



# PANAMA

## Secondary legislation

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**Executive decree No. 461 of December 26, 2017**

See below

**Executive decree No. 124 of May 12, 2017**

See below

**Executive decree No. 122 of June 11, 2018**

See below

**More information on the AEOI portal:** <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/>

**REPUBLIC OF PANAMA**  
**MINISTRY OF ECONOMY AND FINANCE**

**EXECUTIVE DECREE No. 461**

December 26, 2017

“That modifies articles of Executive Decree No. 124 of May 12, 2017, by which Law 47 of October 24, 2016 is regulated, by which the Agreement between the Government of the Republic of Panama and the Government of the United States of America is approved for improving international tax compliance and to enforce the Foreign Accounts Tax Compliance Act (FATCA) and Law 51 of October 27, 2016, which establishes the Regulatory Framework for the implementation of the Exchange of Information for tax purposes”

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**THE PRESIDENT OF THE REPUBLIC,**

In use of its constitutional and legal powers,

**WHEREAS:**

That, in 2016, the Government of the Republic of Panama signed with the Government of the United States of America the Agreement to Improve International Tax Compliance and to implement the Foreign Accounts Tax Compliance Act (FATCA), which was ratified by Law 47 of October 24, 2016;

That, in the same year 2016, the Government of the Republic of Panama officially committed to the automatic exchange of financial information for tax purposes, in accordance with the Common Reporting Standard promoted by the Global Forum of Transparency and Exchange of Information for Tax Purposes;

That in order to implement the commitment with the Automatic Exchange of Information, Law 51 of October 27, 2016, which established obligations for financial institutions, powers for the competent authority, rules of confidentiality and sanctions, among others, was approved;

That, in order to provide clarity to the financial institutions impacted by Laws 47 and 51 of 2016, it is necessary to regulate procedural aspects related to the obligations established in said laws;

That, according to the provisions of Article 4 of Law 51 of 2016, the competent authority is empowered to inspect, supervise and control the Panamanian financial reporting institutions, in compliance with due diligence and reporting processes as provided in said law through the mechanisms that the regulations allow;

That, by virtue of the foregoing, it is necessary to regulate the procedure by means of which the competent authority can answer inquiries related to the exchange of information for tax purposes, as a mechanism to achieve the adequate supervision of the obligations to which the financial institutions are subject under the law;

That, according to the provisions of Article 1199 of the Tax Code of the Republic of Panama, all persons directly interested in them may submit information requests related to tax matters.

That, by virtue of what is established in article 5 of Cabinet Decree 109 of May 7, 1970, the Director General of Revenue is responsible for the planning, management, coordination and control of the administrative and functional organization of the General Directorate of Revenues, as well as the permanent adaptation and improvement of administrative structures and procedures, inherent to the function of administering the tax laws under its jurisdiction. Similarly, the General Directorate of Revenue is empowered to answer questions, in accordance with the provisions of tax laws and regulations in force.

That, according to the provisions of numeral 14 of article 184 of the Political Constitution, the President of the Republic, together with the respective Minister, must regulate the laws that so require it for better compliance, without departing from its text or its meaning,

**DECREE:**

**Article 1.** The Numeral 3 and 4 of Article 2 of Executive Decree 124 of May 12, 2017, remains as follows:

**Article 2**

...

3. *High value* account: means a preexisting individual account with an aggregate balance or value that exceeds One Million (USD1, 000,000.00) Dollars as of June 30, 2017 or December 31 of any subsequent year.
4. *Lower value* account: a preexisting individual account with an aggregate balance or value as of June 30, 2017 that does not exceed One Million (USD1, 000,000.00) Dollars.

**Article 2.** The numerals 3 and 4 of article 3 of Executive Decree 124 of May 12, 2017, remain as follows:

**“Article 3**

...

3. The place of birth is not required to be reported unless the Panamanian reporting financial institution is otherwise required to obtain and report it under the law and it is available in the electronically searchable data maintained by such institution.
4. The information to be reported with respect to 2017 is that described in article 12 of Law 51 of October 27, 2016, except for the total gross amount of the products referred to in subparagraph b of numeral 5 of said article, which should be reported with respect to the year 2018 and following.”

**Article 3.** Article 5 of Executive Decree 124 of May 12, 2017, remains as follows:

**Article 5.** The balance or value of an account will be determined on the last day of the calendar year to which the information refers, unless another provision in this Decree establishes a different date.

**Article 4.** Article 10 of Executive Decree 124 of May 12, 2017, reads as follows:

**“Article 10.** The following procedures will be applicable to lower value accounts:

If the Panamanian reporting financial institution has in its records a current residence address for the individual account holder based on documentary evidence, the Panamanian reporting financial institution may treat the account holder who is an individual as being a resident for tax purposes of the jurisdiction in which the address is located for the purpose of determining whether such individual account holder is a reportable person. For these purpose, the information most recently registered by the Panamanian reporting financial institution, with respect to the individual account holder, shall be considered a “current residence address.

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If the Panamanian reporting financial institution may not rely on a current residence address for the individual account holder, based on documentary evidence, as set forth in the previous paragraph, the Panamanian reporting financial institution must review its electronically searchable data to determine any of the following indicia:

1. Identification of the account holder as a resident of a foreign jurisdiction;
2. Mailing or residence address, including a post office box, in a foreign jurisdiction;
3. One or more telephone numbers in a foreign jurisdiction and no telephone number in Panama;
4. Standing instructions for transfer funds to an account maintained in a foreign jurisdiction other than with respect to a depository account. For these purposes, the "standing instructions" will be considered as those that are communicated by the account holder or an agent of the account holder, which will be repeated without the need for further instructions from the account holder or his agent. Similarly, an

instruction will be considered standing instruction, even after it has been subject to amendment by the account holder or its agent;

5. Currently effective power of attorney or signatory authority, granted to a person with an address in a foreign jurisdiction; or

6. A “hold mail” instruction or “in-care-of” address in a foreign jurisdiction if the Panamanian reporting financial institution does not have any other address on file for the account holder.

For the purposes of the provisions of paragraphs 2, 3, 5 and 6, the information most recently registered by the Panamanian reporting financial institution with respect to the individual account holder shall be considered effective.

If none of the indicia above mentioned are discovered in the electronic search, then no further action is required until there is - in relation to said account - a change in circumstances that results in one or more indicia or the account becomes a high value account.

If any of the indicia are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Panamanian reporting financial institution must treat the account holder as a resident for tax purposes of each reportable jurisdiction for which an indicium is identified, unless it elects to apply the provisions of article 11 of this Executive Decree and one of the exceptions in such article applies with respect to that account.

If a “hold mail” instruction or “in-care-of” address is discovered and no other address or other indication listed in this article has been found with respect to an account holder, the Panamanian reporting financial institution must, in the order most appropriate to the circumstances, apply the paper record search described in article 13, or seek to obtain from the account holder a self-certification or documentary evidence to establish the residence(s) for tax purposes of such account holder. If the paper search fails to establish an indicium and the attempt of the Panamanian reporting financial institution to obtain the self-certification or documentary evidence is not successful, the Panamanian reporting financial institution must report the account as an undocumented account.

**Article 5.** Article 17 of Executive Decree 124 of May 12, 2017 is as follows:

**Article 17.** If a pre-existing individual account is not a high-value account as of June 30, 2017 but becomes a high-value account at the last day of any subsequent calendar year, the Panamanian reporting financial institution must complete enhanced review procedures described in articles 12 to 18 with respect to such account within the calendar year following the year in which the account becomes a high value account. If based on this review such account is identified as a reportable account, the Panamanian reporting financial institution must report the required information about such account with respect to the year in which it is identified as a reportable account and subsequent years on an annual basis, unless the account holder ceases to be a reportable person.

Once a Panamanian reporting financial institution applies to a high-value account the enhanced review procedures described in Articles 12 to 18, the Panamanian reporting financial institution will not be required to re-apply such procedures, other than the relationship manager inquiry described in article 15, to the same high value

account in any subsequent year unless the account is undocumented where the Panamanian reporting financial institution should re-apply them annually until such account ceases to be undocumented.

If there is a change in circumstances with respect to a high-value account that results in one or more indicia described in Article 10 being associated with the account, then the Panamanian reporting financial institution must treat the account as a reportable account with respect to each foreign jurisdiction for which an indicium is identified unless it elects to apply article 11 and one of the exceptions in such article applies with respect to that account.

**Article 6.** Article 22 of Executive Decree 124 of May 12, 2017, reads as follows:

**Article 22.** Unless the Panamanian reporting financial institution elects otherwise, either with respect to all preexisting entity accounts or, separately, with respect to any clearly identified group of such accounts, a preexisting entity account with an aggregate account balance or value that does not exceed Two Hundred Fifty Thousand Dollars (USD250,000.00) as of June 30, 2017, is not required to be reviewed, identified, or reported as a reportable account until the aggregate account balance or value exceeds such amount as of the last day of any subsequent calendar year.

For the purposes of Law 47 of October 24, 2016, the exception to be applied shall be as provided in paragraphs A and B, section IV, annex I of IGA.

**Article 7.** Article 23 of Executive Decree 124 of May 12, 2017, reads as follows:

**Article 23.** A preexisting entity account that has an aggregate account balance or value that exceeds Two Hundred Fifty Thousand Dollars (USD250, 000.00) as of June 30, 2017, and a preexisting entity account that does not exceed Two Hundred Fifty Thousand Dollars (USD250, 000.00) as of June 30, 2017 but the aggregate



account balance or value of which exceeds such amount as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in article 24.

**Article 8.** Article 25 of Executive Decree 124 of May 12 is as follows:

**Article 25.** Review of preexisting entity accounts with an aggregate balance or value that exceeds two hundred and fifty thousand (\$ 250,000.00) dollars as of June 30, 2017 must be completed by June 30, 2019.

The review of preexisting entity accounts with an aggregate balance or value that does not exceed two hundred and fifty thousand (\$ 250,000.00) dollars as of June 30, 2017, but whose aggregate account balance or value exceeds such amount on the last day of any subsequent calendar year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds such amount.

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**Article 9.** Article **28** of Executive Decree **124** of **December** of May 2017 is as follows:

**Article 28.** For new entity accounts, a Panamanian reporting financial institution must apply the following procedures:

1. Determine the residence of an entity:
  - a. Obtain a self-certification, which may be part of the account opening documentation, that allows the Panamanian reporting financial institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Panamanian reporting financial institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures. If the Entity certifies that it has no residence for tax purposes, the

Panamanian reporting financial institution may rely on the address of the principal office of the entity to determine the residence of the Account Holder.

- b. If the self-certification indicates that the account holder is resident in a reportable jurisdiction, the Panamanian reporting financial institution must treat the account as a reportable account, unless it reasonably determines based on information in its possession or that is publicly available, that the account holder is not a reportable person with respect to such reportable jurisdiction.

2. Determine the residence of the person exercising control of a Passive NFE: With respect to an account holder of a new account of entities, including an entity that is a reportable person, the Panamanian reporting financial institution must determine if the account holder is a passive NFE with one or more persons who exercise control and determine the residence of those persons who exercise control. If any of the persons exercising control of the passive NFE is a reportable person, then the account will be considered a reportable account. When the Panamanian financial institution subject to reporting makes these determinations, it must comply with the following, in the most appropriate order according to the circumstances:

- a. For the purpose of determining if the account holder is a passive NFE, the Panamanian reporting financial institution must rely on a self-certification of the account holder to establish its status, unless it displays public information available or in possession of Panamanian reporting financial institution, based on which it can reasonably determine that the account holder is an active NFE or a financial institution other than an investment entity described in subparagraph b of numeral 14 of article 2 that is not a financial institution of a participating jurisdiction.

- b. In order to determine the persons exercising control of an account holder, a Panamanian reporting financial institution may rely on information obtained and maintained under AML / KYC procedures, to the extent that said procedures are consistent with Recommendations 10 and 25 of the Financial Action Task Force (FATF), adopted in February 2012.
- c. For purposes of determining whether a controlling person of a passive NFE is a reportable person, a Panamanian reporting financial institution may rely on a self-certification from the account holder or such controlling person.

If there is a change of circumstances with respect to a new entity account that causes the Panamanian reporting financial institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Panamanian reporting financial institution must re-determine the status of the account in accordance with the procedures set forth in article 26.

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**Article 10.** The numeral 2, article 43 of Executive Decree 124 of 12 of May 2017, reads as follows:

**Article 43**

- 2. Beginning on or before July 1, 2017, the financial institution implements policies and procedures either to prevent a customer from making an overpayment in excess of Fifty Thousand Dollars (USD50,000.00), or to ensure that any customer overpayment in excess of Fifty Thousand Dollars (USD50,000.00) is refunded to the customer within sixty (60) days, in each case applying the rules set forth in articles 32 to 35 for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

**Article 11.** The literal b, numeral 6, article 45 of Executive Decree 124 of May 12, 2017, is modified as follows:

**Article 45.**

....

- a. b. Beginning on or before July 1, 2017, the financial institution implements policies and procedures, either to prevent the client from making overpayments in excess of fifty thousand (\$ 50,000.00) dollars or to ensure that any customer overpayment in excess of said amount is refunded to the customer within sixty (60) days, in each case applying the rules set forth in article 35 for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

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**Article 12** Article 46 of Executive Decree 124 of May 12, 2017, reads as follows:

**Article 46** In accordance with the provisions of Law 51 of October 27, 2016 and Law 47 of October 24, 2016, the Panamanian financial institutions subject to reporting will be obliged to report to the competent authority the information collected in accordance with the provisions of said laws and regulations, with respect to each reportable account, no later than July 31 of the following calendar year to which the information collected corresponds.

**Transitory Paragraph:** Notwithstanding the provisions of Article 4 of this Executive Decree, any preexisting high value account of an individual that is identified as a reportable account between January 1, 2018 and June 30, 2018, shall be reported by the Panamanian financial institution subject to reporting no later than July 31, 2018, and in such case, the information to be reported regarding such account is that corresponding to the 2017 calendar year.

Notwithstanding the provisions of Article 4 of this Executive Decree, preexisting low value of individual and any preexisting entity that is identified as a reportable account between January 1, 2019 and June 30, 2019, must be reported by the Panamanian financial institution subject to reporting no later than July 31, 2019 and in such case, the information that should be reported regarding such account corresponds to the 2018 calendar year.

**Article 13.** Article 48 of Executive Decree 124 of May 12, 2017 reads as follows:

**Article 48.** All entities that qualify to be considered as a Panamanian reporting financial institution, in accordance with the provisions of Law 51 of October 27, 2016 and Law 47 of October 24, 2016 and this Executive Decree, must register this status with the competent authority, in the DGI / FATCA & AEOI Portal, in accordance with the deadlines established by the competent authority.

In the event that an entity loses its status as a Panamanian reporting financial institution within any calendar year, as defined in Law 51 of October 27, 2016 and Law 47 of October 24, 2016 and this Decree Executive, it shall also be obliged to notify such change to the competent authority, within a period not exceeding 30 calendar days, counted from the date on which the entity loses such condition.

**Article 14.** Article 48-A is added to Executive Decree 124 of 12 of May 2017, as follows:

**Article 48-A.** For purposes of Law -51 of October 27, 2016 and Law 47 of October 24, 2016, the "competent authority may notify the Panamanian reporting financial institution of any error regarding the information, reported in a determined period, through the DGI/FATCA & AEOI Portal. The Panamanian reporting financial institution is obliged to amend the error committed during the reporting of the corresponding information in accordance with the instructions provided by the competent authority, and as provided in the applicable regulations.

**Article 15.** Article 49-A is added to Executive Decree 124 of 12 of May 12, 2017, as follows:

**Article 49-A.** Anyone with a personal and direct interest may submit inquiries to the competent authority in order to clarify the meaning and scope of Law 51 of October 27, 2016, Law 47 of October 24, 2016 and any other current or future provision that regulates the exchange of information for tax purposes based on the agreements signed by the Republic of Panama and in force, in relation to a concrete and current factual situation that befalls.

Individuals may make their own consultations, however, legal entities must make their queries through a legally constituted attorney and accompany the certification of the Public Registry stating the existence, validity and legal representation of the company.

1. The consultations must meet the following requirements:
  - a. Address the holder of the competent authority;
  - b. Name and identification number of the person making the consultation;
  - c. Clearly state the facts that are the object of the request;
  - d. Express the criterion of the consultant regarding the facts, matter or situation object of the consultation;
  - e. Cite the relevant legal provisions on which the consultation is based;
  - f. Provide documents and other elements of judgment that allow a better analysis of the consultation.
2. The competent authority must declare the consultation inadmissible in the following cases:
  - a. When it does not comply with the requirements established in this article;
  - b. When sufficient elements of judgment are not provided;
  - c. When the consultation refers to or relates to facts or situations that are the subject of controversy in the governmental or contentious-administrative branch;

- d. When the consultation is about issues other than what is established in the first paragraph of this article.

Any query that comply with the aforementioned requirements will be acquitted within a period of thirty (30) business days, unless, for justified reasons, a longer period is required. The consultation based on inaccurate or false data provided by the consultant will be voided.

**Article 16** This Executive Decree modifies articles 2, 3, 5, 10, 17, 22, 23, 25, 28, 43, 45, 46, 48 and adds articles 48-A and 49-A of Executive Decree No. 124 of May 12, 2017.

**Article 17** This Executive Decree will take effect from the date of its promulgation.

**LEGAL BASIS:** Numeral 14 of Article 184 of the Political Constitution of the Republic of Panama, Article 1199 of the Tax Code, Article 5 of Cabinet Decree 109 of May 7, 1970, Law 47 of October 24, 2016, Law 51 of October 27, 2016 and Executive Decree 124 of March 12, 2017.

**COMMUNICATE AND COMPLY.**

Given in the city of Panama, on December twenty-six of two thousand seventeen (2017)

SIGNATURES

**JUAN CARLOS VARELA RODRÍGUEZ**  
President of the Republic

**IVAN ZARAK**  
Minister in Charge  
Minister of Economy and Finances

SEAL OF THE PRESIDENCY OF THE REPUBLIC OF PANAMA





**TRANSLATION**

**REPUBLIC OF PANAMA**  
**MINISTRY OF ECONOMY AND FINANCE**  
**EXECUTIVE DECREE N° 124**  
**OF MAY 12, 2017**

"That regulates Law 47 of October 24, 2016 and Law 51 of October 27, 2016"

**THE PRESIDENT OF THE REPUBLIC**  
in use of his constitutional and legal powers,

**WHEREAS:**

That in 2016, the Government of the Republic of Panama signed with the Government of the United States of America the Agreement to Improve International Tax Compliance and to Execute the Foreign Accounts Tax Compliance Act (FATCA), which was ratified through Law 47 of October 24, 2016;

That in the same year 2016, the Government of the Republic of Panama officially committed itself to the Automatic Exchange of Financial Account Information in Tax Matters, in accordance with the Common Reporting Standard promoted by the Global Forum on Transparency and Exchange of Information for Tax Purposes;

That in order to implement the commitment to the automatic exchange of information, Law 51 of October 27, 2017, which established principal obligations for financial institutions, powers for the competent authority, rules of confidentiality and sanctions, among others, was approved;

That in order to provide clarity to the financial institutions impacted by Laws 47 and 51 of 2017, it is necessary to regulate procedural aspects related to the obligations established in said laws;

That according to the provisions of clause 14 of article 184 of the Political Constitution, the President of the Republic, along with the respective Minister, must regulate the laws that so require for its better compliance, without departing from its text or its meaning,

## **DECREE:**

### **SECTION 1**

#### **SCOPE OF APPLICATION AND DEFINITIONS**

**Article 1.** The provisions established in Law 47 of October 24, 2016 and its annexes shall prevail over the provisions of this Executive Decree, when applicable.

**Article 2.** For the purposes of this Executive Decree, the following terms shall be understood as follows:

1. *Change in circumstances:* includes any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status. Additionally it includes, any change or addition of information to the account holder's account - including the addition, substitution, or other change of an account holder - or any change or addition of relevant information to any account associated with such account, applying the account aggregation rules described in articles 32 through 34, if such change or addition of information affects the status of the account holder.
2. *Insurance contract:* a contract other than an annuity contract under which the issuer is obliged to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.
3. *High value account:* means a preexisting individual account with an aggregate balance or value that exceeds One Million (USD1,000,000.00) Dollars as of December 31, 2017 or December 31 of any subsequent year.

4. *Lower value account*: a preexisting individual account with an aggregate balance or value as of December 31, 2017 that does not exceed One Million (USD1,000,000.00) Dollars.
5. *New account*: financial account opened by a Panamanian reporting financial institution subject to report on or after July 1, 2017.
6. *New entity account*: a new account held by one or more Entities.
7. *New individual account*: a new account held by one or more individuals.
8. *Preexisting account*: a financial account maintained by a Panamanian reporting financial institution subject to report as of June 30, 2017.
9. *Preexisting entity account*: a preexisting account held by one or more entities.
10. *Preexisting individual account*: a preexisting account held by one or more individuals.
11. *NFE*: any entity that is not a financial institution.
12. *Active NFE*: any NFE that meets any of the following criteria:
  - a. Less than 50% of the NFE's gross income for the preceding calendar year is passive income and less than 50% of the assets held by the NFE during the preceding calendar year are assets that produce or are held for the production of passive income;
  - b. The stock of the NFE is regularly traded on an established securities market or the NFE is a related entity of an entity the stock of which is regularly traded on an established securities market;
  - c. The NFE is a governmental entity, an international organization, a central bank, or an entity wholly owned by one or more of the foregoing;
  - d. Substantially all of the activities of the NFE consist of holding, in whole or in part, the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a financial institution, except that an Entity does not qualify for this status if the Entity functions or holds itself out as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies

and then hold interests in those companies as capital assets for investment purposes;

- e. The NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a financial institution. However, the NFE does not qualify for this exception twenty four (24) months after the date of the initial organization of the NFE;
- f. The NFE was not a financial institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a financial institution;
- g. The NFE primarily engages in financing and hedging transactions with, or for, related entities that are not financial institutions, and does not provide financing or hedging services to any entity that is not a related entity, provided that the group of any such related entities is primarily engaged in a business other than that of a financial institution; or
- h. The NFE meets all of the following requirements:
  - i. It is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;
  - ii. It is exempt from income tax in its jurisdiction of residence;
  - iii. It has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
  - iv. The applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private

person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and

- v. The applicable laws of the NFE's jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the NFE's jurisdiction of residence or any political subdivision thereof.

13. *Passive NFE*: any NFE that is not an active NFE or an investment entity described in subparagraph 14(b) of this article that is not a participating jurisdiction financial institution.

14. *Investment entity*: any entity:

- a. That primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

- 1. Trading in money market instruments (checks, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
- 2. Individual and collective portfolio management;
- 3. Otherwise investing, administering, or managing funds or money on behalf of other persons. Managing funds means managing financial assets; or

- b. The gross income of which is primarily attributable to investing, reinvesting, or trading in financial assets, if the entity is managed by another entity that is a depository institution, a custodial institution, a specified insurance company, or an investment entity described in the previous subparagraph.

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph (a), or an entity's gross income is primarily attributable to investing, reinvesting, or trading in financial assets for purposes of

subparagraph (b), if the entity's gross income attributable to the relevant activities equals or exceeds 50% of the entity's gross income during the shorter of the three-year period ending on December 31 of the year preceding the year in which the determination is made; or the period during which the Entity has been in existence. The term "investment entity" does not include an entity that is an active NFE because it meets any of the criteria in subparagraphs (d) through (g) of paragraph (12) of this article.

An entity shall be deemed to be managed by another entity if the entity that manages exercises directly or through a service provider any of the activities or operations described in the subparagraph (a) on behalf of the managed entity. An entity shall not be deemed to be managed by another entity if the entity has no discretionary authority to manage the entity's assets in whole or in part.

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the Financial Action Task Force (FATF) Recommendations.

15. *Documentary evidence*: includes any of the following:

- a. A certificate of residence issued by an authorized government body, for instance, a government or agency thereof, or a municipality, of the jurisdiction in which the payee claims to be a resident.
- b. With respect to an individual, any valid identification issued by an authorized government body, for instance, a government or agency thereof, which includes the individual's name and is typically used for identification purposes.
- c. With respect to an entity, any official documentation issued by an authorized government body, for instance, a government or agency thereof, or a municipality, that includes the name of the entity and either the address of its principal office in the jurisdiction in which it claims to be a resident or the jurisdiction in which the entity was incorporated or organized.

- d. Any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.
16. *Custodial institution*: any entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20% of the entity's gross income during the shorter of, the three-year period that ends on December 31 prior to the year in which the determination is being made or the period during which the entity has been in existence.
17. *Participating jurisdiction financial institution*: any financial institution that is resident in a participating jurisdiction, but excludes any branch of that financial institution that is located outside such participating jurisdiction; and any branch of a financial institution that is not resident in a participating jurisdiction, if that branch is located in such participating jurisdiction.
18. *Participating jurisdiction*: means a jurisdiction with which an agreement is in place pursuant to which it will provide the information specified in article 12 of Law 51 of October 27, 2016 and in article 3 of this Executive Decree, and which is identified in a list published by the competent authority.
19. *Equity interest*: in the case of a partnership that is a financial institution, either a capital or profits interest in the partnership. In the case of a trust that is a financial institution, an equity interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust (el fideicomiso), or any other natural person exercising ultimate effective control over the trust. A reportable person will be treated as being a beneficiary of a trust if such reportable person has the right to receive directly or indirectly, a mandatory distribution, or may receive, directly or indirectly, a discretionary distribution from the trust. For these purposes, the beneficiary who may receive, directly or indirectly, a discretionary distribution from the trust only will be treated as a beneficiary of a trust in the calendar year on which such distribution is received on the calendar year on which such receives a distribution. In the case of a private equity fund or a legal vehicle other than the

trust, it is understood that the participation in the capital is owned by the person(s) who are in an equivalent or similar situation.

20. *Reportable jurisdiction person*: an individual or entity that is resident in a reportable jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a reportable jurisdiction. For this purpose, an entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes, shall be treated as resident in the jurisdiction in which its place of effective management is situated.
21. *Controlling Persons*: means the natural persons who exercise control over an entity. For an Entity that is a legal person, the term “controlling persons” means the natural person or group of natural persons, whether individually or as a whole, directly or indirectly, who obtains or is(are) the owner(s) of twenty-five (25) percent or more of the shareholding composition or share capital of the legal entity. Where no natural person exercising control in the above-mentioned terms, the Controlling Person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means. Where no natural person(s) is identified as exercising control of the Entity, the Controlling Person(s) of the Entity will be the natural person(s) who holds the position of senior managing official.

In the case of a trust, said term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary (ies) or class (es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust; while in the case of a foundation of private interest or any other legal arrangement other than the trust, that term designates the person (s) who are in an equivalent or similar situation. A person shall be deemed to be the beneficiary of a trust when it is entitled to receive, directly or indirectly, a mandatory distribution, or may receive, directly or indirectly, a discretionary distribution from the trust. For these purposes, a beneficiary who may directly or indirectly receive a discretionary distribution will be considered a beneficiary of the trust in the calendar year in which the distribution is received. In respect thereof, Panamanian reporting financial institutions should



establish adequate procedures and safeguards to identify the timing of such distribution in favor of the discretionary beneficiary in any year, as appropriate.

This term should be interpreted in a manner that is consistent with a similar language set out in the International Financial Action Task Force (FATF) Recommendations, including the recommendation 10 and the Interpretative Note to recommendation 10 of the International Financial Action Task Force Recommendations (adopted in February 2012) and should be interpreted in a manner consistent with those Recommendations.

22. *AML/KYC Procedures*: means the customer due diligence procedures of a Panamanian reporting financial institution pursuant to the anti-money laundering or similar requirements to which such Panamanian reporting financial institution is subject.
23. *Passive Income*: It includes, but is not limited to, the portion of gross income that consists of:
- a. Dividends;
  - b. interest;
  - c. income equivalent to interest;
  - d. rents and royalties, other than rents and royalties derived in the active conduct of a business conducted, at least in part, by employees of the NFE;
  - e. annuities;
  - f. the excess of gains over losses from the sale or exchange of financial assets that gives rise to the passive income described previously;
  - g. the excess of gains over losses from transactions (including futures, forwards, options, and similar transactions) in any financial assets;
  - h. the excess of foreign currency gains over foreign currency losses;
  - i. net income from swaps; or
  - j. amounts received under cash value insurance contracts.

Notwithstanding the foregoing, passive income will not include, in the case of a NFE that regularly acts as a dealer in financial assets, any income from any

transaction entered into in the ordinary course of such dealer's business as such a dealer.

24. *Tax residence of Panama*: Tax residence according to the provisions of article 762-N of the Fiscal Code and its regulatory rules.

25. *Cash value*: the greater of the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan), and the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, this term does not include an amount payable under an insurance contract:

- a. Solely by reason of the death of an individual insured under a life insurance contract;
- b. As a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
- c. As a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an insurance contract other than an investment-linked life insurance or annuity contract due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the insurance contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
- d. As a policyholder dividend other than a termination dividend provided that the dividend relates to an insurance contract under which the only benefits payable are described in subparagraph (b) of this paragraph, or
- e. As a return of an advance premium or premium deposit for an insurance contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

## SECTION II

## GENERAL DUE DILIGENCE REQUIREMENTS

**Article 3.** In regards to the provisions of article 12 of Law 51 of October 27, 2016, the information reported must identify the type of currency in which each amount is denominated.

However, the following exceptions will apply in regards to the information to be reported:

1. With respect to each reportable account that is a preexisting account or with respect to each financial account that is opened prior to becoming a reportable account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Panamanian reporting financial institution and is not otherwise required to be collected by such reporting financial institution by law. However, a Panamanian reporting financial institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to preexisting accounts by the end of the second calendar year following the year in which such accounts were identified as reportable accounts.
2. The TIN is not required to be reported if a TIN is not issued by the relevant reportable jurisdiction or the domestic law of the relevant reportable jurisdiction does not require the collection of the TIN issued by such reportable jurisdiction.
3. The place of birth is not required to be reported unless the Panamanian reporting financial institution is otherwise required to obtain and report it by law and it is available in the electronically searchable data maintained by such institution.
4. The information to be reported with respect to 2017 is the information described in article 12 of Law 51 of October 27, 2016, except for gross proceeds described in subparagraph 5(b) of this article.

**Article 4.** An account is treated as a reportable account beginning as of the date it is identified as such pursuant to the due diligence procedures described in this Executive Decree and, unless otherwise provided, information with respect to a reportable account

must be reported annually in the calendar year following the year to which the information relates, as described in article 46.

A Panamanian reporting financial institution, which pursuant to the procedures described in this Executive Decree, identifies any account as a foreign account that is not a reportable account at the time the due diligence is performed, may rely on the outcome of such procedures to comply with future reporting obligations.

**Article 5.** The balance or value of an account will be determined on the last day of the calendar year to which the information refers.

**Article 6.** Subject to the provisions of paragraph 3 of article 5 of Law 47 of October 24, 2016 and article 13 of Law 51 of October 27, 2016, Panamanian reporting financial institutions may use a service provider for the execution of its obligations under those laws.

It is understood that the responsibility for compliance of established obligations in said laws and their regulations is maintained exclusively in the Panamanian reporting financial institution and not transferred to the service provider.

Those who intend to provide service provider must be legal entities and register with the competent authority.

In the event that the Panamanian reporting financial institution calls upon a service provider for the execution of its obligations under the provisions of this Executive Decree, said financial institution shall maintain records and documentary evidence that the service provider obtained or created for the purposes to carry out the due diligence procedures, in accordance with the provisions of the law.

For the purposes of applying Law 47 of October 24, 2016, service provider must comply with the provisions of paragraph F of Section VI of Annex I of said Law.

**Article 7.** A Panamanian reporting financial institution may apply the due diligence procedures for new accounts to preexisting accounts, either with respect to all relevant preexisting accounts or, separately, with respect to any clearly identified group of such

accounts. The foregoing selection shall be applicable without prejudice to the continued application of the remaining provisions relating to preexisting accounts.

**Article 8.** A Panamanian reporting financial institution may apply the due diligence procedures for high value accounts to lower value accounts, either with respect to all lower value accounts or, separately, with respect to any clearly identified group of such accounts.

### **SECTION III**

#### **DUE DILIGENCE FOR PREEXISTING INDIVIDUAL ACCOUNTS**

**Article 9.** A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract will not be subject to be review, identification or report, provided the Panamanian reporting financial institution is effectively prevented by law or regulations of Panama from selling such contract to residents of any reportable jurisdiction.

Paragraph. For purposes of application of Law 47 of October 24, 2016, unless a Panamanian financial reporting institution opts to the contrary, either in respect of all pre-existing individual accounts or separately with respect to any clearly identified group of such accounts, it is not necessary for the following accounts to be reviewed, identified or reported:

1. A pre-existing individual account with a balance or maximum value of USD50,000.00 until June 30, 2014;
2. A pre-existing individual account which is a cash value insurance contract or an annuity contract with a balance or value of USD250,000.00 or less, until June 30, 2014;
3. A depository account with a balance of USD50,000.00 dollars or less.

**Article 10.** The following procedures apply with respect to lower value accounts.

If the Panamanian reporting financial institution has in its records a current residence address for the individual account holder based on documentary evidence, the Panamanian reporting financial institution may treat the individual account holder as being a resident for tax purposes of the jurisdiction in which the address is located for purposes of determining whether such individual account holder is a reportable person. For these purposes, the information most recently registered by the Panamanian reporting financial institution, with respect to the individual account holder, shall be considered a “current residence address”.

If the Panamanian reporting financial institution may not rely on a current residence address for the individual account holder based on documentary evidence as set forth in the previous paragraph, the Panamanian reporting financial institution must review its electronically searchable data to determine any of the following indicia:

1. Identification of the Account Holder as a resident of a foreign jurisdiction;
2. Mailing or residence address, including a post office box, in a foreign jurisdiction;
3. One or more telephone numbers in a foreign jurisdiction and no telephone number in Panama;
4. Standing instructions to transfer funds to an account maintained in a foreign jurisdiction, other than with respect to a Depository Account. For these purposes, “standing instructions” are those that are communicated by the account holder or an agent of the account holder, which will be repeated without the need for further instructions from the account holder or its agent. Similarly, an instruction shall be considered standing instruction, even after it has been subject to amendment by the account holder or its agent;
5. currently effective power of attorney or signatory authority granted to a person with an address in a foreign jurisdiction; or
6. A “hold mail” instruction or “in-care-of” address in a foreign jurisdiction if the Panamanian reporting financial institution does not have any other address on file for the account holder.

For the purposes of the provisions of paragraphs 2, 3, 5 and 6, the information most recently registered by the Panamanian financial reporting institution with respect to the individual account holder shall be considered effective.

If none of the indicia above mentioned are discovered in the electronic search, then no further action is required until there is -in relation to said account- a change in circumstances that results in one or more indicia or the account becomes a high value account.

If any of the indicia are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Panamanian reporting financial institution must treat the account holder as a resident for tax purposes of each reportable jurisdiction for which an indicium is identified, unless it elects to apply the provisions of article 11 of this Executive Decree and one of the exceptions in such article applies with respect to that account.

If a “hold mail” instruction or “in-care-of” address is discovered and no other address or other indication listed in this article has been found with respect to an account holder, the Panamanian reporting financial institution must, in the order most appropriate to the circumstances, apply the paper record search described in article 13, or seek to obtain from the account holder a self-certification or documentary evidence to establish the residence(s) for tax purposes of such account holder. If the paper search fails to establish an indicium and the attempt of the Panamanian reporting financial institution to obtain the self-certification or documentary evidence is not successful, the Panamanian reporting financial institution must report the account as an undocumented account.

**Article 11.** Notwithstanding the existence of related indications in accordance with the preceding article, a Panamanian reporting financial institution is not required to consider the account holder as a resident of a foreign jurisdiction if:

1. The account holder information contains a current mailing or residence address in the foreign jurisdiction, one or more telephone numbers in the foreign jurisdiction and no telephone number in Panama or standing instructions to transfer funds to an account maintained in a foreign jurisdiction, the Panamanian reporting financial institution obtains, or has previously reviewed and maintains a record of:
  - a. A self-certification from the account holder of the jurisdiction(s) of residence of such Account Holder that does not include such foreign jurisdiction; and

- b. Documentary evidence establishing the account holder is a tax resident of a jurisdiction other than that foreign jurisdiction.
2. The Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in the foreign jurisdiction, the Panamanian reporting financial institution obtains, or has previously reviewed and maintains a record of:
  - a. A self-certification from the account holder of the jurisdiction(s) of residence of such Account Holder that does not include such foreign jurisdiction; and
  - b. Documentary evidence establishing the account is a tax resident of a jurisdiction other than that foreign jurisdiction.

**Article 12.** With respect to high value accounts, the Panamanian reporting financial institution must review electronically searchable data maintained by the Panamanian reporting financial institution for any of the indicia described in article 10.

**Article 13.** If the Panamanian reporting financial institution's electronically searchable databases include fields for, and capture all of the information described in article 14, then a further paper record search is not required. If the electronic databases do not capture all of this information, then with respect to a high value account, the Panamanian reporting financial institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Panamanian reporting financial institution within the last five years for any of the indicia described in article 10:

1. The most recent documentary evidence collected with respect to the account;
2. The most recent account opening contract or documentation;
3. The most recent documentation obtained by the Panamanian reporting financial institution pursuant to AML/KYC procedures or for other regulatory purposes;
4. Any power of attorney or signature authority forms currently in effect; and
5. Any standing instructions to transfer funds currently in effect other than with respect to a depository account.



**Article 14.** A Panamanian reporting financial institution is not required to perform the paper record search described in article 13 to the extent the Panamanian reporting financial institution's electronically searchable information includes the following:

1. The account holder's residence status;
2. The account holder's residence address and mailing address currently on file with the Panamanian reporting financial institution;
3. The account holder's telephone number(s) currently on file, if any, with the Panamanian reporting financial institution;
4. In the case of financial accounts other than depository accounts, whether there are standing instructions to transfer funds in the account to another account, including an account at another branch of the Panamanian reporting financial institution or another financial institution;
5. Whether there is a current "in-care-of" address or "hold mail" instruction for the account holder; and
6. Whether there is any power of attorney or signatory authority, currently effective, for the account.

**Article 15.** In addition to the electronic and paper record searches described in Articles 12 and 13, the Panamanian reporting financial institution must treat as a reportable account any high value account assigned to a relationship manager, including any financial accounts aggregated with that high value account, if the relationship manager has actual knowledge that the account holder is a reportable person.

**Article 16.** If none of the related indicia listed in article 10 are discovered in the enhanced review of high value accounts and the account is not identified as held by a tax resident of a foreign jurisdiction under Article 15, then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.

If any of the related indicia listed in article 10 are discovered in the enhanced review of high value accounts described above, or if there is a subsequent change in circumstances that results in one or more indicia as described in article 10, the Panamanian financial

reporting institution must consider each account holder to be a tax resident of each foreign jurisdiction for which an indicium is identified, unless in cases where that financial institution elects to apply the provisions of article 11 and any of the exceptions contained in that article is applicable in relation to that account.

If a “hold mail” instruction or “in-care-of” address is discovered in the enhanced review of high value accounts described above, and no other address and none of the other indicia listed in article 10 are identified for the account holder, the Panamanian financial reporting institution must obtain from such account holder a self-certification or documentary evidence to establish the residence(s) for tax purposes of the account holder. If the Panamanian financial reporting institution cannot obtain such self-certification or documentary evidence, it must report the account as an undocumented account.

**Article 17.** If a preexisting individual account is not a high value account as of December 31, 2017, but becomes a high value account as of the last day of a subsequent calendar year, the Panamanian reporting financial institution must complete the enhanced review procedures described in articles 12 to 18 with respect to such account within the calendar year following the year in which the account becomes a high value account. If based on this review such account is identified as a reportable account, the Panamanian reporting financial institution must report the required information about such account with respect to the year in which it is identified as a reportable account and subsequent years on an annual basis, unless the account holder ceases to be a reportable person.

Once a Panamanian reporting financial institution applies the enhanced review procedures described in articles 12 to 18 to a high value account, the Panamanian reporting financial institution is not required to re-apply such procedures, other than the relationship manager inquiry described in article 15, to the same high value account in any subsequent year unless the account is undocumented where the Panamanian reporting financial institution should re-apply them annually until such account ceases to be undocumented.

If there is a change of circumstances with respect to a high value account that results in one or more indicia described in article 10 being associated with the account, then the Panamanian reporting financial institution must treat the account as a reportable account

with respect to each foreign jurisdiction for which an indicium is identified unless it elects to apply article 11 and one of the exceptions in such article applies with respect to that account.

**Article 18.** A Panamanian reporting financial institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account.

**Article 19.** The review of preexisting high value individual accounts must be completed by June 30, 2018 and the review of preexisting low value individual accounts must be completed no later than June 30, 2019.

## **SECTION IV**

### **DUE DILIGENCE FOR NEW INDIVIDUAL ACCOUNTS**

**Article 20.** With respect to new individual accounts, upon account opening, the Panamanian reporting financial institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Panamanian reporting financial institution to determine the account holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Panamanian reporting financial institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures.

If the self-certification establishes that the account holder is resident for tax purposes in a reportable jurisdiction, the Panamanian reporting financial institution must treat the account as a reportable account and the self-certification must also include the account holder's TIN with respect to such reportable jurisdiction, subject to paragraph 2 of article 3 and date of birth.

If there is a change of circumstances with respect to a new individual account that causes the Panamanian reporting financial institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Panamanian reporting financial institution cannot rely on the original self-certification and must obtain a valid self-

certification that establishes the residence(s) for tax purposes of the account holder or a reasonable explanation and documentation, as appropriate, supporting the validity of the original self-certification, and maintaining a copy or annotation of such explanation and documentation. A Panamanian reporting financial institution shall establish procedures to ensure that any change that constitutes a change of circumstances is identified. In addition, a Panamanian reporting financial institution must inform any person providing a self-certification of its obligation to notify any change in circumstances to the Panamanian reporting financial institution.

**Article 21.** For purposes of application of Law 47 of October 24, 2016, unless a Panamanian reporting financial institution opts to the contrary, either in respect of all new individual accounts or separately with respect to any clearly identified group of such accounts, it is not necessary for the following accounts to be reviewed, identified or reported:

1. A depository account, except when the balance exceeds USD50,000.00 dollars at the end of any calendar year.
2. An insurance contract with cash value insurance contract, unless the cash value exceeds USD50,000.00 at the end of any calendar year.

## **SECTION V**

### **DUE DILIGENCE FOR PREEXISTING ENTITY ACCOUNTS**

**Article 22.** Unless the Panamanian reporting financial institution elects otherwise, either with respect to all preexisting entity accounts or, separately, with respect to any clearly identified group of such accounts, a preexisting entity account with an aggregate account balance or value that does not exceed Two Hundred Fifty Thousand Dollars (USD250,000.00) as of December 31, 2017, is not required to be reviewed, identified, or reported as a reportable account until the aggregate account balance or value exceeds such amount as of the last day of any subsequent calendar year.

For the purposes of Law 47 of October 24, 2016, the exception to be applied shall be as provided in paragraphs A and B, section IV, annex I of IGA.

**Article 23.** A preexisting entity account that has an aggregate account balance or value that exceeds Two Hundred Fifty Thousand Dollars (USD250, 000.00) as of December 31, 2017, and a preexisting entity account that does not exceed Two Hundred Fifty Thousand Dollars (USD250, 000.00) as of December 31, 2017 but the aggregate account balance or value of which exceeds such amount as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in article 24.

**Article 24.** With respect to preexisting entity accounts described in the preceding paragraph, the Panamanian reporting Financial Institution must apply the following review procedures:

1. Determine the residence of an entity
  - a. Review information maintained for regulatory or customer relationship purposes, including information collected pursuant to AML/KYC Procedures, to determine the residence of the account holder. For this purpose, information indicating that the residence of the Account Holder includes a place of incorporation or organization, or an address in a foreign jurisdiction.
  - b. If the information indicates that the account holder is a reportable person, the Panamanian reporting financial institution must treat the account as a reportable account, unless it obtains a self-certification from the account holder, or reasonably determines based on information in its possession or that is publicly available, that the account holder is not a reportable person.
2. With respect to an account holder of a preexisting entity account, including an entity that is a reportable person, the Panamanian reporting financial institution must determine whether the account holder is a passive NFE with one or more controlling persons who are reportable persons and determine the residence of such controlling persons. If any of the controlling persons of a passive NFE is a reportable person, then the account must be treated as a reportable account. In making these

determinations the Panamanian reporting financial institution must follow the following, in the most appropriate order under the circumstances.

- a. For purposes of determining whether the account holder is a passive NFE, the Panamanian reporting financial institution must obtain a self-certification from the account holder to establish its status, unless it has information that is publicly available or in its possession of the Panamanian reporting financial institution, based on which it can reasonably determine that the account holder is an active NFE or a financial institution other than an investment entity described in subparagraph (14)(b) of article 2 that is not a participating jurisdiction financial institution.
- b. For the purposes of determining the controlling persons of an account holder, a Panamanian reporting financial institution may rely on information collected and maintained pursuant to AML/KYC procedures.
- c. For the purposes of determining the residence of a controlling person of a passive NFE, the Panamanian reporting financial institution may rely on:
  - c.1. Information collected and maintained pursuant to AML/KYC procedures in the case of a preexisting entity account held by one or more NFES with an aggregate account balance or value that does not exceed One Million Dollars (USD1,000,000.00); or
  - c.2. A self-certification from the account holder or such controlling person of the jurisdiction(s) in which the controlling person is resident for tax purposes. In case of not obtaining self-certification, the Panamanian reporting financial institution will determine said residence (s) using the procedures described in articles 12 to 18.

**Article 25.** Review of preexisting entity accounts with an aggregate account balance or value that exceeds Two Hundred Fifty Thousand Dollars (USD250,000.00) as of December 31, 2017 must be completed by December 31, 2019.

The review of preexisting entity accounts with an aggregate account balance or value that does not exceed Two Hundred Fifty Thousand Dollars (USD250,000.00) as of December 31, 2017, but whose aggregate account balance or value exceeds such amount as of the last

calendar day of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds such amount.

**Article 26.** If there is a change of circumstances with respect to a preexisting entity account that causes the Panamanian reporting financial institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Panamanian reporting financial institution must re-determine the status of the account in accordance with the procedures set forth in article 24.

In such a case, the Panamanian reporting financial institution shall apply the following procedures no later than the last day of the calendar year or ninety (90) calendar days after notice or discovery of the change of circumstances:

1. With respect to determining whether an account holder is a resident of a foreign jurisdiction, a Panamanian reporting financial institution shall obtain a self-certification or a reasonable explanation and documentation supporting the reasonableness of the original self-certification or documentation and keep a copy or annotation of said explanation or documentation. If the Panamanian reporting financial institution fails to obtain a self-certification or confirm the reasonableness of the original self-certification or documentation, it must treat the account holder as a resident of all foreign jurisdictions.
2. With respect to the determination of whether an account holder is a financial institution, an active NFE or a passive NFE, the Panamanian reporting financial institution shall obtain additional documentation or a self-certification to determine the status of the account holder as an active NFE or a financial institution. If the Panamanian reporting financial institution fails to obtain the required documentation, it must treat the account holder as a passive NFE.
3. With respect to determining whether the person exercising control of a passive NFE is a resident of a foreign jurisdiction, the Panamanian reporting financial institution shall obtain a self-certification or a reasonable explanation and documentation supporting the reasonableness of the original self-certification or documentation and keep a copy or annotation of said explanation or documentation. If the Panamanian reporting financial institution fails to obtain a self-certification or to confirm the

reasonableness of the original self-certification or documentation, it must rely on the indications described in article 10 that it has in its records on such controlling person to determine if it is resident of a foreign jurisdiction.

## **SECTION VI**

### **DUE DILIGENCE FOR NEW ENTITY ACCOUNTS**

**Article 27.** For purposes of application of Law 47 of October 24, 2016, unless a Panamanian reporting financial institution opts to the contrary, either in respect of all new entity accounts or separately for any clearly identified group of such accounts, a credit card account or a revolving credit line treated as a new entity account does not require to be reviewed, identified or reported, provided that the Panamanian reporting financial institution holds such account, implements policies and procedures to avoid that the balance owed to the account holder exceeds Fifty Thousand Dollars (USD50,000.00).

**Article 28.** For new entity accounts, a Panamanian reporting financial institution must apply the following procedures:

1. Determine the residence of an entity:
  - a. Obtain a self-certification, which may be part of the account opening documentation, that allows the Panamanian reporting financial institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Panamanian reporting financial institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC procedures. If the Entity certifies that it has no residence for tax purposes, the Panamanian reporting financial institution may rely on the address of the principal office of the entity to determine the residence of the Account Holder.



- b. If the self-certification indicates that the account holder is resident in a reportable jurisdiction, the Panamanian reporting financial institution must treat the account as a reportable account, unless it reasonably determines based on information in its possession or that is publicly available, that the account holder is not a reportable person with respect to such reportable jurisdiction.
2. Determine the residence of a controlling person of a Passive NFE:

With respect to an account holder of a new entity account, including an entity that is a reportable person, the Panamanian reporting financial institution must determine whether the account holder is a passive NFE with one or more controlling persons who are reportable persons and to determine the residence of said controlling persons. If any of the controlling persons of a passive NFE is a reportable person, then the account must be treated as a reportable account. In making these determinations the Panamanian reporting financial institution must follow the following, in the most appropriate order under the circumstances.

- a. For purposes of determining whether the account holder is a passive NFE, the Panamanian reporting financial institution must obtain a self-certification from the account holder to establish its status, unless it has information that is publicly available or in its possession of the Panamanian reporting financial institution, based on which it can reasonably determine that the account holder is an active NFE or a financial institution other than an investment entity described in subparagraph (14)(b) of article 2 that is not a participating jurisdiction financial institution.
  - b. For the purposes of determining the controlling persons of an account holder, a Panamanian reporting financial institution may rely on information collected and maintained pursuant to AML/KYC procedures, to the extent that such procedures are consistent with Recommendations 10 and 25 of the Financial Action Task Force (FATF) adopted in February 2012.

- c. For purposes of determining whether a controlling person of a passive NFE is a reportable person, a Panamanian reporting financial institution may rely on a self-certification from the account holder or such controlling person.

If there is a change of circumstances with respect to a new entity account that causes the Panamanian reporting financial institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Panamanian reporting financial institution must re-determine the status of the account in accordance with the procedures set forth in article 26.

## SECTION VII

### SPECIAL DUE DILIGENCE RULES

**Article 29.** The rules established in this section shall apply in implementing the due diligence procedures described in Section II to VI.

**Article 30.** A Panamanian reporting financial institution may not rely on a self-certification or documentary evidence if it knows or has reason to know that the self-certification or documentary evidence is incorrect or unreliable.

**Article 31.** A Panamanian reporting financial institution may presume that an individual beneficiary, other than the owner, of a cash value insurance contract or an annuity contract receiving a death benefit is not a reportable person and may treat such financial account as other than a reportable account unless the Panamanian reporting financial institution has knowledge, or reason to know, that the beneficiary is a reportable person. The Panamanian reporting financial institution has reason to know that a beneficiary of a cash value insurance contract or an annuity contract is a reportable person if the information collected by the Panamanian reporting financial institution and associated with the beneficiary contains indicia of residence in a foreign jurisdiction, described in articles 10 and 11. If a Panamanian reporting financial institution has actual knowledge, or reason to know, that

the beneficiary is a reportable person, the Panamanian reporting financial institution must follow the procedures in articles 10 and 11.

**Article 32.** For purposes of determining the aggregate balance or value of financial accounts held by an individual, a Panamanian reporting financial institution is required to aggregate all financial accounts maintained by the financial institution, or by a related entity, but only to the extent that the financial institution's computerized systems link the financial accounts by reference to a data element such as client number or TIN(s), and allow account balances or values to be aggregated. Each holder of a jointly held financial account shall be attributed the entire balance or value of the jointly held financial account for purposes of applying the aggregation requirements described in this article.

**Article 33.** For purposes of determining the aggregate balance or value of financial accounts held by an entity, a Panamanian reporting financial institution is required to aggregate all financial accounts maintained by the financial institution, or by a related entity, but only to the extent that the financial institution's computerized systems link the financial accounts by reference to a data element such as client number or TIN(s), and allow account balances or values to be aggregated. Each holder of a jointly held financial account shall be attributed the entire balance or value of the jointly held financial account for purposes of applying the aggregation requirements described in this article.

**Article 34.** For purposes of determining the aggregate balance or value of financial accounts held by a person to determine whether a financial account is a high value account, a Panamanian reporting financial institution is also required, in the case of any financial accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established, by the same person, except if such person acts as trustee, to aggregate all such accounts.

**Article 35.** For purposes of this Executive Decree, all dollar amounts are in US dollars and shall be read to include equivalent amounts in other currencies.

Also, for purposes of this Executive Decree, a Panamanian reporting financial institution may determine the balance or accumulated value of an account held in a currency other than dollars. In such a case, the Panamanian reporting financial institution shall determine

the applicable threshold based on its dollar equivalent using the spot exchange rate on the last day of the calendar year before said threshold is determined by the institution.

## **SECTION VIII**

### **PANAMANIAN NON-REPORTING FINANCIAL INSTITUTION AND EXEMPT ACCOUNTS**

**Article 36.** Pursuant to the provisions of paragraph 27 of article 3 of Law 51 of October 27, 2016, a Panamanian non-reporting financial institution means any financial institution that is:

1. a governmental entity, international organization or central bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a specified insurance company, custodial institution, or depository institution;
2. a broad participation retirement fund; a narrow participation retirement fund; a pension fund of a governmental entity, international organization or central bank; or a qualified credit card issuer;
3. any other entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the entities described in the preceding paragraphs, and that is identified in the list that for that purpose will be issued by the competent authority, provided that the status does not frustrate the purposes of Law 51 of October 27, 2016;
4. an exempt collective investment vehicle; or
5. a trust to the extent that the trustee of the trust is a Panamanian reporting financial institution and reports all information required to be reported pursuant to article 12 of Law 51 of October 27, 2016 and article 3 of this Executive Decree, related to all reportable accounts of the trust.

**Paragraph:** For the effects of the previous article, they shall also be considered as Panamanian non-reporting financial institution:

1. The funds regulated by Cabinet Decree No. 252 of 1971 or Law No. 10 of 1993, if said fund complies with the requirements established in paragraphs 1 and 2 of article 40 and with at least one of the requirements listed in paragraphs 3 of Article 40 or with the requirements of paragraph 1 to 5 of Article 41.
2. A trust that serves only as a retention deposit for the payment of debt or a purchase obligation of the settlor.

**Article 37.** For the purposes of this Executive Decree, governmental entity means the government of Panama, any political subdivision of a jurisdiction, which, for the avoidance of doubt, includes a state, province, county, or municipality or any wholly owned agency or instrumentality that is owned by a Panamanian State or of any one or more of the foregoing, each, a governmental entity. This term also includes:

1. An integral part of Panama: any person, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of Panama. The net earnings of the governing authority must be credited to its own account or to other accounts of Panama, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
2. A controlled entity of Panama: an entity that is separate in form from Panama or that otherwise constitutes a separate juridical entity, provided that:
  - a. The entity is wholly owned and controlled by one or more Panamanian governmental entities directly or through one or more controlled entities;
  - b. The entity's net earnings are credited to its own account or to the accounts of one or more Panamanian governmental entities, with no portion of its income inuring to the benefit of any private person; and
  - c. The entity's assets vest in one or more governmental entities of Panama upon dissolution.
3. Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities

are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a governmental entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

For purposes of the provisions of this article, *Caja de Seguro Social* (CSS) regulated by Law 51 of 2005 must be considered as a governmental entity and, therefore, a Panamanian non-reporting financial institution.

**Article 38.** For the purposes of this Executive Decree, International Organization means any international organization or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organization, including a supranational organization; that is comprised primarily of governments; that has in effect a headquarters or substantially similar agreement with Panama; and the income of which does not inure to the benefit of private persons.

**Article 39.** For the purposes of this Executive Decree, Central Bank means an institution that is by law or government sanction the principal authority, other than the government of Panama itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the Government of Panama, whether or not owned in whole or in part by Panama.

**Article 40.** For the purposes of this Executive Decree, broad participation retirement fund means a fund established in Panama to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries that are current or former employees or persons designated by such employees of one or more employers in consideration for services rendered, provided that the fund:

1. Does not have a single beneficiary with a right to more than 5% of the fund's assets;
2. Is subject to government regulation and provides information reporting to the tax authorities; and
3. Satisfies at least one of the following requirements:

- a. The fund is generally exempt from tax on income from investments in Panama, under the laws in Panama, due to its status as a retirement or pension plan;
- b. The fund receives at least 50% of its total contributions, other than transfers of assets from other plans described in articles 40 to 42 or from retirement and pension accounts described paragraph 1 of article 45 from the sponsoring employers;
- c. Distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death, except rollover distributions to other retirement funds described in articles 40 to 42 or retirement and pension accounts described in paragraph 1 of article 45, or penalties apply to distributions or withdrawals made before such specified events; or
- d. Contributions, other than certain types of authorized contributions, to the fund by the employees are limited to the employee's earned income or may not to exceed Fifty Thousand Dollars (USD50,000.00) per year, applying the rules stipulated in articles 32 to 35 for account aggregation and currency translation.

**Article 41.** For the purposes of this Executive Decree, narrow participation retirement fund means a fund established in Panama to provide retirement, disability, or death benefits to beneficiaries that are current or former employees or persons designated by such employees of one or more employers in consideration for services rendered, provided that:

1. The fund has fewer than fifty participants;
2. The fund is sponsored by one or more employers that are not investment entities or passive NFEs;
3. The employee and employer contributions to the fund, other than transfers of assets from retirement and pension accounts described in paragraph 1 of article 45 are limited by reference to earned income and compensation of the employee, respectively;

4. Participants that are not residents of Panama in which the fund is established are not entitled to more than 20% of the fund's assets; and
5. The fund is subject to government regulation and provides annual reports to the respective supervisory bodies in Panama

**Article 42.** For the purposes of this Executive Decree, pension fund of a governmental entity, international organization or central bank means a fund established by a governmental entity, international organization or central bank to provide retirement, disability, or death benefits to beneficiaries or participants that are current or former employees, or persons designated by such employees, or that are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the governmental entity, international organization or central bank.

**Article 43.** For the purposes of this Executive Decree, qualified credit card issuer means a Panamanian financial institution satisfying the following requirements:

1. The financial institution is a financial institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
2. Beginning on or before January 1, 2017, the financial institution implements policies and procedures either to prevent a customer from making an overpayment in excess of Fifty Thousand Dollars (USD50,000.00), or to ensure that any customer overpayment in excess of Fifty Thousand Dollars (USD50,000.00) is refunded to the customer within sixty (60 days), in each case applying the rules set forth in articles 32 to 35 for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

**Article 44.** For the purposes of this Executive Decree, exempt collective investment vehicle means an investment entity that is regulated as a collective investment vehicle, provided



that all of the interests in the collective investment vehicle are held by or through individuals or entities that are not reportable persons, except a passive NFE one or more with Controlling Persons who are Reportable Persons.

An investment entity established in Panama that is regulated as a collective investment vehicle does not fail to qualify under an exempt collective investment vehicle, solely because the collective investment vehicle has issued bearer shares, provided that:

1. The collective investment instrument has not issued and does not issue any bearer shares or that the issued bearer shares are placed in custody in accordance with the provisions of Law 47 of 2013;
2. The collective investment vehicle retires all such shares upon surrender;
3. The collective investment vehicle performs the due diligence procedures set forth in Sections II through VII of this Executive Decree and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
4. The collective investment vehicle has in place policies and procedures to ensure that such bearer shares issued prior to the entry into force of Law 47 of 2013, have been placed in custody before December 31, 2015, as provided in said Law.

**Article 45.** In accordance with the provisions of paragraph 11 of article 3 of Law 51 of October 27, 2016, any of the following accounts is considered as an excluded account:

1. A retirement or pension account that satisfies the following requirements:
  - a. The account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits, including disability or death benefits;
  - b. The account is tax-favored, i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate;

- c. Information reporting is required to the supervisory entities with respect to the account;
  - d. Withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and
  - e. Either annual contributions are limited to Fifty Thousand Dollars (USD50,000.00) or less, or there is a maximum lifetime contribution limit to the account of One Million Dollars (USD1,000,000.00) or less, in each case applying the rules set forth in articles 32 to 35 for account aggregation and currency translation. A Financial Account that otherwise satisfies the requirement of the preceding paragraph will not fail to satisfy such requirement solely because such financial account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of paragraph 1 or 2 of this article or from one or more retirement or pension funds that meet the requirements of any of articles 40 to 42.
2. An account that satisfies the following requirements:
- a. The account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;
  - b. The account is tax-favored, i.e. contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the account holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate;
  - c. Withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account, as the provision of educational or medical benefits, or penalties apply to withdrawals made before such criteria are met; and
  - d. Annual contributions are limited to Fifty Thousand Dollars (USD50,000.00) or less, applying the rules set forth in article 32 to 35 for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of the preceding paragraph will not fail to satisfy such requirement solely because such financial account may receive assets or funds transferred from one or more financial accounts that meet the requirements of paragraph 1 or 2 or from one or more retirement or pension funds that meet the requirements of any of subparagraphs of articles 40 to 42.

3. A life insurance contract with a coverage period that will end before the insured individual attains age ninety (90), provided that the contract satisfies the following requirements:
  - a. Periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age ninety (90), whichever is shorter;
  - b. The contract has no contract value that any person can access by withdrawal, loan, or otherwise without terminating the contract;
  - c. The amount, other than a death benefit, payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges, whether or not actually imposed, for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and
  - d. The contract is not held by a transferee for value.
4. An account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate.
5. An account established in connection with any of the following:
  - a. A court order or judgment,
  - b. A sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:
    - i. The account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a financial asset that is deposited in the account in connection with the sale, exchange, or lease of the property;

- ii. The account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease;
  - iii. The assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee, including to satisfy such person's obligation, when the property is sold, exchanged, or surrendered, or the lease terminates;
  - iv. The account is not a margin or similar account established in connection with a sale or exchange of a financial asset; and
  - v. The account is not associated with an account described in the following paragraph.
- c. The obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time.
  - d. An obligation of a financial institution solely to facilitate the payment of taxes at a later time.
6. A depository account that satisfies the following requirements:
- a. The account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and
  - b. Beginning on or before January 1, 2017, the financial institution implements policies and procedures either to prevent a customer from making an overpayment in excess of Fifty Thousand Dollars (USD50,000.00), or to ensure that any customer overpayment in excess of said amount is refunded to the customer within sixty (60) days, in each case applying the rules set forth in article 35 for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.
7. Any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in the

preceding paragraphs and that is identified in the list that for that purpose was issued by the competent authority, provided that the status of such account does not frustrate the purposes of Law 51 of October 27, 2016.

## **SECTION IV**

### **OTHER PROVISIONS**

**Article 46.** In accordance with Law 51 of October 27, 2016 and Law 47 of October 24, 2016, Panamanian reporting financial institutions shall be obliged to report to the competent authority the information collected in accordance with the provisions of said laws and its regulations, with respect to each reportable account, as follows:

1. In the case of depository institution and specified insurance company: as of June 30, of the calendar year following the year to which the information relates;
2. In the case of custodian institutions and investment entities: as of July 30 of the calendar year following the year to which the information relates.

**Article 47.** The Panamanian reporting financial institutions in accordance with the previous article, must submit the corresponding information in XML Schema format following the regulations and guidelines that for this purpose will be issued by the Ministry of Economy and Finance.

**Article 48:** All entities that qualify to be considered as a Panamanian reporting financial institution, as defined in Law 51 of October 27, 2016 and Law 47 of October 24, 2016 and this Executive Decree, must register said status with the competent authority, within the following time limits, as appropriate:

1. In a period of no more than ninety (90) calendar days as of the entry into force of this Executive Decree; and

2. In the event that the entity does not qualify as a Panamanian reporting financial institution within the period referred to in paragraph 1, no later than thirty (30) calendar days after the entity becomes a Panamanian reporting financial institution.

In the event that an entity loses its status as a Panamanian reporting financial institution within any calendar year, as defined in Law 51 of October 27, 2016 and Law 47 of October 24, 2016 and this Executive Decree, it shall also be obliged to notify such change to the competent authority within a period of not more than 30 calendar days from the date on which the entity loses such condition.

**Article 49.** In the case of a trust that is a financial institution, irrespective of whether it is resident for tax purposes in a participating jurisdiction, the trust is considered to be subject to the jurisdiction of a participating jurisdiction if one or more of its trustees are resident in such participating jurisdiction except if the trust reports all the information required to be reported with respect to Reportable Accounts maintained by the trust to another participating jurisdiction because it is resident for tax purposes in such other participating jurisdiction.

When financial institution other than a trust does not have a residence for tax purposes, because it is treated as fiscally transparent or it is located in a jurisdiction that does not have an income tax, such financial institution is considered to be subject to the jurisdiction of a participating jurisdiction and it is, thus, a financial institution of a participating jurisdiction if:

1. It is incorporated under the laws of the participating jurisdiction;
2. It has its place of management (including effective management) in the participating jurisdiction; or
3. It is subject to financial supervision in the participating jurisdiction.

When a financial institution, other than a trust, is resident in two or more participating jurisdictions, such financial institution will be subject to the reporting and due diligence obligations of the participating jurisdiction in which it maintains the financial account(s).

**Article 50.** This Executive Decree shall take effect upon its promulgation.

**BASIS OF LAW:** paragraph 14 of article 184 of the Political Constitution of the Republic of Panama. Law 47 of October 24, 2016, Law 51 of October 28, 2016.

Given in Panama City on the Twelfth day of the month of March of Two Thousand And Seventeen (2017).

**BE IT PUBLISHED AND ENFORCED**

**(Signed)**

**JUAN CARLOS VARELA RODRÍGUEZ**

President of the Republic

**(Signed)**

**DULCIDIO DE LA GUARDIA**

Minister of Economy and Finance

[Seal: Presidency of the Republic of Panama, Ministry of the Presidency, Registered]

IT IS A TRUE AND LAWFUL TRANSLATION INTO ENGLISH OF THE ATTACHED DOCUMENT WRITTEN IN SPANISH.

**REPÚBLICA DE PANAMÁ  
MINISTERIO DE ECONOMÍA Y FINANZAS**

**DECRETO EJECUTIVO No. 122**  
De 11 de *Junio* de 2018



Por medio del cual se adopta la lista de jurisdicciones identificadas como reportables

**EL PRESIDENTE DE LA REPÚBLICA,**  
en uso de sus facultades constitucionales y legales,

**CONSIDERANDO:**

Que, según lo dispuesto en el numeral 14 del artículo 184 de la Constitución Política, el Presidente de la República en conjunto con el Ministro respectivo, debe reglamentar las leyes que así lo requieran para su mejor cumplimiento, sin apartarse de su texto ni de su espíritu;

Que el numeral 30 del artículo 3 de la Ley 51 de 27 de octubre de 2016, dispone que jurisdicción reportable, es aquella con la que exista un convenio y que esté identificada en la lista que, para tales efectos publicará el Órgano Ejecutivo;

Que en el año 2016, el Gobierno de la República de Panamá se comprometió oficialmente con el intercambio automático de información financiera para fines fiscales, de acuerdo con el Estándar Común de Reporte ("Common Reporting Standard") promovido por el Foro Global de Transparencia e Intercambio de Información para Fines Fiscales;

Que mediante Ley 51 de 2016 antes citada, se establece el marco regulatorio para la implementación del intercambio de información para fines fiscales y dicta otras disposiciones en las que se establece que las instituciones financieras panameñas sujetas a reportar, quedan obligadas a llevar a cabo procesos de debida diligencia y tienen la obligación de reportar ante la autoridad competente, la información recabada de acuerdo con lo previsto en dicha Ley;

Que la Dirección General de Ingresos, en representación del Gobierno de la República de Panamá, suscribió el Acuerdo Multilateral de Autoridades Competentes para mejorar el cumplimiento fiscal internacional sobre la base de un intercambio automático recíproco en aplicación de la Convención, que tiene su sustento legal en la Convención Multilateral de Asistencia Mutua Administrativa para Fines Fiscales,

**DECRETA:**



**Artículo 1.** Publicar la lista de jurisdicciones reportables según lo dispuesto en la Ley 51 de 2016, la cual se adjunta como anexo al presente Decreto Ejecutivo.

**Artículo 2.** Este Decreto Ejecutivo empezará a regir a partir del día siguiente al de su promulgación.

**FUNDAMENTO DE DERECHO:** Numeral 14 del artículo 184 de la Constitución Política de la República de Panamá, Ley 51 de 27 de octubre de 2016,

**COMUNÍQUESE Y CÚMPLASE.**

Dado en la ciudad de Panamá, a los *11* días del mes de *Junio* de dos mil dieciocho (2018)



**JUAN CARLOS VARELA RODRÍGUEZ**  
Presidente de la República



**DULCIDIO DE LA GUARDIA**  
Ministro de Economía y Finanzas



**ANEXO****JURISDICCIONES REPORTABLES EN EL AÑO 2018, EN VIRTUD DE LO  
DISPUESTO EN LA LEY 51 DE 27 DE OCTUBRE DE 2016**

1. Bailía de Guernsey
2. Commonwealth de Australia
3. Estado de Japón
4. Estados Unidos Mexicanos
5. Federación de Malasia
6. Gran Ducado de Luxemburgo
7. Irlanda
8. Isla de Man
9. Nueva Zelanda
10. Reino de Bélgica
11. Reino de Dinamarca
12. Reino de España
13. Reino de los Países Bajos
14. Reino de Noruega
15. Reino de Suecia
16. Reino Unido de Gran Bretaña e Irlanda del Norte
17. República Argentina
18. República de Eslovenia
19. República de Indonesia
20. República de la India
21. República de las Seychelles
22. República de Letonia
23. República de Malta
24. República de Polonia
25. República de Singapur
26. República de Sudáfrica
27. República de Bulgaria
28. República Federal de Alemania
29. República Francesa
30. República Helénica
31. República Italiana
32. República Oriental de Uruguay
33. República Portuguesa