GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

PANAMA

2019 (Second Round)



OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Panama 2019 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

November 2019
(reflecting the legal and regulatory framework as at August 2019)



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Please cite this publication as:
OECD (2019), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Panama 2019 (Second Round): Peer Review Report on the Exchange of Information on Request*, Global Forum on Transparency and Exchange of Information for Tax Purposes, OECD Publishing, Paris, *https://doi.org/10.1787/5f2584a0-en*.

ISBN 978-92-64-94904-1 (print)
ISBN 978-92-64-62978-3 (pdf)

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

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 150 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2010.
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
ANFS	Administration for Non-Financial Subjects
CDD	Customer Due Diligence
DGI	Directorate General of Revenues
DTC	Double Tax Convention
EOIR	Exchange Of Information on Request
FATF	Financial Action Task Force
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IFRS	International Financial Reporting Standards
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
SA	*Sociedad anónima*
SBP	Superintendence of Banks of Panama
SRL	*Sociedad de responsabilidad limitada*
TIEA	Tax Information Exchange Agreement

Executive summary

1. This second round report analyses the implementation by Panama of the standard of transparency and exchange of information on request for tax purposes against the 2016 Terms of Reference. This includes an assessment of its legal framework as at 12 August 2019, as well as its operation in practice, including as concerns the handling of EOI requests received during the period of 1 April 2015 to 31 March 2018. This second round report concludes that Panama is rated **Partially Compliant** overall. In 2016, the Global Forum similarly evaluated Panama against the 2010 Terms of Reference (2010 ToR) and assigned an overall rating of Non-Compliant; as the result of a Fast-Track review in 2017 also based on the 2010 ToR, Panama received a provisional upgraded rating of Largely Compliant (see Annex 3).

Comparison of ratings for First Round Report and Second Round Report

Element		First Round Report (2016)	Second Round EOIR Report (2019)
A.1	Availability of ownership and identity information	NC	PC
A.2	Availability of accounting information	NC	PC
A.3	Availability of banking information	C	LC
B.1	Access to information	NC	LC
B.2	Rights and Safeguards	C	C
C.1	EOIR Mechanisms	C	C
C.2	Network of EOIR Mechanisms	PC	C
C.3	Confidentiality	LC	C
C.4	Rights and safeguards	C	C
C.5	Quality and timeliness of responses	PC	PC
	OVERALL RATING	**NC**	**PC**

C = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

Progress made since previous review

2. The major issues identified in the Phase 2 report published in November 2016 related to: the availability of current ownership information in respect of joint stock companies and foundations, and the lack of supervision of inactive entities (element A.1); the availability of accounting information and underlying documentation, and lack of supervision for inactive entities (element A.2); the lack of using access powers to obtain information directly from entities themselves and absence of penalties imposed for non-compliance with a request by the competent authority (element B.1); an inadequate network of relevant EOI partners (element C.2); over disclosure of information contained in EOI requests to third parties (element C.3); and untimely processing of requests, lack of status updates, and delivery issues with partners' EOI requests (element C.5). All other elements were rated Compliant.

3. Since the 2016 Report, Panama has taken considerable steps to address these recommendations. This includes: introducing requirements for entities and resident agents to keep updated ownership information, strengthening its strike-off of inactive entities, creating an obligation for entities to keep accounting records, giving the DGI greater supervisory and enforcement powers, signing and ratifying the multilateral Convention, strengthening the EOIR Unit, and revising practices regarding access by the Competent Authority. Many of these changes are sufficient to remove some of the prior recommendations.

Key recommendations

4. As noted above, Panama has addressed many of the previous recommendations. The 2016 Terms of Reference contain additional requirements in respect of the availability of beneficial ownership information. Panama has adopted new laws and administrative guidance aimed at strengthening its AML/CFT regime for collecting identity and beneficial ownership information for all legal entities and arrangements, but the legal framework established may not fully be in line with the standard.

5. The key issues raised by this report relate to several gaps identified regarding the availability of beneficial ownership information (elements A.1 and A.3); the lack of strong supervision programmes for ensuring the availability of beneficial ownership information and accounting records (elements A.1 and A.2); the inability to apply preventive sanctions, and not fully using its access powers (element B.1); and the timeliness of providing requested information to partners and status updates (element C.5).

EOI Practice

6. During the review period, Panama received 302 requests from 19 treaty partners and sent 20 requests. There are no pending requests. Status updates were provided in 59% of cases not receiving a complete response in 90 days, with noticeable improvement in the providing of communication with partners in the second half of the review period. Panama provided responses to partner EOI requests in 49% of cases within 180 days of receipt; however, Panama provided partial information to 140 of the requests it received. In most of these cases, Panama was unable to provide accounting information. Panama also failed to provide the requested information in 13% of cases. A number of EOI partners noted problems in obtaining information regarding accounting records or ownership information for entities with bearer shares. Otherwise, peer input has been mostly positive regarding Panama's EOI practice, particularly in the latter half of the review period, although noting some delays and delivery issues encountered by several peers that led to some withdrawals of requests.

Overall rating

7. Panama has achieved a rating of Compliant for five elements (B.2, C.1, C.2, C.3, C.4), Largely Compliant for two elements (A.3 and B.1), and Partially Compliant for three elements (A.1, A.2, and C.5). Panama's overall rating is Partially Compliant based on a global consideration of its compliance with the individual elements.

8. This report was approved by the Peer Review Group of the Global Forum meeting in October 2019 and was adopted by the Global Forum in November 2019. A follow-up report on the steps undertaken by Panama to address the recommendations in this report should be provided to the Peer Review Group no later than 30 June 2020 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework determination is in place, but needs certain improvements.	The Foundations Law and the know-your-client rules established by Law 23 of 2015 are not sufficiently clear to ensure the availability of updated identity information on all of the beneficiaries of private foundations established in Panama.	The relevant provisions of Panama's laws should clearly ensure the availability of information on the identity of all of the beneficiaries of private foundations at all times.
	The definition "final beneficiary", set out in the customer due diligence (CDD) Guidance issued by the Ministry of Economy and Finance and the Superintendence of Banks of Panama, is in line with the standard. However, the procedures set out in the guidance do not require AML/CFT obliged entities to identify "final beneficiaries" based on control, and where no "final beneficiary" can be identified based on ownership, Panama allows for the obliged entity to rely on a statement signed by the legal entity regarding the "final beneficiaries".	Panama should ensure that the procedures to identify "final beneficiaries" set out in the guidance for AML/CFT-obliged entities are consistent with the EOIR standard.

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Partially Compliant	Panama has implemented supervision programmes by the Administration for Non-Financial Subjects and the Directorate General of Revenues to monitor record-keeping obligations of resident agents, legal entities and arrangements to keep ownership information, but these programmes of have limited scope and may not reach all potential non-compliant resident agents and entities. Further, information has not always been available when requested.	Panama should ensure it has adequate supervision practices in place.
	Although Panama has introduced various legislative amendments to require that companies continuing to allow bearer shares place them with custodians and have information available, in practice it has not been able to provide peers with ownership information involving companies with bearer shares in some cases.	Panama should ensure that it can provide information to peers regarding companies with bearer shares.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework determination is in place, but needs certain improvements.	It is unclear whether Panama can sanction a resident agent that fails to keep information on the name and address of the person who maintains accounting records held offshore.	Panama should ensure that it has appropriate penalties in place to enforce all of the obligations in Law 52.

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Partially Compliant	Panama previously did not require accounting information be available for Panamanian entities operating outside Panama and was not able to provide it to peers. During the review period, the enactment of Law 52 introduced record-keeping requirements and allowed Panama to improve its supervision practices but they do not adequately ensure that all relevant entities and arrangements are properly maintaining accounting records and underlying documentation, as only the EOI Unit conducts such inspections and only has two personnel allocated to this activity.	Panama should monitor the implementation of the accounting record keeping obligations in respect of all relevant entities and arrangements, and should further ensure that its enforcement powers are sufficiently exercised in practice.
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework determination is in place, but needs certain improvements.	The definition "final beneficiary", set out in Rule No. 10-2015, is in line with the standard. However, the procedures set out in the guidance do not require banks to identify "final beneficiaries" based on control, and where no "final beneficiary" can be identified based on ownership, banks may rely on an unverified statement signed by the account-holder.	Panama should ensure that the procedures to identify "final beneficiaries" set out in Rule No. 10-2015 are consistent with the EOIR standard.
EOIR rating: Largely Compliant		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework determination is in place.		
EOIR rating: Largely Compliant	Law 51 of 2016 gave the Competent Authority new access powers to obtain information from any information holder and imposes substantial monetary sanctions for non-compliance, including the possibility of being considered inactive for entities who fail to respond. Until very recently, the DGI considered that penalties could only be applied in response to an actual request for EOI information, and not as preventive supervisory actions. Although 10 penalties for failure to respond to a request for information pursuant to an EOI request have been applied, the lengthy sanctioning procedure undercuts the effectiveness of the penalty regime.	Panama should ensure that the penalty regime implemented under Law 51 of 2016 is effective to allow the Competent Authority proper access to obtain necessary information required by the international tax transparency standard.

Determination	Factors underlying recommendations	Recommendations
	Panama has in place the necessary powers to adequately seek out information from sources, whether public or private, needed to respond to an EOI request. However, in practice Panama has not used these powers to fully seek out all possible sources of information when requests are received from EOI partners.	Panama should fully use its access powers to obtain information from all sources of information to obtain all information included in an EOI request.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework determination is in place.		
EOIR rating: Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework determination is in place.		
EOIR rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework determination is in place.		
EOIR rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework determination is in place.		
EOIR rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework determination is in place.		
EOIR rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	**This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.**	
EOIR rating: Partially Compliant	During the review period, Panama experienced notable instances of delivery failure of incoming peer requests.	Panama should monitor that it is effectively and timely receiving all EOI requests sent by partners and to further continue the use of encrypted electronic communications where appropriate.
	During the review period, Panama responded to 20% of requests within 90 days, 49% in 180 days, and 74% within a year; however, 46% of responses were partial and in 13% of cases Panama failed to provide the requested information. Panama provided status updates in 59% of cases.	Panama should further endeavour to provide complete responses to its EOI partners in a timely manner and provide status updates to its EOI partners within 90 days where relevant.

Overview of Panama

9. This overview provides some basic information about Panama that serves as context for understanding the analysis in the main body of the report and is not intended to be a comprehensive overview of Panama's legal, commercial, or regulatory systems. Additional background information can be found in the 2016 Phase 2 report.

Governance and legal system

10. Panama is a constitutional republic, with a democratically elected president who is both chief of state and head of government. The country has a unicameral legislative assembly (National Assembly), also elected by popular vote. A fully independent judiciary operates through a national Supreme Court and subsidiary courts, and prosecutorial office.

11. The legal system is based on the civil law tradition, although legal institutions of common law influence some features of its commercial legislation. The hierarchy of laws is constituted by the Constitution of the Republic of Panama, Special Laws (including treaties), ordinary laws, executive decrees, resolutions, agreements, and other administrative acts. Article 4 of the Panamanian Constitution states that "Panama obliges with international law", which implies that international treaties prevail over all other domestic legal instruments.

Financial sector

12. As of January 2019, there were a total of 643 banks and non-banking financial institutions operating in Panama, made up of:

- 83 banks (48 national banks, 23 international banks, and 12 representative banks)
- 75 securities companies
- 3 pension funds
- 23 insurers

- 173 co-operatives
- 156 financial companies
- 2 development banks
- 29 leasing companies
- 96 savings institutions
- 3 housing credit associations.

13. According to the General Comptroller of the Republic, financial activities of banks accounted for 7.4% of the country's GDP at the end of 2018. The national banking system holds total assets of approximately USD 131.36 billion.

14. Each financial market has a separate supervisory body, but all bodies participate in the Financial Co-ordination Council to co-ordinate overall regulatory policies and effective supervision of the financial market. The relevant regulatory agencies for financial services are:

- the Superintendence of Banks of Panama (SBP) (banks and trust companies)
- Administration for Non-Financial Subjects (ANFS) (casinos, pawnbrokers, free zone companies, lawyers, CPAs, notaries, etc.)
- Superintendence of the Securities Market (includes wealth management firms)
- Superintendence of Insurance and Reinsurance
- Panamanian Autonomous Institute for Co-operatives
- *Banco Hipotecario Nacional* (BHN) (savings and credit unions).

Tax system

15. Panama has a territorial income tax system, according to which all income from any source generated within Panamanian territory is subject to income tax, but only applied to taxable income (determined after allowed deductions from gross income). Excluded from income tax are re-invoicing activities from a Panamanian office if goods do not enter Panama or only transit through national ports or airports, as well as income from international ships operating under a Panamanian flag. Foreign source income also is not subject to tax in applying the territoriality principle; however, a 5% withholding tax applies to dividends from foreign sources or export activities.

16. Panama has a longstanding system of tax exempt income in order to promote certain economic sectors or activities, including its free zones, leasing of transportation vessels, and interest income on domestic financial accounts. A number of these regimes have been determined not to be harmful under Action 5 of the OECD/G20 Base Erosion and Profit Shifting Project (see full details at: https://www.oecd.org/tax/beps/harmful-tax-practices-2018-progress-report-on-preferential-regimes-9789264311480-en.htm).

AML/CFT framework

17. Panama adopted its main revised AML/CFT law, Law 23 of 2015, which expands the scope of covered activities that require application of due diligence measures beyond just financial institutions (like banks) to non-financial reporting entities (casinos, pawnbrokers, free zone companies, etc.) and professionals in certain activities (lawyers, CPAs, notaries, external auditors, and resident agents). Law 23 is an improvement upon Law 2 of 2011, which established know-your-customer procedures for resident agents of legal entities (which are all required to have agents). Law 47 of 2013 adopted a custody regime for bearer shares in order to increase transparency of beneficial ownership for entities using such shares, and Law 18 of 2015 shortened the transition period.

18. All AML/CFT covered entities and service providers must conduct due diligence on customers at the start of a new relationship or in carrying out transactions above a certain threshold (e.g. wire transfers), including identification of final beneficiaries.

19. Currently, only banks, money remittance services, and currency exchange services may rely on the CDD carried out by a third party that belongs to the same economic group, which, in turn, is a regulated entity. Other AML/CFT-obliged entities or service providers may hire third parties to assist them in client identification processes, identification of the beneficial owner, and understanding the nature of the client, provided that the third party is supervised by one of the regulatory agencies for financial services. The reliant entity always remains solely responsible for meeting the CDD rules.

Supervision

20. SBP carries out a supervisory programme of banks and other financial companies, using a risk-based approach to conduct both off-site and on-site inspections as warranted.

21. Entities not chosen for on-site inspection may be subject to off-site monitoring.

22. The ANFS is responsible for administrative supervision of non-financial obligated subjects and activities carried out by professionals subject to supervision, of which there are more than 8 000 in all. Of particular importance is its oversight of resident agents, by ensuring that agents identify their clients, keep requisite records for at least five years following termination of the client relationship, and update these records.

23. The DGI also has some supervisory functions and recently commenced a programme to ensure that private sources of information are maintaining legal and beneficial ownership information, as well as accounting information, more details are provided in elements A.1 and A.2.

FATF review

24. The most recent FATF assessment on AML/CFT is the Mutual Evaluation Report (MER) Panama January 2018 conducted by GAFILAT. In this report, Panama received a largely compliant rating on Recommendation 10 regarding CDD of financial institutions, a largely compliant rating for Recommendation 11 on record keeping, and a largely compliant rating for Recommendation 17 on Introduced Business. Recommendation 22 on Designated Non-Financial Businesses Professions (DNFBPs) was rated largely compliant. Recommendation 24 was rated non-compliant due to beneficial ownership information not always being updated, limited supervision of resident agents, and a lack of enforced penalties. Recommendation 25 was rated as partially compliant due to a high risk that beneficial ownership information on legal arrangements was not accurate or up-to-date, and a lack of enforced penalties for non-compliance with CDD obligations.

25. In a follow-up report issued January 2019, GAFILAT issued new ratings where improvements had been made by Panama, but none of the individual elements mentioned in the above paragraph were changed. The complete MER and follow-up reports have been published and are available at www.fatf-gafi.org/countries/#Panama.

Recent developments

26. Panama enacted Law 52 of 2016 in October 2016 that amended article 318-A of the Fiscal Code to reduce the period after which an entity is deemed dissolved, from 10 years to 3 years, and to reduce the dissolution period from 3 years to 2 years. Consequently, all non-compliant entities from October 2016 onward are deemed dissolved after 3 years of arrears of the annual franchise fee and definitely dissolved after another 2 years. Law 52 entered into force on 1 January 2017 and has immediate applicability to unpaid fees, so the law affects all entities in arrears of their annual franchise

of 3 or more years on 30 June 2017 (which is the first payment deadline of annual franchise of 2017). Law 52 further clarifies the limitations placed on entities deemed dissolved: such entities are generally prohibited from starting legal processes, engaging in business, disposing of assets, or performing any enforceable act.

27. Law 52 also introduced two additional causes for treating an entity as inactive: (i) not having a resident agent duly registered for more than 90 days; and (ii) failure to pay any fine imposed by the Competent Authority. These provisions are expected to have a significant impact in further making Panama's EOI regime effective. Because an entity's resident agent can be legally required to resign or be removed upon the request of DGI for failure to take mandated action or provide information – such as accounting records upon request – the absence of a resident agent after 90 days will cause the entity to be deemed dissolved.

28. The Public Registry has initiated an electronic system update so that a marginal note is automatically applied to an entity whenever a resident agent has resigned or been removed for more than 90 days, resulting in a deemed dissolved status and start of the 2-year countdown for definite dissolution. The Public Registry's electronic system also allows for automatic marginal notes whenever an entity is in arrears for payments of its annual franchise under the basis of Law 52.

29. For companies operating outside of Panama, Law 52 of 2016 established a new obligation to keep accounting records and supporting documentation for all legal entities incorporated in Panama that do not carry on business in the jurisdiction, including holding companies. Law 52 clarifies that all accounting records must be kept for at least five years, either from the last day of the calendar year in which a transaction occurred, or from the last day of the calendar year in which the company ceased operations; if accounting records are not duly kept or provided in a timely manner, sanctions can be imposed on the entity.

30. Executive Decree No. 258 (September 2018) provides further details on Law 52 by clarifying the scope of the obligation to maintain updated accounting records and supporting documentation for legal entities. According to this decree, entities operating outside of Panama must keep their books in accordance with the applicable accounting standards in the jurisdiction in which the records are kept, or in accordance with the International Financial Reporting Rules (IFRS) consistent with the rules applicable in the jurisdiction where the records are kept.

31. Since November 2016, DGI has used a new supervisory programme to contact resident agents regarding ownership information on a sample basis. This supervisory programme is independent of existing EOI requests and separate from the enforcement undertaken by ANFS. The law firms selected

for the DGI pilot supervision act as resident agents of more than 80% of the entities incorporated in Panama, so these inspections are targeted at the key industry players.

32. Panama ratified the multilateral Convention in February 2017, and it entered into force on 1 July 2017 (effective for tax years beginning on or after 1 January 2018).

33. Law 51 of 2016, which included provisions putting into domestic law the Common Reporting Standard and multilateral Convention, also gives the Competent Authority much broader authority to request information from any source – public or private – related to an EOI request and allows for the imposition of sanctions on any source which does not provide the requested information.

34. In 2017, Panama enacted a new trust regime (Law 21), that requires licensing of all trustees and subjects them to AML/CFT obligations. Among other provisions, Law 21 also establishes obligations for trustees (including trustees of foreign trusts) to keep independent accounting records for each trust administered and supporting documentation for a period of at least five years, and requires trustees to file annual financial statements with the Superintendence of Banks.

Part A: Availability of information

35. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

36. In Panama's 2016 Phase 2 report, the Global Forum made several recommendations regarding the availability of ownership information in element A.1. The first recommendation was for Panama to ensure that beneficiary information for foundations was maintained and up-to-date. A second recommendation stated that Panama should substantially reduce the number of inactive companies and foundations existing on its registry in order to ensure availability of relevant ownership information. Another recommendation involved uncertainty surrounding Panama's move to immobilise its bearer share regime as custodial information was still not available in practice following the transition period.

37. Panama has taken active steps to address these recommendations. A new law clarifies that resident agents must keep updated identity and beneficial ownership information for foundations. Panama also has introduced new laws that expand the grounds for causing a legal entity to be deemed inactive and shortening the resulting dissolution period; however, actual strike-off of entities has still not yet occurred. Since the end of the transition period for immobilising bearer shares, Panama has conducted some supervision regarding the custodial procedures. While Panama's law has been strengthened, it does not fully address the Phase 2 recommendation regarding foundations. Also, it is not clear that the attorneys acting as custodians have been subject to adequate supervision.

38. Not discussed in the 2016 report, but now an integral part of the 2016 ToR, is availability of beneficial ownership information. Panama collects

beneficial ownership information through its AML/CFT procedures as well as through the tax agency's supervisory powers, but some deficiencies have been identified regarding the availability of beneficial ownership information in the legal framework; as well there have been limitations in obtaining beneficial ownership information and weak monitoring of AML/CFT obligations for non-financial entities and professionals.

39. During the review period, a major service provider abruptly closed down; this significant event highlights a problem with Panama's supervision practices. Although Panama requires that legal entities and their resident agents retain records – whether ownership or accounting – for at least five years, there are no provisions in place to ensure that shuttered service providers have management plans or other preservation mechanisms to make required records available to the competent authority in these situations. During the review period, Panama received 40 requests for ownership information held by the closed provider. The Panamanian tax authority was able to provide the requested information in 24 cases.

40. The table of determinations and ratings is as follows:

Legal and Regulatory Framework		
Deficiencies identified	**Underlying Factor**	**Recommendations**
	The Foundations Law and the know-your-client rules established by Law 23 of 2015 are not sufficiently clear to ensure the availability of updated identity information on all of the beneficiaries of private foundations established in Panama.	The relevant provisions of Panama's laws should clearly ensure the availability of information on the identity of all of the beneficiaries of private foundations at all times.
	The definition "final beneficiary", set out in the customer due diligence (CDD) Guidance issued by the Ministry of Economy and Finance and the Superintendence of Banks of Panama, is in line with the standard. However, the procedures set out in the guidance do not require AML/CFT obliged entities to identify "final beneficiaries" based on control, and where no "final beneficiary" can be identified based on ownership, Panama allows for the obliged entity to rely on a statement signed by the legal entity regarding the "final beneficiaries".	Panama should ensure that the procedures to identify "final beneficiaries" set out in the guidance for AML/CFT-obliged entities are consistent with the EOIR standard.
Determination: The element is in place, but certain aspects of the legal implementation need improvement.		

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
	Panama has implemented supervision programmes by the Administration for Non-Financial Subjects and the Directorate General of Revenues to monitor record-keeping obligations of resident agents, legal entities and arrangements to keep ownership information, but these programmes of have limited scope and may not reach all potential non-compliant resident agents and entities. Further, information has not always been available when requested.	Panama should ensure it has adequate supervision practices in place.
	Although Panama has introduced various legislative amendments to require that companies continuing to allow bearer shares place them with custodians and have information available, in practice it has not been able to provide peers with ownership information involving companies with bearer shares in some cases.	Panama should ensure that it can provide information to peers regarding companies with bearer shares.
Rating: Partially Compliant		

A.1.1. Availability of legal and beneficial ownership information for companies

41. The identification and verification of both legal and beneficial owners in Panama primarily occurs from such information being obtained by government agencies through the commercial registration and reporting process, as well as from AML/CFT-obliged institutions and service providers. The tax authority also has strengthened powers to request information from both entities and arrangements, as well as private sources.

42. In Panama, all *sociedades* (a legal entity separate from its owners) are merchants under the Commercial Code and so must be registered in the Public Registry. There are two main types of *sociedades* in Panama consistent with the characteristics of a company: *sociedad anónima* (SA) and *sociedades de responsabilidad limitada* (SRLs or limited liability companies (LLCs)).

43. Joint stock corporations (SAs) are the most common form of company in Panama. SAs are composed of at least two shareholders whose liability is limited to their capital contribution. SAs must, at a minimum, have 2 subscribers (which can be a person from the board of directors or one of the appointed dignitaries) and 3 positions of dignitaries (i.e. a president, secretary,

and treasurer), which may be performed by the same person, as long as the articles of incorporation so permit. The names and addresses of the directors are public information and must be included in the articles of incorporation. Further, each SA must have a resident agent. The resident agent is obligated to annually update the ownership information of the SA with the Public Registry. As at 31 December 2018, there were 684 076 SAs registered in the Public Registry (note that this number includes inactive SAs).

44. SRLs are made up of at least two partners who are liable solely for their capital contributions. The ownership is represented by nominal shares, designated as quotas, and cannot be issued in bearer share form. Any changes in ownership must be reflected in amended articles of incorporation, notarised, and submitted to the Public Registry. Each SRL must have a resident agent. As at 31 December 2018, there were 2 652 SRLs registered in the Public Registry (note that this number includes inactive SRLs).

45. Foreign companies can operate in Panama by maintaining an office provided it submits the following documents to the Public Registry: a Panamanian deed containing the articles of incorporation; a copy of the last balance sheet and a statement of the amount of capital engaged or to be engaged in business in Panama; and a certificate issued by a Panamanian consul or by a consul of a friendly nation stating that the company is organised according to the laws of its place of incorporation. Each foreign company is required to have a resident agent. The resident agent is obligated to annually update the ownership information of the SA with the Public Registry. As of 31 December 2018, there were 2 406 foreign companies registered in the Public Registry.

46. The following table[1] shows a summary of the legal requirements to maintain legal and beneficial ownership information in respect of companies in Panama:

Type	Company law	Tax law	AML/CFT law
Joint stock corporations (SAs)	Legal – some Beneficial – none	Legal – some Beneficial – none	Legal – all Beneficial – some
Limited liability companies (SRLs)	Legal – some Beneficial – none	Legal – some Beneficial-none	Legal – all Beneficial – some
Foreign companies	Legal – some Beneficial – none	Legal – some Beneficial – none	Legal – all Beneficial-some

1. The table shows each type of company and whether the various rules applicable require availability of information for "all" such entities, "some" or "none". "All" in this context means that every company of this type is required to maintain ownership information in line with the standard and that there are sanctions and appropriate retention periods. "Some" in this context means that a company will be required to maintain a portion of this information under applicable law.

Legal ownership

47. An entity's legal personality only comes into effect once registered with the Public Registry; without registration a company does not exist and thus cannot conduct commercial operations or financial activity (e.g. open a bank account or conclude contracts).

48. As explained in the 2016 report (paragraphs 73-76), under the Commercial Code in order to register, all SAs must submit public deeds to the Public Registry that identify:

- name and domicile of each subscriber
- number of shares each subscriber underwrites and nominal value of the shares
- names and addresses of directors and other officials
- name and address of the resident agent.

Any changes to a SA's articles or increase/reduction of capital must be made by public deed and submitted to the Public Registry.

49. Following incorporation, information on the issuance of additional shares or share transfers are maintained in a company's share register, and not provided to the Public Registry. As explained in paragraph 78 of the 2016 Report, Law 22 of 2015 amended the Commercial Code (Article 71), clarifying the requirement for companies to keep updated share registers, with financial and administrative sanctions imposed for non-compliance. This law did not require the share register to be kept within Panama. Law 52 of 2016 clarifies that resident agents must maintain a copy of the company's share register.

50. All SAs must have a resident agent at all times; the agent must be a Panamanian lawyer or law firm. The role of the resident agent is to file corporate documents with the Public Registry and process payment of the annual franchise tax; however, the agent is not the company's legal representative. Pursuant to Law 2 of 2011, resident agents are obligated to perform know-your-customer due diligence measures of all legal entities, which has been enhanced by the AML/CFT rules of Law 23 of 2015 (explained below). A resident agent is require to keep the information for five years from the date of termination of the professional relationship with the entity (Article 10 of Law 2).

Commercial supervision

51. The Public Registry does not engage in supervision of registered entities, apart from its role of checking that the statutory requirements for registration or amendments are satisfied.

Tax law

52. All legal entities in Panama – including SAs, SRLs, and private interest foundations – are subject to an annual franchise tax and so must be registered with DGI. At the time of incorporation, legal entities can choose to automatically have their tax registration processed at the same time; otherwise, DGI receives a list each day from the Public Registry of newly registered entities.

53. The annual franchise tax applies regardless of whether the entity has taxable income for the year. Registration with DGI only provides basic taxpayer information, such as the taxpayer's name, address, description of economic activity, entity type, and identification of legal representative.

54. Generally, the Panamanian tax system is based on the principle of territoriality, so Panamanian companies which do not earn income from a source in Panama are not subject to the tax reporting requirements in the Fiscal Code, irrespective of the type of company involved. Income tax returns filed with DGI do not provide ownership information regarding the entity, although DGI is empowered under the Fiscal Code to request any information from a registered taxpayer, including information regarding its shareholders or other owners.

55. At the end of 2017, there were approximately 509 000 taxpayers registered with DGI. During the review period, overall filing compliance per calendar year decreased from 53% to 46%, even as the total number of registered taxpayers grew by nearly 65 000. Penalties for filing a late return are only USD 100 for individuals or USD 500 for legal entities.

Panama tax statistics

	2015	2016	2017
Total registered taxpayers	442 385	476 290	508 912
Business returns filed	84 200	82 906	83 018
Individual returns filed	150 518	156 916	150 438
Filing compliance rate	53%	50%	46%

56. From 2015 to 2018, DGI's tax audit department carried out a number of examinations of taxpayers, during which it asked for shareholder/owner information required under the Commercial Code. The total number of audits during this period was 773, which was less than 1% of the entities registered. The audits determined that these taxpayers were compliant with their ownership record keeping requirements and no penalties needed to be applied.

57. DGI has also been given greater supervisory and enforcement powers under Law 51 of 2016, which allows it to supervise and inspect that private

sources of ownership information are complying with record keeping requirements. Beginning in 2017, DGI relied on its Law 51 authority to conduct a supervisory programme of resident agents focused on the availability of legal ownership information. DGI reached out to 40 resident agents and conducted 115 company checks for legal ownership, obtaining the required information in 90% of cases. As of the date of the on-site visit (February 2019), DGI had not applied penalties against non-compliant resident agents as it considered such penalties were not available to it under Law 51 when conducting preventive inspections. However, it could refer non-compliant resident agents to the ANFS to commence its sanctioning process. The DGI has since revised its interpretation and will be enacting an Executive Decree that clarifies that the DGI may impose sanctions as part of its supervisory programme.

AML/CFT framework

58. Law 23 of 2015 is the primary AML/CFT law in place in Panama for measures governing anti-money laundering and countering terrorism financing activities. Law 23 applies to a broad set of financial institutions (Article 22), including banks, trust companies, financial companies, issuers of credit cards, and issuers of electronic money or other payments; it also applies to a number of non-financial reporting entities (Article 23), including: companies operating in free zones; casinos and pawnbrokers; real estate brokers; precious metal dealers; auto dealers; money remittance companies; and exchange houses. Importantly, Law 23 (Articles 23(16) and 24) also covers activities of professionals engaged in: the sale of property; financial administration or management for customers; creating, operating or managing legal entities or arrangements; selling of legal entities/arrangements; providing a registered office; acting as a nominee; and acting as a resident agent. Money remittance companies and exchange companies are regulated by the SBP (Law 21 of 2017 which amended Law 23 of 2015).

59. Those entities and professionals identified in the paragraph above must conduct proper customer identification and reasonable verification of clients and transactions carried out (Article 26). For natural persons (Article 27), this customer due diligence (CDD) involves identifying and verifying the customer's identity, understanding the nature of the relationship and financial profile of the customer, and verifying the source of funds.

60. CDD for legal persons and arrangements involves obtaining evidence of the entity's founding documents, understanding the customer's business and control structure, identifying and verifying the customer's officers, directors, agents, legal representatives, and final beneficiaries (Article 28). Where final beneficiaries are themselves another legal entity or an entity with bearer shares, the obliged reporting entity or professional must follow the chain of ownership to identify a natural person as the beneficial owner.

61. Law 23 defines a final beneficiary as: "the natural person or persons who own, control or has significant influence on the account relation, the contractual relation or business relation and/or the natural person in whose name or benefit a transaction is made, which also includes natural persons that have the final control on a legal person, trust and other legal structures".

62. If the customer is a private interest foundation, a financial institution must obtain information about the founder, foundation board, and final beneficiary(ies) (Article 28).

63. Specific CDD measures for trusts must be carried out by the trustee, requiring the identification of the settlor and any natural persons considered to be final beneficiaries (Article 31).

64. The CDD information collected by both financial reporting institutions, non-financial reporting entities, and obliged professionals must be kept for a period of at least five years and updated (Article 29), including for inactive entities.

65. Law 70 of 2019 made an amendment to Law 23 that clarifies that all AML/CFT-obliged entities and persons performing specified services must maintain updated CDD records for at least five years after the termination of the client relationship and update such records. Law 70 specifies that for high-risk clients, due diligence documentation must be updated at least once a year; however, the law is silent with respect how often the CDD records of other types of clients must be updated. Rule 10-2015 instructs banks and trust companies to update due diligence documentation at least every 12 months for high-risk customers, 24 months for moderate-risk customers, and at least every 48 months for low-risk customers (Article 25).

66. Failure to comply with the provisions of Law 23 by an obliged entity or professional can result in ANFS imposing a fine from USD 5 000 up to 1 000 000, depending on the seriousness of offense and degree of culpability. Additionally, Resolution No. JD-REG-001-18 of 2 May 2018 provides for sanctions on AML/CFT-obliged non-financial service providers and professionals that fail to comply with their AML/CFT requirements. As of June 2019, ANFS has imposed sanctions totalling USD 930 000 in respect of the entities and activities under its supervision (refer to paragraph 74).

AML/CFT supervision

67. SBP and ANFS carry out compliance activities covering all licensees and obliged service providers of the record keeping and retention requirements using a risk-based system that includes both remote and on-site inspections. Each examination results in a report describing the findings and correction plans to remedy any identified weaknesses.

68. In 2016 and 2017, the SBP conducted a total of 205 on-site inspections of financial institutions and 219 offsite inspections, which included reviews of AML/CFT compliance. More details are provided in paragraph 203.

69. ANFS oversees approximately 8 000 AML/CFT-obliged non-financial service providers, including nearly 591 law firms and 2 000 registered lawyers. It has total staff of 60, with about half working on supervisory matters; of which 6 employees are devoted to the law firm sector. ANFS, working in collaboration with the International Monetary Fund, developed and implemented a risk matrix of the law firm sector to identify and categorise the risk within this sector.

70. Off-site inspections are used to collect information on each service provider to determine their risk profile, with a focus on the highest-risk sectors; ANFS typically selects law firms with the largest number of legal entity customers, which are subject to continuous monitoring. On-site inspections check the due diligence and beneficial owner documentation held by the obliged entity (and if it is up-to-date).

71. Fifty-two of the largest law firms represent approximately 65% of the total number of legal entities registered in Panama. To date, ANFS has subjected 27 of these large law firms to extra situ inspections. Based on the risk matrix, the ANFS developed a supervision plan for 2019 that will include 60 off-site and 9 on-site examinations of law firms. Although ANFS has taken steps to supervise subject law firms, given the size and risk profile of the sector, the intensity of the programme appears inadequate. Further, very limited supervision has occurred on other lawyers that may be acting as resident agents.

72. From 2015 to 2018, ANFS carried out the following inspections on AML-obliged non-financial entities subject to its supervision:

ANFS Inspections of AML/CFT-Obliged Non-Financial Entities

	2015	2016	2017	2018
Off-site Inspections	0	0	5	60
On-site Inspections	10	15	25	8
Total	10	15	30	68

73. The main issues identified in the ANFS inspections involved lack of beneficial ownership documentation, the presence of politically exposed persons, and use of nominees (along with a failure to correctly document the nominee relationship).

74. ANFS can impose a range of sanctions for non-compliance with Law 23, including monetary fines and/or a public disciplinary warning. As a result of the inspections carried out by ANFS, from 2015 to 2018,

45 sanctioning processes were initiated against entities, all resulting in financial penalties. As of March 2019, only 3 cases had been finally resolved (for a total of USD 335 000); 32 were in process and 10 were on appeal.

75. The ANFS issued Resolution No. JD-REG-001-18 of 2 May 2018, which establishes a new sanctioning procedure. This includes the possibility of carrying out an abbreviated sanctioning process, as well as a process for the immediate imposition of sanctions. Nonetheless, Panama was not able to state how long the average sanctioning process takes for ANFS to finalise an administrative action.

76. In addition to the sanctions discussed in paragraph 74, a total of 107 service providers have been sanctioned since 2015 for not properly registering with the ANFS (8 with final monetary penalties, and 99 cases ongoing).

77. SBP also carries out an active educational programme to strengthen the relationship with obliged persons and provide training on important AML/CFT topics. From 2015 to 2018, SBP offered in-person trainings that reached approximately 3 800 obliged persons, while its virtual e-learning modules reached approximately 26 500 bankers and directors. SBP also ensures that all of its staff with duties concerning supervision receive appropriate training, including learning of best practices for AML/CFT supervisory activities.

Nominees

78. The Phase 2 report states that the concept of nominees does not exist in Panama (paragraphs 4, 58, 131-133), and that a *mandatario* arrangement may be used, which in practice yields availability of legal ownership information as the parties must be known under the mandate. According to Panama, Law 23 of 2015 (Article 24) in fact does acknowledge the use of nominees, either as shareholders or directors, although it also requires that any service provider offering such services or interacting with a nominee apply know your customer (KYC) procedures that collects identity information sufficient to know the true legal owners the nominee is acting on behalf of.

79. As noted in paragraph 73, through its inspections, the ANFS has found that documentation concerning nominees may be lacking or incomplete and sanctions were imposed.

Inactive companies

80. The Phase 2 report raised several issues regarding the high number of companies deemed inactive in Panama that impeded the availability of legal ownership information for companies, resulting in a recommendation that Panama significantly reduce the substantially disproportionate number of deemed inactive companies and foundations on its registry. Approximately

486 000 SAs and 17 000 foundations were determined to be inactive at the time of the Phase 2 report.

81. As mentioned in paragraphs 105-113 of the Phase 2 report, entities become inactive when in arrears with annual franchise taxes for a number of years. These entities generally cut off communication with the resident agent, resulting in an inability for Panamanian authorities to obtain updated information regarding the entity's owners. These entities remain legal entities and may, in fact, be active. Panama has taken two important actions regarding these inactive companies.

82. First, Law 6 of 2005 amended article 318-A of the Fiscal Code to introduce a strike off provision for legal entities in arrears with the annual franchise fee, such that any entity 10 years or more in arrears could be struck off from the Public Registry. Because Law 6 of 2005 stated that the 10-year period could only start upon its entry into force, the law did not have applicability until after 2015. Since April 2016, the Public Registry has applied article 318-A three times to entities that had 10 or more years of non-payment of annual franchise fees. As of December 2018, this has resulted in more than 397 000 entities (393 145 SAs, 579 SRLs, 956 foreign companies, and 2 329 foundations) being deemed dissolved from the Public Registry. As a result, these entities could no longer conduct business in Panama and will have their corporate existence terminated after the 3-year dissolution period ends in September 2019 (for the first group of entities), December 2019 (for the second group), and October 2020 (for the third group). See the table at paragraph 88.

83. In addition, Panama enacted Law 52 of 2016 in October 2016 that further amended article 318-A to reduce the period after which an entity is deemed dissolved from 10 years to 3 years, and to reduce the dissolution period from 3 years to 2 years. Consequently, all non-compliant entities from October 2016 onward are deemed dissolved after 3 years of arrears of the annual franchise fee and definitely dissolved after another 2 years. Law 52 entered into force on 1 January 2017 and has immediate applicability to unpaid fees, so the law affects all entities in arrears of its annual franchise of 3 or more years on 30 June 2017 (which is the first payment deadline of annual franchise of 2017). Law 52 further clarifies the limitations placed on entities deemed dissolved: such entities are generally prohibited from starting legal processes, engaging in business, disposing of assets, or performing any enforceable act inside or outside of Panama.

84. Law 52 also introduced two additional causes for treating an entity as inactive: (i) not having a resident agent duly registered for more than 90 days; and (ii) failure to pay any fine imposed by the Competent Authority. The Panamanian authorities become aware of when a business relationship between an entity and a resident agent ends because when the agent resigns

or is removed, this act must be registered in the Public Registry in order for it to be effective. These provisions are expected to have a significant impact in further making Panama's EOI regime effective. Because an entity's resident agent can be legally required to resign or be removed upon the request of DGI for failure to take mandated action or provide information – such as accounting records upon request – the absence of a resident agent after 90 days will cause the entity to be deemed dissolved. From 2016 to 2018, nearly 32 000 entities were deemed dissolved because they did not have a resident agent for a period greater than 90 days.

85. Once struck-off from the registry, entities will enter a final statutory two-year liquidation process; Panama is currently determining the procedure that will apply to the unclaimed assets of liquidated entities. Resident agents must keep information on inactive entities. Pursuant to Law 23, a resident agent must maintain ownership records for five years from the date of the termination of the relationship. The relationship is deemed to end when the entity ceases to exist at the end of the liquidation process.

86. However, in the scenario where the resident agent resigns or is removed, this event marks the end of the relationship. If, in that case, the entity does not appoint another resident agent, it will enter into the two-year liquidation process. This means that the resident agent is only required to keep the ownership records for three years after the entity ceases to exist. It is recommended that Panama ensures that ownership information is kept for five years after the entity ceases to exist for all cases (see Annex 1).

87. Panama reports that 410 750 entities have been determined to be inactive by the Public Registry at the end of the review period (31 March 2018). This number is lower than the estimated number of 486 000 reflected in the Phase 2 report; Panama informs that upon further investigation, the Public Registry and DGI identified nearly 100 000 entities that were duplicates or incorrectly identified as inactive for the reporting made in the Phase 2 report; thus, the actual number of inactive entities currently is lower than what was stated in November 2016.

88. According to the legal measures in effect under Law 6 and Law 52, the following number of entities will be struck off from the Public Registry on the relevant dates:

Deemed inactive entities to be struck off register

	Law 6 of 2005	Law 52 of 2016
September 2019	209 017	
December 2019		175 961
October 2020		12 534
Percentage of total registered entities thus dissolved	28%	25%

89. The eventual final dissolution of inactive entities from Panama's Public Registry will be a welcome step in reducing the risk that the beneficial ownership information would not be available. Events during the review period highlight that the problems surrounding inactive entities undermine the potential ability of Panama to obtain ownership and other information, impacting EOI partner requests. Panama should continue to monitor the risk inactive entities pose to the availability of information and ensure that its new rules are being effectively complied with and enforced (see Annex 1).

Discussion

90. As discussed in the 2016 report (paragraphs 134), initial legal ownership information is available from the Public Registry for SAs and SRLs as such entities must submit information on legal owners at the time of formation as part of the registration process.

91. All registered entities are subject to the annual franchise tax and so must be registered with DGI. DGI can always ask for legal ownership information to be made available, but real availability in practice is not assured given the limited reach of monitoring in place, and the fact that many companies are inactive with no resident agent or physical presence in Panama. DGI's tax audit unit conducted examinations of only a small percentage of total registered taxpayers during the review period and DGI's new preventive supervisory programme of resident agents who should have information on companies that are not subject to tax because they do not earn income in Panama was limited in scope. ANFS supervision also appears to be a light touch without sufficient scope or depth to ensure non-financial institution obliged persons are complying with record-keeping requirements that concern clients' ownership information.

92. The public disclosure in April 2016 of documents linked to the activities of several service providers focusing on offshore transactions cannot be ignored because of its significant impact on EOI. The service providers involved in the leaks conducted business in various offices around the world, not just Panama. The leaks resulted in Panama receiving 40 EOI requests as governments used the publicly available information and further evidence obtained through other means to make requests to EOI partners where the information available supported foreseeably relevant requests. Of these requests, Panama was able to respond to 24.

93. This event had enormous consequences for Panama. One of the service providers at issue had its headquarters office in Panama; this firm served as the resident agent for a large number of legal entities and arrangements incorporated or created in Panama. As the result of criminal investigations into the firm and negative publicity, the firm abruptly closed its Panamanian offices in March 2018.

94. With regard to this service provider, two key facts relating to this peer review need to be mentioned. First, during the review period, the Panamanian competent authority experienced difficulties in obtaining requested information from the provider – as resident agent – regarding certain taxpayers. Second, following the firm's closure in early 2018, only a couple of staff currently remain as part of the winding-up process, who have not been responsive to the Competent Authority. An unquantified number of the firm's documents, including client files, were seized by Panama's Attorney General's Office. According to the tax authorities, Article 314 of the Criminal Procedure Code provides that while the Attorney General is conducting a criminal investigation on this firm, they cannot obtain this information from the Attorney General's Office (see discussion in element B.1).

95. It is likely that peers will continue to make EOI requests of Panama in relation to this service provider as further investigations provide the basis for additional claims. An assessment of the present situation, combined with historical experience, means it is unclear when and with what success the authorities will have in obtaining relevant records from the defunct provider in response to partner requests.

96. This reflects both on the actual availability of ownership information in Panama – which has been demonstrated during the review period to have instances of failure – as well as an inadequate supervision programme that such a large and primary domestic service provider could operate in a manner very detrimental to EOI. Although Panama requires that legal entities and their resident agents retain records – whether ownership or accounting – for at least five years, in practice there are no procedures in place to ensure that shuttered service providers have document retention procedures or other preservation mechanisms in place to ensure the required records are available to the competent authority in such cases.

Peer input

97. Panama received 217 requests for ownership information during the review period, and provided responses to 178 requests. Several peers noted that ownership information for entities with bearer shares was not available during the current review period. There were also instances where the information was not available when the entity was struck off less than five years before the request.

Conclusion

98. Legal ownership information for companies may be held by the entity itself or the Public Registry, although accuracy continues to be a potential issue given low oversight mechanisms in place. This information will also

be held by financial institutions, to the extent a company has a local bank account. Reducing the number of inactive companies on the Public Registry increases the likelihood that the remaining registered entities are keeping their record-keeping obligations, but the actual strike-offs will only take place later in 2019. DGI's enforcement programmes are insufficient to the size of the taxpayer population and are not targeted to ensure the availability of ownership information, including that of foreign companies. It is therefore recommended that Panama ensure that it has adequate supervision practices in place.

Beneficial ownership

99. Panama primarily collects beneficial ownership information through its AML/CFT framework, which covers not only financial institutions but also a wide scope of relevant service providers.

AML/CFT framework

100. As explained at paragraphs 58 to 64, Law 23 of 2015 requires AML/CFT-obliged entities and persons performing specified services to adopt CDD procedures to identify and verify clients. When the client is a legal entity or arrangement, the AML/CFT-obliged entity or service provider must request, at a minimum, legal ownership and identity information, including beneficial ownership information, of all shareholders or members.

101. Law 23 defines a final beneficiary as: "the natural person or persons who own, control or has significant influence on the account relation, the contractual relation or business relation and/or the natural person in whose name or benefit a transaction is made, which also includes natural persons that have the final control on a legal person, trust and other legal structures". This definition is largely in line with the FATF definition and the EOIR standard.

102. Executive Decree 363 (2015), promulgated by the Ministry of Economy and Finance, provides further details on the CDD obligations of Law 23. The Decree instructs AML/CFT-obliged entities and persons performing specified services to identify and verify beneficial owners (final beneficiaries) of legal persons by using a threshold: obliged financial entities must identify beneficial owners who own 10% or more of the entity, while obliged non-financial entities and professionals need only identify beneficial owners who own 25% or more of the customer (Article 8).

103. Where an AML/CFT-obliged person is unable to identify the beneficial owners of a legal entity, private foundation, trust or other arrangement holding the requisite percentage of shares, the obliged person must obtain a signed memorandum, certificate, or affidavit from the legal entity/

arrangement listing all final beneficiaries (Article 8). The decree is silent as to whether this signed statement is subject to any further verification procedures; however, according to Panamanian officials, the signed memorandum, certificate, or affidavit should be validated using the share register. But it is unclear how this ensures the accuracy of beneficial ownership information.

104. The Decree reiterates the requirement in Law 23 that AML/CFT-obliged entities and persons performing specified services must maintain CDD records for at least five years from the date of termination of the customer relationship, and update this information (Article 19).

105. Law 70 of 2019 further amends Law 23 to clarify that AML/CFT-obliged entities and persons performing specified services must maintain CDD records for at least five years after the termination of the client relationship and update such records. For high-risk clients, due diligence documentation must be updated at least once a year; however, Law 70 is silent with respect how often the CDD records of other types of clients must be updated.

106. Following the enactment of Law 23, the SBP issued Rule 10-2015 under its administrative authority for banks and trust companies to follow. Specifically, Articles 15 and 16 of the Rule require that in preparing a customer profile for legal entities, banks and trust companies must take reasonable measures to identify beneficial owners, meaning shareholders with more than 10% of issued shares. Entities without identifiable beneficial owners must submit a statement listing all beneficial owners that is signed by the entity's legal representative or other authorised person. According to Article 25, banks and trust companies must update due diligence documentation at least every 12 months for high-risk customers, 24 months for moderate-risk customers, and at least every 48 months for low-risk customers.

Discussion

107. As explained above, AML/CFT-obliged entities and persons performing specified services must perform CDD regarding customer relationships, which includes identifying and verifying beneficial owners (final beneficiaries). In practical terms, the parameters of the BO identification rules in Law 23 are supplemented by Executive Decree 363 (2015) and Rule 10-2015.

108. Although the definition of final beneficiary in Law 23 broadly speaks of a natural person exercising control over a legal entity or arrangement as one factor triggering identification, Decree 363 and Rule 10-2015 omit reference to control as a factor for CDD purposes. According to these guidelines, AML/CFT-obliged entities and persons performing specified services are to identify natural persons meeting the shareholding thresholds, if no natural persons meeting the shareholding thresholds can be identified as

beneficial owners, then AML/CFT-obliged entities and persons performing specified services must obtain a signed statement from the entity listing its final beneficiaries.

109. Panama responds that where no shareholders can be identified as beneficial owners, the general rule of Law 23 applies such that an obliged entity or person should determine beneficial owners based on ownership or control.

110. The omission of control as a specific factor for identifying beneficial ownership in the CDD guidelines could lead to inadequate due diligence by AML/CFT-obliged entities and persons performing specified services. Although Law 23 includes control as part of the final beneficiary definition, it is likely that AML/CFT-obliged entities and persons performing specified services will adopt procedures based on the Decree and SBP Rule 10-2015 given the supervisory intent of both documents. This then may lead to collection of CDD information on beneficial owners that misses finding final beneficiaries who exercise sufficient control over a legal person, which is out of step with the EOIR standard.

111. Furthermore, reliance on the backstop measure laid out in Decree 363 and Rule 10-2015 may be misplaced. Simply collecting a signed statement from the company regarding its beneficial owners without further efforts to verify the listed names or give guidance on the qualifications for being captured on the form creates a high likelihood that the information may be incorrect (for any of the reasons listed above).

112. Thus, although Panama's legal framework has rules regarding CDD to collect beneficial ownership information, the sufficient scope of the data obtained is in question. It is therefore recommended that Panama ensure that the procedures to identify "final beneficiaries" set out in the guidance for AML/CFT-obliged entities are consistent with the EOIR standard.

113. It is very clear that AML/CFT-obliged entities and persons performing specified services must keep CDD records at least five years from when a customer relationship ends, and that the client records must be updated (based on the customer's risk profile, see paragraph 105). Also, pursuant to Law 70, AML/CFT-obliged entities and persons performing specified services are to update CDD information for high-risk customers every year; however, there are no guidelines for non-financial entities and professionals regarding minimum timelines or triggers for updating due diligence documentation for other types of customers. This may result in obliged persons (specifically non-financial entities and professionals) not having updated CDD records regarding beneficial owners. Accordingly, Panama should clarify how often CDD information for normal or low-risk customers should be updated by AML-obliged non-financial entities and professionals (see Annex 1).

Supervision

114. The ANFS is responsible for supervision of compliance with all of the requirements stemming from the AML/CFT law regarding non-financial reporting entities as well as lawyers (as resident agents), certified public accountants, and notaries in the exercise of activities subject to supervision. Law 23 of 2015 (articles 13, 14, 20) and Executive Decree 363 of 2015 give ANFS authority to supervise these subjects using a risk-based approach, require supervised entities to prepare a governing manual, and issue sanctions for non-compliance; this includes supervision of the due diligence requirements to identify and verify customers' beneficial owners.

115. Starting in 2015, ANFS has been conducting off-site inspections of AML/CFT obliged professionals to review the identification and verification of client's identity information and beneficial owners. As described in paragraph 71, to date, 27 law firms performing the majority of resident agent activities in Panama have been selected for examinations of the compliance with AML/CFT rules. Further, the ANFS has developed a supervision plan for 2019, based on the risk matrix that will include 60 off-site and 9 on-site examinations of law firms. However, the intensity of the inspection programme appears inadequate to truly capture a strong sense of compliance with record-keeping obligations. Further, very limited supervision has occurred on other lawyers that may be acting as resident agents.

116. Law 51 of 2016 also gave DGI expanded supervisory powers to request information from private sources in response to an EOI request and to conduct reviews to see that resident agents have the correct procedures and policies in place to implement AML/CFT obligations. DGI can impose sanctions – ranging from USD 10 000 to USD 15 000, plus an additional 500 per day – on any source which does not provide the information in response to an EOI request.

117. During its preventive supervisory programme of resident agents under Law 51 of 2016, DGI made requests for beneficial ownership information of 111 companies checked in 2018, with a compliance rate of 97%. Note that this was in addition to the request made for legal ownership information of 115 companies (paragraph 57). As explained at paragraph 57, penalties were not available to be applied by the DGI under Law 51 when conducting preventive inspections. Following the on-site visit in February 2019, DGI considers that it may impose sanctions as part of its supervisory programme, and an Executive Decree clarifying this position will soon be enacted. Although, the DGI carried out 111 audits for beneficial ownership information, this is a small number compared to the more than 680 000 companies registered in Panama. Panama is recommended to put adequate supervision practices in place.

Conclusion

118. Panama's legal framework to ensure the availability of companies' legal owner information has greatly improved from the Phase 2 review by mostly addressing the recommendations made in that report. The legal framework for beneficial ownership information consists of AML/CFT obligations to conduct CDD. However, the practical guidance available to AML/CFT-obliged entities and persons performing specified services, including resident agents, for how to gather beneficial ownership information is lacking in key respects on the natural persons who qualify as beneficial owners under the EOIR standard. Thus, a gap in the legal framework exists for beneficial ownership. More importantly, Panama continues to lack effective supervision programmes to demonstrate that company ownership information – both legal and beneficial – is available in practice, which is made more difficult by the high number of inactive entities and from closed service providers who are non-responsive.

A.1.2. Bearer shares

119. As discussed in the 2016 report (paragraphs 136-165), the ability of Panamanian entities to utilise bearer shares was significantly curtailed by legal amendments made in 2013, 2015, and 2016. Law 47 of 2013 created a custodial regime to immobilise bearer share certificates, under which authorised custodians are required to know the identity of the owners of bearer shares issued by Panamanian corporations. Law 18 of 2015 amended Law 47 to improve the custodial regime applicable to bearer shares issued by Panamanian companies. It substantially shortened the transitional period for the deposit of bearer shares certificates issued prior to the date of entry into force of Law 47 (i.e. 4 May 2015). Law 52 of 2016 also amended Law 47 to clarify that all bearer shares not placed into custody by the cut-off date of 31 December 2015 are definitely cancelled.

120. According to Law 18, the holders of bearer shares must either obtain registered share certificates or else deposit them with an authorised custodian by 31 December 2015. After 31 December 2015, the articles of incorporation of issuing corporations were automatically amended by default to prohibit the issuance of new bearer shares unless the board of directors specifically adopted a resolution registered with the Public Registry that adopted a custodial regime. The failure to obtain registered share certificates or use a custodian resulted in the complete lapse of legal rights in issued bearer shares (Law 52 of 2016).

121. An authorised custodian must obtain a sworn declaration from the owner of the bearer shares stating the owner's complete name, nationality (or place of incorporation), identification number, and physical address and

telephone number. The owner of the bearer shares must also inform the issuing entity of the contact information of the custodian. Only licensed banks, regulated brokerage firms, and licensed attorneys can act as custodians; these custodians can be foreign-based if they post a sufficient bond, but to-date no foreign custodians have applied or qualified. Consequently, all custodians are obliged persons for AML/CFT in Panama.

122. There are currently 308 registered custodians of bearer shares, consisting of 2 banks, 6 brokerage firms, and 300 attorneys. Custodians must keep all documents related to the rendering of their custodial services to customers for at least five years following the end of a custodial relationship.

123. According to the Public Registry, only 2 282 companies have registered resolutions that permit the continued existence of bearer shares. Thus, only 2 282 companies are able to issue bearer shares; the articles of incorporation of all other issuing corporations were automatically amended.

124. As discussed in section A.1.1 above, Panama's AML/CFT framework in Law 23 and administrative guidance applies to identify the legal and beneficial owners of entities with bearer shares. Article 28(6) of Law 23 specifies that AML/CFT-obliged reporting entities with customers who can issue bearer shares must take effective measures, including due diligence procedures, to identify the beneficial owner of such shares. However, pursuant to Article 28, non-financial reporting entities and obliged service providers are excluded from this diligence requirement. According to paragraph 158 of the 2016 Report, the Panamanian authorities provide that the specific due diligence requirements imposed by Article 28(6) on financial reporting entities with regard to clients who are legal persons with bearer shares do not exclude the obligation imposed by Article 28(2) on resident agents to identify the final beneficiaries of their clients, including those who are legal persons with bearer shares.

125. Rule 10-2015 specifies in Article 16 that for banks with a corporate customer able to issue bearer shares (including foreign companies with bearer shares), the bank must obtain CDD documents "verifying the name of the individual identified as the final beneficiary and holders of the shares of the corporation, regardless of whether they are nominative or bearer shares". Banks must also require the corporate customer (including customers who are foreign companies with bearer shares) to keep records regarding the director's resolution authorising immobilised bearer shares and identification of the authorised custodian.

126. In addition to the legal changes, Panama also modified its supervisory measures verifying compliance with the new rules on immobilised bearer shares. The SBP inspected both domestic bank custodians regarding their compliance with the new rules on immobilised bearer shares and found high compliance.

127. The ANFS's supervisory measures will also verify whether AML-obliged entities are maintain ownership information involving bearer shares (refer to paragraphs 67-77). As noted in paragraph 71, ANFS has subjected 27 of the 52 largest law firms in Panama to extra situ inspections; however, it is not clear that the more than 300 attorneys acting as custodians have been subject to supervision regarding new record-keeping obligations. In practice, there has been demonstrated unavailability of information during the review period for companies with bearer shares prior to their immobilisation under the custody regime. Several peers explicitly noted that Panama was not able to provide requested information regarding entities with bearer shares. It is therefore recommended that Panama take measures to ensure that it can provide information to peers regarding companies with bearer shares.

A.1.3. Partnerships

128. The 2016 report detailed three types of *sociedades* with characteristics common to partnerships frequently used in Panama: *sociedad colectiva* (general partnerships), *sociedad en comandita simple* (limited partnerships) and *sociedad en comandita por acciones* (partnerships limited by shares) (paragraphs 166-177). For each of these partnerships, the entity is only legally formed with the ability to carry out commercial activities or financial transactions by submitting articles of incorporation to the mercantile registry; the articles specify, among other things, the legal owners. There is no requirement for a partnership to have a resident agent.

129. As at 31 December 2018, there were 50 *comandita simple* and 49 *comandita por acciones* registered in the Public Registry. There were no general partnerships registered. This number has remained unchanged for the past decade. According to Panamanian officials, partnerships are no longer used and do not have a substantial impact on Panama's mercantile regime.

130. There is no specific regulation applicable to foreign partnerships; however, foreign partnerships cannot operate in and from Panama without having to register with the Public Registry. Accordingly, the requirements described below also apply to foreign partnerships.

Identity information on partners

131. Because all partnerships must register with the Public Registry, identity information of all partners must be submitted. This information must also be updated upon any change in the partners by amending the articles.

132. Based on these legal requirements, ownership information regarding partners is available in Panama for all three kinds of partnerships. These requirements ensure that ownership information regarding a partnership's partners is available under Panama's legal framework.

Beneficial ownership

133. The main mechanism for ensuring the availability of beneficial ownership information in Panama for partnerships is through CDD under AML/CFT rules.

134. As required under the AML/CFT Law, AML/CFT-obliged entities and persons performing specified services must conduct customer due diligence that would collect and verify information on the customer's or account-holder's beneficial owners. The information collected by the obliged entities/persons would not be fully consistent with the EOIR standard for the same reasons discussed above in element A.1.1.

135. As there is no requirement that partnerships maintain a local bank account or utilise a resident agent (or other service provider), there is no sense of how many partnerships are covered by CDD procedures to procure beneficial ownership information.

Supervision

136. Partnerships subject to income tax in Panama (i.e. partnerships operating within the country and generating income from a source in Panama) are supposed to file annual tax returns, but this does not require reporting information on its ownership. However, DGI can supervise such partnerships and request any information desired. Panama does not have statistics on the number of partnerships included in the audit statistics reflected in section A.1.1 above.

Conclusion

137. There are only 99 partnerships registered in Panama and, according to Panamanian officials, partnerships are no longer being used. Further, Panama has never received a request for information related to a partnership. Nevertheless, Panama should ensure that up-to-date beneficial ownership information for partnerships is always available in all circumstances (see Annex 1).

A.1.4. Trusts

138. As explained in the 2016 report (paragraphs 178-202), the intention to set up a trust must be expressly stated in writing. The common law concept of trust does not exist in Panama, nor has it signed The Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.

139. Law 1 of 1984 described in the Phase 2 report contains the provisions regarding the creation and governance of trusts in Panama. Law 21 of 2017

modifies certain articles of Law 1 and which establishes the rules for the regulation and supervision of trustees and the trust business.

140. Under Law 21 (effective 10 May 2017), only persons granted a trust license may act as trustees. Banks, individuals, and legal entities (with prior approval) can be granted a license (Article 12); applicants must demonstrate appropriate capacity to act as a trustee (Article 13) and have a minimum paid-in capital of USD 150 000 if an entity or an amount determined by the SBP if an individual. An annual fee of USD 15 000 for entities or 5 000 for individuals is required to obtain and maintain licensure. The former practice of allowing private fiduciaries to administer a small number of trusts without licensure was prohibited by Article 130. Private fiduciaries had until 10 November 2017 to submit an application to obtain a trust license.

141. Once licensed, a trustee is able to conduct the following activities (Article 20):

- create and administer trust funds
- handle bank accounts and escrow accounts
- provide financial advisory services
- act as a representative with voting rights in director or shareholder meetings
- act as an intermediary in the incorporation and/or administration of legal entities and arrangements
- act as custodian for shares, documents, and securities.

142. The SBP has exclusive authority to regulate licensed trustees. Trustees must submit annual audited financial statements to the SBP and maintain separate accounting for each trust; these records must be retained for at least five years from the last day of the calendar year in which a transaction was made (Article 29).

143. There is also no prohibition in Panamanian law for residents to act as trustee of a foreign trust. The trustee of a foreign trust must nonetheless provide the SBP with any documentation requested, even if the operations, activities, and funds are conducted outside of Panama.

144. Under Law 21 (Article 98), the written trust instrument must contain, at a minimum, the following relevant items:

- identification of the settlor and trustee
- for non-purpose trusts, identification of a beneficiary(ies) (and sufficient data for future, classes of, or contingent beneficiaries)
- trust objective and settlor's wishes

- description of trust assets and rights
- trustee's powers and duties
- appointment of Panamanian resident agent (a lawyer or law firm) to endorse the instrument
- general or specific conditions governing the administration of the trust, including the identification of the protector, if applicable.

145. Trustees are subject to know-your-customer rules under the AML/CFT law; therefore, a trustee must identify the settlor and beneficiaries of the trust (Article 35(6)). Article 104 of Law 21 states that a beneficiary is "the person or persons in whose benefit the trust fund was created", who must be designated as such by the settlor in the original instrument or subsequent document. A protector may be provided for in the instrument as well. Article 41-D reiterates the concept of beneficiary with a slightly different wording: "an individual or legal entity for the benefit of whom the trust fund is created and who will receive the benefits resulting from compliance with the trust fund".

146. Trustees are subject to legal restrictions regarding confidentiality of trust activities (Article 39), but are permitted to provide information when requested by a competent authority in accordance with other legal provisions (such as an international treaty). Trustees (including trustees of foreign trusts) are required to maintain records for each trust administered and supporting documentation for a period of at least five years after the relationship has ended.

147. For breach of any provisions of Law 21, the SBP is able to issue a generic fine up to USD 100 000, or take other punishment measures as appropriate (Articles 74-78).

148. As at 31 December 2018, there were 69 trust companies registered with the SBP, and 166 183 registered trusts.

149. During an inspection, SBP reviews compliance with AML/CFT laws, evaluates adequacy of CDD measures and record keeping, and reviews the trust instrument to understand the structure and relevant relationships.

150. From 2016 to 2018, SBP carried out 53 general inspections of trust companies, including 50 specialised AML/CFT examinations. SBP found that not all beneficial owners were identified by the trustee. As a result, 19 sanctions actions were initiated of which one has been finalised; 5 have been appealed; and 13 are still ongoing. From these inspections, the SBP carried out 9 follow-up visits and generated 30 corrective action plans. All trust companies have taken steps to implement their action plan.

Beneficial ownership

151. Pursuant to Law 21, the trust instrument must identify the settlor, trustee, and beneficiaries in order for the arrangement to be valid; a protector, if one exists, must be included in the written terms of the document. Trustees are considered to be financial reporting entities under Law 23 of 2015, and Law 21 also places an obligation on the trustee to perform know-your-customer due diligence requirements with regard to the trust. Thus, trustees are obligated to carry out identification and verification procedures in line with the AML/CFT law.

152. The identification of these parties is consistent with the standard regarding who is considered to be beneficial owners.

Conclusion

153. Beneficial ownership information for domestic trusts and for foreign trusts with a trustee resident in Panama should be available. During the review period, Panama received one EOI request related to a trust.

A.1.5. Foundations

154. Jurisdictions that allow for the establishment of foundations should ensure that information is available identifying the founders, members of the foundation council, beneficiaries, as well as any beneficial owners of the foundation or persons with the authority to represent the foundation.

155. As explained in the 2016 report (paragraphs 203-228), Panama allows for the creation of private interest foundations, which serve as an alternative to traditional common law trusts. In order to obtain legal existence, foundations must submit notarised incorporation documents to the Public Registry that list the name of the founder and members of the foundation council. A foundation must also have a resident agent who is either a Panamanian lawyer or law firm. A resident agent is require to keep the information for five years from the date of termination of the professional relationship with the entity (Article 10 of Law 2). Changes to the foundation's deed must be notarised and submitted to the Public Registry in order to have legal effect.

156. It was noted in the Phase 2 report that approximately 17 000 foundations were deemed inactive at that time (paragraph 224), leading to a recommendation that inactive entities be dealt with because of the problems posed for the availability of ownership information. The number of inactive foundations has since risen, with no inactive entities yet struck off from the Public Registry (see element A.1.1 for more details concerning Panama's handling of inactive entities). The total number of foundations registered with the Public Registry at the end of March 2018 was 55 173 (note that this includes inactive foundations).

157. Resident agents are required under Law 2 and Law 23 to conduct customer due diligence procedures to identify the beneficial owners of clients, including foundations. However, the requirements in Law 23 to identify the final beneficiaries of legal persons, including foundations, is not clear whether an agent will always identify all natural persons as required under the standard. Article 4(4) of Law 23 defines "final beneficiary" as the natural person(s) who own, control or has significant influence on the account relation, the contractual relation or business relation and/or the natural person in whose name or benefit a transaction is made, which also includes natural persons that have the final control on a legal person, trust and other legal structures. Where an agent is unable to determine the beneficial owner based on shareholding, then the legal person must provide a duly signed certificate or affidavit identifying the final beneficiaries (Article 8, Executive Decree 363). As stated in the Phase 2 report (paragraph 215), it is not certain that these procedures are adequate to ensure the availability of identity information in relation to all beneficiaries of Panamanian private foundations at all times.

158. In January 2019, Panama enacted Law 70 to clarify that non-financial obligated subjects, like resident agents, must keep updated records regarding customer due diligence and keep such records for a minimum period of five years (Article 3). While this is a positive step, it does not fully address the issue identified in the Phase 2 report and the paragraph above, as such, it is recommended that Panama address this gap in the legal framework.

159. Foundations generally cannot undertake habitual commercial activities that create taxable income, but where domestic taxable income does arise then the foundation must register with DGI and file a tax return; but no particular type of identity information is provided on the return, although DGI could request such information in the course of a tax audit. Moreover, for most active foundations with income it will be foreign-based and thus not subject to tax in Panama, resulting in no registration or filing requirement.

160. Panama received 27 EOI requests concerning foundations in the current review period and was able to provide the requested information.

161. While Panama's law has been strengthened, it does not fully address the Phase 2 recommendation and the issue of inactive foundations has not yet been finally resolved. The eventual final dissolution of inactive foundations from the Public Registry will be a welcome step in reducing the risk that ownership information would not be available. Panama should continue to monitor the risk inactive foundations pose to the availability of ownership information and ensure that its new rules are being effectively complied with and enforced (see Annex 1).

Summary

162. Panama has made strong improvements to its legal framework in order to make legal ownership information available for relevant entities and arrangements, although a high number of inactive entities (both companies and foundations) still remain on the Public Registry at this time. Some gaps in the legal framework are present for the availability of beneficial ownership of legal entities and arrangement, and so must be addressed. Furthermore, Panama continues to lack adequate supervisory practices and should strengthen existing programmes and/or introduce new ones to ensure the availability of ownership information, including the provision of adequate resources. Additionally, although Panama requires that legal entities and their resident agents retain ownership information for at least five years, there are no provisions in place to ensure that shuttered service providers have management plans or other preservation mechanism to make required records available to the competent authority in these situations. In practice during the review period, there were some cases where Panama was unable to provide information concerning inactive entities or entities with bearer shares. This report determines that for element A.1, the legal framework is "in place, but certain aspects need improvement" and rated as Partially Compliant.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

163. The 2016 Phase 2 report found that Panama's framework for the maintenance of accounting records, including underlying documentation, for a minimum period of five years was inadequate as the record-keeping requirement did not cover all relevant entities and arrangements (particularly for entities operating outside Panama) for the proper period, and such requirements were not properly enforced. Accordingly, element A.2 was determined to be "not in place" and Non-Compliant.

164. Since the 2016 Report, Panama has enacted a law requiring all entities to keep accounting information for at least 5 years, whether the entity has domestic activity or not. This requirement also extends to private interest foundations and trusts. The DGI is also implementing a supervisory campaign to check that entities are keeping the required information.

165. The table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	It is unclear whether Panama can sanction a resident agent that fails to keep information on the name and address of the person who maintains accounting records held offshore.	Panama should ensure that it has appropriate penalties in place to enforce all of the obligations in Law 52.
Determination: The element is in place, but certain aspects of the legal implementation need improvement In place, but certain aspects need improvement.		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	Panama previously did not require accounting information be available for Panamanian entities operating outside Panama and was not able to provide it to peers. During the review period, the enactment of Law 52 introduced record-keeping requirements and allowed Panama to improve its supervision practices but they do not adequately ensure that all relevant entities and arrangements are properly maintaining accounting records and underlying documentation, as only the EOI Unit conducts such inspections and only has two personnel allocated to this activity.	Panama should monitor the implementation of the accounting record keeping obligations in respect of all relevant entities and arrangements, and should further ensure that its enforcement powers are sufficiently exercised in practice.
Rating: Partially Compliant		

A.2.1. Obligations to maintain accounting records

166. As explained in paragraphs 247-251 of the 2016 report, the Commercial Code contains general accounting requirements for all "merchants" (companies and partnerships) that obliges them to keep business and financial records in line with the standard (typically at minimum a general ledger and general journal), but does not apply to entities that only have operations outside of Panama. Penalties of USD 100 to 500 per month are provided for in the event of noncompliance. The Commercial Code requirements generally do not cover trusts and foundations, but the constitutive acts governing trusts implicitly requires the maintenance of accounting records in

order for the trustee to fulfil its fiduciary obligations; foundations generally would keep such records pursuant to the constitutive act, but the law permits the charter to explicitly disclaim any such requirement (see paragraphs 252-254 of the Phase 2 report).

167. Under the Commercial Code, merchants must retain financial records (including accounting records) indefinitely during the course of business and must retain them for five years following the closing of the business. In the case of liquidation, the liquidator is required to maintain the records.

168. Generally, for tax purposes, the Fiscal Code does not require all legal entities and arrangements to maintain accounting records, but to the extent that DGI requires or requests financial information, it must be prepared on an accrual basis under the IFRS. Companies with capital exceeding USD 100 000 or with annual sales volume greater than USD 50 000 must have attested financial statements and submit an audit report with their tax returns.

169. In order to address concerns identified in the Phase 2 report for this element regarding an inadequate retention period and weak supervision, Panama enacted Law 52 of 2016, which entered into force on 1 January 2017 and applies to tax periods that begin in 2017. This law established a new obligation to keep accounting records and supporting documents for all legal entities incorporated in Panama that do not carry on business in the country, including companies, limited liability companies, and private interest foundations. This obligation is placed on the entity or arrangement itself, but the records do not need to be kept within Panama.

170. If the entity's accounting records are kept outside of Panama, Articles 3-4 of Law 52 requires the resident agent to obtain them from the entity within 15 working days of a request by the Competent Authority. An entity will be fined USD 1 000 for failure to maintain accounting records and underlying documents or provide such information upon request, with an additional USD 100 for each day of non-compliance (Article 7). Between January and March 2018, eight entities were found to be non-compliant and the sanctioning process against these entities is being initiated.

171. Under Article 5, the resident agent has an obligation to maintain a record of the address where the accounting records are kept and the name of the person keeping such records and underlying documentation in their custody. Further, the entity's resident agent must have updated information on where accounting records are being kept and must be able to obtain such records and deliver them to the Competent Authority upon request.

172. All accounting records must be kept for at least five years, either from the last day of the calendar year in which a transaction occurred, or from the last day of the calendar year in which the company ceased operations (Article 1).

173. Law 52 does not contain any sanctioning provisions for resident agents that fail to maintain or update information on where accounting records are being kept. However, resident agents that are unable to obtain the requested accounting information from the Competent Authority must either voluntarily resign their position, or may have their relationship terminated by the Public Registry upon request from DGI (Article 4). The removal of the resident agent puts additional pressure on the non-compliant entity as failure to have a resident agent for more than 90 days leads to the entity being deemed inactive and subject to the start of dissolution procedures (see element A.1 for additional details). During the review period, 10 resident agents resigned their positions.

174. Law 51 gives DGI powers to request information from private sources (including resident agents) in response to an EOI request or part of the supervisory programme. The Law allows the DGI to apply sanctions against a resident agent that does not comply with a request for information in response to an EOI request. As noted in paragraph 57, however, as of the date of the on-site visit (February 2019), DGI considered that there were no penalties available to it under Law 51 when conducting preventive inspections. The DGI has since revised its interpretation and will be enacting an Executive Decree that clarifies that the DGI may impose sanctions as part of its supervisory programme.

175. Executive Decree No. 258 (September 2018) was issued to clarify that any legal entity not covered by the Commercial Code must keep and maintain updated accounting records and supporting documentation. Passive entities not performing commercial activities must keep information on the value of assets and any income received. Entities operating outside of Panama must keep their books in accordance with the applicable accounting standards in the jurisdiction in which the records are kept, or in accordance with the IFRS consistent with the rules applicable in the jurisdiction where the records are kept.

176. In order to make clear the obligations for accounting records to be available for trusts, Law 21 of 2017 (Article 29) mandates that a trust company keep separate accounting records for each trust fund and must submit audited financial statements for each trust to the SBP within three months following the close of each fiscal year. This information must be retained for at least five years from the date of any transaction undertaken by a trust. Executive Decree No. 43 (April 2017) also reiterates the need for accounting records to be available regarding each trust by the trustee. Penalties up to USD 100 000 can be imposed for failure to comply with the requirements of Law 21.

177. The additions of Law 52, Executive Decree No. 258 (2018), Law 21 (2017), and Executive Decree No. 43 (2017) are significant and important

steps in bolstering Panama's legal framework regarding the availability of accounting records for all relevant entities and arrangements for at least five years. Consequently, the two Phase 1 recommendations in the Phase 2 report have been sufficiently addressed to justify their removal. However, it is recommended that Panama ensure that appropriate penalties are in place for supervisory purposes to enforce the obligations on resident agents to maintain information on the location of accounting records.

Supervision

178. As noted in the 2016 report, an overwhelming majority of requests involving accounting records for Panamanian entities operating outside Panama could not be fulfilled by Panama during the previous review period. Thus, Panama was recommended to ensure that such records are in fact being kept by all relevant entities and arrangements.

179. According to its traditional audit functions, DGI will, during an audit, examine whether a taxpayer is keeping accounting records according to the Commercial Code. From 2015 to 2018, DGI conducted over 1 300 comprehensive taxpayer audits. All of the taxpayers under audit were found to be compliant with their accounting record keeping requirements.

180. Subsequent to the enactment of Law 52, DGI established an additional supervision programme under its expanded powers of Law 51 to supervise private sources of information for the implementation of EOI for tax purposes. This programme seeks to understand if resident agents are complying with their obligation to obtain and provide accounting records and supporting documents for entities operating outside Panama, and to comply with Article 5 of Law 52.

181. In 2018, the DGI conducted three rounds of supervision of resident agents regarding maintenance and provision of accounting records of 111 companies. These examinations asked agents to identify where the records are kept, and if a foreign location was indicated, DGI asked the agent to provide the accounting records. It obtained accounting records in 60% of the cases where the records should have been available following Law 52 coming into force.

182. When accounting information was not available from the agent during the supervision, then DGI seeks the resignation of the resident agent's position.

183. While the start of supervision by DGI of resident agents is a positive step, the initial steps taken are of limited scope compared to the number of incorporated entities in Panama, especially with regard to the number of companies with only foreign business activity. Only DGI has supervisory authority with regard to accounting records, and it only has two personnel

allocated to carrying out this work, while there are hundreds of thousands of entities obliged to keep accounting records. Therefore, concerns expressed in the 2016 report regarding availability of accounting records for Panamanian entities entirely conducting their business activities abroad have only been partially addressed to date. In addition, the situation and experience reflected in element A.1.1 (paragraphs 93 to 96) of this report reflects a major obstacle Panama likely faces in providing accounting records in the future concerning EOI requests because of closed service providers with no preservation mechanism in place to ensure the information remains available. Accordingly, it is recommended that Panama monitor the implementation of the accounting record keeping obligations in respect of all relevant entities and arrangements, and should further ensure that its enforcement powers are sufficiently exercised in practice.

Peer Input

184. Peer input received from partners regarding Panama's ability to provide accounting information was mixed. Several major EOI partners expressed high frustration with the inability to obtain accounting information for requests made during the review period. For example, one partner sent 103 requests for accounting information during the review period and received no responsive information. Some of the requests related to tax periods prior to 1 January 2017, therefore the subject entities did not have accounting records available; however, some of the requests related to tax periods after 1 January 2017. The partner noted that even though Panama provided legal and beneficial ownership information for these requests, the absence of accounting records jeopardised its investigations as no tax basis could be established. According to Panamanian officials, a number of requests where accounting information could not be provided related to entities that were not incorporated in Panama. Another peer similarly sent 45 requests and did not receive any accounting information as the requests related to tax periods prior to Law 52 taking effect. A few peers expressed positive experience in requesting accounting records from Panama, but all of these peers each sent fewer than 12 requests for such information.

A.2.2. Underlying documentation

185. In addition to explaining all transactions, enabling the financial position of an entity to be determined, and allowing for financial statements to be prepared, accounting records should include underlying documentation and should reflect details of all sums of money received and expended, all sales, purchases and other transactions, and the entity's assets and liabilities.

186. As explained in paragraph 259 of the 2016 report, the relevant laws mentioned above generally require that legal entities maintain sufficient detail of financial transactions in line with the standard, and this has been bolstered by Law 52 for entities not conducting business within Panama. The requirement for trusts to keep accounting and supporting financial records was made explicit in Executive Decree 43 (2017).

Conclusion

187. Panama received 163 requests during the review period for accounting information. It was able to provide the requested information in only 9 cases. Although Law 52 created an obligation for Panamanian companies with only foreign activity to keep such records, the law only had effect for tax periods starting 1 January 2017; consequently, the earliest Panama could ask for accounting records for Panamanian entities operating outside of Panama was early 2018 once calendar year taxpayers had finished their 2017 tax year.

188. Several EOI partners noted great difficulty, if not outright impossibility, in obtaining accounting information pursuant to requests, which significantly diminished their ability to proceed with ongoing internal investigations.

189. Panama has addressed the Phase 2 report recommendations regarding changes to its legal framework to ensure accounting information and underlying documents were available for all relevant legal entities and arrangements (including foreign companies and trusts), such that those recommendations have been removed.

190. However, Panama's existing oversight mechanisms do not appear adequate to ensure that all relevant entities are following the obligations to keep accounting records and underlying documents. Indeed, there remains a significantly material weakness in the supervision in place. There have also been no sanctions issued for non-compliance.

191. This report concludes that the legal framework for this element is determined to be "in place but needs improvement" and rated Partially Compliant.

A.3. Banking information

Banking information should be available for all account-holders.

192. The Phase 2 report did not raise any concerns with respect to the availability of bank information in Panama. In the report, element A.3 was determined to be "in place" and rated Compliant.

193. Availability of banking information is confirmed in Panama's EOI practice. During the review period, Panama received 171 requests for banking information and was able to obtain the information in most cases, with mostly positive peer input.

194. There has been no change in the relevant provisions or practices since the 2016 Report. However, with the inclusion in the revised standard for banking information to identify beneficial owners, there are two identifiable gaps in the availability of account-holder beneficial ownership information. Thus, the table of determinations and ratings is:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendations**
Deficiencies identified	The definition "final beneficiary", set out in Rule No. 10-2015, is in line with the standard. However, the procedures set out in the guidance do not require banks to identify "final beneficiaries" based on control, and where no "final beneficiary" can be identified based on ownership, banks may rely on an unverified statement signed by the account-holder.	Panama should ensure that the procedures to identify "final beneficiaries" set out in Rule No. 10-2015 are consistent with the EOIR standard.
Determination: The element is in place, but certain aspects of the legal implementation need improvement.		
Practical Implementation of the standard		
Rating: Largely Compliant		

A.3.1. Availability of banking information

195. Jurisdictions should ensure that banking information, including beneficial ownership information, is available for all account holders. The SBP regulates the banks and financial institutions in Panama. At the end of 2018, SBP supervised a total of 83 banks.

196. Banks are covered institutions for purposes of the AML/CFT Law (Law 23 of 2015), which sets out obligations to retain records on accounts and transactions. Accordingly, SBP requires banks to maintain transaction records, customer records, and other relevant documents.

197. SBP imposes extensive record-keeping requirements on licensees regarding customer identification and due diligence records. Law 23 requires CDD to be conducted at the start of each new customer relationship or when an occasional transaction is conducted exceeding USD 10 000. The CDD information collected and verified includes identity information of the account-holder as well as beneficial ownership information for legal entities

and arrangements; this CDD information must be updated on a periodic basis based on the customer's risk profile (no later than 4 years for low-risk customers).

198. SBP licensees must keep completed transaction records for as long as they are relevant for the purposes for which they are made, with a minimum period in all cases of five years from the date when the transaction was completed. CDD records must be kept for at least five years following termination of the customer relationship.

199. As explained in paragraphs 107 to 113, the parameters of the final beneficiary identification rules in Law 23 are supplemented by Executive Decree 363 (2015) and SBP Rule 10-2015, which requires that for legal persons, financial institutions identify natural persons with more than 10% shareholding. Although the definition of final beneficiary in the Decree and the Rule broadly speaks of a natural person exercising control over a legal entity or arrangement as one factor triggering identification, the procedure to identify the final beneficiary omit reference to control as a factor. Further, if no natural person can be identified as the final beneficiary, then the financial institution must obtain a signed (but unverified) statement from the account-holder listing all of its final beneficiaries. Although the Decree and the Rule are silent as to whether this signed statement is subject to any further verification procedures; according to Panamanian officials, the signed statement should be validated using the share register.

200. Accordingly, there are potential gaps regarding the availability of all beneficial owners of a customer maintained in the banking records. The omission of control as a specific factor for identifying beneficial ownership may lead to collection of CDD information on beneficial owners that misses finding final beneficiaries who exercise sufficient control over a legal person, which is out of step with the EOIR standard. Panamanian officials explained that in practice, however, banks go beyond just identifying an entity's CEO to identifying any controller. Finally, simply collecting a signed statement from the account-holder regarding its beneficial owners without further efforts to verify the listed names or give guidance on the qualifications for being captured on the form opens the possibility that the information may be incorrect. It is therefore recommended that Panama ensure that the procedures to identify "final beneficiaries" set out in Rule No. 10-2015 are consistent with the EOIR standard.

201. Banking records for trusts are available and consistent with the standard as the bank must determine all proper beneficial owners as required under CDD rules, including specific identification of the settlor, trustee, protector (if any), beneficiaries (whether final or a class, or otherwise exhibiting control), and any other natural person exercising control over the trust.

202. Under Law 23 of 2015, SBP can impose a fine up to USD 1 000 000 for failure to keep records in compliance with issued rules, or issue other administrative sanctions, including restricting, suspending, or revoking a bank's licence.

203. In 2016 and 2017, SBP conducted a total of 205 on-site inspections of financial institutions and 219 offsite inspections (of which 50 banks were inspected), which included reviews of issues involving AML/CFT. In 2018, the SBP carried out 48 examinations of banks. As part of the on-site inspection, the supervision team conducts field tests and random sampling, leading to a sample of customers from which records and transactions are checked to verify that the bank has identified the beneficial owner and maintained updated customer documentation. If any deficiencies are discovered, the SBP includes them in the final findings and prepares recommendations for the bank to take relevant corrective actions. In 2017, 38 bank inspections generated an action plan, and 28 banks had resulting action plans in 2018. The resulting action plans are followed up on a quarterly basis. Nearly all licensees were found to be compliant with their AML/CFT obligations, with only one licensee in 2016, 5 licensees in 2017, and 3 licensees in 2018 receiving sanctions for failure to comply with AML/CFT provisions.

204. Article 35 of Law 23 of 2015 allows an AML/CFT-obliged entity to receive help from third parties in performing customer due diligence procedures, but places ultimate responsibility on the entity with the account for ensuring compliance with the know-your-customer procedures. Further, Article 37 of Law 23 of 2015 allows a bank to rely on the CDD carried out by a third party that belongs to the same economic group, which, in turn, is a regulated entity. In practice, the banking association states that each financial institution always performs its own due diligence procedures, unless part of the same economic group.

Peer input

205. Panama received 171 requests for banking information. Peer input received from partners concerning the ability of Panama to provide bank information for requests made during the review period was mostly positive. The majority of peers noted no problems in obtaining bank information when made as part of an EOI request.

206. One important EOI partner noted that Panama could generally provide bank information, unless the partner was asking whether or not the taxpayer held a bank account in Panama. According to Panama, insufficient details were provided to identify the bank involved (refer to section B.1.1). Another peer noted that Panama answered requests for banking information, but that three requests made early in the review period took nearly two years to get a response, which led to one request being withdrawn for timeliness.

Conclusion

207. The 2016 report found no issues with the availability of banking information in Panama. However, under the 2016 ToR, there are potential gaps regarding the availability of all beneficial owners of a customer maintained in the banking records. Supervision of the banking industry appears to be adequate. Accordingly, element A.3 is determined to be "in place, but certain aspects need improvement" and is rated as Largely Compliant.

Part B: Access to information

208. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information, and whether rights and safeguards are compatible with effective EOI.

B.1 Competent authority's ability to obtain and provide information

> Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

209. Government authorities in Panama have broad powers to obtain bank, ownership, identity, and accounting information and to compel the production of such information where needed. Panama's Competent Authority is empowered to obtain all such information from any person within its jurisdiction who is in possession of the information.

210. Panama's access powers were assessed under the 2010 ToR and found to be inadequate largely because of failure to seek information from entities themselves and lack of any imposed penalties for failure to respond during the review period. Panama was recommended to fully utilise all of the Competent Authority's access powers and to ensure the availability of adequate penalties for failure to provide requested information. Element B.1 was determined to be "in place" and rated Non-Compliant.

211. Since the 2016 Report, Panama has implemented new legislation and rules affecting the legal framework of element B.1. Regarding the first recommendation on more fully using its access powers, Panama has improved its approach to obtaining information subject to an EOI request, using new authority provided under Law 51 of 2016. The same law also addressed the second recommendation by enhancing the scope of penalties applicable

to information holders who fail to timely provide requested information. However, further monitoring of the application of these rules in practice is needed.

212. The table of determinations and ratings is as follows:

Legal and Regulatory Framework		
Determination: This element is in place.		
Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	Law 51 of 2016 gave the Competent Authority new access powers to obtain information from any information holder and imposes substantial monetary sanctions for non-compliance, including the possibility of being considered inactive for entities who fail to respond. Until very recently, the DGI considered that penalties could only be applied in response to an actual request for EOI information, and not as preventive supervisory actions. Although 10 penalties for failure to respond to a request for information pursuant to an EOI request have been applied, the lengthy sanctioning procedure undercuts the effectiveness of the penalty regime.	Panama should ensure that the penalty regime implemented under Law 51 of 2016 is effective to allow the Competent Authority proper access to obtain necessary information required by the international tax transparency standard.
	Panama has in place the necessary powers to adequately seek out information from sources, whether public or private, needed to respond to an EOI request. However, in practice Panama has not used these powers to fully seek out all possible sources of information when requests are received from EOI partners.	Panama should fully use its access powers to obtain information from all sources of information to obtain all information included in an EOI request.
Rating: Largely Compliant		

213. The Minister of Economy and Finance is the listed Competent Authority for all of Panama's EOI agreements. Law 51 of 2016 allows the Minister to delegate this power to one or more other persons. In Resolution No. MEF-RES-2018-1072, the Minister delegated its authority under in force EOI agreements to both the General Director of Revenue and the Head of the EOI Department.

214. Daily operations of the Competent Authority are given to the DGI's EOI Department, which is in charge of receiving, handling, and processing

all incoming EOI requests received by the Panamanian Competent Authority. The EOI Department has approximately a dozen staff working on EOI cases; all requests for information from third parties or transmission of documents to treaty partners will be signed by the Competent Authority.

215. Panama enhanced its legal framework following the Phase 2 report by enacting Law 51 of 2016. Under Article 4 of Law 51, the Competent Authority can exercise its powers to inspect and supervise all private sources of relevant information to make sure they are complying with the requisite obligations and sanctions have been applied to resident agents for this type of supervision. The law also allows the Competent Authority to perform on-site inspections in the offices of private sources or wherever the information is kept.

216. Under Law 52, in the event that a legal entity does not provide a resident agent with accounting records when requested, the resident agent must either resign or can be removed. As explained in element A.2, there have been a few instances where this has occurred.

B.1.1. Ownership, identity and bank information

217. Competent authorities should have the power to obtain and provide information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity, including nominees and trustees, as well as information regarding the ownership of active and inactive companies, partnerships, trusts, foundations, and other relevant entities that is held in or under the control of a person in the jurisdiction.

218. For general ownership information and identity information, the EOI Department can query the DGI databases to ascertain what information is directly held. Ownership and identity information can also be obtained from other government agencies, but should also be available with resident agents. The EOI Department has access to all Public Registry information, as all filings are public. If an EOI partner asks that certain documents be certified, the EOI Department will request certified copies from the Public Registry, which takes additional time. Some peers noted that this type of information can be hard to obtain on a timely basis.

219. For beneficial ownership information, the Competent Authority will generally seek the information from both the resident agent and the legal entity/arrangement itself. Where the information is not available, the Competent Authority will notify the ANFS in order to begin the sanctioning procedure on the agent for not providing the required information.

220. For requests received following the Phase 2 review period (June 2015), the Competent Authority contacts the resident agent for information,

which now has significantly higher obligations to maintain information under Law 51 and is subject to sanctions for non-compliance. If the resident agent cannot provide the requested information, the Competent Authority will then contact the company itself for the information when it has an office in Panama, or if not, by sending a request to any known address of the entity. The company has an obligation to respond to the Competent Authority's inquiry within a specific timeframe or else it will be subject to sanctions. In practice, however, Panama has just started the deemed dissolution process for non-responding entities.

221. During the review period, Panama received 217 requests for ownership information. There were several instances where the information was not available because the entity had been dissolved more than 5 years prior to the request being made and so no source was required to maintain records. There were also several instances where the information was not available for bearer shares or when the entity was struck off less than five years before the request. Panama has indicated that some of these cases have been transferred to the ANFS for sanctions.

222. In a few cases, Panama was not able to obtain the requested information because the foreign service providers were reluctant to provide updated information to Panamanian resident agents. Panama attempted to ameliorate the problem in these cases by providing details of the foreign service provider to the requesting jurisdiction. Although Panama provided these details, this information should have been available with the resident agent (see section B.1.4). Referring a query back to the requesting jurisdiction and asking them to contact a third jurisdiction in order to obtain information that should have been available to Panama's Competent Authority cannot be considered a satisfactory outcome. Note that Panama adopted a similar approach during the 2016 Report (refer to paragraph 355) and a similar conclusion was reached.

223. Since Law 51 of 2016 has come into effect, the Competent Authority has issued 10 sanctions to entities or third parties for failure to respond to a request for information pursuant to an EOI request, but the sanctions are still pending final resolution in court. In fact, these sanctions may be subject to reconsideration and appeal before coming final and in practice, it can take up to a year in many cases for a monetary sanction imposed by the Competent Authority to become final.

224. One seeming gap that arose during the review period resulted from a closed service provider's documents being seized by Panama's Attorney General's Office (refer to paragraphs 93 and 94). According to Panamanian tax authorities, based on Article 341 of the Criminal Procedure Code it cannot obtain this information while the Attorney General's Office is conducting an investigation. Article 341 provides: "When computer equipment of data stored in any other medium is confiscated, the same limitations

regarding professional secrecy and reservation regarding the content of the documents seized shall apply. The examination of the content of the data will be carried out under the responsibility of the Prosecutor who carries it out. To said diligence, the accused person and his/her defender will be summoned in advance. However, the absence of them does not prevent the performance of the act. Equipment or information that is not useful to the investigation or understood as not seizeable will be returned immediately and may not be used for the investigation." However, Article 3(22) of Law 51 sets forth an extremely broad sweep of public entities subject to the Competent Authority's power to request information in its definition: "Any government institution or agency, including those belonging to the Executive, Legislative and Judicial Branches, the Public Ministry, the decentralised, autonomous and semi-autonomous entities, the Panama Canal Authority, municipalities, local governments, mixed-capital companies, co-operatives, foundations and non-governmental organisations that receive or have received funds, capital or state assets." Article 5 of Law 51 requires any private and public source to answer the Competent Authority's request for information.

225. However, Panamanian officials interpret Article 17 of Law 51 to limit the application of Article 5. Article 17 reads: "Any information submitted to the Competent Authority in compliance with this Law or its Regulations by Private Sources or their directors, employees, or representatives shall not constitute a breach of professional secrecy or restrictions on disclosure of information, derived from confidentiality imposed by contract or by any legal or regulatory provision, and shall not imply any liability for the Private Sources indicated in this law and its Regulations or for its directors, employees, or representatives."

226. Article 17 is silent with respect to public sources, but Panamanian officials interpret this article as restricting its access to information to that held by private sources, and Article 341 of the Criminal Procedure Code as overriding Law 51. This interpretation seems to conflict with Articles 3(22) and 5 as the Attorney General's Office is clearly a public source and therefore a covered entity. There seems to be a legal and/or interpretive gap which, on Panama's interpretation, does not allow the Panamanian Competent Authority to fully pursue its powers under Law 51, raising concerns regarding the effectiveness of the law where public sources of information are concerned. According to Panamanian officials, this legal and/or interpretive gap did not affect any of the EOI requests received during the review period as the seizure of documents took place later.

227. For banking information, DGI requests the information directly from the bank; non-compliance results in a financial sanction of USD 10 000 to USD 15 000. During the review period, banks responded to requests for information, therefore, it was not necessary to apply sanctions.

228. Panama received 171 requests for banking information, and the Competent Authority generally did not have any problems obtaining the requested information. As noted in paragraph 206, one peer indicated that it did not receive the requested banking information. These same concerns arose in the 2016 Report (refer to paragraphs 318 to 323).

229. Panama explained that these requests followed a similar pattern and asked whether a specific taxpayer from the requesting jurisdiction held a bank account in Panama. The peer provided Panama with the taxpayer's name, address, TIN, and date of birth (if a natural person). Panama explained to the peer that there were not sufficient details provided to identify the bank or the person involved. Panama explained that the requests did not involve Panamanian taxpayers or entities. Further, Panama does not have a central database listing all bank accounts maintained in Panama; therefore, it would need sufficient information to identify which of its 83 banks would be involved in order to be able to collect this type of information.

B.1.2. Accounting records

230. Law 52 of 2016 allows the Competent Authority to access accounting information, including records not within Panamanian territory, by obliging legal entities to provide it to the resident agent when requested to do so by the Competent Authority.

231. Panama received 163 requests for accounting information during the review period but was only able to provide accounting information on companies carrying on business outside Panama following the enactment of Law 52, which introduced the obligation for all legal entities and arrangements to keep accounting records and underlying documentation in line with the standard (see the discussion in A.2 above). This obligation took effect for accounting and tax periods beginning 1 January 2017, so the first period for which peers could expect this information to be available is starting in 2018 for closed 2017 periods.

232. Three peers provided input specifically noting the inability of Panama to provide accounting information for requests submitted during the current review period for records prior to 1 January 2017. For all periods prior to 1 January 2017, Panama was unable to obtain the requested records as they generally did not exist in Panama given the absence of a legal obligation to maintain them. Panama attempted to ameliorate the problem in some of these cases by finding out the location of the accounting records and notifying the partner of the foreign address of the record holder with the requested information. One peer explained that even where contact details of another intermediary are provided this created an extra administrative burden on the part of this peer.

233. Panama reports that it has received several partners' requests outside of the review period from peers requesting accounting information and it was able to obtain such records in almost 50% of the cases.

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

234. As noted in the Phase 2 report (paragraphs 325-329), Panama's domestic laws provide DGI with ample powers to access relevant information for EOI purposes. Law 33 of 2010 gives DGI power to request and obtain tax information from any type of institution, public or private, in order to comply with its international agreements. Further, Law 51 of 2016 gives the Competent Authority new access powers to obtain information from any information holder and imposes substantial monetary sanctions for non-compliance.

235. Thus, Panama's Competent Authority has unambiguous access powers to obtain and provide information in response to an EOI request without being subject to a domestic tax interest requirement. There is no indication from either Panamanian authorities or peers of any difficulty in obtaining or providing information requested by a foreign competent authority under an EOI agreement regardless of domestic interest.

B.1.4. Effective enforcement provisions to compel the production of information

236. Law 51 of 2016 has given Panama broad powers to compel production of information. If a legal entity/arrangement or third party record holder fails to respond to an information request (pursuant to an EOI request), the Competent Authority can conduct an in-person inspection. Sanctions can be imposed immediately for non-compliance, in the amount of USD 10 000 to USD 15 000, with an additional daily penalty of USD 500 accruing until the information is provided.

237. Where records are required to be held but are located outside of Panama, the Competent Authority can require the resident agent to obtain and provide such records; if the agent fails to provide them or is unable to do so, the agent is asked to resign (or can be involuntarily removed as agent), leading the entity to become inactive after 90 days without an agent in place.

238. As private sources of information, financial institutions must similarly comply with the Competent Authority's request to provide records pursuant to an EOI request or else face the same sanctions listed above.

239. During the review period, the Competent Authority encountered no cases where a person required to keep information or in possession/control of the requested information challenged the obligation to furnish it to DGI.

240. Since Law 51 of 2016 has come into effect, the Competent Authority has issued 10 sanctions to entities or third parties for failure to respond to a request for information pursuant to an EOI request, but the sanctions are still pending final resolution in court. In fact, these sanctions may be subject to reconsideration and appeal before coming final and in practice, it can take up to a year in many cases for a monetary sanction imposed by the Competent Authority to become final. This lengthy process, and the DGI's interpretation that penalties were not available to it under Law 51 when conducting preventive inspections (refer to paragraphs 57, 117, and 174), undercuts the effectiveness of the present penalty regime.

241. With regard to the second recommendation in the Phase 2 report, the Competent Authority's ability to penalise non-compliance has been enhanced in several ways since that report. Under Law 51 of 2016, DGI is authorised to impose fines of USD 10 000 to USD 15 000 on any source that does not timely provide information in response to an EOI request, plus an additional USD 500 per day until the information is completely provided. Further, Law 52 of 2016 provides complementary enforcement by making the failure to pay a fine imposed by the tax authority as grounds for considering an entity to be deemed dissolved and then definitely dissolved 2 years later. Under Law 51, the Competent Authority is also able to refer cases to ANFS for sanctioning when ownership information is not properly maintained, which it has done.

242. In working to address previous concerns with Panama's penalty regime, the penalties now operative in Panama are specifically wide in scope to encompass entities that operate exclusively outside of Panama. For example, if the Competent Authority sends a request for information to an offshore Panamanian entity, the failure to respond can result in a penalty on the entity, and non-payment of a fine creates grounds to be considered inactive, with its attendant consequences (see element A.1.1 above). These improvements address the issues mentioned in the second recommendation such that it can be removed.

B.1.5. Secrecy provisions

(a) Bank secrecy

243. Bank secrecy exists in Panama but specific provisions in various laws override confidentiality when requested for a legitimate purpose by a government authority (see paragraphs 350-352 of the Phase 2 report). Law 51

of 2016 further clarified that a private source of information, including a financial institution, must provide information to the Competent Authority upon request when the information sought concerns an EOI request. Article 17 of Law 51 also explicitly states that responding to the Competent Authority is not considered a breach of an otherwise applicable restriction on disclosure or breach of secrecy, and removes legal liability for the source in responding to such a request.

244. The Competent Authority is able to directly send a request letter to a financial institution for banking information, simply noting that the request involves matters under an international agreement.

245. During the on-site visit, representatives of the banking sector confirmed that financial institutions are well aware of the exception to banking secrecy for EOI requests and have a positive working relationship with DGI and the Competent Authority.

(b) Professional privilege

246. The 2016 ToR protects communications that are "produced for the purposes of seeking or providing legal advice". As mentioned in the 2016 report (paragraphs 335-346), exceptions to professional secrecy are not relevant where a request under an EOI agreement is made and furthermore, international treaties override domestic law.

247. But, the definition of the attorney-client privilege in Panama might be construed broader in practice than what the ToR allows as exchange of privileged information is restricted under Article 16 of Law No. 2 of 2011 if a resident agent believes a "request is devised without due compliance with the rules, requirements, and procedures established in Panamanian legislation or when the request is based on information obtained, by any national or international authority, through illegitimate or illegal means [under Panamanian law]." As explained in paragraph 344 of the 2016 report, although the term "illegitimate means" is not defined in the provision, Panama advised that the intent is to ensure that Panama is not obligated to further the illegitimate acts of a foreign government. There has been no change to this Law or the intention of Article 16 since that report.

248. Panamanian authorities note that there have been no issues in practice regarding a claim of privilege to avoid responding to an EOI request during the current review period. Panama should monitor the practical application of legal professional privilege to ensure that it does not prevent effective exchange of information in line with the international standard (see Annex 1).

Conclusion

249. Panama's Competent Authority has adequate powers for the most part in its legal framework now to obtain necessary records and information subject of EOI requests, and has enforcement powers to compel such information as needed or issue appropriate sanctions for non-compliance. Nevertheless, Panama's sanctions for failure to provide information are subject to lengthy appeal processes and until very recently the DGI considered that penalties were not available to it under Law 51 when conducting preventive inspections. As such, it is recommended that Panama ensure that the penalty regime implemented under Law 51 is effective to allow the Competent Authority proper access to obtain necessary information required by the international tax transparency standard. Additionally, a legal and/or interpretive gap of Law 51 emerged during the review period which restricts the Competent Authority's access to records seized by the Attorney General that may be necessary to respond to partners' EOI requests. Panama is recommended to fully use its access powers to obtain information from all sources of information to obtain all information included in an EOI request. At the present time, there has been no case testing whether an attorney can successfully invoke the legal privilege to avoid answering an EOI request, however no issues have arisen in practice. This report determines that the legal framework for this element is "in place" and rated as Largely Compliant.

B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

250. Application of rights and safeguards in Panama does not restrict the scope of information that the tax authorities can obtain. The 2016 Phase 2 report found the notification rules and safeguards in Panama to be in line with the standard. No material changes to the applicable legal framework have occurred over the review period.

251. The table of determinations and ratings remains as follows:

Legal and Regulatory Framework
Determination: This element is in place.
Practical Implementation of the standard
Rating: Compliant

B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information

252. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction) and time-specific post-exchange notification.

253. As noted in the 2016 report (paragraphs 359-363), there are no longer any notification requirements in Panama which would impede effective EOI. Discussions with the Panamanian authorities and feedback from peers indicate that applicable rights and safeguards have never caused practical difficulties or undue delay to effective exchange of information.

254. When an EOI request requires obtaining information from a third-party record holder, Panama only provides the minimum information necessary to identify the taxpayer and what information is being requested. A template letter is followed when making an information request.

255. Panama reports that the taxpayers who are the subject of the information requests do not have any rights to notice by the third-party record holders that their information is being requested by the authorities, although there is no prohibition either regarding such actions. The 2016 ToR added to the standard an exception from time-specific post-exchange notification requirement that would allow a requested jurisdiction to not notify the account-holder in cases where notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction. Because Panama does not allow for any notification rights, this part of the standard is not an issue.

256. The report determines that this element's legal framework is "in place" and rated Compliant.

Part C: Exchanging information

257. Sections C.1 to C.5 evaluate the effectiveness of Panama's EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether they respect the rights and safeguards of taxpayers and third parties, and whether Panama could provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

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

258. The 2016 Report found that Panama's exchange of information mechanisms were largely in line with the standard, resulting in a determination of the legal framework as "in place" and a rating for element C.1 as Compliant.

259. Panama's bilateral EOI network now covers 27 partners, all of which are in force and allow Panama to effectively exchange information. Since 2016, Panama added 2 new bilateral partners to its EOI network; all such new agreements appear in line with the standard.

260. Panama ratified the multilateral Convention, which entered into force in Panama on 1 July 2017. Panama's EOI network now covers 130 jurisdictions.

261. Panama began exchanging financial account information automatically under the Common Reporting Standard in September 2018, and makes automatic exchange with the United States of reportable accounts under a Foreign Account Tax Compliance Act (FATCA) Intergovernmental Agreement.

262. The table of determinations and ratings is:

Legal and Regulatory Framework
Determination: This element is in place.
Practical Implementation of the standard
Rating: Compliant

C.1.1. Foreseeably relevant standard

263. Exchange of information mechanisms should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. This concept, as articulated in Article 26 of the OECD Model Tax Convention, is to be interpreted broadly, but does not extend so far as to allow for "fishing expeditions". The Article 26 commentary recognises that the standard of "foreseeable relevance" can be met when alternative terms are used in an agreement, such as "necessary" or "relevant". Panama confirms that it interprets these terms according to the standard of foreseeable relevance that is consistent with the scope of Article 26(1) of the OECD Model Tax Convention.

264. In the 2016 Report, all but four of Panama's then-existing EOI agreements were determined to meet the "foreseeably relevant" standard based on the linguistic formulations used or interpretation method employed (see paragraphs 377-380). At the time, the protocols with the DTCs for Ireland, Luxembourg, the Netherlands and Qatar all went beyond the standard in requiring that the name and address of the person under investigation be provided, rather than just the identity. Although the terms in these protocols have not changed since the 2016 report, all four of the jurisdictions are now covered by the multilateral Convention, and so information exchanged with Panama under that agreement will now fall in line with the standard (at least for tax years beginning after 1 January 2018).

265. Since the 2016 Report, Panama has had a new DTC with Viet Nam as well as a TIEA with Japan enter into force. Each of these new agreements provide for the exchange of information that is "foreseeably relevant".

266. During the peer review period, Panama did refuse in twenty cases to answer EOI requests because of lack of foreseeable relevance where the request was considered to involve a fishing expedition. In practice, if Panama has a question in evaluating foreseeable relevance, it will always contact the partner to obtain more information and never denies a request without first contacting the partner. Four peers indicated that they received requests for clarification from Panama; however, no peers raised any issues with respect to Panama's interpretation of the foreseeably relevant standard.

267. There is no indication that any of Panama's EOI agreements contains language prohibiting group requests, and the process for responding to group requests is the same as for any other request for information. Panama does not require any specific information to be provided by the requesting jurisdiction in the case of a group request beyond what is in the model, and would interpret foreseeable relevance in line with the standard with such requests. The Competent Authority interprets foreseeable relevance with respect to group requests in a similar manner as with regular requests. Over the review

period, Panama received one request that the partner termed a group request, but which Panama classified as a bulk request; it had no trouble answering the request.

C.1.2. Provide for exchange of information in respect of all persons

268. Panamanian law contains no restrictions on persons in respect of whom information may be exchanged. The 2016 report found that all of Panama's then-existing EOI agreements were consistent with the standard. The new DTC and TIEA ratified by Panama since then contain appropriate provisions allowing for exchange in respect of all persons. No issues regarding jurisdictional scope have been raised by peers in the current review period.

C.1.3. Obligation to exchange all types of information

269. Article 26 of the OECD Model Tax Convention and the OECD Model TIEA both require the exchange of all types of information, including bank information, information held by a fiduciary or nominee, or information concerning ownership interests. As noted in the 2016 report, Panama's agreements all contain appropriate mechanisms to cover the exchange of information of any type.

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

C.1.4. Absence of domestic tax interest

271. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction. The 2016 report noted that all of the then-existing EOI agreements Panama had with partners included language requiring information-gathering measures without regard to a domestic tax interest, (see paragraphs 394-395). The EOI agreements Panama has ratified since then likewise all allow for information exchange in the absence of a domestic tax interest. No issues were raised in peer input.

C.1.5. Absence of dual criminality principles

272. All of Panama's EOI agreements require the exchange of information regardless of whether the conduct under investigation, if committed in Panama, would constitute a crime, and so. No issues were raised in peer input.

C.1.6. Exchange information relating to both civil and criminal tax matters

273. All of Panama's EOI agreements provide for exchange of information in both civil and criminal matters.

274. In practice, during the review period Panama answered all requests, whether they related to civil or criminal tax matters. No peers raised any concerns.

C.1.7. Provide information in specific form requested

275. As noted in the 2016 report (paragraphs 401-403), there are no restrictions in Panama's EOI agreements or laws that would prevent it from providing information in a specific form. During the review period, Panama reports that it provided information in the specific form requested by a partner, if so indicated. No peers raised any concerns.

C.1.8. Signed agreements should be in force

276. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. The international standard requires that jurisdictions take all steps necessary to bring exchange of information arrangements that have been signed into force expeditiously.

277. Panama's EOI network currently consists of 27 bilateral agreements, all of which are in force. Panama has also ratified the multilateral Convention in February 2017, which entered into force on 1 July 2017.

EOI Bilateral Mechanisms

		Total	Total bilateral instruments not complemented by the Multilateral Convention
A	Total number of DTCs/TIEAS(A=B+C)	26	1
B	Number of DTCs/TIEAs signed (but pending ratification), i.e. not in force (B=D+E)	0	0
C	Number of DTCs/TIEAs signed and in force (C=F+G)	26	1
D	Number of DTCs/TIEAs signed (but pending ratification) and to the Standard	0	0
E	Number of DTCs/TIEAs signed (but pending ratification) and not to the Standard	0	0
F	Number of DTCs/TIEAs in force and to the Standard	22	1
G	Number of DTCs/TIEAs in force and not to the Standard	4 [a]	0

Note: a. The Phase 2 Report concluded that the DTCs with Ireland, Luxembourg, the Netherlands, and Qatar were not in line with the standard (refer to paragraphs 379, 382 and 385). However, these jurisdictions are all parties to the multilateral Convention and are able to exchange information with Panama in accordance with the international standard.

278. Following signature of an EOI agreement between Panama and another party, the agreement is submitted to the National Assembly for approval, which occurs after three debates on different days. After Assembly approval, the President must assent to the agreement, after which it is published in the official gazette. The entire process can take anywhere from six months up to three years, depending on the political forces at any given time. Although no peers raised any issues, and the two EOI agreements signed since the 2016 Report entered into force within seven months, the DTC with Italy that was signed in 2010 did not enter into force until 2017. Panama should continue to ensure that any signed EOI agreements are brought expeditiously into force (see Annex 1).

C.1.9. Be given effect through domestic law

279. For information exchange to be effective, the parties to an EOI arrangement must enact any legislation necessary to comply with the terms of the arrangement. As explained in the 2016 report (paragraph 406), Panama has in place the legal and regulatory framework to give effect to its EOI mechanisms. This continues to be the case.

Conclusion

280. Overall, Panama's information exchange mechanisms are adequate. The report determines that the legal framework for element C.1 is "in place" and rated Compliant.

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

The jurisdiction's network of information exchange mechanisms should cover all relevant partners.

281. The Phase 2 report recommended that Panama continue to enter into EOI agreements with all relevant partners, noting that Panama lacked agreements with a number of important partners and had not signed any agreements over the previous 12 months. As a result, this element was determined to be "in place, but certain aspects need improvement" and rated as Partially Compliant.

282. Panama has continued to expand its network of EOI agreements in place since the 2016 report. Overall, Panama has a network of 27 signed bilateral EOI agreements – including two that have been signed and ratified since 2016 (Japan and Viet Nam) – with all of those agreements in force.

283. Importantly, Panama ratified the multilateral Convention on 23 February 2017, which entered into force in Panama on 1 July 2017. The multilateral Convention significantly expands the scope of Panama's EOI

network and gives its partners the ability to request tax information for tax years beginning 1 July 2017. Panama's EOI network now covers 130 jurisdictions. This is a substantial improvement that addresses the Phase 2 report recommendation.

284. Panama has not refused to enter into an agreement for exchange of information with any potential partner and continues to actively engage in negotiations with prospective treaty partners. Panama is recommended to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

285. The table of determinations and ratings is as follows:

Legal and Regulatory Framework
Determination: This element is in place.
Practical Implementation of the standard
Rating: Compliant

C.3. Confidentiality

The jurisdiction's information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received.

286. The 2016 Phase 2 report concluded that the applicable treaty provisions and statutory rules that apply to officials with access to treaty information and the practice in Panama regarding confidentiality were in accordance with the standard. But a recommendation was made as Panama, in some situations, provided the name of the taxpayer to third parties in seeking information to respond to an EOI request when doing so was unnecessary. Although Panama changed this practice before the adoption of the report, Panama was asked to monitor its disclosures to third parties to ensure the confidentiality requirements of the international standard were followed. As a result, this element was determined to be "in place" but rated as Largely Compliant in the Phase 2 report.

287. Since that report, Panama has continued to ensure that its EOI confidentiality practices meet the high requirements of the standard and specifically follows the previous recommendation that unnecessary disclosure of the taxpayer's name is not made to third parties.

288. The table of determinations and ratings is as follows:

Legal and Regulatory Framework
Determination: This element is in place.
Practical Implementation of the standard
Rating: Compliant

C.3.1. Information received: disclosure, use and safeguards

289. The 2016 report stated that all of Panama's EOI agreements then in effect had confidentiality provisions based on some version of an OECD model tax convention or equivalent (see paragraphs 420-422 of the Phase 2 report). The two EOI agreements that have come into force since then with Panama all contain confidentiality provisions consistent with the standard.

290. As explained in the 2016 report (paragraphs 423-426), Panama has domestic laws that prescribe general confidentiality rules for fiscal matters which apply to DGI personnel. These rules were further strengthened through enactment of Law 51 of 2016 (articles 14-17). The DGI Procedural Manual also considers the provisions of EOI agreements as superseding domestic law. Moreover, Panama has strict confidentiality provisions in its domestic legislation that impose strong sanctions (removal from office and the possibility for criminal prosecution) for any public official or contractor that discloses confidential information, including information arising from or pursuant to an EOI request, and monetary penalties (up to USD 25 000) for private third parties that disclose confidential information.

291. All DGI personnel undergo initial induction training that includes information on applicable confidentiality policies, as well as systematic annual trainings. DGI also employs a "clean screen and desktop" policy and has extensive security policies for keeping tax information confidential. In addition to the provisions contained in domestic law, DGI personnel or contractors are required to sign a confidentiality agreement, which clearly sets out the applicable sanctions and penalties in cases of breaches of confidentiality. This duty of confidentiality continues to apply to DGI personnel after cessation of employment.

292. Access to data received from partners through EOI is limited to EOI Department staff. All hard copy information received concerning an EOI request is stamped confidential and kept in folders that are locked in secure filing cabinets in the EOI Department office. Documents are disposed of securely in accordance with statutory requirements. EOI Department officials have received specific training on handling EOI matters; additionally, DGI has adopted internal manuals on procedures and obligations related to confidentiality (including the Global Forum's EOI Working Manual and the OECD "Keeping It Safe" Guide).

293. Disclosure of EOI information outside of the EOI Department, whether to another government agency or to a third party, contains a confidentiality notice and is limited to the minimum information necessary to provide a stakeholder with the ability to act on a request.

294. The DGI building where the EOI Department is located has restricted public access; building hours are limited for non-officials and all visitors are screened before admittance, including showing a valid I.D. The EOI Department is located on a secured floor with a guard during business hours and the floor hall is monitored with continuous video recording. Access to the EOI Department office is limited to authorised officials, requiring both an access badge and biometric credentials.

295. There have been no known instances in Panama where information received by the Competent Authority from an EOI partner has been improperly disclosed. Panama treats all information related to an EOI request as confidential and will use the information only for tax purposes unless otherwise agreed between Panama and its EOI partner.

296. As explained in the Phase 2 report (paragraph 430), it was noted that some peers experienced delivery issues with requests sent to the Panama Competent Authority by regular postal mail, with either significant delays in receipt or even non-delivery in certain instances. Panama has since notified all partners of the need to send requests and correspondence by private mail delivery, and has implemented limited electronic communication with some jurisdictions (see details in paragraph 323).

297. In response to the Phase 2 report recommendation to monitor that disclosure of details in an EOI request, such as the name of the taxpayer, followed the standard's confidentiality requirement, Panama has changed its internal guidelines on submitting requests to third parties for information regarding an EOI request. These actions are sufficient to address the prior recommendation.

C.3.2. Confidentiality of other information

298. Confidentiality rules should apply to all types of information exchanged, including information provided by a requesting jurisdiction in a request, information transmitted in response to a request and any background documents to such request. Panamanian authorities confirm that in practice they consider all types of information relating to an EOI request confidential (including communications between Panama and the requesting jurisdiction).

Conclusion

299. Panama has adequately addressed the Phase 2 recommendation to ensure that a taxpayer's name is not unnecessarily disclosed in making

requests for information from third parties. Panama's legal framework for ensuring confidentiality is determined to be "in place" and this element is rated as Compliant.

C.4. Rights and safeguards of taxpayers and third parties

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

300. The international standard allows requested parties to not supply information in response to a request in certain identified situations where an issue of trade, business, or other secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege.

301. The 2016 Phase 2 report concluded that Panama's legal framework and practices concerning the rights and safeguards of taxpayers and third parties was in line with the standard and element C.4 was determined to be "in place" and Compliant, with no recommendations made. No relevant changes have occurred since that report.

302. The table of determinations and ratings remains as follows:

Legal and Regulatory Framework
Determination: This element is in place.
Practical Implementation of the standard
Rating: Compliant

C.4.1. Exceptions to requirement to provide information

303. Consistent with the EOIR Standard, all of Panama's EOI mechanisms contain a provision which ensures that the contracting jurisdictions are not obliged to provide information that would disclose any trade, business, industrial, commercial, or professional secret, trade process or information the disclosure of which would be contrary to public policy. Legal privilege only applies to confidential communications between a client and an attorney when made in the course of providing legal advice or in connection with legal proceedings. However, legal privilege does not cover information obtained by an attorney because of know-your-customer requirements (see paragraphs 434-437 of the Phase 2 Report).

304. Law 23 of 2015 (the AML/CFT law) ensures that the Competent Authority has access to information irrespective of any secrecy obligation on the information holder. There have been no judicial cases in Panama that

would imply any limit on the Competent Authority to obtain foreseeably relevant information for purposes of information exchange, and the terms of an international agreement would prevail over the asserted privilege in any event.

305. Discussions with the Panamanian authorities and feedback from peers do not indicate any rights or safeguards that have caused practical difficulties or undue delay to effective exchange of information.

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

306. The 2016 Phase 2 report concluded that Panama lacked adequate organisational structures and resources to handle incoming EOI requests, experienced delivery issues of EOI requests from partners, and failed to routinely provide status updates to partners if information could not be provided within 90 days.

307. Panama received 302 requests from treaty partners during the current review period (1 April 2015-31 March 2018). It improved upon the Phase 2 deficiencies in timely handling EOI requests by providing final responses to partners within 180 days of receipt in approximately 49% of cases in the current review period; however, Panama provided partial information to 140 of the requests it received. In most of these cases, Panama was unable to provide accounting information. Panama also failed to provide the requested information in 13% of cases. Panama gave status updates in approximately 59% of cases.

308. The table of determinations and ratings is as follows:

Legal and Regulatory Framework
This element involves issues of practice that are dealt with in the implementation of EOIR in practice. Accordingly, no determination has been made.

Practical Implementation of the standard		
	Underlying Factor	**Recommendations**
Deficiencies identified	During the review period, Panama experienced notable instances of delivery failure of incoming peer requests.	Panama should monitor that it is effectively and timely receiving all EOI requests sent by partners and to further continue the use of encrypted electronic communications where appropriate.

Practical Implementation of the standard		
	During the review period, Panama responded to 20% of requests within 90 days, 49% in 180 days, and 74% within a year, however; 46% of responses were partial and in 13% of cases Panama failed to provide the requested information. Panama provided status updates in 59% of cases.	Panama should further endeavour to provide complete responses to its EOI partners in a timely manner and provide status updates to its EOI partners within 90 days where relevant.
Rating: Partially Compliant		

C.5.1. Timeliness of responses to requests for information

309. Over the period under review (1 April 2015 to 31 March 2018), Panama received a total of 302 requests for information; the received cases involved 217 requests for ownership information, 163 requests for accounting information, 171 requests for bank information, and 278 requests for other information. The following table relates to the requests received during the period under review and gives an overview of response times needed by Panama to provide a final response to these requests, together with a summary of other relevant factors impacting the effectiveness of Panama's exchange of information practice during the reviewed period:

		1 April 2015-31 March 2016		1 April 2016-31 March 2017		1 April 2017-31 March 2018		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	[A+B+C+D+E]	33	11	83	27	186	62	302	100
Final response: ≤90 days		1	3	16	19	44	24	61	20
≤180 days (cumulative)		5	15	41	49	102	55	148	49
≤1 year (cumulative)	[A]	19	58	64	77	142	76	225	75
>1 year	[B]	5	15	5	6	2	1	12	4
Declined for valid reasons	[C]	0	0	2	2	18	10	20	7
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided >90 days)		9	29	45	69	87	62	141	59
Requests withdrawn by requesting jurisdiction	[D]	3	9	2	2	1	1	6	2
Failure to obtain and provide information requested	[E]	6	18	10	12	23	12	39	13
Requests still pending at date of review	[F]	0	0	0	0	0	0	0	0
Partial information exchanged and request closed		10	30	46	55	84	45	140	46

Notes: a. Requests are counted as per the number of request letters, i.e. an incoming request is counted as one even if it seeks information relating to multiple taxpayers, seeks different types of information or requires that information be obtained from multiple sources.

b. The time periods in this table are counted from the date of receipt of the request to the date on which the final response was issued (refer to paragraph 313).

310. The Phase 2 report had several specific recommendations regarding Panama's timely handling of requests. As very few cases in the second half of the review period were fully responded to within 180 days due to understaffing and a department reorganisation, the report recommended that Panama adopt appropriate organisational processes and make adequate resources available for the EOI Department to timely respond to received requests. The Phase 2 report also recognised that status updates were not systematically provided and so made a recommendation concerning that issue.

311. The EOI procedures adopted by DGI (and reflected in the EOI Work Manual) specifically instruct its EOI officers to provide a status update if a complete response to a request cannot be given in 90 days. In practice, status updates were provided during the current review period in 59% of cases when the time needed to obtain the requested information exceeded 90 days. There was noticeable improvement in providing status updates in the second half of the review period.

312. The table shows that the overall time taken to respond to partners' requests for information has improved from the Phase 2 report, with 49% of requests in the current review period being issued a final response within 180 days and only 4% took longer than a year to provide a response. Four peers commented on the lengthy time it took to receive answers. Two peers also noted that the length of time it took to receive answers (particularly in the early part of the review period) resulted in negative consequences in certain cases, such as withdrawal of requests or inability to use the information. Panama explained that during the first half of the review period, it required more than 180 days to respond to a majority of the requests due to a lack of resources and problems with the mailing services. Panama has taken measures to address these issues (refer to paragraphs 316 and 323). In addition, requests requiring certified documents from the Public Registry can take longer than 90 days in many instances. According to Panamanian officials, this is a result of the substantial increase in the number of requests made to the Public Registry by government agencies, including the Competent Authority, for certified documents. In order to improve response times, unless an EOI partner specifies that it requires certified documents, the Competent Authority can send non-certified copies of Public Registry information since the EOI Department may access Public Registry information.

313. The statistics for "final responses" shown in the table include requests as answered which were, in fact, only partially answered. As shown in the table, Panama failed to provide the requested information to 39 requests (13%) and provided partial responses to 140 requests (46%). Partial information includes those cases where one or more elements of the requested information could not be provided, and in most of these cases, Panama was unable to provide accounting information.

314. Panama declined to provide information in approximately 20 cases for valid reasons, representing 7% of requests received during the review period. According to Panama there are several reasons for why requests were declined. A few requests were not addressed to the proper Competent Authority, so Panama informed the partner of such and received new requests in some cases. Following the publication of leaked documents involving a prominent law firm with ties to Panama, a number of requests received sought information regarding entities, arrangements, and persons referenced in the leaked documents. Panama reports that often the identified legal entity was not registered in Panama and the requesting partner could not demonstrate a link to Panama; this was frequently the case where a non-Panamanian branch of the firm provided services to a legal entity that was incorporated outside of Panama. Without any nexus to persons or transactions in Panama, the competent authority was not able to find a way to exercise any access powers as no information existed within Panama, and so such cases were declined.

C.5.2. Organisational processes and resources

(a) Identification of competent authority

315. As modified by Law 51 of 2016, the competent authority of Panama for exchange of tax information is the Minister of Economy and Finance. Ministerial Resolution No. MEF-RES-2018-1072 further delegates the competent authority function to both the General Director of Revenues and the head of the EOI Department, which in theory speeds up the process for answering requests. The General Director is clearly identified to partners on the DGI website and in the Global Forum's secure competent authorities database for purposes of communication.

(b) Resources and training

316. At the end of the current review period, the Panama EOI Department consisted of approximately a dozen employees, which is a significant improvement: at the beginning of 2015, the EOI Department had only one staff member and during the department's reorganisation in 2016, only had 4 employees. Right now, a head of unit oversees the operational activities of the office, supported by a deputy head. Several officials and analysts handle all EOIR requests, while one official handles only automatic exchange of information (AEOI) matters. The unit also employs several communications and administrative assistants.

317. Many of the staff have attended either multiple Global Forum training events regarding exchange of information and the EOIR Terms of Reference or seminars conducted by partner tax agencies.

318. Funding for handling EOI matters by the EOI Department is provided within the larger budget for DGI, which has been sufficient to allow staff to attend EOI seminars and trainings, as well as provide for technology needs (such as IT security, physical safeguards, and computer equipment).

319. The EOI Department has an EOI Work Manual based on the Global Forum's model manual. The manual is an invaluable tool to the EOI Department, setting out the proper procedures for handling requests, providing template forms for requesting information to fulfil a partner's request, and information on confidentiality. Panama received assistance from a number of international organisations to update the manual, including information on group requests, which was adopted by Resolution No. 201-3931 of 7 August 2019.

(c) Incoming requests

320. All incoming mail from a foreign address addressed to the competent authority is sent directly to the EOI Department and opened by an official in the EOI Department. Upon opening, a request is stamped by the EOI Department with a confidentiality stamp and is kept in a separate folder archived in a locked file cabinet. EOIR officials log each EOI request on an Excel document that is stored on a shared server that is only accessible to EOI officials with proper IT rights to the file. Each EOI request receives a unique reference number.

321. The EOI Department checks the authenticity of the request against the Global Forum competent authorities' database, and examines whether the request complies with an in-force EOI agreement mechanism and meets the EOIR standard. The newly adopted EOI Manual sets out a list of elements that are to be included in an EOI request in order for it to be considered valid. One element is that the requesting jurisdiction provide the identity of the person believed to be in possession or control of the information sought, an explanation of the information holder's relationship to the person under investigation, and the reason(s) why the information holder is believed to be in possession or control of the information sought. According to Panamanian officials, if a requesting jurisdiction does not provide such information on the information holder, the request will not be declined and if there is insufficient information in the request, Panama will contact the requesting jurisdiction for clarification. The standard, described in Article 5(5) of the OCED Model TIEA, only requires the identification of the information holder to the extent that it is known by the requesting jurisdiction. Accordingly, Panama should ensure that its interpretation regarding the identification requirements set out in the EOI Manual continues to be in line with the standard for effective exchange (see Annex 1). The EOI Department acknowledges receipt of an EOI request within 15 days and will request any clarifications at that time.

322. The EOI official handling a request reviews each received request to determine what information is already available within DGI and whether a further request must be made to other Panamanian government agencies or third parties. There is no specific deadline for when requested information held internally within DGI must be collected since the timing depends on the type of request, the EOI Department's workload, and other external factors. Information held by another government agency or third party will be requested by letter from the Head of the EOI Department. Government agencies generally have a deadline of 15 days for responding; private third parties typically have a deadline of 10 days, but the timeline for banks can be extended to 25 days in some cases. Information received from an outside source is checked by the EOI official to determine its relevance to the request. If information requested of a third party is not delivered within the requested deadline, another letter with a shorter deadline is sent out; further non-compliance with a request for information will lead to the start of a sanctioning process.

323. Each EOIR official responsible for a request sets calendar alerts to remain aware of upcoming deadlines. All open requests are reviewed on a weekly basis by the EOI Department management. Once all of the requested information has been received by the EOI Department, the official prepares a response letter to the requesting jurisdiction, which is reviewed and signed by the General Director or the Head of Department. All documents related to an EOI request must bear a clearly visible confidentiality stamp. In all cases, the responses are transmitted by private mail delivery to the partner competent authority. Although Panama is able to receive electronic communications, it has difficulty based on its IT system in transmitting outgoing electronic documents and so still relies on paper responses to partners. Panama has a regular practice of holding monthly calls and annual meetings with its most important EOI partners for the purpose of discussing open cases and sharing best practices. Some peers, particularly at the beginning of the review period, experienced delivery issues with requests sent to the Panama Competent Authority by regular postal mail, with either significant delays in receipt or even non-delivery in certain instances. Since then Panama has communicated to its EOI partners the necessity of using private mail delivery to reach the Competent Authority and has implemented limited pilot programmes of receiving encrypted emails from several EOI partners. It is recommended that Panama monitor that it is effectively and timely receiving all EOI requests sent by partners and to further continue the use of encrypted electronic communications where appropriate

(d) Outgoing requests

324. The 2016 ToR also addresses the quality of requests made by the assessed jurisdiction. Jurisdictions should have in place organisational processes and resources to ensure the quality of outgoing EOI requests.

325. Panama made twenty outgoing requests to four EOI partners during the review period. Outgoing requests are sent by private mail delivery and all documents bear a clearly visible confidentiality stamp. Future outgoing requests will be sent by the Panamanian Post express mail service. Requests are first drafted by auditors but reviewed by the EOI Department for consistency with the EOIR Standard before being signed and transmitted to peers. The EOI Department has several official documents that provide guidance on the procedures and process for creating and sending EOI requests to exchange partners, including the EOI Work Manual (based on the OECD Model) and an executive decree that will soon be issued. The EOI Work Manual lays out a clear template by which auditors must provide adequate information on the reasons for the request, and the EOI Department ensures any request meets the foreseeable relevance standard before sending to the partner. When the EOI Department receives information in response to an outbound request, only the specific information needed by the particular auditor is forwarded and the auditor is informed that the information is treaty-protected confidential information.

326. Sixteen of the outgoing EOI requests sent by Panama to one partner during the review period were the subject of clarification requests by that partner. The three other peers reported that requests for clarifications were not required. Panama reports that all of the requests involving clarification were part of the same audit programme and required additional conversations with the partner to discuss who may be the information holder. After clarification, the partner was able to respond to the requests. Panama is recommended to continue ensuring that its outgoing EOI requests are thoroughly prepared (see Annex 1).

C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI

327. There are no factors or issues identified in Panama's laws that could unreasonably, disproportionately or unduly restrict effective EOI.

Conclusion

328. During the current review period, Panama has displayed difficulty in providing full and complete responses to EOI requests in a timely manner, particularly in the earlier part of the period, which has been verified by peer

input. Although Panama has put in place EOI organisational processes and added staff to the EOI Department, in practice the lack of timeliness continues to be an issue and it is expected that Panama's volume of incoming EOI requests will grow in the future. Although Panama responded to 74% of requests within a year, it provided partial information to 46% of the requests it received. In most of these cases, Panama was unable to provide accounting information. Panama also failed to provide the requested information in 13% of cases. In addition, Panama experienced a sizable number of failed deliveries by peers sending inbound requests; Panama has notified peers of the need to use private mail delivery, but has only implemented limited use of electronic transmissions with peers. Finally, status updates were provided in 59% of cases. It is therefore recommended that Panama further endeavour to provide complete responses to its EOI partners in a timely manner and provide status updates to its EOI partners within 90 days where relevant. Based on a holistic horizontal analysis of Panama's EOI practices, this element is rated as Partially Compliant.

Annex 1: List of in-text recommendations

Issues may have arisen that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. However, in order to ensure that the Global Forum does not lose sight of these "in text" recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- **Element A.1.1:** It is recommended that Panama ensures that ownership information is kept for five years after the entity ceases to exist for all cases (paragraph 86).
- **Element A.1.1 and A.1.5**: Panama should continue to monitor the risk inactive entities pose to the availability of information and ensure that its new rules are being effectively complied with and enforced (paragraphs 89 and 161).
- **Element A.1.1**: Panama should clarify how often CDD information for normal or low-risk customers should be updated by AML-obliged non-financial entities and professionals (paragraph 113).
- **Element A.1.3**: Panama should ensure that up-to-date beneficial ownership information for partnerships is always available in all circumstances (paragraph 137).
- **Element B.1.5**: Panama should monitor the practical application of legal professional privilege to ensure that it does not prevent effective exchange of information in line with the international standard (paragraph 248).
- **Element C.1.8**: Panama should continue to ensure that any signed EOI agreements are brought expeditiously into force (paragraph 278).
- **Element C.2**: Panama is recommended to conclude EOI agreements with any new relevant partner who would so require (paragraph 284).

- **Element C.5.2**: Panama should ensure that its interpretation regarding the identification requirements set out in the EOI Manual continues to be in line with the standard for effective exchange (paragraph 321).
- **Element C.5.2**: Panama is recommended to continue ensuring that its outgoing EOI requests are thoroughly prepared (paragraph 326).

Annex 2: List of Panama's EOI mechanisms

1. Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Signature	Entry into force
1	Barbados	DTC	21-June-2010	18-Feb-2011
2	Canada	TIEA	27-Mar-2013	6-Dec-2013
3	Czech Republic	DTC	4-July-2012	25-Feb-2013
4	Denmark	TIEA	16-Nov-2012	28-Dec-2013
5	Faroe Islands	TIEA	12-Nov-2012	15-Mar-2014
6	Finland	TIEA	12-Nov-2012	30-Dec-2013
7	France	DTC	30-June-2011	1-Feb-2012
8	Greenland	TIEA	12-Nov-2012	9-Mar-2014
9	Iceland	TIEA	12-Nov-2012	30-Nov-2013
10	Ireland	DTC	28-Nov-2011	1-Jan-2013
11	Israel	DTC	8-Nov-2012	30-Jun-2014
12	Italy	DTC	30-Dec-2010	1-Jun-2017
13	Japan	TIEA	25-Aug-2016	12-Mar-2017
14	Korea	DTC	20-Oct-2010	1-Apr-2012
15	Luxembourg	DTC	7-Oct-2010	1-Nov-2011
16	Mexico	DTC	23-Feb-2010	1-Jan-2011
17	Netherlands	DTC	6-Oct-2010	1-Dec-2011
18	Norway	TIEA	12-Nov-2012	20-Dec-2013
19	Portugal	DTC	27-Aug-2010	10-Jun-2012
20	Qatar	DTC	23-Sep-2010	6-May-2011
21	Singapore	DTC	18-Oct-2010	19-Dec-2011
22	Spain	DTC	7-Oct-2010	25-July-2011
23	Sweden	TIEA	12-Nov-2012	28-Dec-2013
24	United Arab Emirates	DTC	13-Oct-2012	23-Oct-2013

	EOI partner	Type of agreement	Signature	Entry into force
25	United Kingdom	DTC	29-Jul-2013	13-Dec-2013
26	United States	TIEA	30-Nov-2010	18-Apr-2011
27	Viet Nam	DTC	30-Aug-2016	14-Feb-2017

2. Convention on Mutual Administrative Assistance in Tax Matters (as amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the multilateral Convention).[2] The multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The multilateral Convention was opened for signature on 1 June 2011.

Panama signed the amended Convention on 27 October 2016 and ratified it on 23 February 2017; it entered into force on 1 July 2017.

The multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus[3], Czech Republic,

2. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention (the multilateral Convention) which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.
3. Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable

Denmark, Dominica, El Salvador, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay, and Vanuatu.

In addition, the multilateral Convention was signed by, or its territorial application extended to, the following jurisdictions, where it is not yet in force: Armenia, Burkina Faso, Dominican Republic (enters into force on 1 December 2019), Ecuador (enters into force on 1 December 2019), Gabon, Kenya, Liberia, Mauritania, Morocco (enters into force on 1 September 2019), North Macedonia, Paraguay, Philippines, Serbia (enters into force on 1 December 2019), and the United States (the original 1988 Convention is in force since 1 April 1995 and the amending Protocol was signed on 27 April 2010).

solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Annex 3: Methodology for the review

The reviews are based on the 2016 Terms of Reference, conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

This evaluation is based on the 2016 ToR, and has been prepared using the 2016 Methodology. The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 12 August 2019, Panama's EOIR practice in respect of EOI requests made and received during the three year period from 1 April 2015 to 31 March 2018, Panama's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Panama's authorities during the on-site visit that took place from 20-22 February 2019 in Panama City, Panama.

List of laws, regulations and other materials received

Commercial laws

Regulatory and anti-money laundering/anti-terrorist financing laws

Tax laws

Authorities interviewed during on-site visit

Administration for Non-Financial Subjects

Tax Administration

Superintendency de Banco

Public Registry

Current and previous reviews

This report is the sixth review of Panama conducted by the Global Forum. Panama previously underwent reviews of its legal and regulatory framework (Phase 1 in 2010, First Phase 1 Supplementary in 2014, and Second

Phase 1 Supplementary in 2015) and the implementation of that framework in practice (Phase 2) in 2016. The 2016 Report containing the conclusions of the first review was published in November 2016 (reflecting the legal and regulatory framework in place as of August 2016). Panama underwent additional review under the Fast-Track Procedure in 2017.

The Phase 1, First Phase 1 Supplementary, Second Phase 1 Supplementary, and Phase 2 reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews. The Fast-Track review was conducted according to 2010 TOR and the Methodology set out in CTPA/GFTEI(2016)49.

Summary of reviews

Review	Assessment team	Period under review	Legal Framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Mr David Smith of the United Kingdom; Ms Yanga Mputa of South Africa; and Ms Renata Fontana and Messrs Bhaskar Goswami and Dónal Godfrey of the Global Forum Secretariat.	n.a.	May 2010	September 2010
Round 1 Phase 1 First Supplementary	Mr David Smith of the United Kingdom; Ms Yanga Mputa of South Africa; and Ms Renata Fontana and Messrs Bhaskar Goswami and Dónal Godfrey of the Global Forum Secretariat.	n.a.	February 2014	April 2014
Round 1 Phase 1 Second Supplementary	Mr David Smith of the United Kingdom; Ms Yanga Mputa of South Africa; and Ms Renata Fontana and Messrs Bhaskar Goswami and Dónal Godfrey of the Global Forum Secretariat	n.a.	August 2015	October 2015
Round 1 Phase 2	Mr David Smith of the United Kingdom; Ms Yanga Mputa of South Africa; and Messrs Boudewijn van Looij and Dónal Godfrey of the Global Forum Secretariat.	1 July 2012 to 30 June 2015	August 2016	November 2016
Round 2	Ms Emer Smith of Ireland; Ms Agata Sardo of Italy; and Ms Kaelen Onusko and Mr Jeremiah Coder of the Global Forum Secretariat.	1 April 2015 to 31 March 2018	August 2019	November 2019

Annex 4: Panama's response to the review report

On behalf of the Republic of Panama we would like to express our gratitude to our assessment team and the Global Forum Secretariat, for the extraordinary efforts for the preparation of this report, the excellent communication and for all the support provided to our team since September 2018, when the evaluation process began.

The Government of Panama has made important progress in terms of transparency and exchange of information for fiscal purposes, since the previous evaluation made to our country, which was approved in November 2016. In addition to address the recommendations found at that time, Panama has done an important job to implement the news criteria's established according to the 2016 Global Forum Terms of Reference.

In this sense, we are satisfied with the result of our effort regarding the implementation of the commitments made before this important Forum and we recognize the need to continue working to achieve the implementation of these standards in the most effective and consistent way possible.

It is important to highlight that, in addition to the exchange on request, Panama has effectively implemented the automatic exchange of information according to the common report standard (CRS) since September 2018, and to date it maintains active relations with 74 jurisdictions in the context of the Multilateral Agreement between Competent Authorities (MCAA).

Since its previous evaluation, Panama has adopted and implemented rules that establish the obligation to maintain beneficial ownership information of any legal entity or legal vehicle; has adopted the respective regulations to ensure the availability of accounting records and supporting information of entities that do not carry out operations in our country; has consistently implemented processes to monitor the existence of information required by our partners; has efficiently updated and implemented the inactivation of legal entities that, for different reasons, represent a risk for tax evasion issues; has strengthened its access powers and coercive measures in case of breaches of information requirements; It has expanded its network of information exchange partners through adherence to the Convention on Mutual

Administrative Assistance in Tax Matters (MAC) and has dedicated significant resources for hiring staff, and updating processes, in order to efficiently attend the large amount of information exchange requests that we receive.

With respect to the obligation to maintain accounting records recently incorporated in the Panamanian legislation, we must remember that it was applicable with respect to the 2017 fiscal period, meaning that accounting records were only available as of 2018.

Finally, with respect to the existing mechanisms to ensure an efficient exchange of information, Panama has demonstrated an undeniable improvement in the deadlines for responding to its requests, it has adopted as a practice to provide notifications of the status of the cases at 90 days – in case of not getting a definitive response for that moment.

The Government of Panama is duly aware that there is still room for improvement, that's why Panama will continue working on a modification process, which includes, among other things, ensuring the availability of information from accounting records as soon as possible, in addition to strengthening existing measures on the information of final beneficiaries, to have information as accurate and up-to-date as possible, and continue to ensure that the structures, resources and processes dedicated to the attention of requests continue to be strengthened to adapt to new challenges.

Finally, Panama is satisfied with the result of our rating given by the Global Forum Secretariat and takes this opportunity to confirm that we are already taking the necessary actions to address the recommendations highlighted in the report so that we can demonstrate our progress in a following supplementary report.

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ISBN 978-92-64-94904-1 – 2019

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request PANAMA 2019 (Second Round)

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The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This report contains the 2019 Peer Review Report on the Exchange of Information on Request of Panama.

Consult this publication on line at ***https://doi.org/10.1787/5f2584a0-en***.

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