12 requires trustees to comply with CDD with respect to their clients and client funds in the context of a contractual relationship, regardless of the amount of the transaction. They must keep the information updated for such relationship. Special attention should be paid when the there is doubt about the veracity of the information obtained on the identification of the client or ultimate beneficiary, whether the beneficiary is direct or indirect.

1227. Such due diligence should include at a minimum the following: Preparation of a written customer profile that includes:

- Client (settlor not beneficiary): Full name, marital status, profession, business or occupation, document of identity, nationality, address and residence (copy of client's identification document is not required).
- Customer references.
- Copy of client passport or equivalent document if living abroad.
- Trust services to a foreign client should be subject to due diligence according to the level of risk, in accordance with the international parameters and standards and with the internal control policies and procedures dictated by the Board of the SBP.
- Purpose of the trust.
- For foreign or domestic legal persons, private foundations and NGOs, trustees are required to obtain current incorporation certificates and identify their officers (dignatarios), directors, authorized agents and legal representatives in order to adequately determine and document the settlor or ultimate direct or indirect beneficiary. (There is no clear requirement for the identification of beneficiaries when they are legal persons especially when they are different to the settlor. In addition, there is also no requirement to identify legal persons in a similar manner when they form part of the property under trust administration).
- Financial, personal and commercial profile and background.
- Source of property settled in trust.
- Maintain a record of the due diligence carried out above.

1228. Art. 1 para. 1 also requires trustees to maintain in their database the above mentioned information, which can be requested by the SBP.

1229. There are no other specific provisions with respect to the issues required under c.5.9-c5.18, except the need to apply risk based procedures for foreign clients (c.5.8 and perhaps c.5.9 as the implication here is high risk not low risk). Note that with respect to c.5.8 Acuerdo 12 does not require enhanced CDD for clients that are legal entities whether Panamanian or foreign when such entities have nominee or bearer shares, either as settlors or companies under trust administration. Such practices and services are common in Panama.

1230. (c.5.1) Art. 5 of Acuerdo 12 requires that information provided to the trustee by clients shall be kept in strict secrecy unless required by judicial and administrative authorities authorized to do so.

In addition, Executive Decree No. 16 of 1984 that regulates the Law of Trusts (1984), neither the Superintendence of Banks nor any other Government authority empowered can disclose any information obtained through their inspections with respect to trust operations except if requested in connection with judicial proceedings. This would exclude e.g., the UAF.

1231. Based on the above, the following main issues and deficiencies have been identified:

- There is no specific identification and verification for identifying the beneficiary, including ultimate beneficiary, when the beneficiary is a legal person or arrangement, especially when the beneficiary is not the settlor. (It is presumed that the trustee is already required to identify the settlor as the primary client).
- When customers are legal persons or legal arrangements, there are no requirements for understanding the ownership and control structure of the customer and to determine who are the **natural persons** that ultimately own or control the customer. The same applies to the beneficiaries.
- There are no obligations for conducting ongoing due diligence on the business relationship.
- There are no requirements to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions.
- There is no obligation to reject the business relation, terminate it or file a STR if the CDD can't be fully applied before or after it has commenced. No obligations for CDD with existing customers.
- No obligations for CDD for existing customers at time the law and Agreements were issued.
- There is no obligation to verify the identity of the customer or beneficial owner before or during the course of establishing the business relationship.

1232. CDD Measures for DNFBPs in Set Circumstances (Applying Criteria under R. 6 and 8–11 to DNFBP) (c.12.2):

1233. Complete Casinos **(R. 6, R. 8, R. 9):** Complete casinos and internet casinos have no preventive obligations of any kind regarding PEPs. There are no requirements regarding non face-to-face transactions and new technologies in normal casinos and no provisions for dealing with business conducted through intermediaries or introducers. It is acknowledged that for the casino business, relying on the CDD of others is not generally pertinent given the nature of the industry. Notwithstanding, R. 8 is very relevant for internet business as all of the clients services are provided online and is by its very nature very risky for ML.

1234. **(R. 10)** Law 42 (AML Law) does not require casinos to maintain customer, transaction and other records for a minimum of five years. However, casinos are required to maintain CTR related records for five years from the date of such documents are issued pursuant to Art. 3 of Executive Decree 1 of 2001. Regarding the scope of these provisions, the following is noted:

- This obligation only applies to documents associated with the CRT obligations and is insufficient for purposes of R. 10, which has broader requirements and should also include the period from the time an account is closed or a relationship is terminated, not based on the date of the document.
- There are no requirements with respect to the retention and sufficiency of records for accounts, correspondence, audit trail, and timely access for competent authorities.

Art. 1 para. 2 of Executive Decree 266 2010 also lacks similar requirements for casinos. However, this Executive Decree 266 of 23 March 2010 was fully revoked on March 31, 2010 by Executive Decree 294.

1235. Other casino resolutions also have document retention requirements. For example, Section VI of Resolution 373 of 2003 and Article 99 of Resolution 065 of 2002 (both OEMs), complete casinos and internet casinos should keep for at least seven years all the supporting documents for multiple linked transactions below B2,000 (MTRs) and CTRs, including the information for the identification of the client, which was previously described for c.12.1. These however are limited to cash and quasi-cash transactions. The seven-year requirement here conflicts with the requirements in the Executive Decrees but is more conservative and is consistent with the requirements in other casino Resolutions such as Articles 6 of Resolution 30 of 2003 and Resolution 31 of 2003, respectively.

1236. (R. 11) There are no specific provisions in law, regulations or OEMs for casinos to pay special attention to and examine complex, unusually large transactions, and to record such etc., as defined under R. 11. However, in the context of the requirements pertaining to suspicious activity monitoring and reporting, the instructions for completing CTRs and STRs (note Law 42 does not impose suspicious activity reporting on casinos but Executive Decree, going beyond the requirements of Law 42 requires under an additional Art. 3 (c) of Executive Decree 1 of 2001) that casinos provide the UAF with STRs pursuant to Art. 1 (5) of Law 42 (the main AML law). This requirement is further elaborated under Resolution 373 of 2003 that provides instructions for completing these STRs. Under section d (3), it requires casinos to pay special attention to any transaction regardless of amount that may be linked to ML (not TF). This requirement would partly meet the requirements of R. 11 even though it is mostly relevant for R. 13.

1237. Real estate agents **(**R. 6, R. 8, R. 9): There is no obligation for special CDD measures regarding neither PEPs, nor requirement for policies and measures to prevent the misuse of technological developments in ML and TF. There is no obligation to have policies and procedures in place to address any specific risks associated with non face to face business relationship and no provision that allows real estate agent companies to rely on intermediaries or other third parties to perform CDD.

1238. (R. 10) Art .1 para. 2 of Executive Decree 266 of 2001, which modified Art. 3 Executive Decree 1 of 2001 requires real estate agents to maintain documentations relating to CTRs for a minimum period of five years. However, this Executive Decree 266 of March 23, 2010 was fully revoked on March 31, 2010 by Executive Decree 294. As indicated above for casinos, this requirement is too narrow and insufficient for purposes of R. 10. Art. 10 of Resolution 327 of 2004 requires real estate agents to maintain for a minimum of five years signed copies of the CTRs and STRs as well as copies of customer identification documents. The retention period starts from the time the relationship was established. As for casinos, it does not require that documents permit the reconstruction of individual transactions, and as to provide evidence for the prosecution of criminal activities. No obligation to keep the information available on a timely basis for the competent authority (10.3). Note that most of the recordkeeping requirements under R. 10 should be in law or regulations and not OEMs (Resolutions).

1239. (R. 11). While not specifically related to R. 11, Executive Decree 266 of 2011 contains some of the necessary elements. It requires real estate agents to file STRs to with the UAF. However, this Executive Decree 266 of March 23, 2010 was fully revoked on March 31, 2010 by Executive

Decree 294. Pursuant to this requirement, Art. 8 of Resolution 327 of 2004 requires real estate agents (legal persons) to send STRs to the UAF relating to both ML and TF (TF not required under Law 42 and the Executive Decrees). In doing so, it needs to take account of and analyze the following:

- Unusual transactions in the light of the common patterns assigned to a client.
- Information about the transaction or the client gathered from private or public external sources.
- Any other reasons that that make the company believe that the transaction is suspicious.
- A suspicious pattern of the services, concluded after the periodical analysis of the transactions of the client.

1240. These requirements would partly meet what is stated in c.11.1. Nonetheless, they do not cover c.11.2 and c.11.3 regarding the examination of the background and purpose of the transactions, as well as keeping the recorded findings available for the competent authorities and auditors for at least five years.

1241. Trustees: (R. 6, R. 8–9). Neither Law 42 (AML law) nor the Executive Decrees issued thereunder make provision for the requirements under R. 6, R. 8–9. Art. 5 (3) of Acuerdo 12-2005 however requires trustees to, in conducting client due diligence, pay special attention and take necessary measures with respect to national and foreign PEPs. In such cases they should have appropriate systems for managing such risk and conduct more enhanced due diligence. Such measures do not explicitly extend to PEPs that are beneficial owners.

1242. The concept of client in Acuerdo 12 treats clients and the ultimate beneficiaries as two separate components for CDD. There are no requirements for meeting c.6.2-c.6.4. It is noted that the SB informed institutions of the FATF requirements under R. 6 through its Circular No. 1-2005. Circular 50-2010 (referencing Circular 40-2010 and Art. 4 of Acuerdo 12) brought to the attention of banks (not trustees) the need to apply enhanced due diligence for PEPs consistent with FATF R. 6. Circular 40-2010 was directed at both banks and trustees emphasizing the requirements on PEPs in Acuerdo 12 (Note that Circulars are not OEMs).

1243. There are no provisions to prevent the misuse of technological developments in ML/TF schemes. There are also no provisions that require to have policies and procedures in place to address any specific risks associated with non face-to-face business relationships or transactions.

1244. There is no provision that allows trustees to rely on intermediaries or other third parties to perform some of the elements of the CDD process (R. 9). This is very relevant to Panama trustees in the case of domestic and international business developed through other professional intermediaries in Panama and abroad, whether or not they are affiliated intermediaries or introducers. Some trustees have extensive international networks in other countries, especially through Panamanian law firms with overseas operations.

1245. **(R. 10)** Art. 1 (9) of Law No. 42 obliges trustees to keep mandatory customer identification and transaction documents for a period of five years. This requirement is narrower than of R. 10 where a broader set of records are required that would be sufficient to reconstruct individual transactions and provide a sufficient trail for investigations and prosecutions, including with respect

to international and national transactions, and business correspondence. It also does not provide the start of the retention period. Art. 3 of Executive Directive 1 of 2001 includes the retention period of five years and clarifies that it shall be kept as of the date of the date on CTR forms and documents. This, however, only applies to CTR related records and the start of the retention period is not appropriate for business relationship and account clients, for instance. Resolution 266 of 2010 which modified the requirements of Directive 1 of 2001 has similar provisions. Note that all of the essential criteria of R. 10 should be in law or regulations. However, this Executive Decree 266 of March 23, 2010 was fully revoked on March 31, 2010 by Executive Decree 294.

1246. Art. 7 of Acuerdo 12-2005 (OEM) requires trustees to keep copies of records acquired as part of customer due diligence under this Acuerdo, including identification and transaction documents, for at least five years after termination of the relationship with the client. It also requires that such records allow the reconstruction of the individual transactions of clients, in case of need. It is not clearly specified that such reconstruction could be used as evidence for the prosecution of criminal activities if necessary.

1247. There is no requirement that records be kept for longer periods when requested to do so by a competent authority and for such information to be available on a timely basis to domestic competent authorities (10.3)

1248. **(R. 11)** Art. 1 (3) of Law 42 (AML law) requires trustees to examine with special attention any transactions regardless of amount that may be linked to ML. In its broadest terms, this may include unusual, large and complex transactions and patters of transactions without apparent legal or economic purpose. Art. 5 (4) of Acuerdo 12-2005 however requires trustees to keep a record of all unusual transactions and activities including filing of related documents. However, there is no requirement to keep such records for at least five years available to competent authorities and the requirements do not specify that the background and purpose of such transactions be examined and recorded.

Effectiveness of Implementation

1249. Complete Casinos: Based on discussions with the industry, customer due diligence, particularly with respect to fraud and cash controls appears to be reasonably implemented. However, there seems to be an overemphasis on cash transactions reporting obligations (CTRs) and very little with respect to ML/TF risks and the necessary due diligence and care in the conduct of business to prevent and detect such activities. For instance, even the CTR requirement is weak as linked transactions under the established threshold are allowed to be recorded using pseudonyms which would make it difficult to link them. This suggests that many of the CTRs involve single transactions near or above B10,000. Less than 25 percent of customers are believed to be nonresident individuals.

1250. Casinos can pay high winnings with checks that can be deposited in local banks with the support of casino winning certifications. Maintaining strict CDD and recordkeeping controls to ensure that such instruments are not used for ML has been a challenge and there have been a few cases where checks have been issued against chips that were not the proceeds of large recorded winnings. The conversion from e.g., cash to chips to a bank check could facilitate ML.

1251. In addition, the structuring of transactions that meet the CTR threshold often leads to multiple CTRs being filed for a single customer. This potential structuring does not lead to a suspicion and

STR, emphasizing the view that overemphasis is placed on CTRs and not on STRs. This may also be a result of weak customer due diligence and recordkeeping, including with respect to multiple linked transactions (MTRs). The STRs filed by these casinos are as follows:

Year	STR Casinos
2009	4
2010	2
2011	17
2012	47
TOTAL	**70**

1252. According to the GCB, the number of inspections, which included AML, has declined sharply in the past year. These inspections mainly focusing on MTRs and CTRs reporting and recordkeeping requirements. As indicated under R. 24, inspection/audit resources are very thin and does not allow for ongoing oversight for AML/CFT purposes.

Year	Casinos	Inspections
2009	2	3
2010	7	15
2011	7	11
2012	2	3
TOTAL		**32**

1253. No sanctions have been imposed by the GCB for AML. One sanction that may be related to ML activities was sanctioned under the gaming laws instead. It has appointed two staff members (out of a total of 47 staff of which seven are inspectors responsible for the entire country) to participate in the supervision of AML for all the gaming sector that includes 18 complete casinos, 29 type A slot rooms, 16 sports betting rooms, two bingo houses and one racecourse, plus the five to seven internet casinos. There are no written inspection procedures for AML/CFT.

1254. Internet Casinos: The ML/TF risks and challenges to conduct effective CDD and recordkeeping on its online and foreign customers are greater than for complete casinos. While copies of identification records and other customer details are required to be sent electronically, face-to-face verification is not feasible. Moreover, at least some casinos keep bank accounts overseas because local banks may not be willing to establish relationships with them for risk reasons where they receive and pay funds associated with online gaming. Payments to gaming accounts in some cases go through offshore banks abroad using specialized internet payments systems. Credit, debit or prepaid cards can be used for such purposes also.

1255. There are generally no limits on the amounts that can be held on a customer's account, but withdrawals can be subject to maximum limits per transaction per week. The regulations allow for inactive accounts to be held up to one year, after which they are transferred to an inactive account following established rules for banks, but still subject to claim by the customer later. This practice would be akin to deposit taking without the requisite CDD and recordkeeping but involving high risk. Internet casinos generally discourage inactive accounts because they are not lucrative, but may provide an incentive to launder funds with insider assistance. Balances in accounts can be paid by bank check or wires on the instructions of clients, and not wired back to the account from which they originated.

1256. No STRs have been filed by internet casinos. Post mission the authorities indicated that all licenses and subleased licenses have been revoked. Supervisors do not have to copies of STRs sent to the UAF.

1257. Supervision by GCB has been negligible with one internet casino, e.g., having been visited only once in the past seven years for general purposes, making it difficult to ascertain and enforce proper CDD, recordkeeping and reporting requirements. There is no specialized staff in GCB on internet casinos.

1258. Real estate agents: At the time of the mission there were 3,113 natural persons and 911 legal entities authorized by the RETB/MICI to perform real estate brokerage services. Only legal entities are covered by the AML Law. In that sense, there is an important portion of real estate brokers with no AML/CFT supervision for compliance with CDD, recordkeeping and reporting requirements. This creates a significant systemic gap in AML/CFT coverage in a country where the real estate sector has experienced a boom in recent years.

1259. CDD in the real estate sector appears to be weak including with respect to nonresidents and property acquired or held in the names of legal entities (including bearer share companies and trusts), through professional intermediaries. According to Article 11(g) of Resolution 327 from 2004, the RETB/MICI has no sanctions available for making real estate agents (legal persons) comply with CDD requirements and can only impose fines for the non compliance of the CTR obligations imposed by Law 42 (AML law).

1260. Post mission, the MICI stated that the following general inspections, which mostly focused on CRT compliance with respect to AML/CFT, were conducted by the RETB during the past five years. The assessment team was not able to verify these statistics:

Year	No. Inspections	No. of entities covered	No. AML Sanctions
2009	135	96	0
2010	180	150	0
2011	480	380	0
2012	320	320	0
TOTAL	**1115**	**946**	**0**

1261. There is no verification of the other obligations stipulated in Articles 2 and 8 of Resolution 327 of 2004, such as the implementations of internal controls and reporting of suspicious transactions. The limited inspection scope can be explained because the legal obligations of real estate brokers (and sanctions) under Law 42 Art. 7 and Art. 11(g) of Resolution 327 of 2004 only apply to CTR reporting. There are no sanctions available for directors and senior management, and they do not include the possibility to suspend the license.

1262. Trustees: Only the trust business conducted by licensed trustees is subject to the CDD, recordkeeping, reporting and other obligations of Panama's AML/CFT regime. Other company services and related activities provided are not covered, and the supervision by the Superintendence of Banks of Panama (SBP) does not cover these other businesses. To the extent that trustees engage in corporate services that are not subject to the AML Law, this creates a significant sectoral gap in AML/CFT coverage of this sector and expose trustees to contagion risk from the nontrust unregulated and unsupervised activities.

1263. CDD is generally applied by trustees pursuant to the AML/CFT requirements but significant challenges remain with respect to clients that are legal entities with bearer shares including entities organized under the laws of other countries. Ongoing CDD challenges also arise with respect to legal entities held in trust where bearer shares are not held in custody by the trustees.

1264. Supervision of trustees for AML/CFT is still evolving and in process of transition to the AML/CFT unit of the SBP. The Trustee Supervision unit has about 14 staff at its disposal including 10 inspectors. There are 69 licensed trustees. The two government financial institutions (one bank and one savings and loans) do not require trust licensees and their trust business would, therefore, not be subject to the trusts and AML law and its supervision.

1265. The SBP does not supervise the nontrust activities of trustees such as corporate services. This is recognized by the SBP as a significant gap in supervisory coverage and does not allow them to take a holistic and detailed review of all the risk areas that can affect a trustee. In addition, in practice the inspection procedures applied by the SBP do not extend to the trustees CDD, recordkeeping and other risk management activities of legal entities under trust management, particularly when such legal entities (e.g., companies and private foundations) are bearer share entities for companies and/or are domiciled in other countries. Similar challenges arise when complying with CDD requirements when trustees administer trusts governed by the laws of other jurisdictions. These appear to be CDD, recordkeeping and reporting compliance challenges for both trustees and the SBP supervisors.

1266. Trustees have sent zero STRs to the UAF.

1267. According to the statistics provided by the SBP, nine trust service providers were sanctioned in 2009 for not sending a CTR on time.

5.1.2. Recommendations and Comments

1268. Include in the AML/CFT regime: lawyers, accountants, notaries, dealers in precious metals and stones, corporate services providers, and real estate agents (natural persons) in accordance with the FATF Recommendations.

Casinos

1269. CTF obligations should be included in the AML Law and relevant Agreements and Resolutions, that is in law or regulation

1270. Customer due diligence asterisked (*) requirements should be in Law 42 or Executive Decrees (regulations), not in OEMs. Consequently, they are currently insufficient to meet the broader customer due diligence requirements of R. 5, including for casinos.

1271. Law 42 and the Resolutions issued for casinos dealing with large cash transactions only specify B10,000, and not transactions by other means equivalent to this amount. For instance, it does not address wire transfer activity (receipts and payments by casinos through wire transfers, including internet casinos) and ongoing due diligence for accounts opened for longer term relationships as opposed to occasional.

1272. It should be mandatory to record the name and not a pseudonym in the MTRs to enable casinos to more readily identify linked transactions for purposes of the CTR and STR reporting requirement.

1273. Record keeping requirements in Law 42 are insufficient for the purpose of R. 10. They only apply to CTRs related documents. Broader requirements must be included in Law or Executive Decrees (regulations), including inter-alia the retention and sufficiency of records, correspondence, audit trail, and timely access for competent authorities.

1274. Insufficient provisions in law, regulations or OEMs for casinos to pay special attention to and examine complex, unusually large transactions, and to record such as defined under R. 11. The requirements for identification and reporting of STRs are insufficient for this purpose.

1275. Complete casinos and internet casinos should have specific and enhanced CDD requirements for PEPs.

1276. Strict measures for non face-to-face relationship should be established for internet casinos for purposes of R. 8, both with respect to CDD, receipt and payment of funds.

Real Estate Agents

1277. CTF obligations should be established by law, regulation or as appropriate OEMs.

1278. AML/CFT obligations should cover both natural and legal persons performing as real estate brokers and agents.

1279. All CDD (asterisked) and record keeping obligations outlined in the essential criteria should be established in law or regulation, and not by OEMs.

1280. Enhanced CDD obligations regarding PEPs are necessary.

1281. Consider CDD provisions for non face-to-face business and for business that rely on introducers or other intermediaries for certain elements of the CDD process.

Trustees

1282. CDD, recordkeeping and other obligations for trustees should extend to other services they provide, especially corporate services. Supervision should also extend to these other or complementary services to ensure compliance with the CDD and other requirements under R. 12.

1283. Specific CDD requirements for beneficiaries that are legal persons should be established, especially when they different from settlors.

1284. Obligations for conducting ongoing due diligence on the business relationship should be established.

1285. Measures to perform enhanced due diligence for higher risk categories of customer, business relationship or transactions must be enacted.

1286. There should be requirements for rejecting the business relation, terminate it or file a STR if the CDD can't be fully applied before or after it has commenced.

1287. There should be requirements for having policies and procedures in place to address risks associated with nonface to face business relationships or transactions.

1288. Provisions regarding trustees relying on intermediaries or other third parties to perform some of the elements of the CDD process should be enacted, considering that trustees in Panama have extensive international networks and develop international business through other professional intermediaries abroad, whether or not they are affiliated intermediaries or introducers.

1289. Broader set of records should be required that would be sufficient to reconstruct individual transactions and provide a sufficient trail for investigations and prosecutions, including with respect to international and national transactions, and business correspondence.

1290. Although the start of the record retention is stipulated in Article 7 of Agreement 12-2005 (OEM), this obligation should be specified by Law or Regulation.

5.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R. 12	**NC**	• Include in the AML/CFT regime: lawyers, accountants, notaries, dealers in precious metals and stones, corporate services providers and real estate agents (natural persons) in accordance with the FATF Recommendations. • CTF obligations are not addressed in Law or Regulations for casinos, real estate agents and trustees. • The large numbers of real estate agents that are natural persons are not covered under the AML/CFT framework. • CDD provisions for real estate agents non face-to-face business and for business that rely on introducers or other intermediaries for certain elements of the CDD process. • Most CDD requirements are not provided for in law and regulations as required under FATF. • CDD and record keeping obligations in Law or Regulation are too limited for Casinos and Real Estate Agents. • No enhanced CDD measures regarding PEPs in the casinos and real estate sectors. • Trustees are not required to specifically to identify and apply CDD to beneficiaries of trusts, particularly when the primary client (settlor) is not the beneficiary. • CDD does not include the identification of ultimate beneficiaries when the trust beneficiaries and settlors are legal entities. Other business activities performed by trustees, like corporate services, are not supervised and hence compliance and effective implementation of CDD, recordkeeping requirements and other requirements are not effective.

		• The start of the record keeping obligation for trustees is not covered under Law or Regulation.

5.2. Suspicious Transaction Reporting (R. 16)

5.2.1. Description and Analysis

1291. Legal Framework:

1292. As stated under R. 12, Lawyers, Notaries, Accountants, Dealers in Precious Metals and Stones, and Company Trust Services Providers are not covered by the Panamanian AML/CFT regime. With respect to the covered sectors (Trustees, Casinos and Real Estate Agents), there are significant gaps in the scope of coverage above in the Real Estate and Trustee sectors in that only legal entities are covered for real estate and nontrust business (e.g., company services business) conducted by Trustees is not subject to the AML/CFT regime and supervision.

1293. For the covered DNFBPs, the STR obligations imposed by Art. 1 (3), (5), (6) and Art. 3 of Law 42 (AML law) only apply to Trustees but not to casinos and real estate agents. Under Law 42, trustees have the same AML obligations as banks and other covered financial institution listed in Art. 1 of this Law, including with respect to due diligence, internal controls, training, and record-keeping requirements, as well as the reporting of STRs and CTRs.

1294. Art. 4 (2) of Executive Decree 1 of 2001 (a regulation) defined as reporting entities ("entidades declarantes") all financial and non-financial entities covered by Law 42 for purposes of CTR reporting. Art. 4 Executive Decree 266 of 2010 (modifying Executive Decree 1 of 2001) added the STR reporting requirement under Art. 1 (5) of Law 42 for all entities ("entidades declarantes) including casinos and real estate agents. However, and although this Executive Decree 266 of 2010 went beyond the requirements of Law 42 with respect to STRs, raising constitutionality issues under Art. 184 of the Constitution. This Executive Decree 266 of March 23, 2010 was nonetheless fully revoked on March 31, 2010 by Executive Decree 294.

1295. CTF issues are not addressed by Law 42 and there are not specific provisions with respect to a compliance function, audit, and employee recruitment/standards. Most of the requirements of R. 13 should be in law and regulations and to the extent STR related requirements are contained in OEMs for any of the three covered sectors, they would not meet the technical requirements of R. 13. There is no coverage of R. 21 issues in law, regulations or OEMs.

1296. Other enforceable means (OEMs) such as Resolutions and Agreements (Acuerdos) issued by the respective administrative agencies/regulators/supervisors for these sectors which have expanded and in some cases gone beyond the requirements of Law 42 and Executive Decrees with respect to R. 13–15, including by imposing new requirements like TF prevention and the filing of STRs with respect to casinos and real estate agents. As discussed above, administrative instruments (Executive Decrees, Resolutions and Acuerdos) should not go beyond the text and spirit of the law under which they were issued (Art. 184 of the Constitution). This poses a risk of challenge on constitutional grounds and being declared unconstitutional, illegal, and/or null and void by the relevant court.

1297. As stated above, under Article 7 of Law 42 casinos and real estate agents have only the obligations to file CTRs for operations above B 10,000. Trustees have the same AML obligations

described in Article 1 of Law 42 for banks and other covered financial institutions, including customer due diligence and record-keeping requirements, as well as the reporting of STRs to the FIU only for ML.

1298. Requirement to Make STRs on ML and TF to FIU (applying c.13.1 and IV.1 to DNFBPs):

1299. Complete Casinos: Law 42 (main AML Law) does not require casinos to report suspicion of ML of TF to the UAF.

1300. Nonetheless, pursuant to Article 83-A of Resolution 97 from 1997, amended by Resolution 31of 2003 (OEMs), casinos are required to report STRs (only for ML) directly to the FIU independently from their amount. These Resolutions are OEMs and do not meet the requirements of c.13.1-c.13.3 that should be in Law or Regulations. In Art. 13 and 14 of Resolution 31of 2003 added two new Articles 83-A and 83-B to Resolution 92 of 1997 requiring them to report directly to the UAF ML suspicious activities described in Art. 13. This article lists 10 specific circumstances that should lead to a ML suspicious report plus one general provision capturing any other behavior of clients that may give rise to suspicion. (Resolution 30 of 2003 amending Resolution 77 of 1999, also includes similar STR provisions for non-casino sports gaming operations). There are no other STR related provisions with respect to R. 13 and R. 14 criteria in these resolutions. Note that the cases to be reported as suspicious under Art. 13 are examples of potentially unusual or suspicious activity as opposed to concrete examples that should be reported to the UAF as STRs. and should be cited as examples only. The reportable cases are:

- Client gives under custody or deposit for gaming purposes, large amounts in checks, money orders and other negotiable instruments, (text of Resolution is missing words that could be “not consistent with the professional”) commercial or business (“activities”?) reported by the client.
- Client give under custody or deposit for gaming purposes, a high volume of dirty or wet bills, not in accordance with the nature of the professional activities, commercial reported by the client.
- Denial to provide requested information for filling a CTR.
- When the client tries to request an employee not to complete the required reports or to retain a record of transactions.
- When client gives false information in the CTRs
- When administrators/operators provide clients with loans when their declared activities are inconsistent with the credit granted. (Note this is more the failure or suspicion of the administrator/operator than that of the client. Should be when the client requests such credit).
- When the client tries to know about the closing period for gathering MTR for avoiding a CTR.
- Clients ask to withdraw large amounts of cash from a deposit account requiring checks from the casino for amounts less than B10,000.
- Clients exchange large amounts of money into chips, betting only small amounts and then ask for the exchange in cash again
- Clients use the casino as a financial service (e.g., depositing funds and transferring to third parties), without betting or betting minimal amounts.
- Any other behavior from the client that can lead to the suspicion of money laundering.

Internet Casinos

1301. As for complete casinos, there is no legal obligation to report STRs, and the OEMs enacted do not meet the requirements of c.13.1-c.13.3 that should be in Law or Regulations. Regarding these OEMs, Article 98 of Resolution 65 of 2002 for internet casinos falls short with respect to the obligation to report suspicious transactions. In this article, a suspicion is only defined as any transaction where the behavior of the player raises suspicion by virtue of particular aspects of himself/herself, or by the circumstances related to the transaction without taking into account the amount. There is no reference to money laundering and its predicate offenses. This article also establishes that the internet casino must have employees able to detect this kind of behavior to be able to register and report a transaction as suspicious, without mentioning specifically where to report such transaction. The officer in charge (Director) of the Gaming Room will be able to dictate instruments dictating the policies to be followed and the guidelines for the identification of suspicious transactions, which haven't been enacted.

1302. Resolution 373 of 2003 (Section d) provides instructions to complete casinos, but not to internet casinos, on filing out STR forms including examples of suspicious activities. However, this resolution erroneously relies on Art. 1 (3) and (5) of Law 42 (AML law) dealing with examination and reporting of transaction that may be linked to ML as the basis for the STR report as these articles did not apply to casinos in 2003.

1303. Casinos and internet casinos are not required by law, regulation or any OEM to report to the FIU a STR when it suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.

Real estate agents

1304. Similar to casinos, real estate agents and developers (legal entities only) are not subject to the STR requirements of Law 42. However, Art. 8 of Resolution 327 of 2004 (OEM), requires real estate agents to report ML and TF suspicious transactions directly to the FIU after analyzing the following:

- Transactions with unusual characteristics according to the normal patterns of behavior of the client.
- Information about the transaction or client coming from external sources.
- Any other reason that makes the real estate agent believes that the transaction is suspicious.
- A suspicious pattern of services based on the periodic review of customer transactions.

1305. Since the above mentioned requirements are established in OEM , we can conclude that there are no other provisions for complying with the criteria of R. 13 and SR. IV.

Trust Companies

1306. The legislation governing trusts and trustees do not have STR provisions. Art. 112-114 of Law 9 for banks and the SBP does however specify AML/CFT requirements including the duty on all entities subject to its supervision (would include trustees) to provide all information required by law, decrees and other regulations. This would provide a general basis for STR reporting (Art. 113).

1307. Art. 1 (3) and (5) of Law 42 (AML law) requires trustees to examine transactions that may be linked to ML and to send STRs directly on their own initiative to the UAF.

1308. Art. 10 Acuerdo 12-2005 issued by the SBP requires trustees to keep records of suspicious transactions linked to ML and TF as well as to any other illicit activity covered by this Acuerdo (it is not clear which other illicit activity is covered). Art. 10 requires trustees to: create record including details of the suspicious transaction including the observations of the employee, inform the compliance officer that will review the transaction and provide comments, report the suspicion to the UAF through the compliance officer within 60 days of the compliance officer commenting on the transaction, and record the date and details of the STR sent to the UAF. The 60 day reporting requirement is very long, and does not meet the "promptly" requirement stated in R. 13. Acuerdo 10 has provided examples of suspicious transactions. Under Art. 12 the SBP is also required to report STRs to the UAF if it becomes aware of suspicion in the course of these supervisory activities.

1309. STRs Related to Terrorism and its Financing (applying c.13.2 to DNFBPs):

1310. Casinos

1311. Casinos and internet casinos are not required by law, regulation or any OEM to report to the FIU a STR when it suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.

1312. Real estate agents

1313. Real estate agents (natural persons) are not required by law, regulation or any OEM to report to the FIU a STR when it suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist.

1314. As stated previously in this report, Art. 8 of Resolution 327 of 2004 requires real estate agents (legal persons) to file ML and TF suspicious transactions reports to the FIU. TF is not covered by either Law 42 or its Executive Decrees (regulations).

Trustees

1315. Similar to real estate agents, law and regulations do not include TF reporting requirements. However, Art. 10 of Acuerdo 12-2005 extends the STR obligation for TF but as indicated earlier, the validity of this and similar requirements may be challenged on constitutional grounds.

1316. Attempted Transactions and No Reporting Threshold for STRs (applying c.13.3 and IV.2 to DNFBPs):

1317. Casinos including Internet Casinos: Although obligations covered by c.13.3 and IV.2 must be part of a Law or Regulation. The STR completion instructions of Resolution 373 from 2003 (OEM) states that STRs should be completed regardless of the amount of the transaction. The definition of suspicious transaction for internet casinos also mentions that it must be identified regardless of the amount of the transaction. Transactions for both types of casinos and the STR provisions imply a completed transaction and hence attempted transactions are not covered.

1318. Real estate agents and trustees: No specific limits apply for STRs for the trustees. However, attempted transactions are not covered and the STR obligations and instructions assume a completed transaction. In the case of real estate agents, these criteria are not covered by Law of Regulation.

1319. Making of ML and TF STRs Regardless of Possible Involvement of Fiscal Matters (applying c.13.4 and c.IV.2 to DNFBPs):

1320. Casinos, real estate agents, and trustees**:** The STR reporting obligations in Law 42 for trustees and in OEMs for Casinos and real estate agents, do not stipulate, either implicitly or explicitly, that a report should be filed regardless it is thought to involve tax related suspicions.

1321. Additional Element—Reporting of All Criminal Acts (applying c.13.5 to DNFBPs):

1322. Casinos, real estate agents, and trustees: There are no limitations with respect to the types of criminal activities that give risk to ML suspicion; hence all illicit activities would be covered.

1323. Protection for Making STRs (applying c.14.1 to DNFBPs): (See R. 14 above for financial institutions)

1324. Casinos: Art. 1 (6) and Art. 3 of Law 42 provide protection against liability when reporting STRs and any other information required by this Law or any other associated regulations. However, because casinos are not subject to STR obligations under this Law, they are not covered by this safeguard.

1325. Part VI (4) of Resolution 373 of 2003 states that all information provided to the UAF by the casinos under the AML legislation will not involve a violation of the professional secrecy nor the restrictions about disclosure of information derived from the confidentiality imposed by contract or by any statutory provision. However, the validity of this protection contained in a STR completion instruction document is doubtful because such protections are not provided by Law 42 and the Executive Resolutions. Similar provisions and issues arise with respect to internet casinos in Art. 100 of Resolution 65 of 2002.

1326. Real estate agents: No liability protection is provided to real estate agents, not even in Resolution 327 of 2004.

1327. Trustees: Art. 1 (6) and Art. 3 of Law 42 exempt STR reporting entities, including trustees, their officers, directors, employees, representatives against liability generally for reporting suspicion to the UAF. Such STR would not constitute a violation of the professional secrecy or a violation of restrictions over disclosure of information, derived from the contractual confidentiality or from any legal or regulatory provision, and neither will it imply any responsibility for the natural or juridical persons mentioned in this Law nor for their dignitaries, directors, employees or representatives.

1328. Prohibition Against Tipping-Off (applying c.14.2 to DNFBPs):

1329. Trustees: See R. 14 for financial institutions that also applies to trustees. The tipping off prohibition in the AML Law is insufficient.

1330. Casinos and Real Estate Brokers (legal persons only for Brokers): Because these sectors are not covered for STR reporting under the AML Law, the tipping off prohibitions do not apply to them.

The extension of STR reporting under Executive Decree 266 did not provide for such prohibitions. However, this Executive Decree 266 of 23 March 2010 was fully revoked on March 31, 2010 by Executive Decree 294.

1331. Additional Element—Confidentiality of Reporting Staff (applying c.14.3 to DNFBPs):

1332. There is no specific law or regulation or any other measure to ensure that the names and personal details of staff of casinos, internet casinos, real estate agent companies and trustees that make a STR are kept confidential by the UAF. Nonetheless, there is a general requirement in Executive Decree 136 of 1995 that established the UAF in its current form requires the UAF and its staff will maintain total secrecy with respect to any information they receive or are aware of in connection with their functions, and in this regard shall comply with all applicable constitutional and legal provisions, with the exception of the disclosure and provision of information to those authorized governmental bodies pursuant to Art. 2 of this Decree, e.g., to prosecutors.

1333. Establish and Maintain Internal Controls to Prevent ML and TF (applying c.15.1, 15.1.1 and 15.1.2 to DNFBPs): (See R. 15 above for financial institutions)

1334. Casinos and Real Estate Brokers: Neither Law 42, nor the Executive Decrees issued thereunder, require casinos and real estate agents to establish AML/CFT policies, procedures and internal controls and compliance arrangements required under c.15.1, c.15.1.1, and c.15.1.2.

1335. Casinos: Resolution 2 of 1998 establishes general control requirements for casinos but not specifically for AML/CFT except with regards to CTR related obligations (Chapter V). Resolution 92 of 1997 has some basic requirements for key staff of casinos to obtain a certificate of fitness (“certificado de idoneidad”) (Title II Chapter X). In addition, Title V Chapter VI of this Resolution requires an internal control system for complying with CTR related reporting obligations in Art. 74–82 of that Resolution.

1336. Resolution 9 of 2003 requires casinos to designate one or more persons as compliance officers responsible for overseeing compliance with AML (not CTF) requirements (Art. 1). Art. 3 and 5 of this resolution establishes qualification requirements for compliance officers including educational and professional competence and experience. Conflicts of interest issues are addressed in Art. 5. The GCB is to be informed of such appointments. The main functions of compliance officers include (Art. 7): (a) developing AML policies and programs, (b) developing reports required by the UAF and GCB (CTRs and STRs), and (c) dissemination within the casino information on legal and regulatory requirements and the internal AML procedures.

1337. The policies and programs that the compliance officer should develop must contain:

- Mechanisms for the detection of suspicious transactions, emphasizing the record of the information of the client, the type of transaction, dates, among others.
- Mechanisms for analyzing any operation, no matter the amount, that may be related to ML coming from the crimes described in la law.
- Procedures of internal control and communication to prevent ML transactions.

1338. These requirements do not specify the need for such policies and procedures to include CDD and recordkeeping except with respect to STR and more broadly to prevent ML.

1339. There is no provision that such compliance officers be at management level or that they have full access to all records and relevant information.

1340. On the other hand, internet casinos are not required to appoint a compliance officer, nor to establish and maintain Internal Controls to Prevent ML and TF.

1341. Real estate agents: Art. 2 of Resolution 327 from 2004 requires real estate agents to implement communication procedures and internal controls to prevent ML and TF, taking into account the following aspects:

- Obligation to fight ML and TF.
- Operational structure for enforcing the AML norms (CTF not included).
- Designate an employee for coordinating and performing compliance activities.
- Analyze inherent risk of ML and TF.
- Foster continuous training programs for the ML and TF prevention, through conferences, seminars and the distribution of publications.
- Make the real estate agents' managers and personnel and other entities belonging to the corporate group be aware about the policies, norms and procedures for the prevention of ML and TF.

1342. Article 9 of Resolution 327 mentions different AML/CFT responsibilities of the real estate agents that must be observed by the "person responsible of the compliance activities."

1343. Despite the above mentioned, real estate agents (legal persons) are not specifically obliged to have and maintain formal internal procedures, policies and controls to prevent ML and TF including with respect to CDD, recordkeeping and STR reporting, and to communicate these to their employees. Neither should the compliance officer be at management level and have access to all required information.

1344. Trustees: Art. 1 (7) and (8) of Law 42 requires trustees to establish internal control and communication procedures and mechanisms to prevent ML (not TF). The adequacy of these procedures and mechanisms will be subject to the supervision of the SB which can require corrective action. Furthermore, trustees are required to make employees aware of the legal requirements of Law 42 including developing training programs to identify and detect transactions that could be linked to ML. While this procedure is broad, it does not specify that the AML system specifically includes policies and controls with respect to CDD, recordkeeping and reporting of STRs.

1345. Unlike for banks (Acuerdo 10-2000), there are no compliance requirements established for trustees by the SB. There is only an indirect and implicit requirement in Art. 8 of Acuerdo 12-2005 that requires banks and trustees to have a manual of policies and procedures approved by the Board of Directors to implement KYC requirements. These policies and procedures should be updated periodically and be tailored to the complexity of activities taking account the various categories of clients and their risks with respect to illicit activity associated with their accounts or transactions.

1346. Independent Audit of Internal Controls to Prevent ML and TF (applying c.15.2 to DNFBPs):

1347. Casinos, real estate, and trustees: Real estate agent companies and trust service providers are not required to maintain an adequately resourced and independent audit function to test compliance

with AML/CFT procedures, policies and controls. For casinos (including internet casinos), Article 83 of Resolution 92-1997 requires an independent audit function to test only the CTR and MTR obligations.

1348. Ongoing Employee Training on AML/CFT Matters (applying c.15.3 to DNFBPs):

1349. Casinos: There is only an indirect requirement for casinos in Art. 7 (d) of Resolution 9 of 2003 for compliance officers to organize training programs for staff to have due care to prevent ML.

1350. These sectors are not required to establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and TF techniques, methods and trends, AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting

1351. Real estate agents: Art. 2 (e) of Resolution 327 of 2004 has an indirect training requirement embedded in the need to have proper communication and internal control procedures that foster continuous training for preventing ML and TF through conferences, talks and seminaries, and by the distribution of related publication. These do not cover ML and TF trends, techniques and methods. Nonetheless, only one training activity had been done according to the statistics provided by the RETB/MICI.

1352. Trustees: Art. 1 (8) of Law 42 (AML Law) requires trustees to take measures to inform staff of the requirements derived from this Law. Such measures should include training plans and courses for staff that would train them to detect activities that may be related to ML, and to know how to proceed in such cases. Agreement 12-2005 that applies to banks and trustees does not contain a training requirement. There is no requirement to provide training on ML and TF techniques, trends and methods, nor on the specifics of CDD, e.g., those contained in the Agreement.

1353. Employee Screening Procedures (applying c.15.4 to DNFBPs):

1354. Casinos and real estate agents: There are no obligations in the AML/CFT requirements for real estate agents to properly screen their employees to ensure high standards when they are hired. On the other hand, Article 26 of Resolution 92-1997 requires Casinos to submit to the GCB police records, photographs and fingerprints of their employees for granting working credentials that will allow them to work in a gaming room. There are no screening procedures for employees that will perform their duties outside a gaming room, like the administrative staff and cashiers for example.

1355. Article 9 of Acuerdo No. 12-2005 requires trustees to adequately select and supervise the conduct of their employees, especially the ones that hold positions that deal with client relationships, receipt of money and control of information. In addition, trustees must establish and maintain employee profiles of for the duration of the labor relationship.

1356. Additional Element—Independence of Compliance Officer (applying c.15.5 to DNFBPs):

1357. Casinos and real estate agent: There is no provision for the AML/CFT compliance officer being able to act independently and to report to senior management above the compliance officer's next reporting level or to the board of directors.

1358. Trustees: Unlike the compliance officer independence and internal reporting provisions in Agreement 10-2000 for banks, there are no similar provisions for trustees.

1359. Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c.21.1 and 21.1.1):

1360. Casinos, real estate brokers and trustees: There are no obligations for these sectors to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations.

1361. There are no measures in place to ensure that they will be advised of concerns about weaknesses in the AML/CFT systems of other countries.

1362. Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c.21.2):

1363. Casinos, Real estate brokers and Trustees: There is no specific obligation for the casinos and internet casinos to examine and record transactions that have no apparent economic or lawful purpose with persons from countries which do not or insufficiently apply the FATF Recommendations.

1364. Real estate agents, and trustees: Although Article 8 (1) of Resolution 327 identifies as one of the steps of the analysis process the unusual transactions regarding the patterns identified for the client, there is no obligation to have the written findings be available to assist competent authorities (e.g., supervisors, law enforcement agencies and the FIU) and auditors.

1365. Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c.21.3):

1366. There are no provisions for casinos, real estate broker's agent companies, and trustees to apply service providers for applying countermeasures when a country continues not to apply or insufficiently applies the FATF Recommendations.

Effectiveness of Implementation

1367. Based on STR statistics provided by the UAF, compliance by all three sectors (casinos, real estate agents, and trustees) has been very weak.

Year	Casinos	Real estate agents	Trustees
2009	4	0	2
2010	2	0	0
2011	17	0	0
TOTAL	**23**	**0**	**2**

1368. Real estate agents have filed zero STRs at least in the past three years in spite of the real estate boom that Panama has been experiencing. In the past two years trustees have also filed zero STRs and only two in 2009. STRs filed by casinos was negligible during 2009 and 2010 but

experienced a sharp but small increase of 15 STRs in 2011. However, this number is still low and indicates that there are number of casinos that have not filed a single STR.

1369. The relatively weak CDD requirements and compliance may be the main reason for the low or nil number of STRs filed by these sectors (see R. 12 and R. 16 above). In addition, supervision particularly of casinos and real estate agents is minimal. Both casinos and supervisors also seem to place a disproportionate emphasis on CTR requirements as opposed to more broad based AML/CFT and STR requirements. Resource capacity at the supervisory agencies for these two sectors is also low.

1370. The situation with trustees, a high risk sector for ML, is a bit more complex. While the SBP is better resourced than the RETB and the GCB to enforce the AML/CFT and STR requirements, this has not translated into strong CDD and STR compliance. Perhaps the narrow scope of SBP supervision (only the trust business conducted by trustees and not their other corporate services is supervised) has led to this. In addition, based on reviews of inspection results, it appears that the SB does not deepen its analysis of compliance in the more complex activities of trustees.

1371. Representatives from the real estate sector that were interviewed declared that they didn't know about the existence of Resolution 327 from 2004, and all the obligations related to it including TF and ML suspicious transaction reporting. They have received brief inspection visits by the RETB for compliance with the AML law and this Resolution.

1372. As stated above, under Article 7 of Law 42 casinos and real estate agents (legal persons) have no legal obligation to file STRs on ML. They have that obligation under the OEM previously mentioned that go beyond this umbrella law. In the case of casinos, TF reporting is not even addressed. In addition, trustees have only the duty to report STRs to the FIU only for ML while the TF obligation also imposed by an OEM that goes beyond the umbrella Law 42. The lack of adequate legal and regulatory provisions hinders sufficient effective implementation of the FATF requirements.

1373. Statistics (R. 32):

1374. Other than for trustees, statistics mentioned in R. 24 are insufficient for purposes of properly identifying whether the covered DNFBPs are effectively implementing particularly the CDD and STR obligations. This is largely due to the fact that supervision is weak. (See R. 24).

5.2.2. Recommendations and Comments

1375. Include in the AML/CFT regime: lawyers, accountants, notaries, dealers in precious metals and stones, corporate services providers and real estate agents (natural persons) in accordance with the FATF Recommendations.

Casinos

- Obligation to file STRs should be enacted in a Law or regulation, and should include TF.
- STRs should be filed for attempted transactions, and regardless of whether they are thought, among other things, to involve tax matters.

1376. Compliance officer should have a management level and have timely access to customer identification data and other CDD information, transaction records, and other relevant information.

1377. Internet casinos should be required to appoint a compliance officer, and to establish, maintain and independently audit internal controls to prevent ML and TF.

1378. Casinos should establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and TF techniques, methods and trends, AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting

1379. Casinos and internet casinos should place screening procedures to ensure high standards when hiring employees.

1380. Casinos and internet casinos should examine unusual transactions related to countries which do not or insufficiently apply the FATF Recommendations.

1381. It is necessary to put into place screening procedures to ensure high standards when hiring employees.

Trustees

1382. It's necessary to specify that the STRs must be submitted regardless the amount of the transaction, and if it was an attempted transaction.

1383. It should be required to trustees to maintain internal procedures, policies and controls to prevent ML and TF, and to communicate these to their employees.

1384. A specific obligation for Trust companies to appoint a compliance officer should be enacted.

1385. Ongoing employee training should be required for the employees of trustees.

1386. Together with the obligation stating that trustees must pay special attention to any kind of transaction no matter the amount, that could be linked to ML (not TF), it is necessary to establish the specific obligation to have the written findings be available to assist competent authorities (e.g., supervisors, law enforcement agencies and the FIU) and auditors.

1387. The SBP should supervise, together with the trust business conducted by trustees, their other corporate services. In addition, SBP should deepen its analysis of compliance in the more complex activities of trustees.

1388. Timeline for reporting of suspicious transactions must considerably reduced.

Real Estate Agents

1389. Obligation to file STRs for ML and TF should be enacted in a Law or regulation.

1390. Protection by law is needed from both criminal and civil liability for the directors, officers and employees (permanent and temporary) for breaching of any restriction on disclosure of

information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU.

1391. There is no specific mention that the STRs should be submitted regardless the amount of the transaction, and if it was an attempted transaction.

1392. Real estate agents should be obliged to have and maintain formal internal procedures, policies and controls to prevent ML and TF, and to communicate these to their employees.

1393. Specific provisions are needed for the management level of the compliance officer and he/she and other appropriate staff should have timely access to customer identification data and other CDD information, transaction records, and other relevant information.

1394. Screening procedures to ensure high standards when hiring employees should be required.

1395. Obligation to have the written findings about the analysis of unusual transactions should be available to assist competent authorities (e.g., supervisors, law enforcement agencies and the FIU) and auditors.

1396. Obligation to have and maintain formal internal procedures, policies and controls to prevent ML and TF including with respect to CDD, recordkeeping and STR reporting, and to communicate these to their employees, should be considered, as well as the compliance officer be at management level and have access to all required information.

1397. It is necessary to put into place screening procedures to ensure high standards when hiring employees.

Casinos, trustees and real estate agents

1398. Casinos and real estate agents should have the legal obligation to file STRs on ML, and not only by OEM. In addition, trustees only have the legal duty to report STRs to the FIU only for ML under the AML Law (Law 42). TF reporting should be extended to all these sectors by law or regulation.

1399. STRs should be filed by these sectors regardless of whether they are thought, among other things, to involve tax matters.

1400. These sectors should be required to file STRs on attempted transactions.

1401. Directors, officers and employees (permanent and temporary) should be prohibited by law from disclosing ("tipping off") the fact that a STR or related information is being reported or provided to the FIU.

1402. These sectors should report to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offense for money laundering domestically.

1403. These sectors should be required to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls.

1404. These sectors should give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations.

1405. Measures to ensure that these sectors will be advised of concerns about weaknesses in the AML/CFT systems of other countries should be considered.

1406. Implementation

- Enhanced supervision should focus on enforcement of CDD requirements and compliance for casinos (including internet casinos), real estate agents and trustees, particularly to increase the number of STRs filed by these high risk sectors.
- Emphasis on CTR requirements should be balanced in the sectors of casinos and real estate agents, by giving a major importance to the AML/CFT and STR requirements. Resource capacity at the supervisory agencies for these two sectors should be also fostered.

5.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R. 16	**NC**	The AML/CFT regime does not include: lawyers, accountants, notaries, dealers in precious metals and stones, corporate services providers and real estate agents (natural persons) in accordance with the FATF Recommendations. • Casinos and real estate agents have no legal obligation to report ML (only by OEM). • Trustees, casinos and real estate agents have no legal obligation to report TF (for trustees and real estate agents only by OEM). • No tipping off prohibitions for casinos (including internet casinos), trustees and real estate brokers. • No requirements for management level of the compliance officer in the casino and real estate sectors. • No specific requirement for appointing compliance officer for trustees and internet casinos. • Heavy emphasis in CTR reporting over the STR obligations for trustees, real estate agents and casinos. Very low number of STRs was filed by all covered DNFP sectors. • No specific provision for all sectors regarding attempted suspicious transaction, and regardless of whether they are thought to involve tax matters. • No requirements for all covered DNFBP sectors to maintain an adequately resourced and independent audit. • No requirements for all covered DNFBP sectors to pay special attention to business relationships and transactions with countries which do not or insufficiently apply the FATF Recommendations.

		• No obligation for all covered DNFBP sectors to analyze and record unusual transactions with counterparties in countries with weak AML/CFT systems.

5.3. Regulation, Supervision, and Monitoring (R. 24–25)

5.3.1. Description and Analysis

1407. Legal Framework:

1408. Trustees, casinos, and real estate agents are governed by their sectoral legislation that designates their supervisors responsible for licensing and oversight. In addition, Executive Decree 1 of 2001 and its amending Decrees designate the supervisory agencies for each entity covered by Law 42 of 2001 as follows:

DNFBP	SUPERVISOR
Casinos	Gaming Control Board (GCB), from the Ministry of Economy and Finance (MEF)
Real estate agents	Real Estate Technical Board (RETB), from the Ministry of Commerce and Industries (MICI)
Trustees	Superintendence of Banking of Panama (SBP)

1409. Regulation and Supervision of Casinos (c.24.1, 24.1.1, 24.1.2, and 24.1.3):

1410. Complete Casinos: Law Decree 2 from 1998 establishes the legal framework for complete casinos. Article 8 of this Law designates the GCB ("Junta de Control de Juegos" or Gaming Control Board) as the governing body of all the gaming activities. The GCG is a dependency of the Ministry of Finance and Treasury (now the Ministry of Economy and Finance or MEF).

1411. Article 12 of Law Decree No. 2 entitles the governing body (Board) of the GCB, composed of representatives from the Ministry of Economy and Finance, the General Comptroller and a member of the Legislative Assembly, with the following functions:

- Monitor, control, prevent, investigate and inspect the operation of games of chance and wagering activities.
- Approve, deny, condition or limit requests for contract administration and operation of games of chance and wagering activities.
- Enact, repeal, alter, amend and update the regulations governing the operation.
- Issuing gambling licenses.
- Give the rulings concerning gaming operations.
- Impose sanctions and penalties as may be appropriate under the regulations.
- Conduct inspections, investigations, audits and issue citations.

1412. According to Article 20 of Law Decree 2, the GCB works through the Directorate of Gaming Rooms Inspections (for the purpose of complete casinos). This directorate has, among others, the following functions:

- Receiving and processing applications for gaming operations.

- Recommend the approval or rejection of the above mentioned applications.
- Perform inspections, investigations and audits.
- Impose fines and sanctions.

1413. The above functions of the GCB provide an adequate legal framework to perform its role as supervisor and regulator of casinos.

1414. Article 147 of Resolution 92 of 1997, added by Resolution 31 of 2003, states that the GCB is responsible for ensuring compliance with the requirements set forth in Law 42 (AML law) or the applicable on prevention of ML. Furthermore, Article 148 of amended Resolution 92 states that failure to comply with the provisions of the AML section of Resolution 91 of 1997 or the laws in force in this matter shall be punished with fines of B5,000 to B1,000,000 similar to the sanctions provided by Law 42. There are no sanctions available for directors and senior management, and they do not provide for the suspension of licenses.

1415. Article 43 of Decree Law No. 2 of 1998 stipulates that the GCB can grant contracts to natural or legal persons that meet all the requirements prescribed in this Law and its regulations. In addition, Article 73 states that for each contract, one or more gaming licenses can be granted.

1416. In the case of natural persons, Article 62 (e) of Decree Law 2 requires the personal background of the applicant, criminal background, commercial activities, financial and commercial information for the last 10 years, as well as other information that can be requested for the specific case.

1417. In the case of legal persons, Article 71 (d) stipulates that they must be properly constituted and organized in Panama, or registered as a foreign company in the Public Registry of Panama. To this effect, the following information must be provided Article 71(f):

- Documents of incorporation of the legal entity.
- Names and personal and financial records of all officers, directors and key employees.
- Financial structure of the legal person, including a list of all its shares that are under circulation, and of their related rights.
- Names of the shareholders of the legal persons.
- Procedures used by the applicant to issue bonds or participation in the profits.

1418. There is no prohibition on the issue of bearer shares by casino owning or operating legal entities, and there is no obligation to know the ultimate beneficial owners of the applicants.

1419. In addition, the natural and legal persons linked to the authorized casinos and the applicants require certificates of probity issued by the GCB after an investigation has been conducted pursuant to Decree Law 2 of 1998:

- Certificate of Suitability: Allows a natural or legal person to participate in the activities of the already authorized casino (Art. 7 and 77). It has to be requested as well by natural persons having 10 percent or more shares of the applicant (Art. 81), or less if the GCB considers appropriate (Art. 82).

- Certificate of Consent: Allows a legal person to be shareholder of an applicant or an already authorized legal person (Art. 7). It has to be requested as well by legal persons having 10 percent or more shares of the applicant (Art. 80), or less if the GCB considers appropriate (Art. 84)

1420. Among the measures stated in Article 71 (c) of Decree Law 2 of 1997, every person applying for a contract to the Gaming Control Board must successfully complete the investigation of probity and background that is performed by the National Security Council of Panama. It is specifically stated that the natural persons controlling the applicant legal person will also have to pass through this screening. But as stated previously, there are no mechanisms in place for the GCB to identify the beneficial owners of applicants especially those that are legal persons, which significantly limit the scope of the licensing procedures for such a risky sector.

1421. For the verification of any changes in the structure of the authorized legal persons, the GCB can verify the following documents that have to kept:

- Certified copy of the act of incorporation, and any amendments.
- Certified copy of the bylaws, and any amendment.
- Certified copy of the commercial license.
- List of all the officials, as well as the current and former directors.
- Minutes of the shareholders´ meetings.
- Minutes of the boards of directors.
- List of all the shareholders, with their names, address, number of shares, date the shares were acquired.
- Registry book of shares.
- Registry with all the transfers of the capital stocks.
- Records for the payments for stocks.

1422. Internet casinos: The licensing requirements, process and background checks for internet casinos are broadly similar to that for complete casinos and are also governed by Resolution 65 of 2002. Art. 6 requires that internet casinos be licensed, regulated and supervised by the GCB. Art. 7 and 10 of Resolution 65 sets out the qualification and licensing application requirements for persons that enter into internet casino contracts with the GCB. Under Art. 7 and Art. 22 of this resolution, each internet casino must enter into a contract with the GCB. Under this contract, one or more licenses can be granted for each internet gaming site required. Licenses can be granted for up to seven years. Resolution 10 of 2004 amended Art. 22 of Resolution 65 allowing for the contract holder to lease its operating rights to others to operate internet casinos. In such cases, the lessees shall be subject to the qualification and licensing application requirements before the GCB under Art. 7 and 10 of Resolution 65 as described above. To date only one contract has been granted to a company that is not operating an internet casino. Post mission, the authorities indicated that there is one authorized internet casino (not operational) that has entered into subleases with three internet operators.

1423. As for complete casinos, there are no mechanisms in place for the GCB to identify the beneficial owner of the applicant legal person, which significantly limit the scope of the licensing process especially for this risky sector.

1424. Monitoring Systems for Other DNFBPs (c. 24.2 and 24.2.1):

1425. Real Estate Agent (companies only): By means of Law Decree 6 of 1999, natural and legal persons acting as real estate agents are required to obtain a license from the RETB (attached to the MICI). However, only legal persons are subject to the AML/CFT requirements. The RETB is made up of:

- Minister of MICI,
- Minister of Housing,
- Minister of MEF, and
- Two representatives from the associations of real estate agents.

1426. According to Article 8 of Law Decree 6 of 1999, the RETB has a Secretariat under MICI (Secretaria de Actas y Correspondencia) responsible for the oversight of this sector.

1427. Law 42 (AML law) only requires legal persons acting as real estate agents to file CTRs. For these purposes, MICI through the RETB was designated as the supervisory authority by Executive Decree 1 of 2001 as amended by Executive Decree 55 of 2012, pursuant to the provisions of Law 42.

1428. Resolution 327 of 2004 was issued to make general AML/CFT provisions for real estate agents, particularly with respect to CTR and STR reporting requirements. Art. 11 of this Resolution sets out the functions of the RETB with respect to real estate agents that include:

- Obtain general information about the real estate companies.
- Send CTR information to the FIU.
- Conduct **monthly follow up of reporting obligations** (presumably CTRs as STRs are sent directly to the UAF) and identify those that are not complying.
- Make recommendations (to real estate agents?) for corrective measures to strengthen the system of internal controls, administration and prevention (of AML?)
- Periodically review compliance with AML/CFT laws.
- Inform the UAF of potential ML and TF cases it detects in the process of carrying out its activities.
- Impose fines under Art. 8 of Law 42 by own initiative or on request by the UAF.

1429. Trustees: Trust Law 1 of 1998 governs the functions of trusts in Panama, and sets out trustees' obligations and role in the administration of trusts. The main regulation with respect to Law 1 is Executive Decree 16 of 1984. Art. 36 of the Trust Law 1 designates the SBP as the competent authority to supervise and oversee trust business in Panama. Moreover, Art. 4 of Executive Decree 16 requires trustees to be licensed by the SBP, after meeting the requirements established in Article 6 of the same instrument which includes the provision by applicants of, inter alia:

- Copies of valid incorporation documents of the applicant company registered in the Public Registry.
- Curriculum vitae and documents evidencing the professional qualifications and expertise of the Directors, officers, managers, and other persons to manage the company.
- Personal and commercial references of the shareholders, directors, officers, who will manage the company.
- Sworn statement of not having been disqualified to carry on business.

- A certification issued by a Certified Public Accountant attesting the shareholders and their share of participation.

1430. In addition, AML Executive Decree 1 of 2001 also designates the SBP as the competent supervisory authority for trustees for purposes of Law 42 (AML law) granting it power to impose sanctions with fines ranging from B5,000.00 to B1,000,000.00 as provided for under Art. 8 of Law 42 and Art. 15 of the AML Acuerdo 12-2005.

1431. Art. 17 of Executive Decree 16 of 1984 empowers the SBP to conduct inspections of trustees for compliance with obligations governing trust business. Under Art. 18 of this Decree the SBP can apply corrective measures, suspend or revoke trustee licenses if it is in breach of laws or is conducting its business in a manner that is against the interest of its clients or the public. There are no sanctions available for directors and senior management besides the criminal penalties established in Law 45 of 2003 about financial crimes.

1432. Secrecy: Art. 20 of Executive Decree 16 of 1984, amended by Executive Decree 213 of 2000, states that the information obtained by the SBP and other Government entities authorized by Law to perform inspections or collect documents related to trust operations and their respective officers could only be disclosed to the competent administrative or judicial authorities for performing their legal and regulatory duties.

1433. Chapter IV of Executive Decree 52 of 2008 which consolidated Law Decree 9 of 1998 into one document provides the banking supervision and inspection powers of the SBP. In particular, Art. 66 of Executive Decree 52 states that for purposes of inspection of banks, the SBP shall not inspect firms over which the bank has effective control in its capacity as trustee. It is understandable that the SBP would not for practical purposes be expected to conduct physical inspection of the premises and activities of such companies in the case of operating entities. However, to the extent that "inspections" are broadly defined to include inspection of records pertaining to such firms under a trustees' control, this would significantly limit the capacity of the SBP to verify whether or not the trustee complied with the CDD and other AML/CFT obligations under Law 42, Decrees, Acuerdos and any other relevant instrument. Ascertaining the activities of the underlying legal entities under trust administration should be part of the CDD process as it would help in the CDD of settlors, beneficiaries and any other parties to a trust.

1434. The SBP is only authorized to supervise trustees (fiduciaries) with respect to their trust business, and hence their AML/CFT oversight activities are limited to trust business. Considering the multiple company services that they offer besides the trust, broader supervision is recommended.

1435. Guidelines for DNFBPs (applying c.25.1):

1436. There are no guidelines for real estate agents (legal persons) and trustees have been issued by their supervisory authorities other than examples of suspicious activities contained in SBP Agreement 12-2005, which is largely focused on banking activities.

1437. For casinos and internet casinos, the GCB enacted Resolution 373 of 2004 containing the following guidelines:

- List of AML laws and regulations.

- List of OEMs for the sector.
- Comprehensive guidelines regarding what are the MTRs, CTRs, and STRs, when and how to fill their attached forms.
- Examples of suspicious activities.
- Issues relating to the obligation of having internal manuals, record keeping, protection from breaching the professional secrecy, prohibition of tipping off and the duty of the compliance officer too supervise the filling of forms (mainly CTRs and STRs).

1438. Adequacy of Resources—Supervisory Authorities for DNFBPs (R. 30):

1439. Trustees: See R. 23 above for FIs. The SBP has a dedicated supervision department for trustees. As noted under R. 23, this department conducts both prudential and AML supervision including on-site inspections of trustees. However, the time and resources dedicated to AML issues is not sufficient at this time, particularly if this department were to more fully inspect all aspects of trustee licensees (especially, nonbank licensees), including but not limited to corporate services associated with trust business. Against this background, the SBP is in process of transferring AML supervision to the AML department that has more specialized staff and resources for this topic.

1440. Casinos: There are nine supervisors and four auditors for performing the inspections and audits of the complete casinos. However, the time and resources available for AML supervision is inadequate, and is focused mainly on reviewing CTR obligations. Staff training on AML/CFT needs to be strengthened and there are no specialized skills to supervise internet casinos which have not been inspected for a very long time.

1441. There are no duties of confidentiality for the staff of the GCB, as well as no special requirements for hiring skilled professionals for the different positions.

1442. Post mission, the authorities provided the following information on AML training (seminars) on various topics for the GCB for the last three years as follows: 2009–1; 2010–1; 2011–3; and 2012–30.

1443. Real estate agents: The RETB is a multi-institutional body formed by the of Minister of MICI, the Minister of MEF, the Minister of Housing and two representatives from the supervised sector. This multi-institutional approach undermines the operational autonomy of the RETB, since no formal meetings have taken place since February 2012 (on-site visit was in October 2012), having many decisions pending since then. According to MICI, two members the two private sector representatives have not been appointed, but the Secretariat is still working and enacting ex officio decisions. According to the RETB framework, including Resolutions 1 of 2001 and 6 of 2004, it is not clear that the Secretariat has enough executive and administrative powers.

1444. There are no duties of confidentiality among the members of the RETB, including for the two representatives from the private sector. This can affect both the independence o the RETB and undermine their credibility as supervisors.

1445. The budget of $59,026 for 2011 falls short considering the amount of supervised entities and the staff of eight people working in the Secretariat of the RETB (four inspectors, no auditors). Currently the RETB has no AML/CFT supervisory powers over the natural persons performing real estate agent activities which total about 3,133 licensees (authorities indicated post mission that there

were 3,282) compared to the 911 legal entities conducting this business. No analysis on the ML/TF risks in these two groups was conducted to determine the scope of coverage under the AML Law, Executive Decrees and Resolution. No statistics on training were provided.

Effectiveness of Implementation

Casinos

1446. The GCB does not identify the beneficial owners (natural persons) of the applicants that are legal entities having other legal entities as shareholders, both local and foreign. In addition, the GCB is not able to identify the beneficial owners of legal entities with bearer shares and there is no prohibition or controls over the issue of bearer shares of companies operating or owning casinos directly or indirectly.

1447. In practice, no police or criminal records are requested from local law enforcement authorities, nor are Interpol checks conducted. A data request for is sent to the local Security Council Body (CICC) to assist in the conduct of background checks. However, the GCB believes that it is insufficient as they cannot inquire into the applicants' financial and overseas records. And any reports used cannot be attached to the license application documentation for approval decisions.

1448. The GCB also does not require the face-to-face meetings with the principals behind the license applications but conduct the applications processing through their legal representatives. This appears to the common practice even for MICI with respect to realtors and other FIs under its jurisdiction. (MICI stated that it is based on longstanding jurisprudence but no support was provided for this assertion). In that sense, the powers of the GCB fall short for preventing criminals and their associates to be owners of a significant part of a casino, or controlling interest, holding a management function in, or being an operator of a casino.

1449. According to the statistics provided by the GCB, to date there are 18 casinos under the supervision of the GCB. The following inspections with AML components (mainly addressing CTR obligations) have been performed by the Audit Department of the GCB, with no sanctions applied to date based on specific breaches of the AML legislation.

Year	No. of visits	No. of AML sanctions
2009	3	0
2010	15	0
2011	11	0
2012	3	0
TOTAL	**32**	**0**

1450. Although they were requested, no statistics were provided regarding the rejections of authorizations for operating as complete casinos, nor statistics regarding actions taken towards unauthorized casinos.

1451. As noted above, according to the information gathered by the assessors, the supervision of the GCB is mainly focused on compliance with CTR obligations, and is based on the review of the timeliness of their completion and submission to the UAF. There is no effective examination of other key issues to verify proper compliance with the CDD, record keeping and STR related obligations.

1452. Internet Casinos: As for complete casinos, screening of owners, controllers and managers of internet casinos under leased rights is weak.

1453. No inspections have been performed to internet casinos and there are no staff with the necessary skills and training for this highly technical and risk business sector. Internet casinos (considered to be high risk due to the international nature of their business and operating characteristics) have not been inspected for AML/CFT or for any other reason, except for the review of the filing of CTR according to the GCG. It is unclear why a CTR review would be conducted if internet casinos are not supposed to handle cash transactions. GCG does not have the necessary skills (human resources) to conduct inspections at the moment.

1454. There are nine auditors who can participate in inspections who generally visit casinos at the request of inspectors who conduct physical checks, but not documents, of complete casino establishments. There are seven inspectors working for GCB responsible for all the gaming establishments in the country. There is 1 staff member in charge of AML/CFT compliance working with two administrative support personnel. The GCB has also faced financial and equipment constraints to conduct inspections and have been supported with transportation equipment donations by the same industry it supervises. This may raise the perception of a conflict of interests.

Real Estate Agents (legal entities only)

1455. According to MICI, the following general inspections, which mostly focused on CRT compliance with respect to AML/CFT) were conducted by the RETB during the past five years:

Year	No. of Inspections	No. of entities covered	No. AML Sanctions
2009	135	96	0
2010	180	150	0
2011	480	380	0
2012	320	320	0
TOTAL	**1115**	**946**	**0**

1456. The above mentioned inspections covered only the verification that CTRs were sent. According to the inspection procedures used by the inspectors, there is only one line on ML prevention. There is no verification of the other obligations stipulated in Articles 2 and 8 of Resolution 327 of 2004, like the implementations of internal controls and reporting of suspicious transactions. The limited inspection scope maybe because the legal obligations of real estate brokers (and sanctions) under Law 42 Art. 7 and Art. 11 (g) of Resolution 327 of 2004 only apply to CTR reporting. There are no sanctions available for directors and senior management, and they do not include the possibility to suspend the license.

1457. Real estate agents (legal persons) that were interviewed by the assessors explained that the visits were very brief (less than one hour) and the only aspect verified was CTRs reporting compliance and that the underlying information is generally not reviewed in detail. The representatives interviewed didn't know they were actually obliged to file STRs and the duty to prevent TF.

1458. Another concern that was raised was the fact the RETB is a multi-institutional body has no formal meetings since February 2012 (visit was on October 2012), having many decisions of their interest pending since then. Representatives from MICI explained this situation occurred because two

members of the private sector have not been appointed, but the Secretariat is still working and enacting decisions on the basis of ex-officio administrative procedures. According to the RETB framework, including Resolutions 1 of 2001 and 6 of 2004, it is not clear that the Secretariat has the enough powers to sanction breaches on ML/TF grounds beyond the scope of formal decisions of Board.

1459. Moreover, the RETB has no AML/CFT supervisory powers over natural persons performing real estate brokerage/agent activities which total around 3,133 licenses. There are 911 broker licenses granted to legal entities that are subject to the AML Law, Executive Decrees and applicable AML Resolution. No analysis of ML/TF risks was conducted to support limiting the scope of the AML requirement to legal persons only.

1460. Considering the number of supervised entities and the staff of eight people working in the Secretariat of the RETB (four inspectors), the budget of $59,026 for 2011 appears to be very low.

Trustees

1461. The narrow scope of SBP supervision (only the trust business conducted by trustees and not their other corporate services is supervised) should be revised, and. In addition, based on reviews of inspection results, it appears that the SB does not deepen its analysis of compliance in the more complex activities of trustees.

1462. According to the statistics provided by the SBP, the trust sector is composed as follows:

Type of Licensed Trustees	No.
Government banks	2
Private banks	23
Private Banks (through trust companies)	14
Affiliated to law firms	15
Insurance companies	2
Other trust companies	12
TOTAL	**68**

1463. The SBP has conducted the following on-site inspections that include AML/CFT elements through its Fiduciary Supervision Office (FSD). Based on the following table, inspections are conducted, on average, about once every two years.

Type	2009	2010	2011	2012 (ytd)
Comprehensive	14	21	25	13
Follow up	1	1	7	12
Special	15	13	18	2

1464. The FSD has 12 staff involved in both offsite and on-site supervision. Other than inspection planning and follow-up activities, all AML/CFT supervision is conducted on-site. According to the FSD, all on-site inspections include AML/CFT. Currently, the FSD is drafting data capture forms for general offsite surveillance purposes that could be used to develop more focused AML/CFT offsite analysis.

1465. Three types of inspections can be conducted. General inspections cover a broad area of trustee activities including AML/CFT. These inspections generally last between 2–3 weeks depending with 2–3 staff participating. Follow up inspections based on prior examination results are of shorter duration while special inspections are conducted at the request of the SBP's AML/CFT unit, or by another competent authority, e.g., the UAF. Inspections can also be conducted jointly between the FSD and the other supervision departments in a coordinated manner. While the FSD is currently conducting AML/CFT supervision of trustees, there are plans underway to transfer this activity to the BSD's AML/CFT unit.

1466. The BSD is implementing a risk rating system for general supervision called "GREN." The results of the AML/CFT inspections are embedded in three components of this model (management, risk and compliance?) but there is no standalone rating for AML/CFT. In addition, the current approach to AML/CFT supervision by the FSD is strictly compliance based but it is hoped that with the planned introduction of enhanced offsite data capture and analysis, this would provide a basis for developing a framework for risk-based approach to AML/CFT supervision. Simply incorporating the compliance based results of AML/CFT inspections into the GREN system is insufficient for a risk-based approach to AML/CFT supervision.

1467. In addition to the administration of trust, trustees can carry on other lines of business (see R. 12 above) that may be complementary or unrelated to trust business, e.g., corporate services. However, the BSP-FSD does not/cannot supervise nontrust activities of trustees. This is a significant gap in supervisory scope. ML/TF risks can arise in any area of activity of trustees that would directly impact the entire operation and should be of primary concern to the SBP. The situation would be more critical for banks that have trust licenses that also engage in nontrust business under such licenses. In addition, the SBP is restricted, by virtue of Art. 66 of Law 2 of 2008 (Executive Decree 52 of 2008), the SBP is prohibited from inspecting the corporate entities under the control of banks acting as trustees. To the extent that the definition of inspection is broad and includes the revision of documents and records, it can significantly limit the ability of the SBP-FSD in testing the AML/CFT controls and compliance of trustees. This provision may also be in conflict with the supervisory mandate given to the SBP by the Executive Decree 16 of 1984. Since Law 2 is more recent and is of a higher hierarchy, it may be presumed that it has precedent over Executive Decree 16.

1468. The SBP informed the mission that there have been sanctions registered in year 2009 for not sending CTRs. There is no information regarding the type and the amount of the sanctions.

1469. Based on the review of trust inspection procedures and results, on-site inspections are, as mentioned above strictly compliance based. There are no specific AML/CFT inspection procedures to review risk management controls for particular types of trust activities, e.g., when the settlor is a legal entity (both local and foreign) particularly when such legal entity has or can issue bearer shares, when the underlying trust property under administration (corpus) includes legal entities (including when they can issue or have issued bearer shares), when trust are established under the laws of foreign jurisdictions, reviewing the control over legal entities that hold other assets in or outside Panama, review of the governing trust document to ascertain whether they have provisions for transferring control of the trust (e.g., to successor trustees), etc.

5.3.2. Recommendations and Comments

1470. The AML/CFT supervisory regime should include: lawyers, accountants, notaries, dealers in precious metals and stones, corporate services providers, and real estate agents (natural persons) in accordance with the FATF Recommendations.

Casinos, real estate agents and trustees

- More resources should be assigned to the SBP, RETB, and the GCB for AML/CFT supervision and enforcement.

Casinos (including internet casinos)

- The GCB must be able to identify the beneficial owner (natural persons) of the applicants for the license to perform the business of casinos for preventing criminals and their associates to be owners of a significant part of a casino, or controlling interest, holding a management function in, or being an operator of a casino.
- Licensing for internet casinos should be clarified, extending direct license requirements to internet casinos.
- Internet casinos should be effectively supervised, not relying mainly on CTR obligations considering that they are not expected to handle cash.
- Supervision should not be orientated only to the filing of CTRs, to the detriment of revision of compliance with other AML/CFT obligations (such as the filing of STRs).
- A deeper AML/CFT supervision regime must be implemented for imposing sanctions when necessary.
- Sanctions for directors and senior management of casinos should be available for the GCB, including the possibility of the suspension of the license.
- Confidentiality duties among the members of the GCB should be implemented.

Real Estate Agents

- Natural persons performing activities of real estate agents should be subject to requirements and supervised by MICI's Real Estate Technical Board for AML/CFT purposes.
- MICI should enact AML/CFT comprehensive AML/CFT guidelines for real estate agents.
- A more independently structured organizational arrangement for the RETB should be considered in order to work effectively as a supervisor, and independently from the supervised entities.
- Confidentiality duties among the members of the RETB should be implemented.
- Inspections performed by the RETB should not be only CTR oriented, and more emphasis should be given to the analysis of other key issues like CDD, record keeping and STRs.
- A deeper AML/CFT supervision regime must be implemented for imposing sanctions when necessary.

Trustees

- The SBP should expand and deepen the scope of supervision of trustee activities, including supervision of nontrust activities of trustees such as corporate services.

- The SBP should issue more sector-specific and comprehensive AML/CFT guidelines for the trustees.
- A deeper AML/CFT supervision regime must be implemented for imposing sanctions when necessary.

5.3.3. Compliance with Recommendations 24 and 25 (Criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R. 24	**NC**	The AML/CFT supervisory regime does not include: lawyers, accountants, notaries, dealers in precious metals and stones, corporate services providers and real estate agents (natural persons) in accordance with the FATF Recommendations. • Except for trust supervision, grossly inadequate supervisory resources and AML/CFT skills for Casinos and Real Estate supervisors given the number of entities subject to supervision. • Lack of sanctions due to the inadequate AML/CFT supervisory and reporting regimes. **Casinos** • The GCB is not able to effectively identify the beneficial owner (natural persons) of the applicants for the license to perform the business of casinos. • Regulatory and operational basis for licensing, supervision and accountability for internet casinos that operate as sub-licensees is inadequate and unclear. • Internet casinos are not effectively supervised and no inspections conducted. • Supervision is CTRs orientated, affecting compliance of other key AML/CFT obligations (such as the filing of STRs). • No sanctions apply for directors and senior management and suspension licenses. • No confidentiality requirements for staff of the GCB. • Lack of specialized staff to supervise high risk internet casino operations, which contributed to zero inspections of this sector. **Real Estate Agents** • Natural persons performing real estate brokerage are not covered under the AML/CFT framework. • Inadequate supervisory organizational arrangements for the RETB. • No confidentiality obligations among the members of the RETB should be implemented. • Inspections performed by the RETB are only CTR oriented, with little or no emphasis given to the analysis of other key issues like CDD, record keeping and STRs. **Trustees** Need to expand and deepen scope of supervision of trustee activities, including nontrust activities such as corporate services.
R. 25	**PC**	• No comprehensive AML/CFT guidelines for real estate agents.

		• No comprehensive sector-specific AML/CFT guidelines for the trustees.

5.4. Other Non-Financial Businesses and Professions—Modern, Secure Transaction Techniques (R. 20)

5.4.1. Description and Analysis

1471. Legal Framework:

1472. Art. 7 of Law 42 (AML Law) applies CTR reporting requirements to the following main activities that are not FIs and DNFBPs designated under FATF:

- Firms established in the Colon Free Zone, other free zones and (export) procession zones.
- National Charities Lottery.

1473. The only obligations for these sectors are to report CTRs and to maintain a record of the name, address and identification number of clients for this purpose.

1474. It is noted that Recommendation 20 requires the application of R. 5, 6, 8–11, 13–15, 17 and 21 to these non-financial activities but not R. 19 that deals with CTR. Because R. 19 and CTRs are not covered by R. 20, these provisions are not applicable for purposes of R. 20 requirements.

1475. The Managing Board of the Colon Free Zone is the only authority that has issued a Resolution to give effect to the AML Law and Executive Decree provisions as the designated supervisory authority for entities operating in that Zone. Resolution 12 of 2011 establishes the functions of the General Management of the Zone to include: verification of the CTR reporting obligations, conduct inspections, apply sanctions, and administrative measures, etc. It also created an AML Unit within the Zone to coordinate with other departments and conduct inspections, request information to verify compliance with the AML Law, train Zone staff on AML issues. It also imposes other specific obligations to firms operating in the Zone with respect to CTRs.

1476. Other Vulnerable DNFBPs (applying R .5, 6, 8–11, 13–15, 17 and 21 c.20.1):

1477. See above. The requirements of R. 20 (R. 5, 6, 8–11, 13–15, 17 and 21) are not met by the Panamanian AML legislation and OEMs.

1478. Modernization of Conduct of Financial Transactions (c.20.2):

1479. Panama does not have a significantly cash-based economy. Modern payment systems are in common use including debit and credit cards, wire transfers, checks, and money remittance systems, etc. Banks are also able to conduct electronic banking for which as specific Agreement has been issued by the banking supervisory (SBP).

5.4.2. Recommendations and Comments

1480. Conduct a risk assessment of high risk economic sectors and activities and consider applying the requirements of R. 20 (applying R. 5, 6, 8–11, 13–15, 17, and 21 c.20.1). Examples of such entities and activities may include, inter alia:

- Specific businesses that operate in the Free Zones that present the highest risks of ML/TF and that are not otherwise covered by the AML Law, FATF as FIs and DNFBPs. Examples of these would be entities engaged in importation and re-exportation of goods, invoicing, and re-invoicing firms, etc.
- Pawn shops.
- Currency transportation firms.
- Safety deposit businesses.
- Dealer in high value goods e.g., vehicles, aircraft and boats.
- Investment advisors.

5.4.3. Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R. 20	**NC**	• The non-DNFBP entities covered in Law 42 (e.g., free zone businesses and the national lottery) are only subject to CTR reporting and not to the Recommendations required under R. 20. • Other non-DNFNP businesses that could present a high risk of ML/TF have not been considered for inclusion under R. 20. (See also Recs. 12, 16, and 24 above for lack of coverage of most DNFBP sectors).

6. LEGAL PERSONS AND ARRANGEMENTS AND NONPROFIT ORGANIZATIONS

6.1. Legal Persons—Access to Beneficial Ownership and Control Information (R. 33)

6.1.1. Description and Analysis

1481. Legal Framework:

1482. Legal persons are listed in Article 64 of the Civil Code of Panama of 1917 as follows:

- Political entities created under the Panamanian Constitution, churches, congregations, communities and religious associations. Corporations and foundations of public interest recognized or created under a special law.
- Associations of public interest recognized by the Executive Branch by Panama.
- Civil or Commercial to which the law grants legal personality independently from their associates.
- From that umbrella legal framework, the following relevant legal entities can be incorporated in Panama:
- General Partnership (sociedad colectiva), under the Code of Commerce and registered before the Public Registry.
- Limited Partnership (sociedad en comandita simple), under the Code of Commerce and registered before the Public Registry.
- Limited Partnership by shares (sociedad en comandita por acciones), under the Code of Commerce and registered before the Public Registry.
- Corporation (sociedad anónima), under the Code of Commerce and Law 32 of 1927 and registered before the Public Registry.
- Foundations of private interest (fundaciones de interés privado), under Law 25 of 1995 and registered before the Public Registry.
- Limited Liability Companies—LLCs (sociedades de responsabilidad limitada - SRL), under Law 4 of 2009 and registered before the Public Registry.
- Cooperatives (Cooperativas), under Law 17 of 1997 and registered before the Registry of Cooperatives of IPCOOP.
- Charitable and nonprofit organizations (public interest foundations) that are given legal personality by governmental institutions e.g., the Ministry of the Presidency, Ministry of Government, the sporting authority (PANDEPORTES) and the Ministry of Agriculture.

1483. All legal persons in Panama must appoint a resident agent, which has to be a lawyer. Resident agents will be the legal contact point of the company and are responsible for paying corporation fees.

1484. In addition, Articles 11-B, 60 and 60-C of the Code of Commerce allow foreign companies to continue their existence as Panamanian companies, and also establish branches. They have to be registered in the Public Registry and are governed by the legal framework of Panama. Any amendments in the incorporation documents must be registered as well.

1485. **Articles of incorporation of the companies (**General Partnerships, Corporations, Partnerships limited by shares and Limited Partnership). According to Article 293 of the Commercial

Code, the following information must be contained in articles of incorporation of the companies that have to be under a notarized public deed.

- Names and addresses of the grantors of the deed,
- Name of the company,
- Purpose and duration of the company,
- Share capital of the company, stating the amount paid by every shareholder/partner. In case of a corporation or limited partnerships by shares, the nature, value and the amount of shares must be stated, as well as if they are nominative or bearer shares,
- Shareholders/partners in charge of managing the company, as well as the holders of the company's authorized signatory. In case of a corporation or limited partnerships by shares, the name and the address of the persons in charge of the administration, their powers, the way to run the company, the powers of the assembly of shareholders and its decision making processes, and
- The declaration of what each shareholders/partners that contributes to the company, whether in industry, money, credits, effects or other property, stating the given value.

1486. Changes in the capital of the General Partnerships and Limited Partnerships must be amended in the Articles of Incorporation and notarized. This is not the case with Corporations and Partnerships limited by shares where changes in capital are only recorded in the share register which is not public.

1487. Public Registry of Panama: The Public Registry of Panama was created and governed by Law 3 of 1999 and Decree 9 of 1920 that sets out its functions. It is in charge of the registration of documents required under the Law. Moreover, according to Articles 55–56 of the Commercial Code the Public Registry has the Commercial Registry under its structure, and will have inter alia the registration of all the commercial companies. No statistics were provided on the TOTAL number and type or legal entities that are active currently registered on the Public Registry of Panama, and how many of the companies have issued bearer shares. Statistics were provided ONLY with respect to the number of new registrations from 2009 to the end of 2012 as follows.

Year	Corporations (Sociedades Anónimas)		Private Interest Foundations		Limited Liability Companies		Foreign Companies		Other Legal Entities[26]
	Active	Non-active	Active	Non-active	Active	Non-active	Active	Non-active	
2009	37,408	3,266	5,233	819	267	26	73	4	1,914
2010	36,022	1,868	4,503	330	154	9	153	5	1,918
2011	34,233	953	4,397	134	192	18	155	4	2,092
2012	34,264	203	4,170	36	193	-	145	3	3,274
Total	**141,927**	**6,290**	**18,303**	**1,319**	**806**	**20,428**	**526**	**16**	**7,284**

[26] These include NPOs and other civic organizations.

1488. The authorities have indicated that their registration system does not permit them to quantify the number of companies that have issued bearer shares. They indicated that new system is being developed that would permit them to do so but that the type of shares that are issued by a company, either nominative or bearer, is indicated in the Public Registry upon registration.

1489. According to the information provided to the team, generally the registration of a company can take around three business days in the Public Registry. In addition, it is a common practice that company service providers, such as law firms, offer to their clients companies that are already incorporated and registered before the Public Registry. These are known as "shelf companies", and generally they have as resident agents, nominative directors and nominative dignitaries (president, secretary and treasurer) the same lawyers of the law firm. With this service, clients, including foreign clients, will own a company almost in real time, without appearing in any public record and ready to make any kind of transactions.

1490. According to industry practitioners, it can take up to 14 days to form a new company although in urgent cases it can be done during a much shorter time, e.g., three days. This often leads some service providers holding pre-formed or "shelf" companies that can more readily transferred to clients.

1491. As stated previously, articles of incorporation should be notarized and registered before the Public Registry.

1492. The information from the company contained in the public deed includes: name of the company, directors, officers, resident agent, share subscribers, share capital and purpose (this can be very general for ordinary companies). The information also states whether the shares capital can be issued either in nominative or bearer form.

1493. Any changes to the articles of incorporation should follow the same formalities. There is no information on the shareholders of the companies (sociedades anónimas), namely, the beneficial owners.

1494. Information from the Public Registry related to companies can be accessed by its web by any natural/legal person or governmental institution, after applying for a username and password. One user name can be used from any IP addresses. The Registry does not compile data on the number of searches, including financial institutions and competent authorities such as the police, UAF, prosecutors and judiciary.

1495. The Public Registry maintains two databases. The first, Sistema Redi, contains digitalized copies of documents entered in the Register that can be accessed by the public. The second, Sistema de Emulacion, records entries in relation to companies and properties that provide a record of registrations and transactions with respect to such companies or properties (e.g., encumbrances). Online instructions are provided for accessing the information in the Public Registry.

1496. Although the technical requirements are already established, online registration of companies performed by the notaries (sending an e-certified public deed) has not been put into practice. The National Assembly must enact the proper legal framework for which a draft has already been submitted by the Public Registry.

1497. The competent authorities have access to the information of the Public Registry on-line, and ask for certified copies of the information already gathered to be used formally in their investigations. Competent authorities also perform on-site visits to the offices of the Public Registry to gather information related to their investigation directly with the assistance of its staff. The authorities provided the following statistics on the number of online requests for certified copies of documents in the Public Registry. There are no statistics on the number of face-to-face requests by competent authorities but it is estimated by Public Registry officials that they average about 450 per year.

NUMBER OF CERTIFIED COPIES ISSUED BY THE PUBLIC REGISTRY REQUESTED BY COMPETENT AUTHORITIESCIONES				
	Year			
MONTH	2009	2010	2011	2012
Jan	973	1192	1401	1823
Feb	1206	1345	1423	841
Mar	1520	921	1121	9082
Apr	425	812	1193	10547
May	1750	1753	1181	1650
June	1547	654	1137	1429
July	608	1007	1262	1165
Aug	1172	1503	2011	1042
Sep	1341	1048	1512	1811
Oct	1003	1231	1620	1666
Nov	1243	936	1152	1629
Dec	755	1283	895	1730
TOTAL	13543	13685	15908	344015

Resident Agents

1498. Resident Agents are a DNFBP for purposes of the FATF standard but are not subject to Panama's general AML/CFT regime. All legal persons in Panama must appoint a resident agent, which has to be a lawyer. Resident agents will be the legal contact point of the company and are responsible for paying corporation fees.

1499. Panama has enacted Law 2 from 2011 that established KYC measures to be applied by the resident agents regarding their clients. Article 3 of Law 2 from 2011 requires resident agents to:

- Identify the client and verify their identity based on documents, data or information obtained from reliable and independent sources.
- Obtain information from the client about the purposes for which the legal entity is created.
- Facilitate the required information to the competent authority (Prosecutor's Office, Judiciary or the General Board of Income of the Ministry of Economy and Finance, not the FIU) to combat ML, TF and any other crime.

1500. Note that the client in this case is any person who solicits the Registered Agent's services, which are not necessarily the company or the owners/beneficial owners or controllers of the company itself. These can also be intermediate clients such as other service providers (e.g., lawyers and accountants) in or outside of Panama that are acting on behalf of their own clients.

1501. For the purposes of paragraph 2, it is specifically provided that the resident agent will not have the obligation to perform any proactive action or verification of the information provided by the client about the activity of the legal person.

1502. Article 5 of Law 2 of 2011 states that every resident agent providing such service must apply KYC measures when:

- The professional relationship with the client is established, subject to what is provided in Law 2 from 2012.
- The formation agent is aware that the client has transferred, directly or indirectly, his interests in the legal person.

1503. It is necessary to keep the identification documents and information obtained up to date as part of the KYC measures.

1504. Article 6 of Law 2 of 2011 stipulates that every resident agent has the obligation to apply the KYC measures, for which it will require that the client provides satisfactory evidence of his identity. When the client acts on behalf of a third party, he/she will have to provide satisfactory evidence of the identity of such third party; and, when the share certificates that represent the ownership title over the legal person are issued to the bearer, he will have to provide satisfactory evidence of the identity of the holders of the shares. However, the term "satisfactory" established in Law 2 of 2011 is vague, and according to the meetings held with lawyers acting like resident agents, this will not always require identification of beneficial ownership in the absence of an explicit requirement. There are no custody requirements for bearer shares. (In July 2013, Law 47 was passed and published on August 13, 2013, providing for the custody of bearer shares. However, this law does not come into force until two years after its publication (13 August 2015), and for bearer shares issued prior to this date, they have an additional three years to place them in custody, that is until August 2018. Other provisions of this new law are also very weak e.g., it does not deal with information on beneficial ownership and control issues under R. 33 and the UAF does not have access to bearer shareholder information).

1505. According to Article 7 of Law 2 of 2011, resident agents will not be required to obtain information from the third parties when it is certain that this third party is a legal person belonging to a professional organ whose conduct or practice requires that it adopt and maintain professional and ethical standards for the prevention of ML and TF and any other illicit activity, such as lawyers, banks, trust companies, insurance companies, brokerage companies and authorized public accountants. This poses a sectoral risk in the case of Panamanian third parties as e.g., law firms, accountants and notaries, because these professional are not subject to the national AML/CFT regime. (See R. 12 and 14 above).

1506. There are no requirements for the resident agents to know the identity of the beneficial owner of the companies with respect of which it acts. Having the possibility of incorporating corporations with bearer shares also limits their KYC duties, because there is no obligation for resident agents to immobilize them and conduction ongoing CDD after becoming a resident agent for such entities required. Finally, the fact that the UAF is not considered as a competent authority under the above Law undermines the preventive AML/CFT measures. Article 12 of Law 2 stipulates that only the designated competent authorities, that are judges, prosecutors and the Ministry of Economy, can request the resident agent for information or documents kept about a client. Again it appears that the "client" in this case is the person who requests the services of the registered agent and not the

company itself. And as stated above, the client may not necessarily be the owners or controllers of the underlying company. Article 18 states that in case of detecting a failure to comply with its obligations, competent authorities can start a procedure before the Fourth Courtroom of General Businesses of the Supreme Court. Articles 20 to 23 stipulate that penalties will depend on the three obligations that can be breached:

- Warning: when in discloses less than the minimum information required to be kept, or it is not updated.
- Fine for no more than B5,000 when information is not disclosed.
- Suspension, when repeatedly and systematically doesn't comply with Law 2 of 2011. This suspension will last between three months and three years for performing as resident agent of new legal persons.

1507. There are no established administrative or supervisory mechanisms for the supervision of compliance and the application of any resulting sanctions.

1508. As indicated above, there is no obligation for the resident agent to gather the information of the beneficial owner of the companies they are incorporating, and has no obligation to immobilize the bearer shares of the companies in case they have them. In addition, there is a serious limitation for the FIU's role, since it is not considered as a competent authority that can have access to the data held by the resident agent. The fact that resident agents will not be required to obtain information from the third party for whom the client is acting when it is a law firms and authorized public accountants poses a serious risk considering that law firms and authorized public accountants have no formal AML/CFT obligations. Sanctions are not strong enough compared to the ones available for obliged entities in their duties to prevent ML and TF.

1509. Corporations and bearer shares

1510. Law 32 of 1927 regulates the Corporations in Panama. Article 1 states that they can be created by two or more persons which can also be other legal entities including companies, foundations and trusts.

1511. Article 2 states the information that the articles of incorporation shall include the following information:

- Name and address of each of the subscribers to the articles of incorporation,
- Name of the corporation,
- The general object of the corporation,
- The amount of the Corporate Capital and the type, number, and par value of the shares,
- The number of shares that each of the subscribers to the articles of incorporation subscribes to (if any),
- Address of the corporation and the name and address of its resident agent in the Republic, who may be a legal person,
- The duration of the corporation, and
- The number directors, their names, and addresses.

1512. Article 30 establishes that nominative shares shall be transferable in the books of the corporation in the manner provided by its articles of incorporation or by-laws. Transfers shall be

binding on the corporation only from the time of their recording in the Share Registry Book (share register).

1513. Article 31 of Law 32 from 1927 establishes that the transfer of bearer shares shall take effect by means of the mere delivery of the certificate.

1514. Article 36 establishes that companies are obliged to keep in their office in Panama, or at any other place determined by its articles of incorporation or by-laws, the Share Registry Book, in which there shall be recorded, the names of all persons who are shareholders of the corporation. This means that even if the Registered Agent is in Panama, for practical purposes the competent authorities may have practical difficulties in the timely access of such information. The place of their domicile must be stated in the company's Registry Book of Shares, together with the number of shares belonging to each shareholder, among other data. In the case of shares issued to bearer, the Share Registry Book will only indicate the number of shares issued and the date of the issuance.

1515. Private Interest Foundations

1516. The private interest foundations are regulated by Law 25 of 1995. According to the interviewed company service providers, they are generally used for "asset protection" vehicles and testamentary purposes. They are a sort of hybrid between a company and a trust arrangement.

1517. They can be created by a natural or legal person by their own or by a third party. They will be governed by its founding charter, which will be signed by the founder, and by its own regulations. They will not look for profit, but will be able to perform occasional commercial activities or exercise rights over commercial companies' part of the patrimony of the foundation, and always that such result will be exclusively dedicated to the aims of the foundation. The name of the beneficiaries can be identified in its internal regulations (reglamento), which are not in the Public Registry. In that sense, the competent authorities will have to request the information about the beneficiary from the founder or board. Both the records and founders may be located abroad.

1518. The foundation charter should contain:

- Name and address of the foundation,
- Initial patrimony expressed in currency for not less than B10,000,
- Names and addresses of the Foundation council that will be in charge of the administration,
- Resident agent,
- The way the beneficiaries will be designated,
- The right to amend the foundation charter when deemed convenient,
- The duration of the foundation, and
- The use (destiny) of the assets of the foundation.

1519. This document will be certified by a public notary and registered before the public registry. Once registered, the foundation will have legal personality (Article 9). Any modification will have to follow the same formalities.

1520. The beneficiaries of the foundation do not need to be mentioned in the charter, and they can be appointed in its different regulations that are not registered in the Public Registry.

1521. Limited Liability Companies—LLCs

1522. LLCs fall under Law 4 of 2009. They can be created by two or more legal or natural persons by means of a private document. The articles of incorporation will contain:

- Identification of the partners and the subscribers,
- Address of the company,
- Duration,
- Objective,
- Amount of capital stock,
- Administrators and legal representatives of the company,
- Officers (president, secretary, and treasurer), and
- Resident agent.

1523. This information will become a public deed issued by a notary public that will be registered before the Public Registry. Once registered, it will have legal personality. Any modification will have to follow the same formalities, including the transfers of the capital contributions that may change the persons of the partners.

1524. Measures to Prevent Unlawful Use of Legal Persons (c.33.1):

1525. The Public Registry of Panama is the central body that keeps records of all companies and other legal persons incorporated in Panama. The information is publicly available through the web, and the competent authorities can request certified copies of the relevant data or perform on-site visits to the Public Registry for its gathering.

1526. There is no requirement to include the names of shareholders of legal persons in the Public Register; hence it is also not possible to track the changes in the ownership of legal persons and to identify the ultimate beneficial owners (natural persons who ultimately own or control the legal person). The names of the shareholders and their shares do not have to be stated in e.g., the articles of incorporation of companies (changes to the articles must be updated in the Public Registry but as these do not need to include shareholder and beneficial ownership, they would not include changes in ownership or control). In addition, The Share Registry Book can be kept in Panama or elsewhere, making it more difficult for competent authorities that are authorized to request such information from either the owners or Resident Agents.

1527. For Foundations of Public interest, the name of the beneficiaries can be kept in the internal records of the Foundation (Reglamento) hence changes in ownership and control would not be publicly available and disclosed.

1528. In the case of partnerships, any ownership changes are recorded at the Public Registry, since it will involve the modification of its constitutive documents.

1529. **Law 2 of 2011 with respect to Resident Agents (lawyers):** There KYC obligations that apply to Resident Agents do not require that they obtain information on the beneficial owners and control of legal entities (any legal structure or arrangement) that require the services of a Resident Agent, with one possible narrow exception. This exception is contained in Art. 6 of Law 2 requires

Resident Agents to obtain satisfactory evidence of identify of the holders of bearer shares of legal entities.

1530. To the extent that "legal entities" in this context refers to the underlying companies requiring the services of the Registered Agents, then this would require obtaining information on the identity of the direct shareholders. It would not, however, require identification of the ultimate (and indirect) beneficial owners), and would only apply to bearer shares, not nominative shareholders. On the other hand, the more likely interpretation of this requirement is that this provision applies to the identification of the holders of the bearer shares of the "client" when the latter is a legal person. This Law does not consider the underlying legal entities that require a Resident Agent as clients. The latter are those natural or legal persons that contract the services of the Registered Agent for themselves or for third parties. This interpretation is further supported by the follow-up provisions of Art. 6 that require Resident Agents to obtain and maintain client information that, when such client is a legal person, includes the identification of persons that directly or indirectly own at least 25 percent of the capital of the legal person. On this basis, there is no requirement to maintain information on the beneficial shareholding and control of legal persons (not the client) that require a Resident Agent.

1531. With regards to access by competent authorities to information on beneficial ownership and control, this would not be possible through the Registered Agents if they do not and are not required to keep such information. And as mentioned above, the share register may be kept outside of Panama, and for bearer share companies that would be practically impossible to establish absent other measures such as immobilization or custody requirements.

1532. In addition, the competent authorities that can request client information are the Public Prosecutor (Ministerio Publico), Judicial Authority (Poder Judicial) for purposes of ML, TF and other illicit activity, and the General Tax Directorate of the Ministry of Economy and Finance for purposes of international treaties and conventions that Panama has ratified. The UAF is not one of these competent authorities. In any event, the client information referred refers to the natural and legal persons (and third parties when applicable) that request the services of the Registered Agent, not the identification of the owners and controllers of the act for the underlying legal entities.

1533. Additional features of Law 2 of 2011 are problematic, even where access to client information (not owners and controllers of the underlying legal persons) is provided that may be useful to the authorized competent authorities. These are as follows:

- Art. 4: When information on the "client" is not available when the services are first provided and there are justifiable reasons for this (no examples are provided), the Resident Agent can complete the KYC process during 30 days from the start of such services. Art. 9 says that when a Resident Agent cannot obtain the required information within the established period, he shall abstain to carry out any transaction that is requested in relation to the underlying legal entity during the period of "noncompliance" by the client. In the world of offshore corporate business where legal entities may be acquired for the execution of one transaction, sold or disposed of quickly including through the use of bearer shares, etc. The 30 day period opens ample opportunity to use the legal entity for unlawful purposes.

- Art. 32: Resident Agents have five years since Law 2 came into effect to comply with the KYC requirements for clients existing at that time that is until around the middle of 2016. As

above, in the world of offshore corporate services, this grace period provides ample opportunity to use the legal entity for unlawful purposes.

- Art. 18–31: The sanctioning regime is judicial in nature, procedurally overly bureaucratic and the sanctions are relatively minor consisting of a warning, a fine of up to $5,000, and temporary suspension of between three months and three years of lawyers to act as Resident Agents for new entities only. Compare the fine applied under Law 42 of 2000 for noncompliance with CDD and other obligations which is from $5,000 to $1,000,000. In addition, because there is in practice no oversight regime, the ability of the competent authorities to make a formal complaint before the designated courtroom of the Supreme Court would be very exceptional. Post mission the authorities indicated that because the law was recently put into effect, there are no cases brought before the competent authorities for possible sanctions.

1534. Access to Information on Beneficial Owners of Legal Persons (c.33.2):

1535. See c.33.1 above. Article 29 of Law 36 from 1927 states that companies are obliged to keep in its office a record which shall be called the "Share Registry", in which the names of shareholders of the company shall be recorded, with the exception of bearers shares for which there are no names attached to the shares. These records are not public. The names of all persons who are shareholders of the company shall be registered in alphabetical order, indicating of their address, the number of shares belonging to each one of them, and the date of acquisition. In the case of shares issued to bearer, the Share Registry Book shall indicate the number of shares issued and the date of the issuance. There are no procedures that would allow a competent authority to access such information in a timely fashion, and there are no procedures in place, e.g., through the Resident Agent, to ensure that such information is accurate and up to date. And as stated above, the share registry can be kept outside of Panama.

1536. In the case of the Foundations of Private interest, the name of the beneficiaries can be identified in its internal regulations (reglamento), which are not in the public registry. In that sense, the competent authorities will have to request the information about the beneficiary to the founder or board. Both the records and founders may be located abroad.

1537. In the case of LLCs, the information about the partners will be in the Public Registry.

1538. Prevention of Misuse of Bearer Shares (c.33.3):

1539. There are no measures to prevent the misuse of bearer shares in Panama. There is no information on how many existing companies have issued bearer shares. Discussions on the possibility of immobilizing bearer shares are ongoing and there seems to be no consensus as to whether that will occur.

1540. Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions) (c.33.4):

1541. There are no measures in place to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to more easily verify the customer identification data. The practice by some banks is to request a declaration of ownership of bearer shares of companies establishing relationships which falls short of other more reliable measures such

as holding physical custody of such shares during the relationship. In general, financial institutions (including the ones in the securities sector) make their own determination about how to handle the risk of clients with bearer shares. According the information gathered by the team, measures may include not taking bearer share clients, accepting them but only if they start the process to convert them to nominative shares, accepting them as clients that require special monitoring and accepting them when considered not to be risky.

Analysis of effectiveness

1542. None of the systems and practices in place facilitates record keeping and timely access to current information on beneficial ownership and control of legal entities operating in Panama, especially companies, and private foundations. Companies are required to maintain an updated Share Registry Book, it can be kept in Panama or elsewhere depending of what is stated in the articles of incorporation. This situation could prevent the authorities to have the information about the shareholders in time and is exacerbated in the case of bearer shares as the names of shareholders would not be on the company's registry. In the case of foundations of private interest, the identification of the beneficiary can be also being recorded in its internal Regulations of the foundations, but the same issues and limitation applies as regards companies.

1543. Because corporate services providers, including lawyers, accounting firms, notaries, are not subject to Panama's AML Law regime (Law 42), there is no sound legal framework to prevent misuse of legal persons (esp. companies/sociedades anonimas) and private foundations) for illicit purposes. Companies also issue bearer shares which compounds risk of misuse absent controls such as immobilization or custody requirements by financial and non-financial service providers. Resident Agents, who must be lawyers, are covered by Law with respect to certain customer identification requirements but it is also grossly deficient with respect to the requirements under R. 12, 14 and 24 applicable to DNFBPs. Against this background, use of corporate vehicles, and foundations, etc., are prevalent in Panama in its international financial services sectors which increases the risks arising from cross border clients and counterparties, in addition to the risk they present to the local financial institutions.

6.1.2. Recommendations and Comments

- Resident agents should be required to gather and maintain the information of the beneficial ownership (under the FATF definition) of the companies they are incorporating. The competent authorities should have access to this information held by the resident agent. In addition, the FIU should be considered as a competent authority that can have access to this data.

- Panama should implement a mechanism to allow competent authorities to access such information in a timely fashion, and establish procedures e.g., through the Resident Agent, to ensure that such information is accurate and up to date. These should include the information contained in the share registries that can be kept outside of Panama.

- Panama should review the 30 day period granted to the resident agents to complete the KYC process and the five years to comply with requirements for existing clients, since in the world of offshore corporate services, this grace period provides ample opportunity to use the legal

entity for unlawful purposes, and to dissolve or otherwise dispose of legal entities used for illicit purposes. Some entities may be used only to carry out one-off transactions.

- Resident agents providing corporate services should be subject to comprehensive AML/CFT requirements and supervision, similar to FATF requirements for trustees. (See R. 12, 14, and 24)

- Panama should consider measures to prevent the misuse of bearer shares, including their effective custody and immobilization, and provide a practical and efficient arrangement for those authorities (including the UAF) and financial institutions to timely access information on beneficial ownership and control for their legal purposes. (Post mission a law was passed in July 2013 for the custody of bearer shares. This law is not fully analyzed in this report).

- In the case of foundations of private interest, Panama should establish mechanisms for the competent authorities to have access in a timely fashion to the identification of the beneficiary, including when it is contained in a document kept abroad.

6.1.3. Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R. 33	**NC**	• The current arrangements for registration, including shareholding and control, and the role of resident agents are inadequate to prevent misuse of legal persons, including companies and private foundations. • No mechanisms for the competent authorities to have access, in a timely fashion on beneficial ownership and control of legal persons, including companies and private foundations. • Key competent authorities, e.g., UAF and all of the AML/CFT supervisors do not have access to information on legal entities and arrangements held by Registered Agents. • At the time of the mission, there are no effective and broad based measures to prevent the misuse of bearer shares and attempts to introduce a mechanism to immobilize bearer shares have not been successful.

6.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R. 34)

6.2.1. Description and Analysis

1544. Legal Framework:

1545. Trusts are the main form of legal arrangement operating in Panama. They are governed by Law 1 of 1984 (Trusts Law) and are broadly similar to common law trusts in structure. A trust is defined as a legal act where a settlor (fideicomitente) transfers property to a trustee (fiduciario) to administer or dispose of them in favor of a beneficiary, who may also be the same settlor. Among its various features, trusts can be for any purpose, must be in writing and they are generally not required to be registered in a public register. The following key features of the trust law (Law 1 of 1984) are:

Art. 9:

- The trust instrument shall include: clear designation of settlor, trustee and beneficiary.
- Sufficient designation of substitute trustee and beneficiaries.
- Description of assets, property and shares in trust property.
- Place and date of trust formation.
- Designation of Panamanian Resident Agent that shall endorse the trust instrument.
- Address of the trust in Panama.

Art. 11:

- Trusts over real estate located in Panama shall be formed as a public instrument.

Art. 13:

- Trusts over real estate located in Panama will affect third parties from the date of registration of the trust instrument in the Public Registry.

Art. 14:

- The transfer of real estate in Panama in trust will be done through its recording at the Public Registry under the name of the trustee.

Art. 18:

- Non-existent beneficiaries or class of non-existent beneficiaries are allowed.

Art. 20 and 21:

- The settlor can name one or more trustees, and can name substitute trustees.

Art. 36:

- Designates the SBP as the supervisor of trust business.

Art. 38:

- Trusts and trust property can be subject to the laws of other countries if the trust instrument provides for this. They can also be transferred to another country.

Art. 40:

- Foreign trusts can be subject to Panamanian law.

1546. By Executive Decree 16 of 1984 (amended by Executive Decree 213 of 2000), the SBP licenses and supervises trustees. Trust business can be conducted by authorized trustees, which can include banks, insurance companies, lawyers, and any other natural or legal persons that habitually engages in trust business. Government banks are exempt from licensing requirements. There can be more than one trustee for a single trust, and there can be substitute or successor trustees. They can act as trustees for trusts established under foreign law. Panamanian trusts can also be subject to the laws of other countries. Competent authorities that can inspect or obtain information on trusts business are subject to strict secrecy obligations and can be sanctioned for unauthorized disclosures including to prison and monetary fines.

1547. At the time of the mission there were 68 licensed trustees subject to the SBP's supervision with total assets under trust administration of B 7,518,024,000.

Trustees			
Type	**No.**	**Assets under Administration (in thousands B)**	%
Government banks	2	1,728,963	23%
Private banks	28	2,364,034	31%
Insurance companies	2	33,710	1%
Law firms	14	1,555,235	21%
Other firms	22	1,837,082	24%
Total	**68**	**7,518,024**	**100%**

1548. Measures to Prevent Unlawful Use of Legal Arrangements (c.34.1):

1549. Art. 36 Law 1 (Trust Law) designates the SBP as the supervisor of trust business. Executive Decree 16 of 1984 regulates this law and provides for the licensing of trustees by the SBP. Art. 17 authorizes the SBP to conduct inspections of trustees for compliance with the trust legislation and other provisions allow for interventions and sanctions. Per Art. 20 and 21 (as amended), the SBP and any other government agency (and their staff) authorized to conduct inspections or obtain information on trust business shall maintain strict secrecy of such information and can only reveal such information to administrative and judicial authorities exclusively in the conduct and compliance with their legal and regulatory functions.

1550. By means of Agreement 12-2005, several AML/CFT measures were introduced by the SBP for trustees including for trustee banks and other trustees (financial and non-financial entities) to help prevent the unlawful use of the trusts. Hereinafter all will be referred to as "trustees." (See R. 12, R. 14 and R. 24 above). Articles 4 and 5 of this Agreement require trustees to comply with CDD and record keeping obligations with respect to their clients. These include establishing the purpose of the trust and the identification of clients. This Agreement does not state who is the trustee's client but is implicit that the focus is on identification of the settlor that requests the formation of a trust. However, there is no requirement to identify the beneficiaries and class of beneficiaries (when they are not identified yet) of trusts. In Art. 5 (1)(f), there is a requirement to identify clients that are legal persons including the "identification of officials, directors, those with powers of attorney and legal representatives when applicable, in such a manner that allows establishing and documenting adequately the settlor himself, or the ultimate beneficiary, direct or indirect." Reference to beneficiary in this context is to the settlor when the latter is a legal entity, not to the beneficiary of the trust which is a separate party to the trust. In any event, identifying the officials, and directors, etc., of the legal entity would not necessarily result in the identification of the beneficiary of the trust unless the settlor and beneficiary are the same parties. In addition, identifying the officials and legal representatives etc., of the legal entity settlor does not also lead to the identification of the beneficial owners (e.g., shareholders of the entity).

1551. All CDD information will have to be recorded and kept for at least five years, and will be available for the supervisor (SBP) according to Article 113 of Banking Law and Art. 7 of Agreement 12-2005.

1552. Art. 5 of Acuerdo 122-2005 (similar to provisions in amended Art. 20 and 21 of Executive Decree 16 of 1984) requires that information provided to the trustee by clients shall be kept in strict secrecy unless required by judicial and administrative authorities authorized to do so. Based on the forgoing, the only case where information on the beneficiaries of trusts are publicly available is when a trust holds real estate in Panama in which case the trust instrument should be in the Public Register

which may contain information on the beneficiaries. However, if the real estate is in the name of a company and the trustee only holds shares in such company, technically it would not have to be disclosed.

1553. In addition, e information on trusts can be obtained in two ways. One through the SBP as the supervisor of trustees by competent administrative and judicial authorities pursuant to their legal and regulatory functions. It is presumed that the UAF, as an administrative authority may have access to such information as well as the judicial authorities (e.g., Organo Judicial). However, police authorities such as the Ministerio Publico would not have such access. Note that the other legal venue for accessing information on trusts is through the Resident Agent Law 2 of 2001. Each trust must have a Registered Agent but in Art. 2 and 8 of this Law, the Ministerio Publico (public prosecution), Organo Judicial (judicial body) and Tax Authority (Ministry of Economy and Finance, have access to information on trusts held by the Resident Agent for specified purpose including illicit activity by the first two. However, under this Law the UAF is not one of the designated competent authorities.

1554. And while the trust law (Law 1 of 1984) requires the designation of settlors, fiduciaries and beneficiaries in the trust instrument, SBP Agreement 12-2005 does not require trustees to identify ultimate trust beneficiaries, whether natural or legal persons, or the class of beneficiaries.

1555. Access to Information on Beneficial Owners of Legal Arrangements (c.34.2):

1556. See above under c.34.1. In summary, the legislative framework for such disclosure and access to timely up to date information on beneficiaries of trusts is fragmented and incomplete with partial exception with respect to trusts that directly hold real estate in Panama. And in so far as trust beneficiaries are not required to be identified, such access would be further curtailed.

1557. Additional Element—Access to Information on Beneficial Owners of Legal Arrangements by Financial Institutions) (c.34.3):

1558. There is no access by FIs to information on beneficiaries held by trustees to independently verify the CDD information provided by trustee clients. In addition, Art. 5 (1) (f) of Agreement 12-2005 applicable to trustees, states clearly that information provided voluntarily (interpreted that there is no legal obligation) to trustees by their clients (settlors) or their legal representatives on the identify of beneficiaries shall be held in strict secrecy and confidentiality, and can only be provided to judicial or administrative national authorities that are legally authorized to request it. Consequently and based on this provision, trustees are prohibited from providing to FIs any information on beneficiaries that is provided by their clients voluntarily. To the extent that this may be information relating to their identity, etc, it would be a limitation on FIs conducting their own CDD because there is a provision restricting the access to it. There is no information regarding FIs rejecting a business relationship for not obtaining the information of the beneficiaries of a trust.

1559. Art. 4 (1) (d) of Agreement 12-2005 requires banks to identify the ultimate beneficiaries when the client is acting for another person that is the beneficiary or use of the services being provided. However, a trustee acts on their own account when dealing with banks so this may not be applicable to such relationship. The more appropriate provisions are in Art. 4 (1) (g) that deals with clients that are legal persons including trusts. In such case and similar to identification requirements Art. 5 (1) (f) for trustees, the need to identify the beneficiaries of trusts is not clear as it is for settlors that are legal entities.

Effectiveness of Implementation

1560. The supervisory procedures applied by SBP do not fully focus on CDD conducted on beneficiaries of trusts, except indirectly when the settlor and trustee are the same persons. This situation would be more challenging for trusts established under the laws of another country and where the settlors and beneficiaries are companies that have issued bearer shares. This would limit their capacity to provide timely information on trusts to competent authorities.

1561. Misuse of legal arrangements, primarily trusts, is mitigated by including trustees as entities subject to the AML Law along with other financial institutions covered by Art. 1 of Law 42. However, because trusts are often used in the administration of legal persons form part of the trust corpus (property under trust administration), and the settlors and/or beneficiaries can also be legal persons and, the deficiencies noted under R. 33 have a contagion effect on risk of misuse of trusts for illicit purposes. In addition, as noted under R. 12 and R. 24, the scope of trustee supervision is too narrow and does also not include a review of legal entities under trust administration, nor does it extend to the nontrust business of some trustees, e.g., corporate services. Assessors also noted that trustees and other corporate services providers (e.g., foundations) use these legal vehicles as "asset protection" structures. On inquiry it was not clear what these structures or vehicles were protecting "against." In this connection, assessors also noted that neither the trustees nor their supervisors (SBP) were aware of the extent of use of "walking" provisions in trust instruments that would allow for the transfer of trust property e.g., to other successor trustees in Panama or outside, and to the appointment of successor trustees in other jurisdictions, e.g., when motivated by regulatory or other official inquiry. Such trust features are allowed under Panama's trust law and could be abused to frustrate or avoid asset identification, tracing and confiscation.

6.2.2. Recommendations and Comments

- Requirements are needed for managing risks associated to local and foreign companies with bearer shares and private foundations when acting as settlors or beneficiaries of trusts.
- SBP should perform an in-depth analysis for understanding the trusts under the administrations of the trustees, in order to prevent the use of these structures for ML and TF.
- In addition to the identification of the client (settlor) further obligations for the identification of the ultimate trust beneficiary should be considered.
- The legislative framework for the disclosure and access to timely up to date information on beneficiaries of trusts should be revised for avoiding fragmented and incomplete provisions on this matter.
- The scope of trustee supervision should include the possibility to review the legal entities under trust administration and the nontrust business of some trustees.

6.2.3. Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R. 34	**NC**	• No special requirements for managing risks associated to local and foreign companies with bearer shares and private foundations when acting as settlors or beneficiaries of trusts.

		• Supervisors do not perform an in depth analysis for understanding the trusts under the administration of the trustees, • No obligations for the identification of the ultimate trust beneficiary. • Fragmented and incomplete provisions for the disclosure and access to timely up to date information on beneficiaries of trusts. • Trustee supervision does not include the possibility to review the legal entities under trust administration and the nontrust business of a large number of trustees (e.g., those not affiliated with regulated financial institutions).

6.3. Nonprofit Organizations (SR. VIII)

6.3.1. Description and Analysis

1562. Legal Framework:

1563. Art. 39 of the Constitution, Arts. 64 and 72 of the Civil Code, Executive Decree No. 524 (2005,) and Executive Decree No. 627 (2006) modifying Executive Decree No. 524.

1564. Article 64 of the Civil Code of Panama (1917) recognizes as legal persons: political entities created by the Constitution or Law, churches, congregations, religious communities and associations, foundations of public interest, associations of public interest and nonprofit associations of private interest recognized by the Executive Branch.

1565. Executive Decree 524 of 2005 (Art. 1) gives the Ministry of Government the authority to oversee and grant legal personality (understood as the capacity to exercise rights and civil obligations, and to be represented in a court of law) to nonprofit associations and organizations, churches, congregations, religious communities and associations, federations and any other organization not related to sports, farming, cooperatives and labor issues. Executive Decree 524 was amended by Executive Decree 627 of 2006, creating a registry of nonprofit entities with legal personality inside the Ministry of Government where they are registered in accordance with the activities conducted by such entities. Private foundations can also be registered in this registry when they are established for social purposes or those established pursuant to Law 25 (1995) that foundations affiliated with the City of Knowledge ("Ciudad del Saber" is a nonprofit foundation dedicated to the management of projects related to the devolution of the canal to Panama by the USA). (Private foundations are analyzed in R. 33 and R. 34) The City of Knowledge Foundation was created by Law Decree 6 of 1998 for the promotion and development of research and innovation centers in the fields of science, technology, humanities, among others. Law 19 (2010) which reorganizes the Ministry of Government and Justice as "Ministry of Government," empowers this Ministry to issue and suspend legal personality for public and private entities.

1566. Once legal personality is granted and the applicable documentation has been notarized, the NPOs can be registered in the Public Registry of Panama and with the Panamanian taxation authority for tax exempt status. This gives legal effect to the Resolution the recognizes their legal personality after which it is mandatory to register with the Ministry of Government.

1567. Ministry of Government Resolution 30-R-10 of 2012 for the NPO sector created the Supervision, Monitoring and Evaluation Unit within the Legal Department of the Ministry of Government and regulates its functions. This Unit is empowered, in summary, to:

- Visit the entities.
- Require any information to confirm that the entity is performing its legally authorized activities.
- Summon the representatives from the entities for meetings to submit any document that may be required to ascertain or clarify any legal issues.
- Require assistance from the police for performing its mandate.

1568. Review of Adequacy of Laws and Regulations of NPOs (c.VIII.1):

1569. According to the information provided to the mission, the current framework on NPOs was enacted in the light of the recommendations made by multilateral organizations. There have not been domestic reviews on the activities, size and other relevant features of the nonprofit sector in Panama for the purpose of identifying the features and types of NPOs that are at risk of being misused for terrorist financing by virtue of their activities or characteristics. Post mission, the authorities have highlighted the requirement of NPOs to maintain the required documentation to enable inter alia, inspections, investigations and sanctions. However, this is not specifically related to this criterion.

1570. Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse (c.VIII.2):

1571. No raising awareness or outreach has been performed to the NPO sector about the risks of terrorist abuse and the available measures the protection against it.

1572. Supervision or Monitoring of NPOs that Account for Significant Share of the Sector's Resources or International Activities (c.VIII.3):

1573. While the Supervision, Monitoring and Evaluation Unit has been very recently created in 2012, it is not yet operational for performing any effective supervision of the associations and NPO's. No concrete plans were provided to properly resource the Unit and to commence oversight activities. A procedures manual for the implementation of the applicable legal requirements with respect to these entities has been drafted but has not been approved as yet for implementation.

1574. Information maintained by NPOs and availability to the public thereof (c.VIII.3.1):

1575. Information about the NPOs is required by the Ministry of Government and Justice, (Articles 2 to 6 of the Executive Decree 524) for granting the legal personality and is entered in the Public Registry. There is no explicit obligation for NPOs to make this information publicly available. However, once the information they are required to provide are entered in the Public Registry, it is available to the public.

1576. According to Articles 2 and 3 of Resuelto N°30-R-10 (2012), NPOs in Panama must submit before the Monitoring and Evaluation Unit the incorporation documentation and its bylaws that show the following information ***inter alia***: members of the board (natural or legal persons) and the objectives and specific aims of the NPO. They should also maintain records on the receipt and use of funds. This information will be available from the NPO, the Monitoring and Evaluation Unit and

from the Public Registry. This information should be maintained in their offices to enable inspections by the competent authorities.

1577. Measures in place to sanction violations of oversight rules by NPOs (c.VIII.3.2):

1578. The only sanctions available in Article 15 of Executive Decree 524 are the revocation and dissolution of the legal personality of the NPOs when it is involved in illegal activities or is acting out of the scope of its declared aims and objectives. In such cases the matter can be referred to the authorities for prosecution.

1579. Licensing or registration of NPOs and availability of this information (c.VIII.3.3):

1580. Article 1 of the Executive Decree 514 stipulates that the Ministry of Government will grant the legal personality to the NPOs after fulfilling the requirements mentioned previously. In addition, Article 11 states that the Ministry will keep a record of these entities, duly registered before the Public Registry. Nonetheless, the Monitoring and Evaluation Unit only has information on 1,012 NPOs which have been granted legal personality since 2006. No information was provided on the numbers of the NPOs currently registered in the Public Registry. The authorities indicate that they would need to compile this data manually from the available records as far back as 1950 but this has not been done.

1581. Maintenance of records by NPOs, and availability to appropriate authorities (c.VIII. 3.4):

1582. Last paragraph of Article 14 of Executive Decree 514 requires NPO to keep information regarding its funds related to public interest projects. However, there is no mention on the period for keeping those records and that they have to be sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization.

1583. Measures to ensure effective investigation and gathering of information (c.VIII.4):

1584. There are no measures (not only laws) to prove that the Panamanian authorities can effectively investigate and gather information on NPOs. As mentioned above, the Supervision, Monitoring and Evaluation Unit has only recently been created in 2012 and is not yet fully operational. While the Public Prosecutor (Ministerio Publico) can investigate, the lack of an operational supervision body poses a significant constraint.

1585. Domestic cooperation, coordination and information sharing on NPOs (c.VIII.4.1):

1586. The mission was provided with no evidence regarding effective domestic cooperation, coordination and information sharing arrangements among the appropriate authorities or organizations that hold relevant information on NPOs of potential TF concern. According to the authorities, cooperation can take place between the Ministry of Government and Public Prosecutor for purposes of investigations; however, the ongoing oversight function of the Ministry of Government has yet to be implemented.

1587. Access to information on administration and management of NPOs during investigations (c.VIII.4.2):

1588. The mission was provided with no evidence of investigations having full access to information on the administration and management of a particular NPO but it is available at least to the extent that it is in the Public Registry as described above. However, detailed information would need to be maintained by the NPOs to which the Ministry of Government and other investigative authorities can access. To date, routine inspections have not been conducted of NPOs to verify that the information kept is consistent with the legal and investigation requirements.

1589. Sharing of information, preventative actions and investigative expertise and capability, with respect NPOs suspected of being exploited for terrorist financing purposes (c.VIII.4.3):

1590. While the Ministry of Government and Public Prosecutor can exchange information for purposes of investigations, the authorities have not developed and implemented specific NPO mechanisms for the prompt sharing of information among all relevant competent authorities for preventative or investigative measures. However, there are no known legal or regulatory provisions that would prevent this from being implemented.

1591. There is no specialized investigative and examination expertise and capability to examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organizations. The supervisory unit has just recently been established and is not yet operational and still needs to be trained for its functions.

1592. Responding to international requests regarding NPOs - points of contacts and procedures (c.VIII.5):

1593. While there are no established points of contact and procedures to respond to international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support, it is expected that the procedures in place for ML and TF would apply for NPOs. According to Panama, this would be through the Ministry of Foreign affairs and the Prosecutor’s office.

Effectiveness of Implementation

1594. Although the relevant regulatory framework has been enacted, the recently created the Supervision, Monitoring and Evaluation Unit of the Ministry of Government is not operational yet, and the investigative and cooperation mechanisms that can be used have not yet been formally considered and implemented. In addition, the lack of ongoing supervision mitigates the capacity to identify cases that should be investigated and sanctioned. Consequently, effective implementation of this framework is pending.

6.3.2. Recommendations and Comments

1595. The Supervision, Monitoring and Evaluation Unit of the Ministry of Government should be made fully operational as soon as possible.

1596. Panama should perform periodic domestic reviews on the activities, size and other relevant features of the nonprofit sector and TF risk.

1597. Panama should perform periodic raising awareness activities in the NPO sector about the risks of terrorist abuse and the available measures the protection against it.

1598. Panama should establish for NPOs the period for keeping those records, and that they have to be sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization.

- Panama should develop and implement specific mechanisms for the prompt sharing of NPOs information among all relevant competent authorities for preventative or investigative measures.

1599. Implement points of contact and procedures to respond to international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support.

1600. Panama should put in place formal effective domestic cooperation, coordination and information sharing arrangements among the appropriate authorities or organizations that hold relevant information on NPOs of potential TF concern.

1601. Panamanian authorities should have full access to information on the administration and management of a particular NPO (including but not limited to financial information) that may be obtained during the course of an investigation.

1602. Panama should foster specialized investigative and examination expertise and capability to examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organizations.

6.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR. VIII	**NC**	• The Supervision Monitoring and Evaluation Unit of the Ministry of Government is not operational yet. • No domestic reviews on the activities, size and other relevant features of the nonprofit sector and TF risk. • No raising awareness activities in the NPO sector about the risks of terrorist abuse and the available measures the protection against it. • No period for keeping records of NPOs that is sufficiently detailed to verify their use. • No points of contact and procedures to respond to international requests for information regarding particular NPOs that are suspected of TF. • No effective domestic cooperation, coordination and information sharing among the appropriate authorities or organizations that hold relevant information on NPOs of potential TF concern. • No full access for Panamanian authorities to the information on the administration and management of a particular NPO that may be obtained during the course of an investigation. • No specialized investigative and examination expertise and capability to examine those NPOs that are suspected of being related to TF.

7. NATIONAL AND INTERNATIONAL COOPERATION

7.1. National Cooperation and Coordination (R. 31 and R. 32)

7.1.1. Description and Analysis

1603. Legal Framework:

1604. Law 23 of December 30, 1986, established CONAPRED, a policy oversight body to deal with narcotics and related issues, including narcotics-based ML. CONAPRED consists of high level representatives from the relevant government bodies such as the Ministry of Public Prosecution and the UAF, as well as several agencies representing the private sector on health issues such as drug addiction.

1605. Executive Decree 29 of February 16, 2005 established the High Level Presidential Commission against ML and TF (Comision Presidencial de Alto Nivel - CPAN for its acronym in Spanish). The AML/CFT Commission is comprised of heads of relevant government bodies (such as the Attorney General's Office, the UAF, and the Superintendency of Banks, etc.) as well as representatives of some of the reporting entities under the AML legislation. The UAF is a member and the Executive Secretary of the Commission. The CPAN is presided by the Minister of Economy and Finance.

1606. Law 67 of September 1, 2011, created the Financial Coordination Council (Consejo de Coordinacion Financiera - CCF). The main objective of this Council is for the financial regulators to exchange information and coordinate their activities in order to ensure proper regulation and effective supervision of the financial sector.

1607. Executive Decree 28 of December 28, 2011, established the National Council for the Fight Against International Terrorism. The Council is presided by the Minister of Foreign Affairs, and its functions are to implement the various international conventions against terrorism that Panama has ratified.

1608. Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c.31.1):

1609. The National Drug Strategy is implemented through CONAPRED with participation of the UAF, the SBP, the MICI, the IPACOOP, the CNV, the ZLC (Colon Free Zone) Administration, the National Lottery, the Gaming Control Board, the Office of the Attorney General, and the High Level Presidential Commission for the Prevention of ML. CONAPRED addresses both prevention and law enforcement matters related to drugs, and administers the proceeds received from drug forfeiture cases. The money laundering component of CONAPRED's activities is limited to drugs, and does not include TF issues.

1610. The CPAN is a high level coordinating body, which meets only once a year. Its functions are to (i) assist the President of the Republic with respect to the national strategy against ML/TF and with respect to the measures that should be adopted to implement such national strategy (ii) coordinate the efforts of public and private sectors at national and international level, in order to implement in an effective and harmonious way the national strategy against ML/TF, and (iii) promote the

implementation of measures to be taken in order to develop and adequately update the national strategy against ML/TF.

1611. The assessors did not obtain any documentation representing a national strategy developed by the CPAN. The CPAN is integrated by both public and private sectors. Its members are designated by Executive Decree for a period of two years. Such strict and limited functioning does not seem to allow the CPAN to fulfill its mandate.

1612. The CCF is comprised of the Director of Banking supervision authority (SBS) who holds Presidency, the Director of Securities Supervision authority, the Director of Insurance supervision authority, the Executive Director of IPACOOP for cooperatives, the Executive Director of Pensions for Public Servants, and the National Director of Financial Companies of MICI.

1613. The UAF can attend the meetings but is not a member and cannot vote (Article 4 of Law 67 of 2011). In addition, the operational exchange of information between the CCF members can only be done after the signing of a MOU between two members.

1614. The CCF adopted its Internal Rules by Resolution CCF 1-2012 on July 5, 2012. There were nine meetings in 2012, mostly to determine the internal rules and to draft resolutions.

1615. At this stage, it is too early to assess the effectiveness of the CCF in terms of national coordination. It is also not certain that its focus will be on AML/CFT policies, as it does not fully integrate the UAF.

1616. While the UAF is part of the recently set up National Council for the fight against International Terrorism, there is no mention of financing of terrorism in the description of the functions of the Council. The Council should meet every three months, or at the request of one of its members. There are 16 public institutions which are part of the Council, amongst them the UAF and the Superintendency of Banks. It is also too early to assess the effectiveness of the National Council for the Fight against International Terrorism, which has met three times since its creation.

1617. Although the authorities did not mention this body to the assessors, there may be established a Tripartite Commission of Coordination including the UAF, the Judiciary and the Attorney General's Office by an agreement in 2005. It was reactivated in 2009 with the aim of coordinating the activities of the three abovementioned agencies for the adoption of measures to analyze, prosecute and adjudicate effectively the money laundering and financing of terrorism offenses. Unfortunately there is no indication that this Tripartite Commission of Coordination has met in the last couple of years.

1618. Additional Element - Mechanisms for Consultation Between Competent Authorities and Regulated Institutions (c.31.2):

1619. Beside the CPAN, there is no mechanism in place for consultation between competent authorities, the financial sector and DNFBPs. In 2005, the SSRP entered into an MOU with SBP and SMV on supervision matters, but not specifically on AML/CFT issues. No AML/CFT information has been exchanged by SMV under this MOU.

1620. Statistics (applying R. 32):

1621. The authorities did not provide any statistics in relation with their coordination efforts. The frequency of the meetings of the different coordinating bodies remains unclear. The result of their works has not been communicated to the assessors.

1622. Panama does not seem to review the effectiveness of its system for combating money laundering and terrorism financing on a regular basis.

1623. The supervisory authorities informed that they have not received formal requests for assistance made or received relating to or including AML/CFT. Therefore, no statistics could be provided in this regard.

Effectiveness of Implementation

1624. Panama did put in place some mechanisms to ensure domestic coordination, including on terrorism and it's financing. These bodies do involve the relevant actors, especially at the policy level. However, all these coordination bodies seem to have a limited (or too recent) activity. In addition, discussions at the technical level do not appear to take place which does not promote effective coordination at the operational level between the different agencies involved against ML/TF.

1625. There is no operational cooperation or coordination between the DIJ, the UAF, and the Customs. Some interlocutors mentioned that the only opportunity to meet with colleagues from other agencies happens during the workshops organized by the US DEA.

1626. There seems to be more frequent contacts between the UAF and the SBP on one side, and between the SBP and the DIJ on the other side. However, these contacts are not institutionalized and are based on individual initiatives. The assessors did not obtain any minutes or agenda of meetings between the UAF and the SBP, or between the UAF and the DIJ, or between the SBP and the DIJ. Finally, all these entities seem to meet only once a year, when the UAF releases its annual report. But the format of the meetings does not permit operational exchanges, including on trends, patterns and risks, and on the best way to detect and investigate money laundering in Panama.

1627. At policy level, the ongoing debate in the country on bearer shares immobilization and reform of the AML/CFT legislation (two pieces of legislation being considered) demonstrates an element of domestic coordination but it is not clear what role the various coordinating bodies is playing. The UAF did not share with the assessors the draft AML/CFT law nor the draft law on bearer shares if there is one. It was also not clear what role the UAF, as the leading AML/CFT body, is playing in this debate. (Post mission an law providing for the custody of bearer shares was passed in July 2013).

7.1.2. Recommendations and Comments

- Panama should make more consistent and regular use of the coordination tools that are in place and ensure that ML/TF issues are regularly addressed especially at the operational level.
- There should be more clear channels of communication between agencies, including supervisory authorities in order to promote the implementation of AML/CFT law and regulations, including through contacts at operational level.

- The fight against ML/TF should be part of the agenda of the coordination bodies on a regular basis.

7.1.3. Compliance with Recommendation 31 and 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R. 31	**PC**	• Lack of effective coordination mechanisms and practice to develop and implement national AML/CFT measures. • Absence of operational contacts between the UAF and law enforcement agencies.
R. 32	**NC**	• No regular review of the effectiveness of the ML/TF regime in Panama.

7.2. The Conventions and UN Special Resolutions (R. 35 and SR. I)

7.2.1. Description and Analysis

1628. Legal Framework:

1629. Ratification of AML Related UN Conventions (c.35.1):

1630. Panama has ratified the United Nations Convention against Transnational Organized Crime through Law 23 of July 7, 2004 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances through Law 20 of 7 December 7, 1993.

1631. Ratification of CTF Related UN Conventions (c.I.1):

1632. Panama has ratified the International Convention for the Suppression of the Financing of Terrorism through Law 22 of May 9, 2002. It has also ratified all the treaties listed in the Annex to this Convention, including 13 universal conventions and protocols and 2 regional conventions.

Implementation of Vienna and Palermo Conventions *(Articles 3–11, 15, 17 and 19, c.35.1):*

1633. The money laundering offense in Panama is largely in compliance with the requirements of Vienna and Palermo Conventions. Proper ancillary offenses as well as the association to commit ML are criminalized by the law. Panama has also criminalized the trafficking in narcotics and other related offenses.

1634. The criminal law and the criminal procedures laws provide for provisional measures and for forfeitures of property. Controlled deliveries are also available for use by investigators.

1635. All ancillary offenses provided for under the Vienna and Palermo conventions are covered under Panamanian law.

1636. Panamanian laws explicitly provide for the seizing and forfeiture of: “the instruments, property and real estate, securities and derivatives of the commission, or related to the offenses against public administration, money laundering, financing of terrorism, drug trafficking and related crimes.

1637. The Panamanian law doesn't provide for the confiscation of property of corresponding value.

1638. Based in a number of bilateral and multilateral treatises, Panama may be able to provide the widest possible range of mutual legal assistance in AML/CFT investigations, prosecutions and related proceedings. However, the country has no constitutional or legal rules governing the principles and procedures for international legal cooperation in the absence of a treaty. In those cases, according to jurisprudence of the Supreme Court, the assistance may be provided under the principles of reciprocity, solidarity and good faith.

1639. Preventive measures and a supervisory regime are in place for banks and nonbank financial institutions. However, the legal framework setting out the various obligations is still subject to significant shortcomings as discussed under section 3 of this report. In particular, customer due diligence measures, record keeping, and STR reporting requirements could be strengthened further and important parts of the financial and non-financial sectors required to be covered under the FATF standard are not subject to the AML law (Law 42 of 2000). Law 42 also does not cover CTF issues. CTF issues are variably addressed mostly under subsidiary administrative instruments (OEMs) in ways that go beyond Law 42 and contrary to Art. 184 of the Constitutions that says they should not fall outside the text and spirit of the law. Consequently, their legality may be subject to challenge.

Implementation of CTF Convention (Articles 5–7, 10–16, 18–20, 24-27, 29–31, and 34, c.35.1):

1640. Terrorist financing offense extends to any person who willfully provides funds with the unlawful intention that they should be used or knowing that they are to be used to carry out a terrorist act. The law doesn't cover the financing of a terrorist organization or an individual terrorist.

1641. Panamanian law covers, in a generic fashion, a range of offenses established in the Conventions and Protocols listed in the Annex to TF Convention as well as the hypothesis defined in paragraph (2). However, the regulation only applies when there is “the purpose of disturbing the public peace.” Additionally, in order to commit any of the terrorist acts, the author must have used some of the instruments mentioned in the law: “radioactive material, gun, fire, explosive, biological or toxic substance or any other means of mass destruction or element that has that potential.”

1642. As far as those subjective and objective elements are not required in many of the offenses set forth in TF Conventions, their inclusion in the law limits the scope of the financing of terrorism crime in Panama.

1643. **Implementation of UNSCRs relating to Prevention and Suppression of TF:** Panama hasn't implemented the UNSCRs relating to Prevention and Suppression of TF.

1644. Additional Element – Ratification or Implementation of Other relevant international conventions (c.35.2):

- Panama ratified the Inter-American Convention against Terrorism through Law 75 of 2003.

7.2.2. Recommendations and Comments

- Fully implement the UN Vienna and Palermo Conventions.

- Fully implement the UN CTF Convention, in particular by addressing the shortcomings identified for SR. II.
- Address the shortcomings identified in relation to the implementation of UNSCRs 1267 and 1373.

7.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R. 35	**PC**	• Panama has not fully implemented many provisions of the Vienna and Palermo Conventions as outlined in the various sections of the report.
SR. I	**PC**	• Panama not fully implemented the CTF Convention as outlined in the various sections of this report. • Panama has not implemented UNSCRs 1267 and 1373.

7.3. Mutual Legal Assistance (R. 36–38, and SR. V)

7.3.1. Description and Analysis:

1645. Legal Framework:

1646. Section 4 of the Constitution of Panama establishes the principle of respect and compliance with the rules of international law. Based on this premise, Panama has signed several agreements on Mutual Legal Assistance in Criminal Matters. However, the country has no constitutional or legal rules governing the principles and procedures for international legal cooperation in the absence of treaty. In those cases, according to jurisprudence of the Supreme Court, assistance may be provided under the principles of reciprocity, solidarity and good faith that must prevail among the countries of the international community (Court Sentences of September 14, 1995 and August 12, 1996 of the Fourth Chamber of General Matters).

1647. Panama has signed a number of bilateral international conventions and treaties on mutual legal assistance including:

a) Mutual Legal Assistance Treaty in Criminal Matters between the Republic of Panama and the United States of America, approved by Law 20 of July 22, 1991.
b) Mutual Legal Assistance Treaty and Judicial between the Republics of Panama and Colombia, approved by Law 42 of June 14, 1995.
c) Mutual Legal Assistance Treaty in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, signed in Guatemala on October 29, 1993, ratified in Panama by Law 39 of July 13, 1995.
d) Mutual Legal Assistance Treaty in Criminal Matters between Panama and the United Mexican States, approved by Law 40 of June 30, 1998.
e) Act 5 of 2008. Treaty between the Republic of Panama and the Federative Republic of Brazil on Mutual Legal Assistance in Criminal Matters, signed at Panama on August 10, 2007.

1648. Widest Possible Range of Mutual Assistance (c.36.1):

1649. According to the above-mentioned treaties, Panama may be able to provide the widest possible range of mutual legal assistance in AML/CFT investigations, prosecutions and related

proceedings, including assistance of the following nature: (a) the production, search and seizure of information, documents, or evidence (including financial records) from financial institutions, or other natural or legal persons; (b) the taking of evidence or statements from persons; (c) providing originals or copies of relevant documents and records as well as any other information and evidentiary items; (d) effecting service of judicial documents; (e) facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country; and (f) identification, freezing, seizure, or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for TF, as well as the instrumentalities of such offenses.

1650. As an example, the Mutual Legal Assistance Treaty in Criminal Matters between Panama and the United Mexican States provides that the assistance covers:

- collect evidence and obtain declaration of persons;
- provide information, documents and other files, including summaries of criminal records;
- locating persons and objects including their identification;
- the legal processing of searches or requests for searches and assurance measures or provisional warrants that are ordered by the judicial authorities of the requested Party, in accordance with their constitutional and other legal mandates;
- the legal processing of requests for taking measures for the freezing and confiscation of goods that are ordered by the judicial authorities of the requested Party in accordance with its constitutional and other legal mandates;
- the voluntary transfer of persons in custody in order to testify or for assisting in an investigation;
- service of documents, including documents requesting the presence of people;
- providing documents, records and evidence, and
- other forms of assistance that are not inconsistent with the object and purpose of this Treaty, or the law of the Requested Party."

1651. According to jurisprudence of the Supreme Court the same kind of assistance can be provided in the absence of treaty under the principles of reciprocity, solidarity, and good faith.

1652. Panama does not permit the confiscation of assets of corresponding value.

1653. Provision of Assistance in Timely, Constructive and Effective Manner (c.36.1.1):

1654. According to the information provided (agreements, statements, and statistics) Panama provides the broadest international cooperation on judicial assistance required by foreign governments attending any requests not contrary to the Panamanian constitutional or legal system.

1655. In general, treaties and conventions do not establish a specific timeframe for compliance with a legal assistance request. However, they do establish the time to formalize the request for such assistance, which in most conventions is a 30 day term.

1656. They have reported that, in 2010, responses to international legal assistance requests were provided in an average timeframe of 11 months, for 2011 the average was seven months and for 2012 it was five months. The authorities also reported that there have been cases in which cooperation was

complied summarily within days or weeks. However, they have not provided statistics to support the abovementioned statement.

1657. No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c.36.2):

1658. In general, mutual legal assistance is not prohibited or made subject to unreasonable, disproportionate or unduly restrictive conditions.

1659. However, it must be noted that Panama applies the principle of dual criminality in a very strict manner. This is based on numerous treaties to which Panama is a party and a consistent and repeated jurisprudence of the Supreme Court. Notwithstanding, there is no requirement that the crime should have the same designation as in Panamanian law for that principle to be applied.

1660. Efficiency of Processes (c.36.3):

1661. Each instrument signed by the Panamanian government with other states establishes parameters and procedures to which the international assistance is subject.

1662. The requests for international assistance are processed through the Central Authority agreed in the applicable treaty. In the case of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, and the United Nations Convention Against Transnational Organized Crime and its Protocols, the Central Authority is the Attorney General's Office.

1663. In other cases, the requests for cooperation are processed through the Ministry of Foreign Affairs (Department of Treaties and Legal Affairs), or through the National Directorate for Implementation of Mutual Legal Assistance Treaties and International Cooperation of the Ministry of Government, and General Business Fourth Chamber of the Supreme Court.

1664. There is no clear process for the execution of mutual legal assistance requests in a timely way and without undue delays in the absence of treaty.

1665. The authorities have reported that, in 2010, the international legal assistance request were provided in an average timeframe of 11 months, for 2011 in an average of seven months and for 2012 the average was five months. They also reported that there have been cases in which the cooperation was complied summarily within days or weeks. However, they have not provided statistics to support the abovementioned information.

1666. Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c.36.4):

1667. According to the authorities, Panama does not provide legal assistance when the offense is also considered to involve fiscal matters based on the principle of dual criminality, based on the fact that fiscal offenses/crimes are not a predicate offense to money laundering.

1668. Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c.36.5):

1669. There are no impediments to provide mutual legal assistance when there are laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP. However, the practical

challenges on obtaining beneficial ownership and control of legal persons and arrangements may make implementation challenging. (See R. 33 and R. 34, and R. 12, R. 14, and R. 24)

1670. Availability of Powers of Competent Authorities (applying R. 28, c.36.6):

1671. The powers of competent authorities required under R. 28 are available for use in response to requests for mutual legal assistance.

1672. Avoiding Conflicts of Jurisdiction (c.36.7):

1673. Panama did not provide information about the existence of mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country

1674. International Cooperation under SR. V (applying c.36.1–36.6 in R. 36, c.V.1) and Additional Element under SR. V (applying c.36.7 and 36.8 in R. 36, c.V.6):

1675. The same rules and principles governing international legal assistance on money laundering apply to terrorist financing.

1676. Dual Criminality and Mutual Assistance (c.37.1 and 37.2), (c.V.2):

1677. Panama applies the principle of dual criminality in a very strict manner. This is based on numerous treaties to which Panama is a party and a consistent and repeated jurisprudence of the Supreme Court. That principle applies even in the cases of less intrusive and non-compulsory measures.

1678. However, for extradition and those forms of mutual legal assistance where dual criminality is required, Panama has no legal or practical impediment to rendering assistance where both countries criminalize the conduct of underlying the offense. Technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorizes or denominates the offense do not pose an impediment to the provision of mutual legal assistance (Section 517 of the Criminal Procedures Code)

1679. Timeliness to Requests for Provisional Measures including Confiscation (c.38.1–c.V3):

1680. Section 4 of the Constitution of Panama establishes the principle of respect and complies with the rules of international law. Based on this premise, Panama has signed several agreements on Mutual Legal Assistance in Criminal Matters.

1681. Additionally, according to jurisprudence of the Supreme Court, the assistance may be provided under the principles of reciprocity, solidarity and good faith.

1682. However, the country has no constitutional or legal rules governing the principles and procedures for international legal cooperation in the absence of a treaty. Therefore, there are no appropriate laws and procedures to provide an effective and timely response to mutual legal assistance requests outside of treaties.

1683. Panama hasn’t provided statistics on requests related to seizure and confiscation orders.

1684. Property of Corresponding Value (c.38.2–c.V3):

1685. Panama does not have provisions for the seizure or forfeiture of property of corresponding value.

1686. Coordination of Seizure and Confiscation Actions (c.38.3–c.V3):

1687. Panama does not have arrangements for coordinating seizure and confiscation actions with other countries.

1688. Asset Forfeiture Fund (c.38.4):

1689. Panama has not considered to the establishment of an Asset Forfeiture Fund.

1690. Sharing of Confiscated Assets (c.38.5):

1691. Panama informed that it is possible to share confiscated assets. The authorities reported specific cases under international legal assistance agreements. At the time of the mission they stated that asset sharing arrangements were being put in place where Panama would receive about 70 percent of confiscated assets from the United States of America. In addition, Panama had sent significant funds to El Salvador, Peru, and Israel being the proceeds of frozen (not confiscated) assets in Panama banks under international judicial assistance arrangements.

1692. Statistics (applying R. 32):

Requests Received for Legal Assistance in General Criminal Matters (per year)

2010	REQUESTING COUNTRY	TOTAL	PROVIDED	PENDING
	GERMANY	1	1	0
	ARGENTINA	2	2	0
	BELGIUM	1	1	0
	BRASIL	5	5	0
	BULGARIA	1	1	0
	CANADA	1	1	0
	CHILE	2	2	0
	COLOMBIA	26	26	0
	COSTA RICA	6	6	0
	ECUADOR	10	10	0
	EL SALVADOR	4	4	0
	SPAIN	2	2	0
	USA	13	13	0
	UK	1	1	0
	GUATEMALA	9	9	0
	HONDURAS	14	12	2
	ITALY	1	1	0
	MEXICO	8	8	0
	NETHERLANDS	2	2	0
	PERU	8	8	0
	RUSIA	1	1	0

	URUGUAY	1	1	0
	VENEZUELA	6	5	1
	TOTAL	**125**	**122**	**3**

2011	REQUESTING COUNTRY	TOTAL	PROVIDED	PENDING
	GERMANY	1	1	0
	ARGENTINA	7	7	0
	BELGIUM	1	1	0
	BOLIVIA	1	1	0
	BULGARIA	2	2	0
	CANADA	2	2	0
	COLOMBIA	17	14	3
	COSTA RICA	5	5	0
	ECUADOR	13	10	3
	USA	17	11	6
	EGYPT	1	1	0
	EL SALVADOR	8	6	2
	SPAIN	7	4	3
	FRANCE	3	1	2
	UK	1	1	0
	GUATEMALA	7	5	2
	HONDURAS	4	4	0
	JAPAN	1	1	0
	MEXICO	10	10	0
	NICARAGUA	1	1	0
	PERU	13	13	0
	POLAND	2	2	0
	UK	1	1	0
	RUSIA	2	1	1
	SWEDEN	1	1	0
	UKRAINE	1	1	0
	VENEZUELA	10	9	1
	TOTAL	139	116	23

2012	REQUESTING COUNTRY	TOTAL	PROVIDED	PENDING
	ARGENTINA	3	1	2
	AUSTRALIA	1	0	1
	BRASIL	3	1	2
	CANADA	3	1	2
	COLOMBIA	16	6	10
	COSTA RICA	9	5	4
	CUBA	1	0	1
	CURAZAO	1	1	0
	ECUADOR	4	1	3
	USA	15	5	10
	EL SALVADOR	5	4	1
	SPAIN	2	0	2
	FRANCE	1	0	1
	UK	1	1	0
	GUATEMALA	2	2	0
	HONDURAS	9	4	5
	LITUANIA	2	0	2
	MEXICO	5	4	1
	NETHERLANDS	2	0	2

	PERU	4	2	2
	POLAND	1	0	1
	REP. DOMINICANA	1	0	1
	RUSIA	3	1	2
	TURKEY	1	0	1
	UKRAINE	2	2	0
	URUGUAY	1	0	1
	VENEZUELA	8	3	5
	TOTAL	106	44	62

Requests Made for Legal Assistance on Money Laundering (per year)

2010	REQUESTING COUNTRY	TOTAL	PROVIDED	PENDING
	COLOMBIA	6	6	0
	ECUADOR	3	3	0
	EL SALVADOR	4	4	0
	USA	4	4	0
	GUATEMALA	8	8	0
	HONDURAS	6	6	0
	PERU	5	5	0
	URUGUAY	2	2	0
	TOTAL	38	38	0

2011	REQUESTING COUNTRY	TOTAL	PROVIDED	PENDING
	COLOMBIA	5	3	2
	EL SALVADOR	6	4	2
	USA	3	2	1
	GUATEMALA	5	2	3
	HONDURAS	4	4	0
	NICARAGUA	2	2	0
	POLAND	1	1	0
	PERU	5	5	0
	TOTAL	31	23	8

2012	REQUESTING COUNTRY	TOTAL	PROVIDED	PENDING
	ARGENTINA	1	0	1
	COLOMBIA	4	1	3
	HONDURAS	8	4	4
	GUATEMALA	1	1	0
	EL SALVADOR	1	1	0
	USA	1	1	0
	TOTAL	16	8	8

Analysis of Effectiveness:

1693. Panama provides international cooperation on legal assistance required by foreign governments.

1694. Panama has signed several bilateral and multilateral treaties and agreements of international cooperation.

1695. According to jurisprudence of the Supreme Court, in the absence of treaty assistance may be provided under the principles of reciprocity, solidarity and good faith. However, the lack of explicit legal provisions to regulate the principles and procedures for international legal cooperation in the absence of treaty, as well as a strict interpretation of the principle of dual criminality, may affect the effectiveness of the system.

1696. According to the authorities, in practice, the time for providing the judicial assistance in Panama does not exceed a term of three to four months. However, they have not provided statistics to support that.

1697. The deficiencies on the compliance with Recommendations 1, 3, and 28 affect the effectiveness of the system, specially taking into account the strict interpretation of the principle of dual criminality.

1698. The limited scope of the terrorist financing offense also affects the effectiveness of the system.

1699. Panama hasn't provided comprehensive statistics on requests related to seizure and confiscation orders.

7.3.2. Recommendations and Comments:

- Establish explicit legal provisions to regulate the principles and procedures for international legal cooperation in the absence of a treaty.
- Adopt regulations to permit the confiscation of assets of corresponding value.
- A request for mutual legal assistance should not be refused on the ground that the offense is also considered to involve fiscal matters.
- Consider devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.
- To the greatest extent possible, mutual legal assistance should be rendered in the absence of dual criminality, in particular, for less intrusive and noncompulsory measures.

7.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R. 36	**PC**	• Panama does not have legal provisions to regulate the principles and procedures for international legal cooperation in the absence of treaty. • Panama does not provide mutual legal assistance on the ground that the offense is also considered to involve fiscal matters. • Mutual legal assistance is not rendered in the absence of dual criminality for less intrusive and noncompulsory measures. • The deficiencies on the compliance with Recommendations 1, 3, and 28 adversely impact the effectiveness of the system. • The limited scope of the terrorist financing offense also adversely impacts the effectiveness of the system.

R. 37	**PC**	• Mutual legal assistance is not rendered in the absence of dual criminality for less intrusive and noncompulsory measures.
R. 38	**PC**	• There are no appropriate laws and procedures to provide an effective and timely response to mutual legal assistance requests outside of treaties. • Confiscation of assets of corresponding value is not permitted • Panama has not considered to the establishment of an Asset Forfeiture Fund. • Deficiencies on the compliance with Recommendation 3 adversely impact the effectiveness of the system. • Panama hasn't provided statistics on requests related to seizure and confiscation orders.
SR. V	**PC**	• Panama does not have legal provisions to regulate the principles and procedures for international legal cooperation in the absence of a treaty. • Panama does not provide mutual legal assistance on the ground that the offense is also considered to involve fiscal matters. • Mutual legal assistance is not rendered in the absence of dual criminality, not even for less intrusive and noncompulsory measures. • The limited scope of the terrorist financing offense adversely impacts the effectiveness of the system.

7.4. Extradition (R. 37, 39, and SR. V)

7.4.1. Description and Analysis

1700. Legal Framework:

1701. Panamanian legislation provides the principles and procedures for extradition through Section 24 of the National Constitution, Chapter V of the Judicial Code and Title IX of the Criminal Procedures Code. Additionally, Panama has signed bilateral extradition treaties with eleven countries:

1702. Dual Criminality and Mutual Assistance (c.37.1 and 37.2):

1703. Panama applies the principle of dual criminality in a very strict manner. This is based on numerous treaties to which Panama is a party and a consistent and repeated jurisprudence of the Supreme Court. That principle applies even in the cases of less intrusive and non-compulsory measures.

1704. However, for extradition and those forms of mutual legal assistance where dual criminality is required, Panama has no legal or practical impediment to rendering assistance where both countries criminalize the conduct underlying the offense. Technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorizes or denominates the offense, do not pose an impediment to the provision of mutual legal assistance (Section 517 of the Criminal Procedures Code).

1705. Money Laundering and Terrorist Financing as Extraditable Offenses (c.39.1 and SR V.4):

1706. Money laundering and terrorist financing are extraditable offenses, according to Section 517 of the Criminal Procedures Code.

1707. Extradition of Nationals (c.39.2 and SR V.4):

1708. Section 24 of the Constitution provides that Panama cannot extradite its nationals. However, Section 2506 of the Judicial Code and Section 519 of the Criminal Procedures Code provide that, in the event that extradition is denied by nationality, it must be considered that the offense has been committed in Panama; therefore, it must be tried in the country (principle "Aut Dedere Aut Judicare").

1709. Cooperation for Prosecution of Nationals (applying c.39.2(b), c.39.3):

1710. The authorities have cited two precedents of cases in which Panama has cooperated with other countries (requesting states) for the prosecution and conviction of Panamanian citizens who could not be extradited due to nationality. One case related to a money laundering crime committed in the United States and the other in Peru.

1711. Efficiency of Extradition Process (c.39.4 and SR V.4):

1712. Panama has not adopted specific measures or procedures that will allow extradition requests and proceedings relating to ML and TF to be handled without undue delay.

1713. However, the authorities have informed that Panama is working on the modification of the law of extradition. This reform aims to further adapt the Panamanian legislation to international standards, following recommendations made by international organizations dedicated to issues of prosecuting crime, terrorism and human rights.

1714. Additional Element (R. 39)—Existence of Simplified Procedures relating to Extradition (c.39.5):

1715. Panama has not established simplified procedures relating to Extradition.

1716. Additional Element under SR. V (applying c.39.5 in R. 39, c.V.8)

1717. Panama has not established simplified procedures relating to Extradition.

1718. Statistics (R. 32):

1719. Extradition requests per year and country

2010				
TOTAL	**Finalized**	**Money laundering**	**Requesting country on money laundering**	**Requesting country on terrorism**
15	10	4	USA (1) Belgium (1) Greece (1) Italy (1)	USA (1)

2011			
TOTAL	**Finalized**	**Money laundering**	**Requesting country on money laundering**
18	10	4	USA (3) Spain (1)

2012				
TOTAL	**Finalized**	**Money laundering**	**Requesting country on money laundering**	**Terrorism**
35	19	8	USA(8)	USA(1)

Analysis of Effectiveness:

1720. Panama provides international cooperation on extraditions required by foreign governments.

1721. Panama has signed several bilateral and multilateral treaties and agreements on extradition and has explicit legal provisions to regulate the principles and procedures for international legal cooperation on that matter in the absence of treaty.

1722. The limited scope of the terrorist financing offense affects the effectiveness of the system, specially taking into account the strict interpretation of the principle of dual criminality.

1723. The authorities have not provided information about the duration, in practice, of the extradition processes. Also, the statistics provided by Panama do not show clearly whether the extraditions were conceded or not. Therefore, it is not possible to assess the effectiveness of the system in an appropriate manner.

7.4.2. Recommendations and Comments

- To the greatest extent possible, mutual legal assistance should be rendered in the absence of dual criminality, in particular, for less intrusive and noncompulsory measures.

- Consistent with the principles of domestic law, Panama should adopt measures or procedures that will allow extradition requests and proceedings relating to ML and TF to be handled without undue delay.

7.4.3. Compliance with Recommendations 37 and 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R. 39	**LC**	• Panama has not adopted measures or procedures that will allow extradition requests and proceedings relating to ML and TF to be handled without undue delay.
R. 37	**PC**	• Mutual legal assistance is not rendered in the absence of dual criminality, not even for less intrusive and noncompulsory measures.
SR. V	**PC**	• Panama has not adopted measures or procedures that will allow extradition requests and proceedings relating to ML and TF to be handled without undue delay. • Mutual legal assistance is not rendered in the absence of dual

		criminality, not even for less intrusive and noncompulsory measures. • The limited scope of the terrorist financing offense also affects the effectiveness of the system.

7.5. Other Forms of International Cooperation (R. 40 and SR. V)

7.5.1. Description and Analysis

1724. Legal Framework:

1725. The AML law (Law 42 of 2000) does not make provisions related to international cooperation in AML matters. The ability to cooperate with foreign counterparts, therefore, depends on the regulatory framework of each stakeholder.

1726. UAF: With respect to the UAF, Article 2 (d) of Executive Decree 78 of June 5, 2003 states that the UAF is permitted to exchange with foreign counterparts information for the analysis of cases that could be related to money laundering or financing of terrorism, subject to said authorities signing a Memorandum of Understanding (MOU) or other cooperation agreements. The UAF has been a member of the Egmont Group since 1997, and has signed 40 MOUs with foreign counterparts.

1727. The AML Law does not cover the following FIs and/or activities: insurance companies and intermediaries, savings and loan associates, financial leasing, factoring, and multi-service cooperatives that provide deposits, loans and services, which negatively impacts the compliance with this recommendation.

1728. Supervisors: The SBP, as the supervisory authority of banks is empowered under Article 65 of the Banking Law to cooperate with its foreign counterparts, through memorandums of understandings. To that end, the SBP can sign bilateral or multilateral MOUs that allow and facilitate the consolidated, cross-border banking supervision and the global evaluation of banks and banking groups. In addition, article 65 of the Banking Law states that cooperation with foreign supervisory bodies is based on principles of reciprocity and confidentiality and must be related to the objectives of banking supervision. The couple of MOUs reviewed by the assessors did not mention the coverage of trustee supervision. The SBP had signed 424 MOUs as of the date of the assessment.

1729. The SMV is empowered under Article 30 of the Securities Law to sign bilateral MOUs with foreign counterparts in order to regulate matters related to inspections, investigations, exchange of information and cooperation, among others.

1730. The SSRP is granted the power under Article 12 of Law 12/2012 (Insurance Law) to sign MOUs both with domestic and foreign competent authorities. The authorities informed that at the time of the on-site mission, no MOUs had been signed yet with foreign counterparts, but that MOU negotiations with Colombia and Ecuador were underway. However, insurance companies and intermediaries are not fully subject to the AML Law and such limitation affects the compliance with the recommendation.

1731. ICI and IPACOOP are not entitled under their legal framework to sign MOUs with foreign counterparts.

1732. As regards cooperation with foreign supervisory authorities of DNFBPs, there is no legal framework to enable a wide range of international cooperation and clear and effective gateways for the exchange of information.

1733. Law enforcement: The Police (DIJ) is able to exchange information of ML/TF cases, at operational level, by using the Interpol network. There is also bilateral informal cooperation with foreign authorities such as the DEA on anti-narcotics matters.

1734. The Customs channel to exchange operational information at international level is the International Administrative Mutual Assistance, under the aegis of the World Customs Organization.

1735. Widest Range of International Cooperation (c.40.1):

1736. The UAF: The UAF provides cooperation with the countries it has signed MOUs by searching its own database and accessing public information related to the request. In the absence of MOUs, the UAF will not disclose information contained in its database to an Egmont member but will share only publicly available information, which constitutes a breach to the Egmont Principles it has committed to. Whatever the status of its counterpart is (Egmont member, non Egmont member, MOU signatory) it does not appear that the UAF is sharing information that is not contained in its database already, which constitutes an important impediment to effective international cooperation.

1737. Supervisors: The Executive Decree 52 of 2008 (Banking supervision law) does not limit the range of assistance that the SBP can provide to its foreign counterparts, as long as it is related to supervision matters. The article 331 (2) of the Law on SMV states that the SMV cannot disclose any information obtained through an investigation, inspection or negotiation, except to the Prosecutors or for consolidated supervision purposes. This seems to limit the range of international cooperation that it can provide to its foreign counterparts.

1738. The provisions in the law the MOUs seem to be applied exclusively to co-operation and information exchange in relation to prudential supervision, and not to information related to anti-money laundering or the financing of terrorism. The authorities indicated that the scope of information exchange related to prudential supervision would cover AML/CFT aspects and that the existing provisions are drafted in wide enough terms to include these aspects, thus not requiring explicit references to AML/CFT. However, explicit mentions of AML/CTF as part of the scope of the MOUs would help remove any uncertainty as to the scope of cooperation.

1739. The SBP, SMV, and the SSRP are granted under their respective sectoral laws authority to provide a wide range of international cooperation to foreign counterparts through memoranda of understanding.

1740. Pursuant to Article 65 of the Banking Law, the SBP has signed 24 Memoranda of Understanding with the following countries/institutions: (1) Cayman Islands, (2) Bahamas, (3) Brazil, (4) Russia, (5) Montserrat, British West Indies, (6) British Virgin Islands, (7) Mexico, (8) Honduras, (9) Antigua, (10), United States (Federal Corporation of Deposits Insurance), (11) Islas de Turks and Caicos Islands, (12) Office of Thrift Supervision, (13) United States-Office of the Comptroller of the Currency and the Federal Reserve Bank, (14) Canada, (15) Peru, (16) Ecuador, (17) Guatemala, (18) Dominican Republic, (19) Nicaragua, (20) Bolivia, (21) Venezuela, (22) El Salvador, (23) Colombia, and (24) Costa Rica.

1741. The SMV has signed 11 Memoranda of Understanding with the following countries: (1) Mexico, (2) Argentina, (3) Costa Rica, (4) Spain, (5) Ukraine, (6) Salvador, (7) Dominican Republic, (8) Honduras, (9) Puerto Rico, (10) Colombia, and (11) Multilateral Memorandum of Understanding between the Central American countries, Panama, and Dominican Republic. The SMV has not yet signed the IOSCO Multilateral Memorandum of Understanding. However, the authorities informed that the process for becoming part of such memorandum is underway. At a multilateral level, the SMV is part of the MOU signed in 2007 between the Central American countries and Dominican Republic, in order to promote coordination, exchange of information, capacity building, amongst the signatories for a sound, transparent and organized regional stock exchange and securities market. However, the SMV has not yet signed a multilateral MOU with GAFISUD members.

1742. GAFISUD recently developed a project to promote good practices, to enhance cooperation and exchange of information between financial institutions supervisory bodies of members' countries. The objective of this agreement is to put forward common rules for international cooperation in AML/CFT matters. As of the mission date, the following countries have signed: Ecuador, Panama, Paraguay, Peru and Uruguay. For Panama, the three core supervisors are covered by this agreement (SBP, SNV and SSRP). By signing this agreement, the supervisors committed to exchange on: (i) the evolution of the financial sector, norms and regulations, (ii) trends, best practices and typologies of ML/TF, (iii) practices in identifying and verifying clients and beneficial owners, (iv) licensing and subsidiaries, and (v) identification of the real owners of supervised financial institutions.

1743. A review of copies of the MOUs provided by the authorities revealed that the majority of these memoranda were drafted in general terms and focused on exchanging information and promoting cooperation among counterparts mostly with respect to banking activities.

1744. Law enforcement: The DIJ exchanges information through the Interpol network. While there are no specific limitations to this cooperation network, the limitations posed domestically to the law enforcement authorities in accessing information (e.g., due to lack of transparency of the corporate vehicles) are replicated at the international level. Informal cooperation is also provided on a case-by-case basis, with a couple of countries. The Customs authority also uses the international network of the World Customs Organization in order to exchange information with their foreign counterparts. The Attorney General Office and the DIJ each have a representative in the RRAG[27], the Asset Recovery Network for GAFISUD.

1745. There is no regional Police/Customs treaty in force.

1746. Provision of Assistance in Timely, Constructive, and Effective Manner (c.40.1.1):

1747. UAF: The UAF limits the assistance it provides to the consultation of its database and to public information, if the requesting counterpart is an Egmont member. This operational limitation undermines the utility and effectiveness of the exchange of information. Panama did not indicate any

[27] The RRAG (Red de Recuperacion de Activos de Gafisud) is aimed at strengthening cooperation between GAFISUD members in asset recovery issues related to ML/TF and predicate offenses. Each country identifies a focal point, in order to facilitate the contacts.

timeliness issues with regard to the replies to Egmont request, and no statistics on the average time for a reply have been given to the assessors. In addition, the domestic limitations in the access to information on legal persons and arrangements (e.g., from resident agents/lawyers) impact on the ability of the UAF to provide relevant information to its foreign counterparts.

1748. Supervisors: In the absence of statistics or examples of real cases of cooperation, the provision of assistance in timely, constructive and effective manner by the Supervisors cannot be assessed. The SBP did not recall receiving requests for assistance over the last two years. Similarly, the SMV and the SSRP informed that no requests have been received yet.

1749. To the extent that the SBP does not access to and does not supervise the nontrust activities of trustees (e.g., corporate services), their ability to effectively cooperate may be constrained. The supervisors for noncore financial businesses (MICI and IPACOOP) and covered DNFBPs do not have systems for international cooperation.

1750. SMV and SSRP did not provide statistics in terms of number of requests received or sent by foreign counterparts. .

1751. Law Enforcement: The DIJ is in charge of handling the mutual legal assistance requests received by the Prosecutor's Office. The same limitations that it faces during domestic investigations are present when dealing with foreign requests, both at formal or informal level. Statistics (or lack thereof) from the DIJ and the Customs do not allow assessing whether the provision of assistance is made in timely, constructive and effective manner.

1752. Clear and Effective Gateways for Exchange of Information (c.40.2):

1753. See discussion above. Where MOUs have been signed, Panama has clear gateways for the exchange of information, including providing the address and contacts of each counterpart to facilitate prompt exchanges if necessary. See limitations above on lack of arrangements for some sectors.

1754. Spontaneous Exchange of Information (c.40.3):

1755. Spontaneous exchanges of information are possible according to the MOUs signed by concerned entities in Panama, and also through Interpol and WCO networks.

1756. As far as the UAF is concerned, the law encompasses only the exchange of information related to ML/TF and not to the predicate offenses.

1757. Making Inquiries on Behalf of Foreign Counterparts (c.40.4), FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c.40.4.1):

1758. Nothing prevents the UAF to make inquiries on behalf of foreign counterparts. The UAF is legally able to search its own database and to search other databases to which it has direct or indirect access, for matters related to ML/TF.

1759. In practice, and according to the Protocol Manual for the UAF activities, the UAF only searches its own database. Even if the UAF indicated that it also searches public information related to the requests, it does not appear as a mandatory step for the analysts in charge of handling Egmont

requests. The UAF specified however that the scope of the information to be provided will depend on the nature of the request and of its degree of precision. However, its ability to directly access information from some sectors, e.g., corporate information maintained by residents agents, would limit the scope of cooperation.

1760. The supervisory authorities are not authorized to conduct inquires on behalf of foreign counterparts.

1761. Conducting of Investigations on Behalf of Foreign Counterparts (c.40.5):

1762. The DIJ is able to conduct investigations on behalf of foreign counterparts and declared having done so a couple of times in the past. Most of the time, the foreign counterparts have also assisted in the investigations (for instance in the conduct of searches), as silent partners and outside of the formal proceeding. However, all this is done under the MLA process, and it is not clear if such assistance could be provided outside of the MLA process. The assessors were not given any indication that other competent authorities are authorized to conduct investigations on behalf of foreign counterparts.

1763. No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c.40.6):

1764. As far as supervisory authorities are concerned, the information exchanged must serve the purpose of filling the duties of the competent authorities and is subject to the same or equivalent confidentiality rules by the foreign requesting authority. Exchanges of information are not subject to disproportionate or unduly restrictive conditions.

1765. Article 65 of the Banking Law states that the cooperation with foreign supervisory bodies will be based on principles of reciprocity and confidentiality and must adhere strictly to objectives of banking supervision.

1766. As far as UAF and law enforcement authorities are concerned, there are no unreasonable or unduly restrictive conditions on exchange of information. The UAF, upon request, may also authorize the recipient country to use the information provided for judicial proceedings.

1767. Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c.40.7):

1768. At the UAF level, there is no legal restriction for the exchange of information based on fiscal matters. As a matter of fact, the requests sent through Egmont network are often at very preliminary stages and the predicate offense may not be identified. It was reported to the assessors that this would not impede the (limited) UAF collaboration.

1769. On the supervisory side, information provided to foreign counterparts under MOUs is usually intended to be used for supervisory purposes only and does not in practice involve fiscal matters. The SBP informed that since tax evasion is not a predicate offense to money laundering the request would be restricted. The SMV and the SSRP informed that a request for cooperation would be refused on the sole ground that the request involves fiscal matters.

1770. Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c.40.8):

1771. Requests cannot be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBPs. However, the domestic limitations to access of information indicated above will also affect implementation at both national and international levels. The lack of readily available information on the control and identity of beneficial owners of companies with bearer shares, and restrictions on access to information held by resident agents/lawyers on legal persons and arrangements due to confidentiality issues both create practical restrictions.

1772. Lawyers are not explicitly covered by the AML law. Each company and private foundation needs to have a resident agent, and only lawyers can provide this service. Since 2011, the law on resident agents imposes on them duties to perform certain customer identification procedures and to make the information available to competent authorities. Nonetheless, they have five years to comply with the new requirements for existing clients. In addition, the UAF is not listed as a competent authority that can request information from resident agents.

1773. Safeguards in Use of Exchanged Information (c.40.9):

1774. The authorities indicated that the exchanged information received is protected by the same confidentiality provisions that apply to similar information from domestic sources. The assessors were not aware of any breaches of confidentiality or agreements due to unauthorized use of information received from a foreign counterpart.

1775. Additional Element—Exchange of Information with Non-Counterparts (c.40.10 and c.40.10.1):

1776. The UAF is only able to exchange information with counterparts, pursuant Article 2 (d) of Executive Decree 78 of 2003.

1777. No information was given to the assessors on whether the requesting countries stated the purpose of the request, or on whose behalf the request is made.

1778. Additional Element—Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU (c.40.11):

1779. The Law 42 of 2000 does not prevent the UAF to obtain information from other competent authorities or other persons, pursuant request from foreign FIU. However, concerning trustee business, the SBP will not be able to share information with the FIU in the absence of judicial proceedings.

1780. International Cooperation under SR. V (applying c.40.1–40.9 in R. 40, c.V.5):

1781. By Executive Decree 78 of 2003, the UAF can exchange information with its counterparts including in relation with financing of terrorism. There is no mention of such international cooperation with regard to terrorism and terrorism organizations.

1782. As a general matter, all the deficiencies identified under R. 40 and SR. II have a limiting effect on the ability of Panama to provide international cooperation.

1783. For supervisory authorities, the scope of the international cooperation covers supervision matters but does not provide specific procedures for the expeditious exchange of AML/CFT information and cooperation.

1784. Law enforcement agencies did not mention specific agreements to exchange information on TF. It is assumed that the existing channels for ML would apply, with their benefits and limitations, and again, with no specific framework related to TF issues.

1785. Additional Element under SR. V (applying c.40.10–40.11 in R. 40, c.V.9):

1786. There is no possibility for any agency to exchange with non-counterparts, including on TF issues. No information was given to the assessors on requests from non-counterparties.

1787. Statistics (R. 32)

1788. UAF statistics: To date, 40 MOUs have been signed by the UAF of Panama with: Argentina, Australia, Bahamas, Barbados, Belgium, Bermuda, Bolivia, Brazil, Bulgaria, Canada, Cayman Islands, Chile, Colombia, Costa Rica, Croatia, Dominican Republic, El Salvador, Ecuador, France, Germany, Georgia, Guatemala, Haiti, Honduras, Israel, Italy, Mexico, Monaco, Netherlands Antilles, Paraguay, Peru, Portugal, Russia, South Africa, Spain, St Vincent, United Kingdom, United States, Ukraine, and Venezuela.

1789. Statistics in terms of exchange of information through the Egmont Network are the following:

Year	Number of requests received	Origin (Top 3)	Number of requests sent (and number of STR received the same year)	Destination (Top 3)
2007	82	Guatemala 13 Colombia 11 Bulgaria 6	43	Colombia 16 US 5 Others 2
2008	224	Colombia 27 Ukraine 20 US 17	90	Colombia 21 Venezuela 12 US 7
2009	145	US 25 Bulgaria 11 Belgium, Ukraine 9	97 (out of 956 STRs)	Venezuela 23 Colombia 21 US 16
2010	188	US 25 Ukraine 17 Bulgaria, Guatemala 9	56 (out of 815 STRs)	US 12 Venezuela 6 Colombia 6
2011	188	US 16 Ukraine 12 Peru, Colombia 11	37 (out of 647 STRs)	US 7 Colombia 5 Venezuela 4

1790. Statistics reveal a high demand for information arriving to Panama. The response rate was as follows: 140 replies in 2009, 188 replies in 2010, 226 replies in 2011. The UAF explained that the higher number of replies in a given year compared with the requests received was due to the analysis performed by the UAF. In such cases, the procedures manual of the UAF only requires the UAF to search the UAF database when dealing with an Egmont request.

1791. The SBP had signed 24 MOUs at the date of the assessment. However, it does not recall receiving or sending any request related to ML/TF issues over the last two years.

1792. There are no statistics about international cooperation related to ML/TF provided by the SMV, MICI, and the casino regulator.

Effectiveness of Implementation

1793. There is a legal framework for international cooperation by competent authorities. However, the deficiencies identified in the scope of the law, with regard to the covered entities, impact considerably on its implementation with regard to international cooperation in AML/CFT matters.

1794. The shortcomings in terms if identification of persons who control and the beneficial owners of legal persons and arrangements also hinder the ability to provide international cooperation.

1795. In addition, limitations on access to information and databases (other than its own) by the UAF reduce the effectiveness of assistance that it can provide to its counterparts. For instance, it cannot access information from resident agents. The written policy (Manual de Procedimientos) of the UAF is to consult only its own database upon request of its foreign counterparts with whom it has signed an MOU, though it can also access public information. This self-imposed limitation in providing information to foreign counterparts is not legally grounded and could be an significant impediment for an FIU based in an important international financial and corporate services center.

1796. Other than the UAF (e.g., through the Egmont network), the other competent authorities do not seem to exchange information related to AML/CFT with their foreign counterparts, at least not during the past 2–3 years.

1797. It is also noted that the UAF receives many more requests than it sends. In 2011, the UAF requested international cooperation in about 5 percent of the cases based on STRs received. This number appears low and may suggest that there were no international aspects in the STRs received and analyzed by the UAF and/or that it is not effectively utilizing the cooperation channels available to it.

1798. In summary, there are major implementation shortcomings and the country does not seem to have taken substantive action in terms of international cooperation beyond signing MOUs.

7.5.2. Recommendations and Comments

- The UAF should enhance international cooperation by more use of its powers under the AML Law (Law 42 of 2000) to access the information from reporting entities and law enforcement authorities in connection with requests from a foreign counterparts.

- The UAF should not limit itself to the consultation of its own database and public sources.

- The Supervisors should specifically include in the MOUs the exchange of information on AML/CFT.

- MICI and IPACOOP should be empowered to cooperate and exchange information with foreign counterparts.

- All competent authorities in Panama should be allowed to conduct inquiries on behalf of foreign counterparts. (i.e., SBP, SMV, and SSRP)

- All competent authorities should be provided with the power to cooperate and share information considered to involve fiscal matters.

- The Supervisors should consider using the MOUs to perform "fit-and-proper" checks as part of its licensing procedures.

- The UAF should make more systematic use of international cooperation in order to enhance the quality of its analysis.

- Panama should address the deficiencies identified under SR. II in order to be able to provide with effective international cooperation in TF matters.

7.5.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relative to s.6.5 underlying overall rating
R. 40	**NC**	• The ability to provide effective international cooperation by supervisors is significantly limited by the lack of or insufficient coverage in the AML/CFT legal and supervisory regime of, inter alia: insurance companies and their intermediaries, savings and loan associations, financial leasing, factoring, and multi-service cooperatives, the national mortgage bank (BHN), bureau (bureau de change), payment and credit management systems, lawyers, accountant, notaries, dealers in precious metals and stones, company services providers, and real estate agents (natural persons), etc. • The UAF does not make sufficient use of information access powers under the AML Law to enhance international cooperation. • MICI and IPACOOP are not empowered to exchange information with foreign counterparts. • Supervisors MOUs do not specifically include AML/CFT for the exchange of information. • The UAF should make a more systematic use of international cooperation in order to enhance the quality of its analysis. • Deficiencies identified under SR. II limit effective international cooperation on TF matters. • Panama's competent authorities do not provide the widest range of international cooperation to their foreign counterparts. • Not all competent authorities in Panama are allowed to conduct inquiries on behalf of foreign counterparts. • Lack of ability for some competent authorities (SBP and SVM) to share information when the request involves fiscal matters. • The domestic limitations to access information impact on the scope

		and effectiveness of international cooperation. • Lack of statistics on international cooperation for competent authorities other than the UAF does not allow for full assessment of effectiveness of implementation. • Absence of information on the timeliness of responses by the UAF from international parties does not allow for full assessment of effectiveness.
SR. V	**PC**	• The shortcomings identified under SR. II have a limiting effect on the ability of Panama to provide with effective international cooperation for TF investigations.

8. OTHER ISSUES

8.1. Resources and Statistics

	Rating	Summary of factors underlying rating
R. 30	**NC**	• The UAF financial and human resources are insufficient to enable the unit to perform effectively its functions and are stretched due to the fact that STRs are still filled on paper and processing of all CTRs need to be computerized. • The UAF budget is too dependent on (unpredictable) fines imposed by the Supervisor. • The DIJ is insufficiently staffed to perform its functions. • The DIJ does not receive adequate and relevant in-house or inter-agency training for combating ML and TF. • The Prosecutors and Judges do not receive adequate training on ML/TF, all the trainings being organized by the industry. • Insufficient resources and training provided to the competent authorities affect the effectiveness of the AML/CFT criminal laws. • Most nonbank financial supervisors (SMV, SSRP, IPACCOP, and MICI) are not properly funded, staffed and provided with necessary technical resources to fully and effectively perform their functions. • Insufficient training to staff of most supervisory agencies (SMV, SSRP, IPACOOP and MICI). • Supervisory resources and training for covered non-financial businesses (other than for trustees) are grossly inadequate especially for casinos (including and especially for high risk internet casinos), realtors and free zone businesses. • Training and inspection experience on general and AML/CFT trustee supervision needs to be reinforced and expanded to deal with complex trust structures and their risks, and to include associated the nontrust businesses of trustees.
R. 32	**NC**	• The statistics provided by the authorities are not explicit regarding the range of penalties effectively applied to money laundering. • Statistics on predicate offenses are grouped by chapters of the Penal Code (e.g., “Against the Economic Order”) and it is, therefore, not possible to establish to which specific crimes related to money laundering. • The poor maintenance and the lack of concordance of statistics at all stages of law enforcement authorities prevent a thorough assessment of the implementation of AML/CFT offenses in Panama. • There are no statistics on the duration of the legal assistance processes. • The statistics on extradition do not show clearly whether the extraditions were conceded or not. • Statistics from the DIJ and the Prosecutors are not properly maintained, with discrepancies in the number of cases and lack of clarity between ML cases and predicate offenses cases (drug cases mainly) using ML (UAF) information. • There is no statistics related to persons or entities and amounts of property frozen pursuant to or under UN Resolutions relating to terrorist financing. • There is no statistics for STRs resulting in investigation, prosecution or convictions for ML, TF or the underlying predicate offense. • There is no statistics for criminal sanctions applied to persons convicted of

		ML or TF offenses. • There is no statistics from the UAF on requests granted or refused • There is no statistics on spontaneous referrals made by the UAF to foreign authorities. • There is no statistics on international cooperation by supervisors authorities on ML/TF matters. • No statistics by the Public Registry (Registro Publico) on the total number of companies, foundations, and other legal entities that are on the registered and those are active. • No statistics on the number of NPOs that are operating in Panama. • No statistics on the number of lawyers, accounting firms, and other corporate services providers that are performing activities that should be covered under the applicable FATF Recommendations.

8.2. Other relevant AML/CFT Measures or Issues

1799. None.

8.3. General Framework for AML/CFT System (see also Section 1.1)

1800. As noted under the Preventive and Institutional and Other measures sections above, the primary AML Law (Law 42 of 2000) does not include CFT provisions, even though both ML and TF are offenses in the Penal Code. Subsidiary legislation (Executive Decrees/regulations) and other enforceable means (Resoluciones and Acuerdos) have gone beyond the provisions of the primary AML Law in significant ways thereby expanding its scope and in some instances include CFT provisions. To the extent that such laws and regulations are sufficient to address the asterisked (*) criteria for assessing compliance with the FATF recommendations, they would assist Panama in meeting those requirements. To the extent that the issues in the asterisked criteria are dealt with in OEMs, they would not.

1801. Against this background, there are constitutional issues with respect to the subsidiary instruments going beyond the letter and spirit of the umbrella legislation. The Constitution states explicitly that they should not but the authorities stress that under their jurisprudence, the provisions that go beyond the primary laws are enforceable until such time as they have been declared illegal or unconstitutional by a competent court. The assessors were not informed of any constitutional challenge and court ruling of the applicable provisions that would declare them as unlawful and unenforceable. Notwithstanding, the assessors stressed to the authorities the view that the mere threat or possibility of a constitutional challenge can create a dissuasive environment for supervisors and other competent authorities responsible for effectively implementing and enforcing the AML/CFT regime. This environment could also adversely influence the degree of compliance by financial and non-financial entities subject to the AML Law. A key indicator to consider in this respect is the experience in sanctioning for noncompliance with the AML/CFT requirements, and whether the constitutional issues may be influencing it. The very low number and level of sanctions applied against financial and non-financial entities under the AML regime can lead one to conclude that, for an important international financial and corporate jurisdiction like Panama, these legal and constitutional issues may be playing an important role in compliance and enforcement.

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating[28]
Legal systems		
1. ML offense	**PC**	• Some FATF-designated categories of crime are not included as predicate offenses to money laundering: counterfeiting of currency, smuggling, forgery, and piracy. Illicit association and trafficking in stolen goods have a limited scope. • The offense of money laundering doesn't apply to persons who committed the predicate offense with respect to the conduct of concealment and disguise regulated under Section 255 of the Penal Code. • Lack of adequate ML statistics to monitor and assess effective implementation of this Recommendation.
2. ML offense—mental element and corporate liability	**LC**	• Liability of legal persons doesn't cover the hypothesis when a legal person is utilized to launder money but is not benefited by it. • There aren't clear parallel criminal, civil or administrative sanctions and proceedings applicable when a legal person is convicted for money laundering. • Lack of sufficient ML statistics to monitor and assess effective implementation of this Recommendation.
3. Confiscation and provisional measures	**PC**	• Panama does not provide for the confiscation of property of corresponding value. • The freezing and seizing ex-parte or without notice is not established explicitly in the law. • The competent authorities have restrictions to access to information on legal entities and arrangements held by lawyers, registered agents and others subject to the FATF Recommendations. • There is no possibility of voiding contracts and arrangements entered into prior to trial that would prejudice identification, tracing, investigations, freezing, seizure and confiscation. • Low level of confiscations in light of country risks, especially for non-drug related offenses.
Preventive measures		
4. Secrecy laws consistent with the	**PC**	• Confidentiality provisions and supervisory practice limit access by the SBP, and SSRP to the nontrust

[28] These factors are only required to be set out when the rating is less than Compliant.

Recommendations		business conducted by banks and insurance companies under their trust licensees. • SBP and SSRP are unable to share information with respect to nontrust businesses (e.g., corporate services business) conducted by banks and insurance companies. • MICI and IPACOOP are not empowered to share information either domestically or internationally. • Uncertainty with respect to the information access and sharing by FIs that provide corporate services to clients e.g., as Resident Agents for companies and private foundations. • Effectiveness: Limited sharing of information between competent authorities, especially at the international level.
5. Customer due diligence	**PC**	• Systemic limitations in scope of application of AML regime: the AML legislation does not apply to, inter alia, insurance companies and their intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives savings and loan associations, Banco Hipotecario National, and entities that provide the safekeeping/custody of cash and other liquid assets. • Many CDD requirements that should be in law and regulations are in OEMs. • No CDD requirement when carrying out occasional transactions that are wire transfers (c.5.2). • CDD requirements for legal persons do not clearly apply to trusts and foundation clients. (c.5.4) • Identification requirements for beneficial owners are insufficient for legal persons and arrangements. The requirement to identify the beneficial owner of an account is in law only for legal entities (companies) and not for clients that are natural persons. (c.5.5) • Lack of measures in place to prevent the abuse of bearer share companies constrains ability to conduct ongoing CDD. (c.5.1) • Lack of legal requirement for ongoing due diligence of the business relationship (currently only required in OEM for banks and securities entities) (c.5.7). • Not all parties to a trust client (and private foundations) are required to be identified (c.5.5.1). • No requirement to understand the ownership and control structure of a customer, e.g., a company that is owned through another company, trust, or foundation structure, whether domestic or foreign

		(c.5.5.2). • No enhanced due diligence requirements for high risk categories of customer, e.g., nonresidents (relevant to international/offshore business), private banking, clients representing legal persons or arrangements (particularly those entities that have bearer shares), and clients that use numbered or coded accounts (c.5.8). • Securities entities are allowed to conduct reduced CDD in certain circumstances in the absence of appropriate guidelines (c.5.10, 5.11, 5.12). • No comprehensive CDD regulations for high risk unregulated bureau de change firms (casas de cambio) by MICI. • Lack of comprehensive regulations from MICI for finance companies and money remitters to address the full range of requirements set forth in Recommendation 5. • Lack of comprehensive CDD regulations for savings and loan cooperatives.
6. Politically exposed persons	**PC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries (limited scope coverage), issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan services associations, the national mortgage bank, the savings bank, and entities that provide the safekeeping/custody of cash and other liquid assets. • Guidance on PEPs in Circulars and not in law, regulations or OEMs. • Banks: No requirements to obtain senior management approval to continue a business relationship, should a customer become a PEP after being accepted as a client (c.6.2). • Securities: No requirement to identify the source of wealth of PEPs. (c.6.3). • No comprehensive requirements for entities regulated by MICI and IPACOOP for PEPs.
7. Correspondent banking	**PC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries (limited scope coverage), issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan services associations, the national mortgage bank, the savings bank, and entities that provide the safekeeping/custody of cash and other liquid assets.

		• Banks: No requirement to determine if the respondent institution's AML/CFT measures and controls are effective (currently only required to confirm they are in accordance with international standards) (c.7.2). • Inadequate CDD provisions/requirements ("if necessary") for banks to establish and document each bank's respective responsibilities regarding the underlying customers (c.7.4). • SBP should issue guidance/requirements regarding the requirements for a bank to maintain "payable through accounts" (7.5). • Securities: No comprehensive requirements regarding cross border relationships.
8. New technologies and non face-to-face business	**PC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries (limited scope coverage), issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan services associations, the national mortgage bank, the savings bank, and entities that provide the safekeeping/custody of cash and other liquid assets. • No requirements to prevent misuse of technological developments for entities regulated by SMV, MICI and IPACOOP. (c.8.1). • No specific provisions or guidelines on non face-to-face business and physical presence requirements for clients. (c.8.2).
9. Third parties and introducers	**NC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries (limited scope coverage), issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan services associations, the national mortgage bank, the savings bank, and entities that provide the safekeeping/custody of cash and other liquid assets. • The supervisory authorities should decide whether to allow or prohibit FIs to rely on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, and according to that decision, issue the appropriate regulations to reduce the risk of this activity and comply with Recommendation 9.
10. Record-keeping	**PC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service financial

		cooperatives, savings and loan associations, national mortgage bank (BHN), and entities that provide the safekeeping/custody of cash and other liquid assets. Such scope limitation negatively impacts the compliance with the Recommendation. • Bureau de change (casas de cambio) are neither regulated nor supervised to ensure compliance with the AMLC/TF framework. • No specification in the law as to when the five years recordkeeping retention period for both transaction and customer records should apply (five years following completion of transaction and the termination of an account or business relationship or longer if requested by competent authority). • No obligation in law or regulation for FIs to maintain records on both domestic and international transactions. • No obligation for FIs to maintain account files and business correspondence. • No obligation for FIs to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.
11. Unusual transactions	**NC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries (limited scope coverage), issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan services associations, the national mortgage bank, the savings bank, entities that provide the safekeeping/custody of cash, and other liquid assets. • Lack of sufficient regulations or guidelines for covered FIs to pay special attention to complex, unusually large transactions and unusual patterns of transactions. • No requirements for all FIs to examine as far as possible the background of such transactions, set forth those findings in writing, keep them for at least five years, and to make them available for competent authorities.
12. DNFBP–R. 5, 6, 8–11	**NC**	• Include in the AML/CFT regime: lawyers, accountants, notaries, dealers in precious metals and stones, corporate services providers and real estate agents (natural persons) in accordance with the FATF Recommendations. • CTF obligations are not addressed in Law or

		Regulations for casinos, real estate agents and trustees. • The large numbers of real estate agents that are natural persons are not covered under the AML/CFT framework. • Most CDD and record keeping requirements are not outlined as obligations for Casinos and Real Estate Agents. • No enhanced CDD measures regarding PEPs in the casinos and real estate sectors. • Trustees are not required to specifically to identify and apply CDD to beneficiaries of trusts, particularly when the primary client (settlor) is not the beneficiary. • CDD does not include the identification of ultimate beneficiaries when the trust beneficiaries and settlors are legal entities. Other businesses performed by trustees, like corporate services, are not supervised and hence compliance and effective implementation of CDD, recordkeeping requirements and other requirements are not effective. • The start of the record keeping obligation for trustees is not covered under Law or Regulation.
13. Suspicious transaction reporting	**PC**	• Not all entities subject to reporting requirements • Too narrow basis for reporting given the deficiency identified in the definition of the ML offense (scope of predicate offenses) • No obligation in the AML Law to report suspicion of TF. • The timeframe of 60 days to report a suspicious transaction once discovered by the reporting entities (except insurance companies) is too long. • Overemphasis on CTR reporting diminishes attention on STRs.
14. Protection and no tipping-off	**LC**	• Insufficient scope in the tipping off prohibitions provision and the liability protections in the AML Law. • Liability protection in the AML law does not include the condition of good faith reporting.
15. Internal controls, compliance and audit	**PC**	• Scope limitation: The AML legislation does not apply to insurance companies and their intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan associations, the national mortgage bank, and entities that provide the safekeeping/custody of cash and other liquid assets.

		• No requirements for CTF. • Requirements do not extend to banks' trusts company operations. • No explicit requirement for bank's trust company operations for compliance officers to have timely access to customer identification data and other relevant information. • No internal audit requirements for entities regulated by SMV and MICI. • No employee standards requirements for entities regulated by MICI. • No reporting lines requirements for compliance officers for entities regulated by MICI. • Need more detailed policy, internal control, procedures, and compliance, etc., requirements for cooperatives.
16. DNFBP–R. 13–15 and 21	**NC**	• The AML/CFT regime does not include: lawyers, accountants, notaries, dealers in precious metals and stones, corporate services providers and real estate agents (natural persons) in accordance with the FATF Recommendations. • Casinos and real estate agents have no legal obligation to report ML (only by OEM). • Trustees, casinos and real estate agents have no legal obligation to report TF (for trustees and real estate agents only by OEM). • No tipping off prohibitions for casinos (including internet casinos), trustees and real estate brokers. • No requirements for management level of the compliance officer in the casino and real estate sectors. • No specific requirement for appointing compliance officer for trustees and internet casinos. • Heavy emphasis in CTR reporting over the STR obligations for trustees, real estate agents and casinos. Very low number of STRs was filed by all covered DNFP sectors. • No specific provision for all sectors regarding attempted suspicious transaction, and regardless of whether they are thought to involve tax matters. • No requirements for all covered DNFBP sectors to maintain an adequately resourced and independent audit. • No requirements for all covered DNFBP sectors to pay special attention to business relationships and transactions with countries which do not or

		insufficiently apply the FATF Recommendations. • No obligation for all covered DNFBP sectors to analyze and record unusual transactions with counterparties in countries with weak AML/CFT systems.
17. Sanctions	**NC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan associations, national mortgage bank (BHN), and entities that provide the safekeeping/custody of cash and other liquid assets. • The activities of bureaus de change (*casas de cambio*) are neither licensed nor regulated, or supervised, and there is no effective AML/CFT supervision by MICI. • The sanctioning regime does not extend to TF. • Limited scope of sanctions which are mostly applied for breaches of CTR requirements. • The sanctions under the AML Law have been limited to legal persons but not to their directors and senior management. • Few and low fines are not dissuasive and most sanctions are monetary. • Limited range of available sanctions to money remitters and finance companies. • Sanctions are not available to directors and senior management of finance companies and money remitters. • Ineffective sanctioning regime due to weak AML/CFT supervision overall but particularly for the securities market intermediaries, the insurance intermediaries, cooperatives, money remitters, finance companies, and bureau de change.
18. Shell banks	**PC**	• No clear obligation for banks to have a physical presence, including that mind and management is located in Panama. • No obligation for FIs to ensure that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	**C**	
20. Other NFBP and secure transaction techniques	**NC**	• The non-DNFBP entities covered in Law 42 (e.g., free zone businesses and the national lottery) are only subject to CTR reporting and not to the Recommendations required under R. 20. • Other non-DNFNP businesses that could present a high risk of ML/TF have not been considered for

		inclusion under R. 20. (See R. 12, 16 and 24 above for lack of coverage of most DNFBP sectors).
21. Special attention for higher risk countries	**NC**	• Scope limitation: The AML Law does not apply to insurance companies and their intermediaries (limited scope coverage), issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan services associations, the national mortgage bank, the savings bank, and entities that provide the safekeeping/custody of cash and other liquid assets. • No requirement for banks to pay special attention to transactions with persons (only banks) from or in countries which do not or insufficiently apply the FATF Recommendations. • Insufficient requirement for banks to examine the background of transactions with those jurisdictions that have no apparent economic or visible lawful purpose, and to keep those written findings for competent authorities. • Inadequate notification process by the SBP on countries that do not or insufficiently apply the FATF Recommendations. • For SMV, MICI, and IPACOOP FIs, no requirement to pay special attention to transactions with banks and persons from or in countries which do not or insufficiently apply the FATF Recommendations, to examine the background of transactions with those jurisdictions that have no apparent economic or visible lawful purpose, and keep those written findings for competent authorities. • No demonstrable capacity by the SBP, SMV, MICI, and IPACOOP to apply appropriate counter-measures when a country continues not to apply or insufficiently apply the FATF Recommendations.
22. Foreign branches and subsidiaries	**PC**	• Scope limitation: Requirements do not cover a number of financial sectors/activities: The AML legislation does not apply to insurance companies and their intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan associations, the savings bank, the national mortgage bank, and entities that provide the safekeeping/custody of cash and other liquid assets. • Bureau de change (casas de cambio) are neither regulated nor supervised to ensure effective compliance with the AML/CFT requirements.

		• No requirement for FIs to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (host country) laws, regulations or other measures.
23. Regulation, supervision and monitoring	**PC**	• Scope limitation: The AML Law does not apply to insurance companies and intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives, savings and loan associations, the national mortgage bank (BHN), and entities that provide the safekeeping/custody of cash and other liquid assets. • The activities of bureaus de change are neither licensed/regulated nor supervised, and there is no effective AML supervision by the designated AML supervisor under the AML Law (MICI). • Absence of CFT provisions in the AML Law limits the scope of supervision by the designated supervisory authorities under the AML Law. • The SBP does not in practice supervise the nontrust business conducted by banks under their trust licensees held either directly or through affiliates. • Insufficient AML/CFT supervision over securities and insurance market participants, money remitters, finance companies, and cooperatives due to insufficient budgetary and human resources. • The number and quality of AML/CFT inspections for SMV, MICI, IPACCOP, and SSRP is limited. • No AML/CFT inspections for bureau de change by the MICI. • No examination program available for the insurance sector and the inspections' program is not comprehensive for the securities sector. • No legal or regulatory requirements to ensure that criminals cannot own or hold a management function in money remitters and in cooperatives. • No licensing and functional regulation and supervision of bureaus de change to prevent criminals from owning or controlling their operations. • No effective systems in place for ensuring that money remitters comply with the AML/CFT requirements.
24. DNFBP—regulation, supervision and monitoring	**NC**	• The AML/CFT supervisory regime does not include: lawyers, accountants, notaries, dealers in precious metals and stones, corporate services providers and real estate agents (natural persons) in accordance with

		the FATF Recommendations. • Except for trust supervision, grossly inadequate supervisory resources and AML/CFT skills for Casinos and Real Estate supervisors given the number of entities subject to supervision. • Lack of sanctions due to the inadequate AML/CFT supervisory and reporting regimes. **Casinos** • The GCB is not able to effectively identify the beneficial owner (natural persons) of the applicants for the license to perform the business of casinos. • Regulatory and operational basis for licensing, supervision and accountability for internet casinos that operate as sub-licensees is inadequate and unclear. • Internet casinos are not effectively supervised and no inspections conducted. • Supervision is CTRs orientated, affecting compliance of other key AML/CFT obligations (such as the filing of STRs). • No sanctions apply for directors and senior management and suspension licenses. • No confidentiality requirements for staff of the GCB. • Lack of specialized staff to supervise high risk internet casino operations, which contributed to zero inspections of this sector. **Real Estate Agents** • Natural persons performing real estate brokerage are not covered under the AML/CFT framework. • Inadequate supervisory organizational arrangements for the RETB. • No confidentiality obligations among the members of the RETB should be implemented. • Inspections performed by the RETB are only CTR oriented, with little or no emphasis given to the analysis of other key issues like CDD, record keeping and STRs. **Trustees** Need to expand and deepen scope of supervision of trustee activities, including nontrust activities such as corporate services.
25. Guidelines and Feedback	**PC**	• No feedback No comprehensive AML/CFT feedback on quality of STRs to individual entities, Supervisors

		and sectors. • Near absence of case-by-case feedback given by the UAF to the reporting entities. • Insufficiency of general guidelines/training given by the UAF to the reporting entities for real estate agents. • Insufficient guidance has been issued for most financial institutions that will assist them to implement and comply with the AML/CFT requirements. • No comprehensive sector-specific AML/CFT guidelines for the trustees/training given by the UAF to the reporting entities.
Institutional and other measures		
26. The FIU	**PC**	• Need to enhance the legal framework (e.g., Law 42) to ensure that, inter alia, all reporting entities are required to report suspicion of TF, UAF has access to all required information including information on legal entities and arrangements held by lawyers, registered agents and others subject to the FATF Recommendations. • Effectiveness of the UAF adversely affected by not receiving STRs from key sectors subject to the FATF recommendations including: lawyers, notaries, accountants, dealers in precious metals and stones, company services providers and financial institutions not subject to reporting requirements (see R. 5 and R. 23). Need to enhance STR reporting guidelines to require all information in support of suspicious activities. • The UAF does not give sufficient feedback to reporting entities, including institution specific information on the quality of STRs. • Need to enhance the value added to the analysis of STRs to improve the quality of disseminations, even if the number of disseminations declines from its current level. • UAF disseminations to law enforcement do not include all relevant supporting data to enable more efficient and timely investigations and prosecutions. • Insufficient staff to adequately carry out the UAF's core functions, and need to rely less on fines for budgetary resources. • Need to enhance the autonomy of the UAF that now requires the Director to report directly to the Ministry

		of the Presidency for administration purposes.
27. Law enforcement authorities	**PC**	• Absence of designation of the competent authority to investigate TF offense. • Limited time (10 days) for undercover operations and controlled deliveries before informing the suspect through public hearing is a limitation to the power to postponement of arrest and seizures. • Limited information on the effectiveness of the implementation of the legal framework for ML purpose • No implementation for TF purpose.
28. Powers of competent authorities	**PC**	• Limited access to relevant information, in practice (delays in responding to the requests) and by law (resident agents). • Absence of statistics on the use of investigative techniques. • Absence of statistics on money frozen, seized and confiscated in ML/TF cases. • Limited training and capacity building amongst the different actors in law enforcement authorities.
29. Supervisors	**PC**	• Scope limitation: The AML Law does not apply to insurance companies and intermediaries, issuers/managers of means of payment, financial leasing and factoring, multi-service financial cooperatives savings and loan service associations, the national mortgage bank (BHN), and entities that provide the safekeeping/custody of cash and other liquid assets. • Bureau de change (casas de cambio) are neither licensed, regulated, nor supervised as an activity and the designated AML supervisor (MICI) under the AML Law does not supervise them for compliance. • SBP and SSRP ability to adequately inspect banks and insurance companies that have trust licenses, either directly or through affiliates is restricted due to lack of access to nontrust businesses (e.g., corporate services) conducted under trust licenses. • SRRP needs broad-based legal access to information and documentation for effective supervision insurance companies and their intermediaries. • The Securities Law limits access to information for the conduct of inspections by the SMV to issues involving legal violations. MICI, IPACOOP and SSRP do not exercise their AML/CFT supervisory powers, few AML/CFT inspections and conducted and sanctions applied and inspections are not in-

		depth. • MICI has no power to apply sanctions to directors or senior management of money remitters and finance companies.
30. Resources, integrity, and training	**NC**	• Supervisory resources and training for covered non-financial businesses (other than for trustees) are grossly inadequate especially for casinos (including and especially for high risk internet casinos), realtors, and free zone businesses. • Training and inspection experience on general and AML/CFT trustee supervision needs to be reinforced and expanded to deal with complex trust structures and their risks, and to include associated the nontrust businesses of trustees. The UAF financial and human resources are insufficient to enable the unit to perform effectively its functions and are stretched due to the fact that STRs are still filled on paper and processing of all CTRs need to be computerized. • The UAF budget is too dependent on (unpredictable) fines imposed by the Supervisor. • The DIJ is insufficiently staffed to perform its functions. • The DIJ does not receive adequate and relevant in-house or inter-agency training for combating ML and TF. • The Prosecutors and Judges do not receive adequate training on ML/TF, all the trainings being organized by the industry. • Insufficient resources and training provided to the competent authorities affect the effectiveness of the AML/CFT criminal laws. • Most nonbank financial supervisors (SMV, SSRP, IPACCOP, and MICI) are not properly funded, staffed and provided with necessary technical resources to fully and effectively perform their functions. • Insufficient training to staff of most supervisory agencies (SMV, SSRP, IPACOOP, and MICI).
31. National co-operation	**PC**	• Lack of effective coordination mechanisms and practice to develop and implement national AML/CFT measures. • Absence of operational contacts between the UAF and law enforcement agencies.
32. Statistics	**NC**	• The statistics provided by the authorities are not explicit regarding the range of penalties effectively applied to money laundering.

		• Statistics on predicate offenses are grouped by chapters of the Penal Code (e.g., "Against the Economic Order") and it is, therefore, not possible to establish to which specific crimes related to money laundering. • No statistics by the Public Registry (Registro Publico) on the total number of companies, foundations, and other legal entities that are on the registered and those are active. • No statistics on the number of NPOs that are operating in Panama. • No statistics on the number of lawyers, accounting firms, and other corporate services providers that are performing activities that should be covered under the applicable FATF Recommendations. The poor maintenance and the lack of concordance of statistics at all stages of law enforcement authorities prevent a thorough assessment of the implementation of AML/CFT offenses in Panama. • There are no statistics on the duration of the legal assistance processes. • The statistics on extradition do not show clearly whether the extraditions were conceded or not. • Statistics from the DIJ and the Prosecutors are not properly maintained, with discrepancies in the number of cases and lack of clarity between ML cases and predicate offenses cases (drug cases mainly) using ML (UAF) information. • There is no statistics related to persons or entities and amounts of property frozen pursuant to or under UN Resolutions relating to terrorist financing. • There is no statistics for STRs resulting in investigation, prosecution or convictions for ML, TF or the underlying predicate offense. • There is no statistics for criminal sanctions applied to persons convicted of ML or TF offenses. • There is no statistics from the UAF on requests granted or refused • There is no statistics on spontaneous referrals made by the UAF to foreign authorities. • There is no statistics on international cooperation by supervisors authorities on ML/TF matters.
33. Legal persons—beneficial owners	**NC**	• The current arrangements for registration, including shareholding and control, and the role of resident agents are inadequate to prevent misuse of legal persons, including companies and private

		foundations. • No mechanisms for the competent authorities to have access, in a timely fashion on beneficial owners of legal persons, including companies and private foundations. • Key competent authorities, e.g., UAF and all of the AML/CFT supervisors do not have access to information on legal entities and arrangements held by Registered Agents. • There are no effective and broad based measures to prevent the misuse of bearer shares and attempts to introduce a mechanism to immobilize bearer shares have not been successful.
34. Legal arrangements—beneficial owners	**NC**	• No special requirements for managing risks associated to local and foreign companies with bearer shares and private foundations when acting as settlors or beneficiaries of trusts. • Supervisors do not perform an in depth analysis for understanding the trusts under the administration of the trustees, • No obligations for the identification of the ultimate trust beneficiary. • Fragmented and incomplete provisions for the disclosure and access to timely up to date information on beneficiaries of trusts. • Trustee supervision does not include the possibility to review the legal entities under trust administration and the nontrust business of a large number of trustees (e.g., those not affiliated with regulated financial institutions).
International Cooperation		
35. Conventions	**PC**	• Panama has not fully implemented many provisions of the Vienna and Palermo Conventions as outlined in the various sections of the report.
36. Mutual legal assistance (MLA)	**PC**	• Panama does not have legal provisions to regulate the principles and procedures for international legal cooperation in the absence of treaty. • Panama does not provide mutual legal assistance on the ground that the offense is also considered to involve fiscal matters. • Mutual legal assistance is not rendered in the absence of dual criminality for less intrusive and noncompulsory measures. • The deficiencies on the compliance with Recommendations 1, 3, and 28 affect the effectiveness of the system.

		• The limited scope of the terrorist financing offense also affects the effectiveness of the system.
37. Dual criminality	**PC**	• Mutual legal assistance is not rendered in the absence of dual criminality for less intrusive and noncompulsory measures.
38. MLA on confiscation and freezing	**PC**	• There are no appropriate laws and procedures to provide an effective and timely response to mutual legal assistance requests outside of treaties. • Confiscation of assets of corresponding value is not permitted • Panama has not considered to establish an Asset Forfeiture Fund. • Deficiencies on the compliance with Recommendation 3 affect the effectiveness of the system. • Panama hasn't provided statistics on requests related to seizure and confiscation orders.
39. Extradition	**LC**	• Panama has not adopted measures or procedures that will allow extradition requests and proceedings relating to ML and TF to be handled without undue delay.
40. Other forms of co-operation	**NC**	• The ability to provide effective international cooperation by supervisors is significantly limited by the lack of or insufficient coverage in the AML/CFT legal and supervisory regime of, inter alia: insurance companies and their intermediaries, savings and loan associations, financial leasing, factoring, and multi-service cooperatives, the national mortgage bank (BHN), casas de cambio, payment and credit management systems, lawyers, accountant, notaries, dealers in precious metals and stones, company services providers, and real estate agents (natural persons), etc. • The UAF does not make sufficient use of information access powers under the AML Law to enhance international cooperation. • MICI and IPACOOP are not empowered to exchange information with foreign counterparts. • Supervisors MOUs do not specifically include AML/CFT for the exchange of information. • The UAF should make a more systematic use of international cooperation in order to enhance the quality of its analysis. • Deficiencies identified under SR. II limit effective international cooperation on TF matters. • Panama's competent authorities do not provide with

		the widest range of international cooperation to their foreign counterparts. • Not all competent authorities in Panama are allowed to conduct inquiries on behalf of foreign counterparts. • Lack of ability for some competent authorities (SBP, SVM) to share information when the request involves fiscal matters. • The domestic limitations to access information impact on the scope and effectiveness of international cooperation. • Lack of statistics on international cooperation for competent authorities other than the UAF does not allow for full assessment of effectiveness of implementation. • Absence of information on the timeliness of responses by the UAF from international parties does not allow for full assessment of effectiveness.
Nine Special Recommendations		
SR. I. Implement UN instruments	**PC**	• Panama not fully implemented the CTF Convention as outlined in the various sections of this report. • Panama has not implemented UNSCRs 1267 and 1373
SR. II. Criminalize terrorist financing	**PC**	• The terrorist financing offense does not extend to any person who willfully collects funds for terrorism. • The terrorist financing offense does not cover the financing of a terrorist organization and an individual terrorist • The indirect provision of funds is not explicitly covered by the law. • Not all the offenses established in the Conventions and Protocols listed in the Annex to TF Convention are explicitly covered under the terrorist financing offense. • Not all the hypothesis defined in paragraph 2 of TF Convention are explicitly covered under the terrorist financing offense. • It is required that the author must have used some of the instruments mentioned in the law in order to commit any of the terrorist acts. • There aren't clear parallel criminal, civil or administrative sanctions and proceedings applicable when a legal person is convicted for terrorist financing.
SR. III. Freeze and confiscate	**NC**	• Panama does not have laws and procedures to freeze, without delay or prior notice, terrorist funds or other

terrorist assets		assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999). • Lack of effective laws and procedures to freeze, without delay and prior notice, terrorist funds or other assets of persons designated in the context of S/RES/1373(2001). • There are no laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. • Lack of an effective system for immediate communication to the financial sector of actions taken
SR. IV. Suspicious transaction reporting	**NC**	• No reporting obligation for TF in the AML Law.
SR. V. International cooperation	**PC**	• Panama does not have legal provisions to regulate the principles and procedures for international legal cooperation in the absence of treaty. • Panama does not provide mutual legal assistance on the ground that the offense is also considered to involve fiscal matters. • Mutual legal assistance is not rendered in the absence of dual criminality, not even for less intrusive and noncompulsory measures. • The limited scope of the terrorist financing offense affects the effectiveness of the system.
SR.VI. AML/CFT requirements for money/value transfer services	**NC**	• No procedures in place to identify and close down unauthorized money remitters. • No requirement to identify beneficial owners, including inquiring whether applicants are acting for third parties with respect to natural person applicants. • No identification requirements of the shareholders and where applicable the beneficial owners of legal entities. • No requirement to conduct police and criminal background checks on the applicants and other related parties. • No requirement to interview the applicants/principals as the legal requirement is that application for licensing be made through a lawyer. • No provisions are made for money remittance businesses existing at the time Law 48 was passed. The focus of the Law is on new businesses, contrary to the apparent broad scope of Art. 1. • The legal framework does not explicitly require that money remitters conduct customer due diligence measures in all the circumstances required under

		c.5.2 particularly when there is suspicious of ML or TF regardless of the amount, and when there are doubts about the veracity or adequacy of previously obtained identification data. • Lack of requirement for money remitters to retain records for a "longer" period than five years if requested by a competent authority in specific cases and those records should be sufficient to permit the reconstruction of individual transactions in a way that is sufficient for criminal prosecutions. • There are also no requirements to retain business correspondence records for the required period and there is no guidance in the law or executive decrees with respect to the start of the five year period, that is, from the time a transaction is executed or a business relationship is terminated. • No provisions are made in Law 42 or Executive Decrees No. 1 of 2001 and No. 55 of 2012 with respect to ensuring that records and information are available to competent authorities on a timely basis. • Lack of requirements for money remitters to establish the background and purpose of unusual transactions and to keep and make available such findings for the authorities and their auditors • There are no requirements in Law 42 or the two Executive Decrees to report suspicion of terrorism financing. • No obligation that attempted transactions are also reported. • No obligation to include the adoption of broad AML/CFT policies and procedures. • No requirement for the Compliance Officer to be at a management level. • There is no requirement in the AML/CFT legislation and other requirements to have an independent audit function to test compliance with the AML/CFT obligations. • No requirement to train staff on ML/TF techniques, methods and trends, laws and other obligations, including with respect to customer due diligence, and suspicious activity reporting. • No requirement to properly screen employees for AML/CFT as part of the recruitment process. • No requirements for money remitters to pay special attention to transactions with persons or countries neither with week AML/CFT regimes, nor of

		measures to be taken in such cases. • AML/CFT supervisory capacity of MICI is grossly inadequate. • The number of AML/CFT inspections is inadequate. • There is no formal manual for AML/CFT supervision and inspections.
SR.VII. Wire transfer rules	**NC**	• No explicit requirement that full originator information for wire transfers is included in all wire transfers. • There are no specific provisions with respect to intermediary and beneficiary financial institutions in the payment chain of wire transfers to ensure that all originator information is transmitted with the transfer. • The prohibition to process wire transfer is too limited and only applies when the name of the originator and the originator bank is not included, not full originator information. • No requirement to apply a risk-based approach for wires lacking the required information, to consider filing a STR and restricting or terminating business relationships with ordering institution. • Sanctions for noncompliance should be those under the AML Law for consistency with other AML violations.
SR.VIII. Nonprofit organizations	**NC**	• The Supervision Monitoring and Evaluation Unit of the Ministry of Government is not operational yet. • No domestic reviews on the activities, size and other relevant features of the nonprofit sector and TF risk. • No raising awareness activities in the NPO sector about the risks of terrorist abuse and the available measures the protection against it. • No period for keeping records of NPOs that is sufficiently detailed to verify their use. • No points of contact and procedures to respond to international requests for information regarding particular NPOs that are suspected of TF. • No effective domestic cooperation, coordination and information sharing among the appropriate authorities or organizations that hold relevant information on NPOs of potential TF concern. • No full access for Panamanian authorities to the information on the administration and management of a particular NPO that may be obtained during the course of an investigation. • No specialized investigative and examination expertise and capability to examine those NPOs that

		are suspected of being related to TF.
SR.IX. Cross-Border Declaration and Disclosure	**NC**	• Despite the legal provision, the outbound transportation of cash is not enforced in Panama • The inbound transportation of cash is enforced only at Tocumen International Airport, at to a very limited extent at the airport located at the border with Costa Rica • The legal framework does not allow for proportionate sanctions • The legal framework does not allow for the restrain/seizure of declared cash that may be related to ML/TF • The information transmitted to the UAF is limited to the information collected at Tocumen International Airport • Absence of statistics on international cooperation • Absence of training or knowledge sharing regarding cross-border cash transaction and patterns of ML or tax evasion at domestic and international level

Table 2. Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalization of Money Laundering (R. 1 and 2)	• The following FATF-designated categories of crime should be included as predicate offenses to money laundering: counterfeiting of currency, smuggling, forgery, and piracy. • Illicit association as a predicate offense to money laundering should cover a wider range of crimes, not only drug trafficking. • Trafficking in stolen goods as a predicate offense to money laundering should cover a wider range of property, not only vehicles. • The offense of money laundering should apply to persons who committed the predicate offense also to the conducts of concealment and disguise regulated under Section 255 of the Penal Code. • Widen the scope of the criminal liability of legal persons in order to cover the hypothesis of such person being utilized to launder money whether it is benefited by it or not. • Establish clear parallel criminal, civil or administrative proceedings applicable when a legal person is convicted for money laundering. • Strengthen statistics for ML offenses throughout the chain of procedures from investigation to court decisions.
2.2 Criminalization of Terrorist Financing (SR. II)	• The terrorist financing offense should extend to any person who willfully collects funds for terrorism. • The terrorist financing offense should cover the financing of a terrorist organization and an individual terrorist. • The indirect provision of funds should be explicitly covered by the law. • All the offenses established in the Conventions and Protocols listed in the Annex to TF Convention as well as the hypothesis defined in paragraph 2 must be explicitly covered under the terrorist financing offense. • In order to commit any of the terrorist acts, it shouldn't be required that the author must have used some of the instruments mentioned in the law: “radioactive material, gun, fire, explosive, biological or toxic substance, or any other means of mass destruction or element that has that potential,” unless it is explicitly required by the international treatises. • Establish clear parallel criminal, civil or administrative sanctions, and proceedings applicable when a legal person is convicted for terrorist financing.

2.3 Confiscation, freezing, and seizing of proceeds of crime (R. 3)	• Laws should provide for the confiscation of property of corresponding value. • Establish explicitly in the law that the freezing and seizing is made ex-parte or without notice • Laws should permit voiding contracts and arrangements entered into prior to trial that would prejudice identification, tracing, investigations, freezing, seizure and confiscation. • Enhance prosecutions and confiscation for nondrug related ML. • Enhance the powers of the competent authorities to access to information on legal entities and arrangements held by lawyers, registered agents and others subject to the FATF Recommendations
2.4 Freezing of funds used for terrorist financing (SR. III)	• Establish effective laws and procedures to freeze terrorist funds or other assets of persons designated by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999). Such freezing should take place without delay and without prior notice to the designated persons involved. • Establish effective laws and procedures to freeze terrorist funds or other assets of persons designated in the context of S/RES/1373(2001). Such freezing should take place without delay and without prior notice to the designated persons involved. • Implement effective laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. Such procedures should ensure the prompt determination, according to applicable national legal principles, whether reasonable grounds or a reasonable basis exists to initiate a freezing action and the subsequent freezing of funds or other assets without delay. • Implement an effective system for communicating actions taken under the freezing mechanisms referred to in Criteria III.1–III.3 to the financial sector[29] immediately upon taking such action. • Provide clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms. • Implement effective and publicly know procedures for considering de-listing requests and for unfreezing the funds or

[29]For examples of possible mechanisms to communicate actions taken or to be taken to the financial sector and/or the general public, see the FATF Best Practices paper entitled "Freezing of Terrorist Assets – International Best Practices."

	other assets of de-listed persons or entities in a timely manner consistent with international obligations. • Implement effective and publicly know procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person. • Adopt appropriate procedures for authorizing access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses. These procedures should be in accordance with S/RES/1452(2002). • Establish appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court.
2.5 The Financial Intelligence Unit and its functions (R. 26)	• The legal framework including for setting up the FIU should be updated, in order to include (i) proper TF requirements for reporting entities and consequential powers for the UAF and (ii) legal power of dissemination of information, with no contradiction with the legal obligations of confidentiality. The UAF should have access to the information maintained by all DNFBPs according to the standard, including the lawyers, registered agents, accountants, and real estate agents. The amendment to the law on resident agents to that respect seems to be a priority. • The UAF should amend the guidelines to fill the STRs in order to request only the relevant documentation supporting suspicion of money laundering or financing of terrorism, and not the whole documentation attached to the disclosed bank accounts. • The UAF should consider transmitting to the AGO along with the intelligence report all the relevant documentation gathered in the course of the analysis. It would save time to the investigative authorities, enhance efficiency and contribute to more successful investigations and prosecutions. • The UAF should ensure adequate staffing to perform its full range of functions that include the maintenance of statistics, international cooperation and enhanced feedback to the reporting entities. • The UAF should provide a wider range of assistance to foreign counterparts and not limiting its assistance to the consultation of its own database, as requested by the Procedures Manual. • The UAF should make more systematic use of international cooperation in order to enhance the quality of its analysis. • The UAF should maintain more accurate and relevant statistics in

	order to better support the activities of competent authorities, including the supervisors e.g., provide a breakdown of statistics related to bureau de change and money remitters for instance. • The UAF should be able to rely almost exclusively on budgetary resources other than fines which are unpredictable. • The appointment (and removal) of the Director of the UAF should be statutorily independent and not subject to perceived political considerations for nomination and revocation. And administrative reporting obligations should be more independent of the Ministry of the Presidency.
2.6 Law enforcement, prosecution and other competent authorities (R. 27 and 28)	• Panama should ensure that the provisions of the Procedural Penal Code allow for throughout investigations in money laundering and financing of terrorism cases, in particular by allowing appropriate time for performing complex investigations. • Panama should make use of the special investigative techniques in money laundering cases on a regular basis and keep statistics of such use. • Panama should have immediate access to the information detained by Resident Agents upon request, without the uncompressible delay of five days. • Panama should maintain updated statistics on the money seized, frozen, confiscated, in money laundering cases, with a breakdown by type of predicate offenses. • The law enforcement authorities in Panama, including the AGO, and the Judiciary, should be more adequately trained, on a regular basis, and should develop in-house capacities on financial investigations. • The law enforcement authorities should access relevant information to investigations in a timely fashion. When information is not provided in a timely fashion by the requested parties (financial institutions for instance), sanctions should be pronounced.
2.7 Cross-Border Declaration and Disclosure (SR. IX)	• Panama should review the whole legal framework in order to ensure consistency and applicability of the legal provisions regarding cross-border cash movements. The interplay between the penal and administrative provisions (and sanctions) should be clarified. • Panama should enforce the legislation for outbound movements of cash and properly include the requirement for transportation of cash and bearer negotiable instruments by mail or cargo. • Panama should provide for proportionate, dissuasive and effective sanctions, and should maintain comprehensive statistics regarding the implementation of the sanctions. • Panama should adapt the legal framework regarding cross-border cash movements to the fight against ML/TF, by enabling the competent authorities to restrain and seize assets that are related

	to ML/TF. • Panama should coordinate internally on the topic of cross-border cash movements and should ensure international cooperation through appropriate channels. Panama should provide statistics regarding international cooperation in this domain. • Panama should use the valuable data collected to train and raise awareness amongst competent authorities on this topic of cross-border cash transportation. Patterns of money-laundering or tax evasion could be shared with foreign competent authorities.
3. Preventive Measures–Financial Institutions	
3.1 Risk of money laundering or terrorist financing	• Conduct a sectoral and national ML/TF risk assessment.
3.2 Customer due diligence, including enhanced or reduced measures (R. 5–8)	• Extend the scope to all relevant entities by FATF standard. • Ensure CDD requirements that should be in law and regulations are indeed in law and regulations (instead of OEMs). • Issue CDD requirements when carrying out occasional transactions that are wire transfers (c.5.2). • Issue CDD requirements for legal persons do not clearly apply to trusts and foundation clients. (c.5.4) • Issue comprehensive identification requirements for beneficial owners for legal persons and arrangements. The requirement to identify the beneficial owner of an account is in law only for legal entities (companies) and not for clients that are natural persons. (c.5.5) • Ensure measures are in place to prevent the abuse of bearer share companies constrains ability to conduct ongoing CDD. (c.5.1) • Ensure there is a legal requirement for ongoing due diligence of the business relationship (currently only required in OEM for banks and securities entities) (c.5.7). • Ensure all parties to a trust client (and private foundations) are required to be identified (c.5.5.1). • Issue requirements to understand the ownership and control structure of a customer, e.g., a company that is owned through another company, trust, or foundation structure, whether domestic or foreign (c.5.5.2). • Issue requirements to conduct enhanced due diligence for high risk categories of customer, e.g., nonresidents (relevant to international/offshore business), private banking, clients representing legal persons or arrangements (particularly those entities that have bearer shares), and clients that use numbered or coded accounts (c.5.8). • SMV should ensure securities entities are not allowed to conduct reduced CDD in certain circumstances in the absence of appropriate guidelines (c.5.10, 5.11, 5.12).

	• MICI should issue comprehensive CDD regulations for high risk unregulated bureau de change firms (casas de cambio). • MICI should issue comprehensive regulations for finance companies and money remitters to address the full range of requirements set forth in Recommendation 5. • IPACOOP should issue comprehensive CDD regulations for savings and loan cooperatives. • All supervisors should ensure requirements regarding PEPs are enforceable (in law, regulations or OEMs, not Circulars). • SBP should issue requirements for banks to obtain senior management approval to continue a business relationship, should a customer become a PEP after being accepted as a client (c.6.2). • SMV should issue requirements for securities entities to identify the source of wealth of PEPs. (c.6.3). • MICI and IPACOOP should issue comprehensive requirements regarding PEPs. • SBP should issue requirements for banks to determine if the respondent institution's AML/CFT measures and controls are effective (currently only required to confirm they are in accordance with international standards) (c.7.2). • SBP should issue CDD provisions/requirements (currently listed as "if necessary") for banks to establish and document each bank's respective responsibilities regarding the underlying customers (c.7.4). • SBP should issue guidance/requirements regarding the requirements for a bank to maintain "payable through accounts" (7.5). • SMV should issue comprehensive requirements regarding cross border relationships. • SMV, MICI and IPACOOP should issue requirements to prevent misuse of technological developments for their regulated entities (c.8.1). • All supervisors should issue requirements regarding non face-to-face business and physical presence requirements for clients. (c.8.2).
3.3 Third parties and introduced business (R. 9)	• Extend the scope to all relevant entities by FATF standard. • The supervisory authorities should decide whether to allow or prohibit FIs to rely on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, and according to that decision, issue the appropriate regulations to reduce the risk of this activity and comply with Recommendation 9.
3.4 Financial institution secrecy or confidentiality (R. 4)	• The SBP and the SSRP should have access to the nontrust business conducted by banks and insurance companies respectively under their trust licensees and exchange such information with other competent authorities when needed.

	• It is still unclear whether FIs can act as Resident Agents for companies and private foundations in connection with their private banking and/or trust business which under the law of registered agents would allow neither the supervisors nor the UAF access to underlying company information. • MICI and IPACOOP should be granted the power to share information with other competent authorities both domestically or internationally. • Competent authorities should ensure implementation of the cooperation and exchange of information agreements both at the domestic and international level.
3.5 Record keeping and wire transfer rules (R. 10 and SR. VII)	• Incorporate factoring and leasing companies, insurance intermediaries, multipurpose cooperatives, savings and loans associations, the National Mortgage Bank (BHN), and other entities that provide the safekeeping and custody of cash and other liquid assets (to the requirements of the AML Law. • Establish, by law or regulation that the five years retention period applies following the completion of the transaction and the termination of an account or business relation (or longer if requested by a competent authority). • Clarify by law or regulation that the recordkeeping obligation applies to both domestic and international transactions. • Include the obligation for financial institutions to maintain records on account files and business correspondence. • Require FIs to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority. • Make it an explicit requirement that full originator information for wire transfers is included in all wire transfers. • Explicitly require for intermediary and beneficiary financial institutions to ensure that all originator information is transmitted with the transfer. • Expand the prohibition to process wire transfer in cases when full originator information is lacking, not only the name of the originator and the originator bank. • Require FIs to apply a risk-based approach for wires lacking the required information, to consider filing a STR and to restrict or terminate business relationships with ordering institution. • Apply the sanctions for noncompliance under the AML Law for breaches of the wire transfer obligations.
3.6 Monitoring of transactions and relationships (R. 11 and 21)	• Extend the scope to all relevant entities by FATF standard. • Issue regulations or guidelines for covered FIs to pay special attention to complex, unusually large transactions and unusual patterns of transactions. • Issue requirements for all FIs to examine as far as possible the background of such transactions, set forth those findings in

	writing, keep them for at least five years, and to make them available for competent authorities. • Issue requirements for banks to pay special attention to transactions with persons (only banks) from or in countries which do not or insufficiently apply the FATF Recommendations. • Issue requirements for banks to examine the background of transactions with those jurisdictions that have no apparent economic or visible lawful purpose, and to keep those written findings for competent authorities. • Establish a notification process by the SBP on countries that do not or insufficiently apply the FATF Recommendations. • SMV, MICI, and IPACOOP should issue requirements to pay special attention to transactions with banks and persons from or in countries which do not or insufficiently apply the FATF Recommendations, to examine the background of transactions with those jurisdictions that have no apparent economic or visible lawful purpose, and keep those written findings for competent authorities. • Establish capacity by all supervisors to apply appropriate counter-measures when a country continues not to apply or insufficiently apply the FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R. 13, 14, 19, 25, and SR. IV)	• Extend the scope of the reporting obligations to all relevant entities by FATF standard. • Require the STR to be filed promptly. • Include legal specific requirement to report attempted transactions. • Include in the AML Law CTF reporting requirements for STR. So far, UAF is granted ability to perform its functions in the case of financing of terrorism suspicion, but the reporting entities themselves don't have a legal requirement to file STRs in case of suspicion of financing of terrorism. • Expand the scope of the tipping off prohibitions and extend the liability protections in the AML Law, and adding good faith reporting as a condition for the liability protection. • Consider streamlining STR reporting by not, at first instance, requiring all account and related documentation to be attached to a STR, but emphasize more analysis on the part of reporting entities. • Ensure that the names of reporting entity's staff are not included in reports sent to the Attorney General Office. • Fully automate the CTR receipt and entry procedures and ensure that CTRs contain all relevant data to identify clients. • Make the CTR database available to other competent authorities. • Emphasize timeliness and quality of STRs over timeliness of CTRs.

3.8 Internal controls, compliance, audit and foreign branches (R. 15 and 22)	• Extend the scope to all relevant entities by FATF standard • Include CTF requirements. • Extend requirements to banks' trusts company operations. • Issue explicit requirement for bank's trust company operations for compliance officers to have timely access to customer identification data and other relevant information. • Issue internal audit requirements for entities regulated by SMV and MICI. • Issue employee standards requirements for entities regulated by MICI. • Ensure there are reporting lines requirements for compliance officers for entities regulated by MICI. • Issue more detailed policy, internal control, procedures, and compliance, etc. requirements for cooperatives. Include a specific provision within the regulatory framework requesting FIs to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (host country) laws, regulations or other measures.
3.9 Shell banks (R. 18)	• Establish an explicit licensing requirement for banks to have a physical presence including that mind and management is located in Panama. • Establish an obligation for international banks operating in Panama that are not part of an international bank or group to have a physical presence requirement similar to the one imposed on FIs that are part of a financial group. • Establish a clear obligation for FIs to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
3.10 The supervisory and oversight system–competent authorities and SROs Role, functions, duties and powers (including sanctions) (R. 23, 29, 17, and 25)	• Include in the AML Law: factoring and financial leasing, insurance companies and intermediaries, multipurpose cooperatives, savings and loans associations, the National Mortgage Bank (BHN), and entities that provide the safekeeping/custody if cash and other liquid assets. • Increase the range of sanctions under the AML Law in order to provide for effective, dissuasive and proportionate sanctions. • Ensure that sanctions under the AML Law also apply to directors and senior management of legal companies. • MICI should consider applying the range of sanctions under its sectoral Law for dealing with AML/CFT violations since the range of sanctions under the AML Law does not seem broad and dissuasive. • Include in the AML Law provisions for CFT that would also apply for CFT supervision and sanctions by the designated supervisory authorities. • MICI should ensure that sanctions are available to directors and

	senior management of finance companies and money remitters. • MICI should ensure the integrity of shareholders and executives at the time of licensing money remitters to ensure that criminals cannot own or hold a management function in the financial institution. • IPACCOP should put in place appropriate licensing requirements to ensure the integrity of their "founders" and executive directors. • Bureau de change (casas de cambio) should be licensed, regulated and subject to effective AML/CFT supervision. • SBP and SSRP should be able to supervise the nontrust business (e.g., corporate services, safekeeping) conducted by banks and insurance companies under trustee licenses granted to them directly or to affiliates. In the ability to access for comprehensive supervisory purposes and for sharing information with competent authorities should be explicitly granted notwithstanding any limitations to access and trust supervision in the Trust law. • SMV, MICI, IPACCOP, and SSRP should strengthen AML/CFT supervision, develop formal examination procedures for AML/CFT matters and ensure that their procedures for targeting on-site inspections take adequate account of the ML/TF risks within individual institutions. • All supervisory authorities should review the licensing procedures applied on FIs on an ongoing basis to ensure a periodic review of the fit-and-proper conditions of key persons after the license has been granted. • SMV should broaden in the Securities Law its inspection powers, without any limitation to the existence of legal violations. • SSRP should have no limitation to access information. • All supervisory authorities (SBP, SMV, MICI, IPACCOP, and SSRP) should issue guidelines to entities they supervise in order to assist them in complying with the AML/CFT requirements.
3.11 Money value transfer services (SR. VI)	Authorities should: • Establish procedures to identify and close down unauthorized money remitters. • Establish within the legal framework a requirement: (i) for the identification of the beneficial owners, including to inquire whether applicants are acting for third parties with respect to natural person applicants, (ii) the shareholders and where applicable the beneficial owners of legal entities, (iii) to conduct police and criminal background checks on the applicants and other related parties, (iv) to interview the applicants/principals as the legal requirement is that application for licensing be made through a lawyer, and (v) extend the provisions of Law 48 to existing money remittance

	business at the time the Law was passed. • Require money remitters to conduct customer due diligence measures in all the circumstances required under c.5.2 particularly when there is suspicious of ML or TF regardless of the amount, and when there are doubts about the veracity or adequacy of previously obtained identification data. • Require money remitters to retain records for a "longer" period than five years if requested by a competent authority in specific cases and that records should be sufficient to permit the reconstruction of individual transactions in a way that is sufficient for criminal prosecutions. • Require money remitters to retain business correspondence records for the required period and there is no guidance in the law or executive decrees with respect to the start of the five year period, that is, from the time a transaction is executed or a business relationship is terminated. • Ensure that records and information are available to competent authorities on a timely basis. • Require money remitters to establish the background and purpose of unusual transactions and to keep and make available such findings for the authorities and their auditors. • Require money remitters to report suspicion of terrorism financing and ensure that the names and details of staff of money remitters involved in making and reporting STRs are kept confidential by the UAF. • Impose an obligation to report attempted transactions. • Require money remitters to adopt broad AML/CFT policies and procedures. • Require the Compliance Officer to be at a management level and to have an independent audit function to test compliance with the AML/CFT obligations. • Impose a requirement to train staff on ML/TF techniques, methods and trends, laws and other obligations, including with respect to customer due diligence, and suspicious activity reporting. • Impose a requirement on money remitters to properly screen employees for AML/CFT as part of the recruitment process. • Require money remitters to pay special attention to transactions with persons or countries with week AML/CFT regimes, nor of measures to be taken in such cases. • Strengthen the AML/CFT supervisory capacity of MICI and ensure that an adequate number of on-site AML/CFT inspections are conducted.
4. Preventive Measures– Nonfinancial Businesses and Professions	

4.1 Customer due diligence and record-keeping (R. 12)	• Include in the AML/CFT regime: lawyers, accountants, notaries, dealers in precious metals and stones, corporate services providers, and real estate agents (natural persons) in accordance with the FATF Recommendations. **Casinos** • CTF obligations should be included in the AML Law and relevant Agreements and Resolutions, that is in law or regulation • Customer due diligence asterisked (*) requirements should be in Law 42 or Executive Decrees (regulations), not in OEMs. Consequently, they are currently insufficient to meet the broader customer due diligence requirements of R. 5, including for casinos. • Law 42 and the Resolutions issued for casinos dealing with large cash transactions only specify B 10,000, and not transactions by other means equivalent to this amount. For instance, it does not address wire transfer activity (receipts and payments by casinos through wire transfers, including internet casinos) and ongoing due diligence for accounts opened for longer term relationships as opposed to occasional. • It should be mandatory to record the name and not a pseudonym in the MTRs to enable casinos to more readily identify linked transactions for purposes of the CTR and STR reporting requirement. • Record keeping requirements in Law 42 are insufficient for the purpose of R. 10. They only apply to CTRs related documents. Broader requirements must be included in Law or Executive Decrees (regulations), including inter-alia the retention and sufficiency of records, correspondence, audit trail, and timely access for competent authorities. • Insufficient provisions in law, regulations or OEMs for casinos to pay special attention to and examine complex, unusually large transactions, and to record such as defined under R. 11. The requirements for identification and reporting of STRs are insufficient for this purpose. • Complete casinos and internet casinos should have specific and enhanced CDD requirements for PEPs. • Strict measures for non face-to-face relationship should be established for internet casinos for purposes of R. 8, both with respect to CDD, receipt and payment of funds. **Real Estate Agents** • CTF obligations should be established by law, regulation or as appropriate OEMs. • AML/CFT obligations should cover both natural and legal persons performing as real estate brokers and agents.

	• All CDD (asterisked) and record keeping obligations outlined in the essential criteria should be established in law or regulation, and not by OEM. • Enhanced CDD obligations regarding PEPs are necessary. • Requirement for policies and measures to prevent the misuse of technological developments in ML and TF are necessary. In addition, it is necessary to establish obligations to have policies and procedures in place to address any specific risks associated with non face to face business relationship. • It is necessary to impose obligations regarding the examination of the background and purpose of the transactions, as well as keeping the recorded findings available for the competent authorities and auditors for at least five years. Trustees • CDD, recordkeeping and other obligations for trustees should extend to other services they provide, especially corporate services. Supervision should also extend to these other or complementary services to ensure compliance with the CDD and other requirements under R. 12. • Specific CDD requirements for beneficiaries that are legal persons should be established, especially when they different from settlors. • Art. 5 of Acuerdo 12 that deals with CDD conducted by trustees requires that information provided to the trustee by clients on the identity of beneficiaries of trusts shall be kept in strict secrecy unless required by judicial and administrative authorities authorized to do so. In addition, higher level Executive Decree No. 16 of 1984 that regulates the Law of Trusts (1984), states that neither the Superintendence of Banks nor any other Government authority empowered can disclose any information obtained through their inspections with respect to trust operations except if requested in connection with judicial proceedings. Because, this deals with CDD issues, these provisions should be reviewed to ensure that such agencies such as the UAF are not excluded from obtaining or receiving such information for purposes of their functions. • Obligations for conducting ongoing due diligence on the business relationship should be established. • Measures to perform enhanced due diligence for higher risk categories of customer, business relationship or transactions must be enacted. • There should be requirements for rejecting the business relation, terminate it or file a STR if the CDD can't be fully applied before or after it has commenced. • There should be requirements for having policies and procedures in place to address risks associated with non face- to-face business relationships or transactions.

	• Provisions regarding trustees relying on intermediaries or other third parties to perform some of the elements of the CDD process should be enacted, considering that trustees in Panama have extensive international networks and develop international business through other professional intermediaries abroad, whether or not they are affiliated intermediaries or introducers. • Broader set of records should be required that would be sufficient to reconstruct individual transactions and provide a sufficient trail for investigations and prosecutions, including with respect to international and national transactions, and business correspondence. • Although the start of the record retention is stipulated in Article 7 of Agreement 12-2005 (OEM), this obligation should be specified by Law or Regulation.
4.2 Suspicious transaction reporting (R. 16)	• Include in the AML/CFT regime: lawyers, accountants, notaries, dealers in precious metals and stones, corporate services providers and real estate agents (natural persons) in accordance with the FATF Recommendations. **Casinos** • Obligation to file STRs should be enacted in a Law or regulation, and should include TF. • STRs should be filed for attempted transactions, and regardless of whether they are thought, among other things, to involve tax matters. • Compliance officer should have a management level and have timely access to customer identification data and other CDD, information, transaction records, and other relevant information. • Internet casinos should be required to appoint a compliance officer, and to establish, maintain and independently audit internal controls to prevent ML and TF. • Casinos should establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and TF techniques, methods and trends, AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting • Casinos and internet casinos should place screening procedures to ensure high standards when hiring employees. • Casinos and internet casinos should examine unusual transactions related to countries which do not or insufficiently apply the FATF Recommendations. • It is necessary to put into place screening procedures to ensure high standards when hiring employees.

	Trustees • It's necessary to specify that the STRs must be submitted regardless the amount of the transaction, and if it was an attempted transaction. • It should be required to trustees to maintain internal procedures, policies and controls to prevent ML and TF, and to communicate these to their employees. • A specific obligation for Trust companies to appoint a compliance officer should be enacted. • Ongoing employee training should be required for the employees of trustees. • Together with the obligation stating that trustees must pay special attention to any kind of transaction no matter the amount, that could be linked to ML (not TF), it is necessary to establish the specific obligation to have the written findings be available to assist competent authorities (e.g., supervisors, law enforcement agencies and the FIU) and auditors. • The SBP should supervise, together with the trust business conducted by trustees, their other corporate services. In addition, SBP should deepen its analysis of compliance in the more complex activities of trustees. • Timeline for reporting of suspicious transactions must considerably reduced. **Real Estate Agents** • Obligation to file STRs for ML and TF should be enacted in a Law or regulation. • Protection by law is needed from both criminal and civil liability for the directors, officers and employees (permanent and temporary) for breaching of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU. • There is no specific mention that the STRs should be submitted regardless the amount of the transaction, and if it was an attempted transaction. • Real estate agents should be obliged to have and maintain formal internal procedures, policies and controls to prevent ML and TF, and to communicate these to their employees. • Specific provisions are needed for the management level of the compliance officer and he/she and other appropriate staff should have timely access to customer identification data and other CDD information, transaction records, and other relevant information. • Screening procedures to ensure high standards when hiring employees should be required.

	• Obligation to have the written findings about the analysis of unusual transactions should be available to assist competent authorities (e.g., supervisors, law enforcement agencies, and the FIU) and auditors. • Obligation to have and maintain formal internal procedures, policies and controls to prevent ML and TF including with respect to CDD, recordkeeping and STR reporting, and to communicate these to their employees, should be considered, as well as the compliance officer be at management level and have access to all required information. • It is necessary to put into place screening procedures to ensure high standards when hiring employees. **Casinos, trustees and real estate agents** • Casinos and real estate agents should have the legal obligation to file STRs on ML, and not only by OEM. In addition, trustees only have the legal duty to report STRs to the FIU only for ML under the AML Law (Law 42.TF reporting should be extended to all these sectors by law or regulation. • STRs should be filed by these sectors regardless of whether they are thought, among other things, to involve tax matters. • These sectors should be required to file STRs on attempted transactions. • Directors, officers and employees (permanent and temporary) should be prohibited by law from disclosing ("tipping off") the fact that a STR or related information is being reported or provided to the FIU. • These sectors should report to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offense for money laundering domestically • These sectors should be required to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls. • These sectors should give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations. • Measures to ensure that these sectors will be advised of concerns about weaknesses in the AML/CFT systems of other countries should be considered. • Implementation • Enhanced supervision should focus on enforcement of CDD requirements and compliance for casinos (including internet casinos), real estate agents and trustees, particularly to increase

	the number of STRs filed by these high risk sectors. • Emphasis on CTR requirements should be balanced in the sectors of casinos and real estate agents, by giving a major importance to the AML/CFT and STR requirements. Resource capacity at the supervisory agencies for these two sectors should be also fostered.
4.3 Regulation, supervision, monitoring, and sanctions (R. 17, 24, and 25)	• The AML/CFT supervisory regime should include: lawyers, accountants, notaries, dealers in precious metals and stones, corporate services providers and real estate agents (natural persons) in accordance with the FATF Recommendations. **Casinos, real estate agents and trustees** • More resources should be assigned to the SBP, RETB, and the GCB. **Casinos (including internet casinos)** • The GCB must be able to identify the beneficial owner (natural persons) of the applicants for the license to perform the business of casinos for preventing criminals and their associates to be owners of a significant part of a casino, or controlling interest, holding a management function in, or being an operator of a casino. • Licensing for internet casinos should be clarified, extending direct license requirements to internet casinos • Internet casinos should be effectively supervised, not relying in CTR obligations considering that they are not expected to handle cash. • Supervision should not be orientated only to the filing of CTRs, to the detriment of revision of compliance with other AML/CFT obligations (such as the filing of STRs). • A deeper AML/CFT supervision regime must be implemented for imposing sanctions, if necessary. • Sanctions for directors and senior management of casinos should be available for the GCB, including the possibility of the suspension of the license. • Confidentiality duties among the members of the GCB should be implemented. **Real Estate Agents** • Natural persons performing activities of real estate agents should be subject to requirements and supervised by MICI's Real Estate Technical Board for AML/CFT purposes. • MICI should enact AML/CFT comprehensive AML/CFT guidelines for real estate agents. • A more independently structured organizational arrangement for the RETB should be considered in order to work effectively as a

	supervisor, and independently from the supervised entities. • Confidentiality duties among the members of the RETB should be implemented. • Inspections performed by the RETB should not be only CTR oriented, and more emphasis should be given to the analysis of other key issues like CDD, record keeping and STRs. • A deeper AML/CFT supervision regime must be implemented for imposing sanctions, if necessary. **Trustees** • The SBP should expand and deepen the scope of supervision of trustee activities, including supervision of nontrust activities of trustees such as corporate services. • The SBP should issue more sector-specific and comprehensive AML/CFT guidelines for the trustees. • A deeper AML/CFT supervision regime must be implemented for imposing sanctions, if necessary.
4.4 Other designated non financial businesses and professions (R. 20)	• Conduct a risk assessment of high risk economic sectors and activities and consider applying the requirements of R. 20 (applying R. 5, 6, 8–11, 13–15, 17 and 21 c.20.1). Examples of such entities and activities may include, inter alia. • Specific businesses that operate in the Free Zones that present the highest risks of ML/TF and that are not otherwise covered by the AML Law, FATF as FIs, and DNFBPs. Examples of these would be entities engaged in importation and re-exportation of goods, invoicing, and re-invoicing firms, etc. • Pawn shops. • Currency transportation firms. • Safety deposit businesses. • Dealer in high value goods e.g., vehicles, aircraft and boats. • Investment advisors.
5. Legal Persons and Arrangements and Nonprofit Organizations	
5.1 Legal Persons–Access to beneficial ownership and control information (R. 33)	• Resident agents should be required to gather and maintain the information of the beneficial ownership (under the FATF definition) of the companies they are incorporating. The competent authorities should have access to this information held by the resident agent. In addition, the FIU should be considered as a competent authority that can have access to this data. • Panama should implement a mechanism to allow competent authorities to access such information in a timely fashion, and establish procedures e.g., through the Resident Agent, to ensure that such information is accurate and up to date. These should include the information contained in the share registries that can be kept outside of Panama.

	• Panama should review the 30 day period granted to the resident agents to complete the KYC process and the five years to comply with requirements for existing clients, since in the world of offshore corporate services, this grace period provides ample opportunity to use the legal entity for unlawful purposes, and to dissolve or otherwise dispose of legal entities used for illicit purposes. Some entities may be used only to carry out one-off transactions. • Resident agents providing corporate services should be subject to comprehensive AML/CFT requirements and supervision, similar to FATF requirements for trustees. (See R. 12, 14 and 24) • Panama should consider measures to prevent the misuse of bearer shares, including their immobilization. • In the case of foundations of private interest, Panama should establish mechanisms for the competent authorities to have access in a timely fashion to the identification of the beneficiary, including when it is contained in a document kept abroad.
5.2 Legal Arrangements–Access to beneficial ownership and control information (R. 34)	• Requirements are needed for managing risks associated to local and foreign companies with bearer shares and private foundations when acting as settlors or beneficiaries of trusts. • SBP should perform an in-depth analysis for understanding the trusts under the administrations of the trustees, in order to prevent the use of these structures for ML and TF. • In addition to the identification of the client (settlor) further obligations for the identification of the ultimate trust beneficiary should be considered. • The legislative framework for the disclosure and access to timely up to date information on beneficiaries of trusts should be revised for avoiding fragmented and incomplete provisions on this matter. • The scope of trustee supervision should include the possibility to review the legal entities under trust administration and the nontrust business of some trustees.
5.3 Nonprofit organizations (SR. VIII)	• The Supervision, Monitoring and Evaluation Unit of the Ministry of Government should be operational as soon as possible. • Panama should perform domestic reviews on the activities, size and other relevant features of the nonprofit sector and TF risk. • Panama should perform raising awareness activities in the NPO sector about the risks of terrorist abuse and the available measures the protection against it. • Panama should establish for NPOs the period for keeping those records, and that they have to be sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organization. • Panama should develop and implement specific mechanisms for the prompt sharing of NPOs information among all relevant

	competent authorities for preventative or investigative measures. • Implement points of contact and procedures to respond to international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support. • Panama should put in place effective domestic cooperation, coordination and information sharing arrangements among the appropriate authorities or organizations that hold relevant information on NPOs of potential TF concern. • Panamanian authorities should have full access to information on the administration and management of a particular NPO (including financial and programmatic information) that may be obtained during the course of an investigation. • Panama should foster specialized investigative and examination expertise and capability to examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organizations.
6. National and International Cooperation	
6.1 National cooperation and coordination (R. 31)	• Panama should make more consistent and regular use of the coordination tools that are in place and ensure that ML/TF issues are regularly addressed especially at the operational level. • There should be more clear channels of communication between agencies, including supervisory authorities in order to promote the implementation of AML/CFT law and regulations, including through contacts at operational level. • The fight against ML/TF should be part of the agenda of the coordination bodies on a regular basis.
6.2 The Conventions and UN Special Resolutions (R. 35 and SR. I)	• Fully implement the UN Vienna and Palermo Conventions, especially regarding the criminalization of ML and the adoption of a comprehensive prevention system. • Fully implement the UN CTF Convention, in particular by addressing the shortcomings identified for SR. II regarding the criminalization of TF. • Address the shortcomings identified in relation to the implementation of UNSCRs 1267 and 1373.
6.3 Mutual Legal Assistance (R. 36, 37, 38 and SR. V)	• Establish explicit legal provisions to regulate the principles and procedures for international legal cooperation in the absence of treaty. • Adopt regulations to permit the confiscation of assets of corresponding value. • A request for mutual legal assistance should not be refused on the ground that the offense is also considered to involve fiscal matters. • Consider devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of

	justice in cases that are subject to prosecution in more than one country. • To the greatest extent possible, mutual legal assistance should be rendered in the absence of dual criminality, in particular, for less intrusive and noncompulsory measures.
6.4 Extradition (R. 39, 37, and SR. V)	• To the greatest extent possible, mutual legal assistance should be rendered in the absence of dual criminality, in particular, for less intrusive and noncompulsory measures. • Consistent with the principles of domestic law, Panama should adopt measures or procedures that will allow extradition requests and proceedings relating to ML and TF to be handled without undue delay.
6.5 Other Forms of Cooperation (R. 40 and SR. V)	• The UAF should enhance international cooperation by more use of its powers under the AML Law (Law 42 of 2000) to access the information from reporting entities and law enforcement authorities in connection with requests from a foreign counterparts and thus should not limit itself to the consultation of its own database and public sources. • The Supervisors should specifically include in the MOUs the exchange of information on AML/CFT. • MICI and IPACOOP should be empowered to cooperate and exchange information with foreign counterparts. • All competent authorities in Panama should be allowed to conduct inquiries on behalf of foreign counterparts. (i.e., SBP, SMV, and SSRP) • All competent authorities should be provided with the power to cooperate and share information considered to involve fiscal matters. • The Supervisors should consider using the MOUs to perform "fit-and-proper" checks as part of its licensing procedures. • The UAF should make a more systematic use of international cooperation in order to enhance the quality of its analysis. • Panama should address the deficiencies identified under SR. II in order to be able to provide with effective international cooperation in TF matters.
7. Other Issues	
7.1 Resources and statistics (R. 30 and 32)	• SMV, MICI, IPACOOP, and SSRP should be provided with adequate human, financial and technical resources to effectively perform • All supervisors should be provided with more training. Enhanced training for risk-based supervision including for offsite surveillance of ML and TF risks should be provided. More resources should be assigned to the SBP, RETB, and the GCB. • It is necessary for the Public Registry (Registro Publico) to have statistics on the total number of companies, foundations, and other legal entities that are on the registered and those that are

	active. • It is necessary to have statistics on the number of NPOs that are operating in Panama. • It is necessary to have statistics on the number of lawyers, accounting firms, and other corporate services providers that are performing activities that should be covered under the applicable FATF Recommendations.

Annex 1. Authorities' Response to the Assessment

Thank you for giving Panama the opportunity to provide its views on the final versions of the Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism (the "DAR") and the related Report on Observance of Standards and Codes ("ROSC"). We remain grateful for your team's expertise and professionalism in assisting Panama as it continues to strengthen its AML/CFT regime in accordance with international standards and best practices.

Given that the DAR and the related ROSC have been finalized and will shortly be published pursuant to the authorization sent by this Ministry, we write to inform you of the following concerns that Panama has with these reports and any follow-up processes that these reports may entail:

1. Panama is not in agreement with the results and ratings concerning compliance with the Forty Recommendations (2003) and the Nine Special Recommendations on Terrorist Financing (2001) of the Financial Action Task Force ("FATF"). Following a review of these reports, institutions such as the National Customs Authority, the Ministry of Government, the Attorney General of the Nation, the Ministry of Foreign Relations, the Superintendency of Banks and the Financial Intelligence Unit reported that many of their responses and submissions were not taken into account, resulting in unfavorable conclusions in the evaluation.

2. Panama is concerned that these reports do not reflect the current state of the Panamanian AML/CFT system, due to several improvements that Panama has made since the time of the assessment upon which these reports are based. We note in particular that the preface to the DAR states that the report provides a summary of the AML/CFT measures in place in Panama at the time of the mission, which took place from October 15–29, 2012. Since that time, Panama's significant steps to strengthen its AML/CFT system have included:

- The draft Amendment to Law No. 42 of 2000, implementing the new FATF standards;
- Law No. 47 of August 6, 2013, which adopts custody requirements for bearer shares;
- New provisions in the Terrorism Law in the Criminal Code - Law No. 62 of September 18, 2013, and amendments to the Law of the Superintendency of the Securities Market, the Law of the Superintendency of Insurance and Re-insurance and Law No. 67, which created the Council of Financial Coordination.

Accordingly, we respectfully request that the published version and any published summary of the Detailed Assessment prominently reflect this important temporal dimension, namely, that the Detailed Assessment does not reflect the considerable advances in Panama's AML/CFT regime since October 2012.

3. The evaluation by the International Monetary Fund was undertaken at the initiative and request of the Government of the Republic of Panama but was based on the 40 plus 9 recommendations no longer in effect from February 2012, when 40 new recommendations were approved by FATF. While we do not criticize this fact, it nonetheless presents challenges as Panama continues to move forward in its AML/CFT efforts. Panama is presently focused on further improving its AML/CFT system in accordance with the newly revised FATF recommendations. For example, Panama is taking initial steps in the formulation of a National Risk Assessment and Corresponding

Strategy Against Money Laundering and Terrorism Financing. We believe these efforts will significantly strengthen the effectiveness of Panama's AML/CFT system, in part by focusing our attention and resources on those risks and issues of greatest AML/CFT concern. We do not wish for these priorities to become subordinated to parallel concerns associated with fully meeting the technical requirements of the old FATF 40+9 recommendations.

We do recognize that the newly revised FATF standards enhance the prior standards, and that technical compliance with the old 40+9 recommendations provides a necessary foundation for effectively meeting the new recommendations. However, we wish to underscore the importance of maintaining Panama's AML/CFT focus on those actions that will most effectively strengthen its AML/CFT system moving forward. We urge that any follow-up processes associated with finalization of the DAR and the ROSC (including the recommended actions contained therein) respect this fundamental point, for the benefit of Panama and all AML/CFT authorities with interests in Panama.

We are aware that our country, like many other nations, confronts significant challenges in meeting the standards for addressing the scourge of money laundering and terrorist financing, but we wish to reiterate and highlight our strong commitment to meet these challenges through the actions we are continuing to take, including those noted above.

Annex 2. List of Bodies Met During the On-site Visit

Governmental Bodies: (18 agencies)

1. Ministerio Público de Panamá
2. Procuraduría General de la Nación
3. Órgano Judicial
4. División de Blanqueo de Capitales de la Dirección de Investigación Judicial (DIJ), Policía Nacional de Panamá
5. Autoridad Nacional de Aduanas
6. Unidad de Análisis Financiero
7. Ministerio de Comercio e Industrias
8. Ministerio de Relaciones Exteriores
9. Ministerio de Gobierno
10. Ministerio de Gobierno: Organizaciones No-Gubernamentales/sin fin de lucro (ONGs)
11. Servicio Nacional de Migración
12. Superintendencia de Bancos de Panamá
13. Superintendencia del Mercado de Valores
14. Superintendencia de Seguros y Reaseguros
15. IPACOOP
16. Junta de Control de Juegos
17. Registro Público
18. Administración Zona Libre de Colon
19. Financial Institutions (32 entities)
20. Banks
21. Insurance companies and intermediaries
22. Securities intermediaries
23. Mutual funds
24. Bureaus de change
25. Money remittance firms
26. Cooperatives
27. Savings and loan associations
28. Pawning/lending firms
29. Leasing companies
30. Finance companies
31. Designated Non-Financial Businesses and Professions (17 entities)
32. Attorneys
33. Accountants
34. Trust and Corporate services providers
35. Real estate agents, brokers and developers
36. Casinos including internet casinos
37. Dealers in precious metals and stones