



# FIRST ENHANCED FOLLOW-UP REPORT OF PANAMA



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## PANAMA: FIRST ENHANCED FOLLOW-UP REPORT

### I. INTRODUCTION

1. The mutual evaluation report (MER) of Panamá was adopted in December, 2017, within the framework of the 36th Plenary of Representatives of GAFILAT. This follow-up report reviews Panamá's progress in addressing the deficiencies of technical compliance identified in its MER. This report also analyses Panamá's progress in implementing new requirements relating to FATF Recommendations which have changed since the onsite visit made to Panama: Recommendations 7, 18 and 21. New ratings are granted when enough progress is observed. In general, the countries are expected to have addressed most of the technical compliance deficiencies, if not all, before the end of the third year as from the adoption of their MER. This report does not deal with Panamá's progress aimed at improving its effectiveness. A subsequent follow-up assessment will analyse the progress on the improvement of effectiveness which may eventually result in the new rating of the Immediate Outcomes.

### II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. Regarding technical compliance, the MER rated *Panamá* as follows:

**Table 1. Ratings of technical compliance, December, 2017**

<b>R 1</b>	<b>R 2</b>	<b>R 3</b>	<b>R 4</b>	<b>R 5</b>	<b>R 6</b>	<b>R 7</b>	<b>R 8</b>	<b>R 9</b>	<b>R 10</b>
LC	LC	PC	C	LC	LC	LC	LC	C	LC
<b>R 11</b>	<b>R 12</b>	<b>R 13</b>	<b>R 14</b>	<b>R 15</b>	<b>R 16</b>	<b>R 17</b>	<b>R 18</b>	<b>R 19</b>	<b>R 20</b>
LC	C	C	PC	C	LC	LC	C	PC	PC
<b>R 21</b>	<b>R 22</b>	<b>R 23</b>	<b>R 24</b>	<b>R 25</b>	<b>R 26</b>	<b>R 27</b>	<b>R 28</b>	<b>R 29</b>	<b>R 30</b>
C	LC	LC	NC	PC	LC	LC	LC	C	PC
<b>R 31</b>	<b>R 32</b>	<b>R 33</b>	<b>R 34</b>	<b>R 35</b>	<b>R 36</b>	<b>R 37</b>	<b>R 38</b>	<b>R 39</b>	<b>R 40</b>
LC	LC	PC	C	LC	C	LC	LC	LC	LC

*Note:* There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC) and non-compliant (NC).

*Source:* Mutual Evaluation Report of Panamá [[www.gafilat.org](http://www.gafilat.org)].

3. In view of these outcomes, GAFILAT placed Panamá under enhanced follow-up<sup>1</sup>. The Executive Secretariat of the GAFILAT evaluated Panamá's request for a new rating of technical compliance and drafted this report.

4. Section III of this report summarizes the progress made by *Panamá* to improve technical compliance. Section IV features the conclusion and a table that shows which Recommendations were newly rated.

<sup>1</sup> Regular follow-up is the monitoring mechanism predetermined for all countries. Intensified follow-up is based on the FAFT's traditional policy that addresses those members with significant deficiencies (of technical compliance or effectiveness) in the AML/CTF systems, and it implies a more intensive follow-up process.

### III. OVERVIEW OF THE PROGRESS INTENDED TO IMPROVE TECHNICAL COMPLIANCE

5. This section summarizes *Panamá's* progress to improve its technical compliance by: (a) addressing the deficiencies of technical compliance identified in the MER, and (b) implementing new requirements where the FATF Recommendations have changed since the onsite visit made to Panama.

#### 3.1. Progress in addressing the technical compliance deficiencies identified in the MER

6. Panamá made progress in addressing its technical compliance deficiencies identified in the MER in relation to the following Recommendations:

- Recommendations 3, 14, 19, 20 and 33, which were originally rated as PC.
- Recommendations 1, 16, 17, 27, 32 and 35, which were originally rated as LC.

7. As a result of this progress, Panamá received a new rating in Recommendations 14, 19, 32 and 33. The GAFILAT acknowledges the progress made by Panamá in the improvement of the technical compliance of Recommendations 1, 3, 16, 17, 20, 27 and 35; however, the progress made is not considered sufficient to raise the rating on these recommendations.

#### *Recommendation 1 (originally rated as LC – without rerating)*

8. The Mutual Evaluation Report (MER) of Panamá pointed out deficiencies regarding Recommendation 1, as indicated as follows: The National Risk Assessment (NRA) does not consider the receipt of funds or other assets associated with tax offences committed abroad, which is one of its major risks in ML matters; the NRA does not sufficiently delve into the analysis of the different business sectors identified as vulnerable (lawyers, customs-free zones, real estate firms, etc.); the national policies and businesses implemented by the competent authorities are not consistent with all the risks identified in the country and significant vulnerabilities have not been addressed by the National Strategy; more detailed sectoral risk guides should be issued to enable Reporting Subjects to apply appropriate mitigating measures; regardless of the competences of the supervisory bodies, there are business areas that require a greater presence of supervisors to ensure the fulfilment of the regulations, especially in the trust sector and in the most vulnerable sectors of the Designated Non-Financial Businesses and Professions (DNFBPs) (real estate firms, customs-free zones and lawyers); there is no obligation to document the risk assessment performed as required by paragraph 1.10.a) of this Criterion 19. Likewise, it should be considered that the same Article establishes the obligation to keep the aforementioned information updated only for the reporting subjects of the financial sector, therefore, for the non-financial sector, the obligation to keep the customer risk assessments established in paragraph 1.10. c) of this Criterion up to date is not fulfilled; and the regulations do not restrict the application of simplified measures to cases of proven low risk.

9. In this regard, the country reported on the current status of Bill No. 591, which adds Chapter XII "Crimes against the National Treasury" to Title VII of the Criminal Code, which covers tax offences. In this sense, it was reported that the bill is currently in the first debate of the Government and Justice Commission of the National Assembly.<sup>2</sup>

10. Panama also provided information on the update of the Sectoral Risk Assessment of Non-Financial Reporting Institutions (NFRI), which was approved in October 2018. The document

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<sup>2</sup> In this regard, it is reported that the authorities of Panama informed that the bill was approved in first debate in the Government and Justice Commission of the National Assembly on October 30, 2018.

provides an analysis of the 11 sectors regulated and supervised by the Supervisor and Regulator of Non-Financial Reporting Institutions (Intendencia de Supervisión y Regulación de Sujetos Obligados No Financieros), and will serve as input for the update of the National Risk Assessment (NRA).

11. However, given that the NRA continues to omit the consideration of the elements indicated by the assessment team in the MER, particularly as regards considering the receipt of funds or other assets associated with tax offences committed abroad; and delving into the analysis of the different business sectors identified as vulnerable (lawyers, customs-free zones, real estate firms, etc.), the deficiencies stated by the assessment team remain unaddressed. Thus, it is proposed that the rating be maintained as **Largely Compliant**.

*Recommendation 3 (originally rated as PC – without rerating)*

12. In Panama's MER, it was pointed out as a deficiency that tax offences are not criminalized as predicate offences for money laundering. According to the analysis of the assessment team, this omission has an impact on one of the main risks identified, which is the placement of assets derived from illicit activities committed abroad.

13. As far as this deficiency is concerned, the country reported on the current status of Bill No. 591, which adds Chapter XII "Crimes against the National Treasury" to Title VII of the Criminal Code, which covers tax offences. On this matter, it was reported that the bill is currently in the first debate of the Government and Justice Commission of the National Assembly.<sup>3</sup>

14. Nevertheless, considering that tax offences have not yet been criminalized as predicate offences for LA, and that the Assessment Methodology (paragraph 28), as well as the GAFILAT Mutual Evaluation Procedures (paragraph 17) provide that only regulations in force should be taken into account, the deficiency noted by the assessment team remains unaddressed.

15. Based on the information provided by the country, it is concluded that the deficiency identified in the MER in terms of Criterion 3.2 remains unaddressed. Thus, it is proposed that the rating be maintained as **Partially Compliant**.

*Recommendation 14 (originally rated as PC – rerated as Compliant)*

16. In Panama's MER, it was pointed out as a deficiency that the legislation does not stipulate that agents must apply AML/CTF measures or that the compliance programme must be extended to them, and that remittance companies or currency exchange houses are not subject to the requirement to be registered or licensed.

17. With regard to Criterion 14.1, SB Agreement No. 1-2018 of August 21, 2018 established a registration process for money remittance companies before the Superintendency of Banks in the areas of prevention of money laundering (LA), terrorism financing (TF) and financing of the proliferation of weapons of mass destruction (FPWMD).

18. As relevant aspects of the regulation, related to this Criterion, the following items are mentioned:

- (i) Its provisions are applicable to any natural or legal person that provides money transfer services, whether through systems of transfer or transmission of funds, clearing of funds or by any other means, inside and outside the country, whether or not its main activity (Art. 1).

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<sup>3</sup> In this regard, it is reported that the authorities of Panama disclosed that the bill was approved in first debate in the Government and Justice Commission of the National Assembly on October 30, 2018.

(ii) Money remittance companies must be registered with the Superintendency of Banks of Panama (SBP) as a financial reporting institution (Art. 2).

(iii) SBP may request the Ministry of Commerce and Industries to cancel the authorization to engage in the business activity of money remittance if the company has not completed the respective registration process as a regulated entity (Art. 2).

(iv) In order to register, companies must submit relevant documentation, including the articles of incorporation, information on the beneficial ownership, domicile, products and services offered, bank accounts, account statements, source and origin of the resources incorporated in the working capital of the company, electronic media or computer applications used for the marketing of its services, compliance officer, manual and all policies and procedures in force regarding prevention of ML/TF/FP, among other relevant aspects (Art. 4).

(v) The information submitted to obtain the registration shall be updated once a year (Art. 7).

(vi) Various grounds for cancellation of the registration are established (Art. 8).

(vii) It provides that, in the event of knowledge or reasonable grounds indicating that a natural or legal person is carrying on the business of a money remittance company without the corresponding registration, it may examine its books, accounts and other documents in order to determine such fact; and that any unjustified refusal to present books, accounts and documents may be considered the exercise of remittance activity without registration as well as the possible violation of ML regulations. If necessary, the Superintendency may adopt such measures as it deems appropriate (Sec. 10).

19. Based on the above, it is considered that the deficiency noted in the MER with respect to this Criterion was fully addressed.

20. As for Criterion 14.5, Art. 5 of SB Agreement No. 1-2018, of August 21, 2018, it established that every money remittance company must designate an executive level person as responsible for compliance. Art. 3.3 defines the compliance officer, who is the executive in charge of the functions of prevention of money laundering (ML), terrorism financing (TF) and financing of proliferation (FP). This executive is responsible for overseeing the implementation of a compliance program, which refers to the set of policies and procedures that guide the company's employees in terms of compliance with legal provisions and internal policies in force on prevention.

21. Regarding agents, Panama reported on the issuance of Agreement 04-2018 of the SBP on preventive measures for remittance companies on October 23, 2018. Among the highlights of the standard, the following are mentioned:

(i) Article 7 establishes contractual obligations entered into with international agents. Money remitters, which have contractual relationships with foreign agents, should ensure that they comply with the due diligence obligations contained therein.

(ii) Article 8 establishes due diligence measures for subagents and/or related agents, stating that money remitters shall ensure that their contracted subagents or related agents perform the due diligence measures set out in the Agreement. In addition, money remitters must maintain a list of all their subagents and/or related agents, which must include the geographic location, the evaluation of the agent's compliance with due diligence measures, the assigned risk level and the identification data of the subagent and/or related agent. The

list of subagents and/or related agents, together with the information described above, must be forwarded to the SBP upon request.

(iii) Article 13 requires the evaluation of sub agents or related agents, indicating that money remitters shall have an evaluation of their related agents or subagents and shall apply a risk-based assessment model to determine how transactions with this subagent or related agent increase or mitigate the ML/TF/FP prevention risk. In addition, it is established that the money remittance company must have a due diligence file of the subagent or related agent and of the international agents with whom it carries out transactions.

(iv) Article 22 establishes that money remittance companies shall annually train their subagents or related agents in ML/TF/FP.

22. Based on the above, it is considered that the deficiency noted in the MER with respect to this Criterion was fully addressed.

23. According to the analysis of the information presented by Panama, it is concluded that the deficiencies related to Criteria 14.1 and 14.5 were addressed in their entirety. Thus, it is proposed that the rating be raised to **Compliant**.

***Recommendation 16 (originally rated as LC – without rerating)***

24. In Panama's MER, it was noted as a deficiency that there is no clarity on the obligation of beneficiary banks to take follow-up actions when detecting transfers without complete information, and that the remittance sector had not yet been adequately regulated by its new supervisor, the SBP.

25. With respect to the first deficiency, relating to Criterion 16.15, there is no information to conclude that the regulations require beneficiary banks to take follow-up action in detecting transfers without complete information. Thus, the weakness identified in the MER remains unaddressed. With regard to the second deficiency, related to Criterion 16.17, Panama reported on the issuance by the SBP of the Prevention Agreement for other regulated financial institutions No. 001-2018 of August 21, 2018, which established a registration process for money remittance companies in the Superintendency of Banks, in matters of prevention of ML, TF and FP. Likewise, in the framework of the information provided with respect to Recommendation 14, Panama informed that the SBP issued Agreement 04-2018, by means of which guidelines are established for the prevention of improper use of services provided by money remittance companies to other regulated entities of October 23, 2018, and which provides for AML/CTF measures to be taken by the sector, addressing the deficiency noted in the MER (see rerating analysis of Rec. 14).

26. Based on the information provided by the country, it is concluded that the shortcoming identified in the MER as regards Criterion 16.15 remains unaddressed. Thus, it is proposed that the rating be maintained as **Largely Compliant**.

***Recommendation 17 (originally rated as LC – without rerating)***

27. In Panama's MER, it was indicated as a deficiency that, although the standards encompass "third parties" in the country, they do not indicate that the information can be obtained immediately and without delay.

28. In that regard, Panama reported on article 125 of Law 21 of 2017, which refers to the reform of article 35 of Law 23 of 2015 and establishes measures relating to the application of due diligence measures by third parties. However, this standard does not contain provisions for obtaining information immediately and without delay. At the same time, Panama reported on the issuance of the Resolution of the Supervisor and Regulator of Non-Financial Reporting Institutions (Intendencia de Supervisión y Regulación de Sujetos Obligados No Financieros) No. JD-REG-

001- July 17, 2017, where guidelines are foreseen with respect to information and documentation requirements as part of the supervisions of the Intendency. In particular, Article 3 of the resolution provides that the supervised subjects must provide the information and documentation required during the supervision process on the date and in the format requested by the Intendency.

29. However, the above-mentioned Resolution is applicable to the context of a supervision of the intendency to the subjects under its scope, but does not address the issue of reliance on third parties, and therefore, does not contemplate the deficiency pointed out by the MER.

30. Based on the information provided by the country, it is concluded that the deficiency identified in the MER still remains unaddressed. Thus, it is proposed that the rating be maintained as **Largely Compliant**.

*Recommendation 19 (originally rated as PC – rerated to Largely Compliant)*

31. The Mutual Evaluation Report of Panamá pointed out as a deficiency that there is no mechanism through which the reporting subjects are informed about the countries that should be considered high risk, merely stating that they will be those identified as such by the FATF. In addition, the MER indicates that the provisions are limited to issuing an extended due diligence, but do not stipulate the implementation of countermeasures in relation to those countries with strategic deficiencies, as identified by the FATF.

32. With regard to Criterion 19.1, it should be noted that it calls for financial institutions to be required to apply increased due diligence proportionate to the risks, business relationships and transactions with natural and legal persons (including financial institutions) from countries for which this is called for by the FATF.

33. In this regard, Article 41.2 of Law 23 of 2015 (AML/CFT Law) establishes the duty of reporting subjects to apply extended or enhanced due diligence to business relationships or transactions with natural and legal persons and financial institutions from countries which, according to the FATF, do not apply sufficient measures for ML, TF and FP offences.

34. Meanwhile, Executive Decree 363 of 2015, which regulates the AML/CFT Law, provides in Article 12 that reporting subjects shall apply, in addition to basic due diligence measures, extended or enhanced measures in the areas of business, their activities, products, services, distribution or marketing channels, business relationships and operations that carry a higher risk of ML, TF or FP. In this regard, it states that business relationships and operations with clients in countries, territories or jurisdictions at risk shall be included in the high-risk category; as well as those that involve the transfer of funds from or to such countries (risk jurisdictions), territories or jurisdictions, including in any case those countries for which the FATF requires the application of extended or enhanced due diligence (paragraph 4).

35. Finally, these aspects are reflected in the corresponding sectorial regulations, such as Article 7 of Agreement 10 of 2015 of the SBP (banking and trust sector), Article 6 of the Prevention Agreement for other financial reporting entities No. 001-2018 of August 21, 2018 (remittances sector), Article 18 of the Prevention Agreement for other financial reporting entities No. 004-2018 of October 23, 2018 (remittances sector), Article 16 of Agreement 6-2015 of the Superintendency of Securities Market (SMV, securities market sector), Agreement 03-2015, in its Article 36 (insurance sector), Guideline No. I-REG-002-18 of October 4, 2018 (non-financial and professional reporting entities), and Resolution JD/No. 11/2015 of the Panamanian Autonomous Cooperative Institute (IPACOOOP, cooperative sector).

36. According to the previous analysis, Panamanian regulations address the requirements of the standard in criterion 19.1.

37. With respect to Criterion 19.2, Panama reported on the issuance of Resolution No. 01-018 of March 27, 2018 of the National Commission against Money Laundering (CNBC), which resolves to publish lists of persons and countries considered high-risk with regard to ML/TF/FP. Also reported was the issuance of CNBC Resolution No. 02-018 of March 27, 2018, regarding the list of politically exposed persons of the Bolivarian Republic of Venezuela, in order to implement a special revision of them, regardless of their amount, and apply extended due diligence on the part of reporting subjects.

An analysis of the information provided by Panama shows that measures have been adopted to ensure that reporting subjects apply extended due diligence on persons or transactions linked to non-cooperative or high-risk countries. However, regardless of the due diligence measures that can be implemented by the reporting subjects, there is no information to conclude that the country can apply countermeasures proportional to the risks when the FATF has made an call in this regard; or irrespective of that circumstance.

38. With regard to Criterion 19.3, based on the training given to reporting subjects that were informed by the country, as well as on the aforementioned legal provisions (especially Guideline No. I-REG-002-18 of October 4, 2018, addressed to non-financial and professional reporting entities that carry out activities subject to supervision), it is noted that the country has measures to ensure that reporting subjects know that there is concern regarding weaknesses in AML/CFT systems in other countries.

39. According to the analysis of the information described above, it is considered that the deficiency related to Criterion 19.1 is completely addressed. With respect to the deficiency related to Criterion 19.2, it should be noted that there is still no information that would allow it to be considered fully addressed, although it does not constitute a major deficiency. With regards to Criterion 19.3, it is considered that the respective deficiency is addressed. Thus, it is proposed that the rating be elevated to **Largely Compliant**.

***Recommendation 20 (originally rated as PC – without rerating)***

40. The MER of Panamá pointed out as a deficiency that the deadline for sending the STR within fifteen days of the detection of the fact does not conform to the promptness criterion defined in the Standard. It was also stated that no explicit reference is made to the obligation to report attempts to carry out an operation.

41. With regard to the status of addressing deficiencies, the country reported on the current status of Bill No. 591, which aims to amend Article 54 of Law 23, relating to suspicious transaction reporting.<sup>4</sup>

42. However, considering that the amendment bill has not yet been approved, and that the Assessment Methodology (paragraph 28), as well as the GAFILAT Mutual Evaluation Procedures (paragraph 17) provide that only regulations in force should be taken into account, the deficiency noted by the assessment team remains unaddressed.

43. Based on the information provided by the country, it is concluded that the deficiencies noted in the MER with regard to criteria 20.1 and 20.2 remain unaddressed. Thus, it is proposed that the rating be maintained as **Partially Compliant**.

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<sup>4</sup> In this regard, it is reported that the authorities of Panama communicated that the bill was approved in the first debate in the Government and Justice Commission of the National Assembly on October 30, 2018.

*Recommendation 27 (originally rated as LC – without rerating)*

44. The MER of Panamá pointed out, with regard to the power of the Panama Superintendency of Insurance and Reinsurance (SSRP), the SMV and the IPACOOOP, that it is not clear that information relevant to monitoring compliance with AML/CFT requirements can be required.

45. In this context, Panama reported on the powers of the respective supervisors. With regard to the SSRP, through article 232 of Law 12 of 2012, it reported that the SSRP has wide powers to supervise, make duplicates, examine accounting books, shares books, minutes, registers and other documents it deems necessary, as well as details of investments, correct creation of reserves, payment of fees to insurance brokers and commissions for marketing channels. Panama also reported on article 3 of SSRP Agreement No. 03-2015, which establishes that the SSRP shall exercise its supervisory role with a risk-based approach, thereby establishing the methodology for reporting subjects in the insurance sector subject to its supervision to design and implement processes to identify, evaluate and understand their ML/TF/FPWMD risks. The regulation adds that the Superintendency shall have access to financial, commercial, operational and administrative information related to ML, TF and FP associated with contractors, insured, insurance beneficiaries, products and services of reporting subjects in the insurance sector.

46. However, it should be noted that the same Article 232 of Law 12 of 2012 sets forth, in addition to the information provided by Panama, the following: “Nevertheless, in order to protect the right to privacy of policyholders and contractors, by virtue of the confidentiality of the information provided when applying for policies, the Superintendency’s revision may not include information of any kind on confidential information contained in the individual files of the contractors maintained by the persons supervised. For the purposes of this article, the Superintendency may request the services of the auditors from the Office of the Comptroller General of the Republic.” Thus, it is not clear that the issues relating to the powers of the SSRP are addressed.

47. With respect to the SMV, Panama referred to the following standards of the Consolidated Text of Decree-Law 1 of 1999: (i) Article 3, which establishes that the Superintendency shall have as its general objective the regulation, supervision and auditing of securities market activities carried out in the Republic of Panama. (ii) Article 14, on the superintendent’s powers, which establishes the authority to examine, supervise and audit the activities. (iii) Article 329, regarding the subjects under supervision. (iv) Article 330, on diligences and inquiries, which provides for the power of the SMV to obtain the information and documents it deems necessary on the matters covered by the Securities Market Law from the subjects under its supervision. It also establishes that, in order to obtain such information or to confirm its veracity, the Superintendency may carry out any inspections it deems necessary, and that persons are obliged to make available to the Superintendency the books, records and documents it considers necessary, regardless of their medium, including computer programs and magnetic, optical or any other kind of files. The regulation establishes that the Superintendency is expressly empowered to carry out revisions of books, records and documents, to require the exhibition of accounting books or records and documents that justify each entry or account, to check portfolio investments and to review the minutes of corporate entities. The Superintendency may compel any of the persons indicated to submit the documents or information or to make the affidavits it deems necessary and relevant to such investigations.

48. With regard to the IPACOOOP, Panama reported on Article 119 of Law 17 of 1997, which establishes that, for the purposes of inspection and oversight, the IPACOOOP is empowered to conduct visits to cooperatives and that they shall be obliged to provide any and all data and elements that are needed or deemed relevant and shall show documentation to designated inspectors as well as allow them access to their offices, premises and facilities.

49. From the analysis of the information provided by the country, it is concluded that there are still doubts as to the scope of the powers of the SSRP. Thus, it is proposed that the rating be maintained as **Largely Compliant**.

*Recommendation 32 (originally rated as LC – rerated to Compliant)*

50. The Mutual Evaluation Report (MER) of Panamá identified the following deficiencies: There is no provision or regulation expressly granting powers to request or obtain further information from persons engaged in the transfer of cash or negotiable instruments; there are no collaboration agreements, guidelines, decrees or other types of documents establishing cooperation between national authorities. Likewise, there is no information regarding similar teams deployed at land borders or sea posts; the scope of the measures on declarations does not cover all means of transport of foreign currency indicated by the standard, including mail and cargo transport; the legislation does not empower the authorities to obtain further information in cases where this is required.

51. Regarding the deficiency indicated in Criterion 32.1, Panama provided information on the progress made, which covers not only the issuance of regulations but also the implementation of concrete measures. With respect to the regulatory framework of the declaration regime, it should be highlighted that section 6 of the Executive Decree 472 of August 18, 2017 (issued after the adoption of Panama's MER), covers all persons entering or departing from the customs territory. This includes cargo transport and other means.

52. In particular, the above-mentioned section sets forth: *“The declaration form of travelers will be given to persons entering or departing from the customs territory through border posts, airports and marina ports, at no cost. It will be requested that the form be completed and signed in accordance to the identification of the passport or travel document. In addition, it should be provided, in a traveler's declaration secondary interview, all the information regarding the origin and final destiny which explain on a reasonable basis the amount of the currency in cash, securities and negotiable instruments”*.

53. Therefore, it is worth noting that measures informed by Panama confirm the scope and application of the declaration measures, which cover all means of cash or bearer negotiable instruments transportation. Also, without prejudice to the control made to travelers entering or departing from the country, Panama provided complementary information relative to mail and cargo.<sup>5</sup>

54. In this regard, all money or value convertible into money, or precious metals that enter the country and are transported by cargo or mail, must be declared before the customs, and the declaration will be recorded in the respective computer system and in the forms established by the National Customs Office<sup>6</sup> (it should be added that Panama provided copies of the forms). In

<sup>5</sup> It should be noted that Panama provided information on cases which demonstrate the control exercised in cargo, as referred below:

(i) Date: May 2016: According to the customs report, Boxes arrived the country by means of couriers, and the Air Waybill described that they contained pieces of cloth inside. However, when they were collected by their owner, a citizen of Mexican origin, the inspectors of the Directorate of Prevention and Customs Control (DPFA) decided to go through the scanner where anomalies are detected. Thus, the clothes were removed, and the boxes were put into the scanner, discovering rectangular figures hidden in the walls of the boxes. They found in a double bottom, bundles of 100 US dollars bills, which had not been declared, amounting in total USD 140,000.00.

(ii) Date: 01/19/17. Case detected in the Courier mode on gold and silver coins of Canadian origin with an approximate value of USD 300,000.00. This was the result of previous analysis carried out in the area of maritime declarations.

US. 300.000.00 dólares americanos, esto fue producto de análisis previos que se realizan en las manifestaciones área o marítimas.

(iii) Date: November 2018. Case of precious metal (gold pieces) in the modality of merchandise introduction to the Colon Free Zone, which were declared with a value lower than the threshold. The passenger has entered several times with this modality, reason why it is under investigation. As a result of the investigations it has been corroborated that the real value of the precious metals exceeded US \$ 50,000.00.

<sup>6</sup> Among the mentioned forms we can find the followings: Forms Declaration of Value of Imported Goods, Affidavit of Traveler, Declaration of Customs for import, re-export and export, DMCE (Commercial Movement Document of the Colon Free Zone), DTI (Internal Transit Declaration), DUT (Single Declaration for International Terrestrial Customs Transit).

addition, in the case of money, securities or documents negotiable by more than US\$ 10,000.00, it was indicated that currency or securities transport vehicles must be used and this is verified by Customs.

55. With regard to the scope of measures on mail, information was provided on an agreement with between the National Customs Authority and National Post and Telegraphs of Panama (COTEL), in which Customs exercises control and oversight in the country's various mail agencies. In addition, a cooperation agreement was signed between the Supervisor and Regulator of Non-Financial Reporting Institutions (Intendencia de Supervisión y Regulación de Sujetos Obligados No Financieros) and the National Customs Authority, which has allowed the exchange of information on travellers who go to the sectors supervised by the Supervisor. Thus, it is considered that the deficiency pointed out by the MER was clarified.

56. Panama also added that the ANA carries out control and surveillance over all the emails services throughout the country, which consists of the assignment of Customs Inspector officials to carry out inspections. On the other hand, it was specified that, because Panama is part of the Universal Postal Convention, it is prohibited to introduce money or securities in the country by using mails.

57. Therefore, it is considered that the deficiency indicated in the IEM in Criterion 32.1 was sufficiently covered.

58. With respect to the deficiency in Criterion 32.4, particularly in relation to the powers to request or obtain further information from persons who move cash or negotiable instruments, Executive Decree 472 of August 18 2017, chapter II, article 6, established that persons entering or leaving customs territory through border posts, ports, airports and authorized marinas must submit all information explaining the origin of the cash, securities and other negotiable documents to the National Customs Authority.

59. It should be specified, in addition to the foregoing, that the power to inquire about the "intended use" is included in the generic powers provided for in the regulations, which are applicable to any circumstance of absence of declaration or false declaration detected. In particular, it is noted that section 6 in fine of the aforementioned Decree contemplates the power of the customs authority to require the declaration and that, in a secondary interview of traveller's declaration, all the information of the origin and final destiny which explain on a reasonable basis the amount of money in cash, securities and other negotiable documents. In this regard, when referring to "final destiny", the Decree covers the final destination that was purported to be given to the respective money or negotiable instruments.

60. In addition, article 7 of the Decree stipulates that travellers, at the time of their departure from the customs territory, must proceed to the offices of the National Customs Authority at ports of departure to state through interview or documentation the destination of the cash, securities or negotiable documents in accordance with the terms of the traveller's affidavit for entering the national territory.

61. On the other hand, it should be added that section 12 of the aforementioned Executive Decree provides that *"the sworn declaration of a traveller entering or leaving the country, as well as the omission of the declaration or the declaration of amounts that do not correspond with the money, securities or negotiable documents that the traveller is carrying, which exceed the amount of Ten Thousand Balboas (B / .10,000.00), will imply the respective customs criminal sanctions or those that the criminal legislation of the Republic of Panama establish"*.

62. Without prejudice to the above, the National Customs Authority also reported that other systems are used to obtain information such as: The Advanced Passenger Information System

(APIS), the biometric identification system for information alerts on individuals linked to criminal records and criminal suspects, the airport communications project (AIRCOP) under the Agreement with the UNODC, which consists of a real-time operational information exchange flow integrating two technological platforms, Interpol's I-24/7 and the World Customs Organization's CENComm. According to the information provided by Panama, the deficiency is considered to have been addressed.

63. With regard to the deficiency of Criterion 32.7 on cooperation between national authorities, Executive Decree 472 of August 18 2017 created the "Inter-institutional Committee to Support the National Customs Authority (CIAANA)", whose mission is to serve as a liaison for security, coordination and exchange of information with the National Customs Authority, in order to improve the security controls of the traveller's affidavit regarding the handling of cash for amounts in excess of ten thousand balboas (B/. 10,000.00), negotiable documents or other securities convertible into cash that travellers bring with them, when entering or leaving the customs territory through borders, ports, airports and authorized marinas, in order to prevent smuggling, money trafficking, money laundering, financing of terrorism and financing of the proliferation of weapons of mass destruction. The CIAANA is composed of the following Public Institutions: National Customs Authority (presiding); Executive Secretariat of the National Security Council; Public Prosecutor's Office; Financial Analysis Unit; National Police; National Immigration Service; General Revenue Department; National Air Naval Service; National Border Service; Civil Aviation Authority; National Maritime Authority; other Executive Branch institutions as required.

64. Likewise, Articles 10 and 11 of the respective Decree set forth cooperation mechanisms between the National Customs Authority and the Financial Analysis Unit (UAF), and between the National Customs Authority and the National Immigration Service, respectively. In addition, information was provided on the signing of an inter-institutional cooperation agreement between the National Customs Authority and the Supervisor and Regulator of Non-Financial Reporting Institutions (Intendencia de Supervisión y Regulación de Sujetos Obligados No Financieros), dated April 21, 2017. According to the information provided by Panama, the deficiency is considered to have been addressed.

65. Based on the information provided by Panama, it is concluded that the deficiencies noted in the MER were addressed. Thus, it is proposed that the rating be elevated to **Compliant**.

***Recommendation 33 (originally rated as PC – rerated to Compliant)***

66. The MER of Panamá pointed out as a deficiency that the country did not produce complete statistics on the AML/CFT prevention system, although the UAF had recently been designated as the agency responsible for producing such statistics in the future.

67. With regard to the identified deficiency, the country provided information that proves that it maintains statistics in terms of: (a) Suspicious transaction reports received and dissemination of financial intelligence; (b) investigations, prosecuted cases and convictions for money laundering; (c) amounts withheld in the context of cross-border movements of funds, amounts seized for money laundering by the Public Security Ministry and amounts confiscated by the judiciary; and (d) exchange of information between the UAF and foreign counterparts, international judicial assistance, and passive and active extraditions.

68. It should be noted that this statistical information is collected and maintained by the UAF and is updated periodically. The statistics are also uploaded to the UAF's Secure Statistics Site for consultation and review by the various competent authorities.

69. Thus, it is considered that the deficiency identified in the MER is completely addressed.

70. Based on the statistical information provided by the country, it is concluded that the deficiency pointed out in the MER was fully addressed. Thus, it is proposed that the rating be elevated to **Compliant**.

*Recommendation 35 (originally rated as LC – without rerating)*

71. The MER of Panamá pointed out that the applicable sanctions are not considered sufficiently dissuasive for the larger institutions within Panama. In this regard, the country reported on the adoption of Resolution CCF No. 001-2018, which contains a guide to standardize the minimum criteria for imposing sanctions for non-compliance with Law 23 of 2015 and its regulations, corresponding to the SBP, SMV, SSRP and IPACOOOP.

72. Likewise, with regard to the Supervisor and Regulator of Non-Financial Reporting Institutions (Intendencia de Supervisión y Regulación de Sujetos Obligados No Financieros), information was provided on the issuance of Resolution No. JD-REG-001-18 of May 2 2018, which establishes the procedure for imposing sanctions in reference to the prevention of money laundering, the financing of terrorism and the financing of the proliferation of weapons of mass destruction on non-financial reporting entities and professionals carrying out activities subject to supervision, which includes the possibility of applying an abbreviated procedure, as well as a procedure for imposing immediately applicable sanctions and progressive fines.

73. Notwithstanding this, no information was provided on the modification of the limit established in Article 60 of Law 23 of 2015, which determines that non-compliances shall be sanctioned with fines of up to one million balboas (B/.1,000,000.00), which does not seem sufficiently dissuasive for the largest financial institutions, such as international banks. Thus, the deficiency noted in the MER has not been addressed.

74. Based on the analysis of the information provided by the country, it is concluded that the deficiency noted in the MER remains unaddressed. Thus, it is proposed that the rating be maintained as **Largely Compliant**.

**3.2. Brief review on the progress of other Recommendations rated NC/PC:**

75. Panama also informed progress on Recommendations 24 and 25. Mainly, these advances are related to the application of sanctions by the SSRP in reference to information on beneficial ownership; the issuance of Resolution No. DG-SSRP-002 of July 13, 2018, by which the ownership of shares of the entities regulated by the SSRP is regulated; the presentation of a bill aimed at amending section 29 of Law 23 of 2015 on records and their safeguards; and on the supervision of law firms by the Intendancy.

**3.3. Progress on Recommendations which have changed since Panama's MER\_**

76. Since the adoption of Panama's MER, the FATF has amended Recommendations 7, 18 and 21. This section considers Panama's compliance with the new requirements.

*Recommendation 7 (originally rated as LC – without rerating)*

77. In June 2017, the Interpretive Note to R.7 was amended to reflect the changes made to the proliferation financing-related United Nations Security Council Resolutions (UNSCRs) since the FATF standards were issued in February 2012, in particular, the adoption of new UNSCRs.

78. In this regard, Panama continues to implement targeted financial sanctions related to UNSCR 1718 and its successors, throughout Section 49 of Law 23 of 2015, which requires that reporting entities apply a preventive freezing of funds, property or assets upon receiving the lists of

UNSC according to S/RES/1718, S/RES/1737 and all its successors, or other Resolutions that be issued in this subject. Thus, it is considered that the changes in the requirements of Recommendation 7 are covered, so the rating should be maintained as **Largely Compliant**.

***Recommendation 18 (originally rated as C – without rerating)***

79. According to the recent amendment of Criterion 18.2(b) of the Methodology, financial groups should be required to implement group-wide programmes against ML/TF, which should be applicable, and appropriate to, all branches and majority-owned subsidiaries of the financial group. These should include the measures set out in criterion 18.1 and also the provision, at group-level compliance, audit, and/or AML/CFT functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes. This should include information and analysis of transactions or activities which appear unusual (if such analysis was done)<sup>7</sup>. Similarly branches and subsidiaries should receive such information from these group-level functions when relevant and appropriate to risk management.

80. Regarding the banking sector, section 38 of Agreement 10-2017, as amended by the Agreement 01-2017, establishes that banking groups under the consolidated supervision of the SBP must have policies and procedures to exchange information within the group for AML/CFP purposes, taking in consideration ML/TF risks, which should be consistent with the complexity of transactions and services, as well as the size of the financial group.

81. With respect to the scope of the term “exchange of information” set in the regulation (SBP Agreement 10-2015), Panama provided information that corroborated that it covers the information on unusual transactions. Thus, the new requirements of Criterion 18.2(b) are covered.<sup>8</sup>

82. In reference to the securities sector, a similar situation arises, this time with respect to Art. 35-A of Agreement 6/2015 SMV (added by the Agreement 2/2017 SMV). The same occurs in the insurance sector with the provisions of Article 3 of Agreement No. 7 of 2016 of the SSRP, which sets forth measures relating to the “*exchange of information*” within the group.

83. Meanwhile, articles 29 and 56 of Law 23 of 2015 contain provisions regarding the duty to maintain and safeguard information, as well as on confidentiality and tipping off. Therefore, the regulations include the requirements of Criterion 18.2 (c)

84. Based on the foregoing, it is considered that the Recommendation is maintained with rating of **Compliant**.

***Recommendation 21 (originally rated as C –without rerating)***

85. According to the recent amendment of Criterion 21.2 of the Methodology, the tipping off provisions are not intended to inhibit information sharing under Recommendation 18.

86. Article 56 of Law 23 of 2015 contains the provisions on tipping off. In this regard, it establishes that the reporting entities must not make known to the customer or *third parties* that information has been requested or has been provided, including the submission of the suspicious transaction reports, to the UAF. The Article adds that the non-compliance entails the application of the sanctions provided in the Law and its regulations.<sup>9</sup>

<sup>7</sup> This could include an STR, its underlying information, or the fact than an STR has been submitted

<sup>8</sup> It should be noted that Panama reported on the recent approval of SBP Agreement No. 13 of 2018, dated November 27, 2018. This Agreement amends Art. 38 of Agreement 10-2015 and introduces an interpretative complement on the possibility of exchanging information on Unusual operations at the financial group level

<sup>9</sup> Regarding Recommendation 21 it should be also noted that Panama reported on the recent approval of SBP Agreement No. 13 of 2018, dated November 27, 2018. This Agreement amends Art. 38 of Agreement 10-2015 and introduces an interpretative complement on the scope of tipping off provisions.

87. According to the information provided by Panama, the scope of the term “third parties” set in the law covers all the members of the financial group, whether domestic or international. Therefore, it is concluded that the requirements of Criterion 21.2 in fine, which establishes that tipping off provisions should not inhibit information sharing under Recommendation 18, are sufficiently covered. In consequence, Recommendation 21 should be maintained as **Compliant**.

#### IV. CONCLUSION

88. Panama is making progress in addressing the technical compliance deficiencies identified in its MER. In view of *Panama*'s progress since the adoption of its MER, its technical compliance with the FATF Recommendations was rated again as follows:

**Table 2. Technical compliance with new ratings, December 2018**

<b>R 1</b>	<b>R 2</b>	<b>R 3</b>	<b>R 4</b>	<b>R 5</b>	<b>R 6</b>	<b>R 7</b>	<b>R 8</b>	<b>R 9</b>	<b>R 10</b>
LC	LC	PC	C	LC	LC	LC	LC	C	LC
<b>R 11</b>	<b>R 12</b>	<b>R 13</b>	<b>R 14</b>	<b>R 15</b>	<b>R 16</b>	<b>R 17</b>	<b>R 18</b>	<b>R 19</b>	<b>R 20</b>
LC	C	C	C	C	LC	LC	C	LC	PC
<b>R 21</b>	<b>R 22</b>	<b>R 23</b>	<b>R 24</b>	<b>R 25</b>	<b>R 26</b>	<b>R 27</b>	<b>R 28</b>	<b>R 29</b>	<b>R 30</b>
C	LC	LC	NC	PC	LC	LC	LC	C	PC
<b>R 31</b>	<b>R 32</b>	<b>R 33</b>	<b>R 34</b>	<b>R 35</b>	<b>R 36</b>	<b>R 37</b>	<b>R 38</b>	<b>R 39</b>	<b>R 40</b>
LC	C	C	C	LC	C	LC	LC	LC	LC

*Note:* There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC) and non-compliant (NC).

89. *Panama* will continue the enhanced follow-up and will continue to inform *GAFILAT* of progress in strengthening its implementation of AML/CFT measures.