FINANCIAL SECTOR ASSESSMENT PROGRAM

REPUBLIC OF PANAMA

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

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INTERNATIONAL MONETARY FUND
LEGAL DEPARTMENT

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ACRONYMS

AML	Anti-Money Laundering
AFSSR	Assessment of Financial Sector Supervision and Regulation
BCP	Basel Core Principles
BHN	Banco Hipotecario Nacional
Bolsa	Bolsa de Valores de Panamá, S.A.
CFATF	Caribbean Financial Action Task Force
CFT	Countering the Financing of Terrorism
CNV	Comisión Nacional de Valores
CONAPRED	Commission for the Study of Prevention of Drug-Related Crimes
CPSS	Committee on Payment and Settlement Systems
CTR	Currency Transaction Report
DLMV	Decree law of securities markets (Decree law number 1, July 8, 1999)
DNFBP	Designated Nonfinancial Businesses and Professions
EGMONT	EGMONT Group of financial intelligence units
FATF	Financial Action Task Force
FIU	Financial intelligence unit
FSAP	Financial Sector Assessment Program
US-GAAP	United States generally accepted accounting principles
IAS	International accounting standards
IAIS	International Association of Insurance Supervisors
IOSCO	International Organization of Securities Commissions
IPACOOP	Panamanian Autonomous Institute for Cooperatives
LatinClear	Central Latinoamericana de Valores, S.A.
LEG	IMF's Legal Department
MEF	Ministry of Economy and Finance
MFD	IMF's Monetary and Financial Systems Department[1]
MICI	Ministry of Commerce and Industry
MLAT	Mutual Legal Assistance Treaty
MOU	Memoranda of understanding
OFAC	Office of Foreign Assets Control
PTJ	Judicial Technical Police
ROSC	Report on Observance of Standards and Codes
SdB	Superintendency of Banks
SIF	Section of Financial Investigations of the Police (formerly UIF)
SROs	Self regulatory organizations
SSRP	Superintendency of Insurance and Reinsurance
STR	Suspicious transaction report
UAF	Financial Analysis Unit
UN	United Nations
ZLC	Free Zone of Colón

[1] In August 2006, the Monetary and Financial Systems Department (MFD) was renamed the Monetary and Capital Markets Department (MCM).

I. Assessment of Observance of the FATF Recommendations

A. General

This assessment of observance of the Financial Action Task Force (FATF) Recommendations for *anti-money laundering and countering the financing of terrorism* (AML/CFT) has been completed as part of an evaluation of Panama's observance of regulatory standards for the financial sector.[2]

General

Panama is a constitutional republic with a democratically elected president who is both chief of state and head of government. The current government began its four-year period in September 2004. The country has a unicameral legislative assembly, also elected by popular vote, and an autonomous judicial branch. The legal system is based on the civil law tradition, with some features of its commercial legislation being influenced by legal institutions of United States common law (i.e., the regulation of trusts).

With a population of approximately 3 million, Panama has a territory of 78,200 square kilometers in the Central American isthmus, between the Caribbean Sea and the North Pacific Ocean, bordered by Costa Rica and Colombia. Full control and operation of the Panama Canal connecting the Atlantic and Pacific oceans were transferred from the United States to Panama in 1999. The Canal drives much of Panama's economy, along with the Colon Free Trade Zone (ZLC), a booming real estate market and a well developed services sector, including banking and financial services. Although there is a legal parity between the local currency (Balboa) and the U.S. dollar, in practice no local currency circulates and all commercial payments and financial transactions are made in U.S. dollars.

Panama endeavors to provide economic and political leadership in the Central American and Caribbean region and is a member of many international organizations, including the Caribbean Financial Action Task Force (CFATF), which it currently presides.

Banking activities represent the most significant component of the financial services sector. Banking system assets on a nonconsolidated basis were $39.6 billion, and on a consolidated basis (including local and foreign subsidiaries of Panamanian-headquartered banks) were $45.8 billion at end-March 2006. At end–March 2006, there were 73 banks, including 2 state-owned banks, 37 general license private banks, and 34 international license banks. The banking center in Panama has a significant international presence, including banks from the United States, the United Kingdom, Spain, and other Latin American and European countries.

Lawyers and accountants are not required to belong to a professional association in order to practice, and the associations' codes of ethics are not legally enforceable. There are

[2] The assessment was conducted by Messrs. Francisco Figueroa, Ernesto Lopez, Ms. Hellen Chirino-Roosberg, (all Fund staff), and Ms. Nancy Worthington (consultant to the Fund).

ethical rules for lawyers established by law and subject to investigation and sanction by the Supreme Court, although there have been very few sanctions in practice.

General situation of money laundering and financing of terrorism

Information from various criminal investigations shows that the reporting and other preventive requirements in the money laundering law have had a dissuasive effect on money laundering activity in financial institutions. The UAF reported that money laundering has moved towards other parts of the economy in order for launderers to avoid the developed capacity of banks to detect the introduction of illicit capital.

The geographic location of Panama makes it an attractive transit area for drugs and related money laundering. To date, the 10 money laundering cases that have been prosecuted were based on narcotics-related predicate crimes. The cases have resulted from internal efforts in the Public Ministry *(Ministerio Público)* as well as from international cooperation. Other financial crimes cases have resulted mainly from foreign investigations of corruption where funds were later deposited in Panamanian financial institutions.

An area of great concern involves the role that the Free Zone of Colón (ZLC), the second largest free-trade zone in the world, can play as the originating or transshipment point for goods purchased with proceeds of narcotics trafficking, including through the Black Market Peso Exchange. The smuggling of currency, drugs, and prohibited chemical materials, the introduction and transshipment of counterfeit merchandise, and several forms of customs fraud also generate criminal proceeds that expose the system to money laundering.

Officials advised that the Panamanian jungle border with Colombia is occasionally penetrated by the illegal armed groups active along their common border, but did not consider this to pose a terrorist threat to Panama. There have been no known cases of financing of terrorism.

Overview of the Financial Sector and DNFBP

Panama's major financial activity is banking. The most significant Panamanian local banks are Primer Banco del Istmo, Banco General, Banco Continental, and Global Bank. The largest foreign banks are: HSBC Bank, Banco Bilbao Viscaya Argentaria BBVA, Banco Atlantico, BNP Paribas, Dresdner Bank A.G., and Banco Latinoamericano de Exportaciones.

Box 4.1 lists the types of financial institutions and designated nonfinancial business and professions (DNFBPs), and provides a brief description of key activities. Not all of these entities are subject to the preventive and reporting obligations of Law 42-2000.

Box 4.1 Regulation of AML/CFT by Activity

Type of Financial Institution	Licensees	Activities included in FATF recommendations	Regulator/ Supervisor	Subject to AML/CFT Law[3]
Banks	73 total By license type: 37 General 34 International 2 State owned	Deposit-taking; lending; funds transfers; payment services; guarantees; securities; managing of currency and/or securities for third parties; currency exchange	SdB	Yes
Savings and Loans Associations	4	Deposit-taking and lending, including mortgage lending	BHN	NO
Financial Cooperatives	276	Deposit taking cooperatives (i) savings and credit cooperatives, and (ii) multiple services cooperatives	IPACOOP	Yes
Brokerage Houses	30	Deposit taking; funds transfers; securities; investments management; assets administration	CNV	Yes
Investment Societies	11	Participation in securities, and provider of related financial services; loan collections, investments	CNV	Yes
Finance Companies	137	Consumer lending (not deposit-taking)	MICI	Yes
Leasing Companies	105	Asset-backed lending	MICI	NO
Remittances and Exchange Houses	7	Money transfer services	MICI	Yes
Insurers, Reinsurers	27	Guarantees and commitments; subscriptions and placement of life and other insurance related-investments	SSRP	Only CTR
Insurance Brokers	400	Subscriptions and placement of life and other insurance related-investments	SSRP	NO
Insurance Agents	1,550	Subscriptions and placement of life and other insurance related-investments	SSRP	NO
Fiduciaries (Trust Service Providers)	52	Creation and administration of trusts (fiduciarias)	SdB	Yes
Full Casinos	12 locations	Casino services	Gaming Board	Only CTR
Internet Casinos	1	Not yet functioning	Gaming Board	Only CTR
Slot Machine Businesses	40 locations	Slot machines	Gaming Board	Only CTR
Hippodrome, Bingos and Others	23 locations	Horse racing, bingos, betting agencies, and all other gaming services.	Gaming Board	Only CTR

[3] "Only CTR" means that the legal requirement is to file only cash-transaction reports. Additional requirements have been included in subsequent regulations but compliance and enforceability of these are weak, as explained later in the report.

Box 4.1 Regulation of AML/CFT by Activity

Type of Financial Institution	Licensees	Activities included in FATF recommendations	Regulator/ Supervisor	Subject to AML/CFT Law[3]
National Lottery	1	State-owned monopoly of lotteries	(self-regulated)	Only CTR
Companies in the Colon Free Zone	1,900 (aprox.)	Warehousing, distributorship, importing and exporting, etc.	Administration of the Free Zone	Only CTR
Companies in Processing Free Zones	84	Manufacturing of goods for exportation	MICI	Only CTR
Lawyers and company service providers	9,000 (aprox.)	Formation of companies, foundations and of any legal persons, company representation, nominee directorship, registered officer, etc.	(none)	NO
Accountants	11,888	Occasional operation, management, and selling of legal persons	MICI	NO
Notaries	23	Not applicable (N/A)	(none)	NO
Real Estate Agents & Promoters	284 (only legal persons need license)	Development, promotion, buying and selling of real estate	MICI	Only CTR
Nonprofit Organizations	Unknown	Receive and disburse donations	Ministry of Government & Justice	NO
Pawn Shops	134	Lending	MICI	Only CTR

Services exclusively performed by lawyers for the incorporation of companies, personal interest foundations and legal persons in general are not subject to Law 42-2000. About 28,990 companies and private interest foundations were registered in the Public Registry during 2004. No information is available from the Registry to determine the percentage that bearer share companies represent of this total.

Casinos offer modern facilities and state-of-the-art gaming services to domestic and foreign (tourists) clients. The gaming industry reported revenues of more than $666 million in the first three months of 2005. One internet casino has recently been licensed but has not yet initiated operations and it cannot accept bets originated in Panama.

The DNFBPs subject to AML/CFT obligations are casinos, trust service providers, and real estate agents. Other nonfinancial businesses that are regulated for AML/CFT purposes are pawn shops and businesses located in free trade zones. Not covered by AML/CFT regulations are lawyers, accountants, and corporate service providers. Dealers in precious metals and stones are partly covered if they are also merchants located in the ZLC, which makes them subject to the free zone's CTR requirements.

Overview of commercial laws and mechanisms governing legal persons and arrangements

There are several types of legal entities available for use as business organizations, ranging from corporations (sociedad anónima), special partnerships (sociedad en comandita), and limited liability companies (sociedad de responsabilidad limitada). Corporations are the most widely used. They may be jointly or individually owned (single shareholder) and may have either nominative or bearer shares.

The procedure for the formation of all companies (corporations and others) is the same, regardless of whether their activities are local or offshore. Distinctive aspects of this industry in Panama are that: i) only lawyers admitted to practice in Panama can provide incorporation services, ii) all companies must have a resident agent which must be a lawyer; and iii) all companies must be registered in the Public Registry, where disclosure is made of the identity of directors, managers and resident agents.

Overview of strategy to prevent money laundering and terrorist financing

AML/CFT strategies and priorities

An overall national strategy was developed on drugs for 2002–2007 in which the theme of drug-related money laundering was addressed and specific objectives set out to:

- Ensure strict compliance with the regulations issued by the authorities for the financial and commercial system.
- Amend the AML legislation to fit the current situation.
- Improve the exchange of information between law enforcement agencies, both national and international.
- Establish communication links between all the public sector entities engaged in the fight against money laundering.
- Train, on an ongoing basis, public and private entities responsible for AML/CFT enforcement and compliance.

The government is implementing a program funded by the Inter-American Development Bank to improve transparency in the financial system. This national plan includes measures to combat money laundering and financing of terrorism through strengthening the public institutions responsible for financial supervision, improving coordination and communication between the supervisory bodies and the UAF, recommending improved legislation and regulation of the reporting entities on financial activities and establishing procedures of financial intelligence for the prevention of money laundering and financing of terrorism.

Though the authorities' efforts are substantial, there is no coordinating policy body in operation on the broader subject of money laundering beyond drug-related crimes. New legislation has expanded the AML/CFT responsibilities of some authorities (e.g., oversight of pawnshops for AML/CFT compliance was assigned to the MICI) without an assessment of their capacity to undertake the new task or of what should be prioritized within the system.

The institutional framework

The coordination of policies and issues related to AML/CFT was assigned to the Financial Analysis Unit (UAF) by Executive Decree of December 2004. The Superintendency of Banks (SdB), on the other hand, plays a substantial role in the implementation of preventive measures as many of its regulations and supervisory practices have served as a model for other supervisory authorities which have similar responsibilities.

In 2001, the authorities established a high level Presidential Commission for the prevention of money laundering and financing of terrorism comprised of representatives from different agencies, but the commission has met infrequently. The authorities expect that the recent appointment of a representative from the public sector by Executive Decree 29 of February 16, 2005 and one from the private sector Executive Decree 126 of May 31, 2001 will reactivate the Commission.

The following are the governmental agencies with direct responsibility on AML/CFT issues in the areas of prevention, regulation, supervision, investigation or prosecution:

- Financial Analysis Unit (UAF), within the National Public Security and National Defense Council of the Ministry of the Presidency;
- Superintendency of Banks (SdB);
- National Securities Commission (CNV);
- Autonomous Panamanian Cooperatives Institute (IPACOOP);
- Ministry of Commerce and Industry (MICI), which includes:
  - Superintendency of Insurance and Reinsurance (SSRP);
  - National Directorate of Finance Companies (responsible for finance companies, leasing companies, money remitters and pawn brokers);
  - Office of Export Processing Zones;
  - Real Estate Technical Board;
  - Accounting Board (it has no AML/CFT responsibilities at the moment).
- Gaming Control Board of the Ministry of Economy and Finance;
- ZLC Administration;
- Attorney General (Ministerio Público and the judicial technical police within);
- Judicial Branch (no specific courts specialized in money laundering or the financing of terrorism; and
- National Directorate of Immigration.

Approach concerning risk

Except in the banking and securities sectors, the compliance culture of reporting institutions is excessively focused on filing transaction reports for cash transactions above a $10,000 threshold at the expense of more integral internal control policies and detection mechanisms. The reporting also applies in the case of transactions involving other cash-like instruments, such as checks, money orders, etc.

There has not been a formal assessment of the various money laundering and financing of terrorism risks in Panama. The approach taken by the Panamanian authorities is that all

reporting institutions must be subject to the same requirements established in Law 42-2000. There is some graduation of preventive measures in the law, as it imposes comprehensive requirements for some businesses and only a CTR requirement for others. However, there is not a systematic analysis of risks in which to base the differences made in the law, neither to exclude other sectors completely from AML/CFT requirements. It is expected by government officials that the High Level Presidential Commission for prevention of money laundering and countering the financing of terrorism will foster a more strategic understanding of the specific risks to which the Republic of Panama is exposed and facilitate the adoption of risk based policies.

Within that framework of Law 42-2000, competent and/or regulatory authorities have ample powers to adopt additional measures "which contribute to the fulfillment of the objectives set forth in Law 42" (Article 5 of Executive Decree No. 1 of 2001). To date, the regulations of almost all reporting institutions have been modeled after those issued by the Superintendency of Banks, and little guidance exists to address the different nature of risks in sectors other than banking and securities. The lack of a risk-based focus is reflected in the fact that most fines assessed by authorities other than the SdB and CNV were the result of failing to notify that there where no transactions above the reporting threshold in a given period.

The potential misuse of the ZLC was identified by the authorities as a heightened risk and some initial steps have been taken to address it. However, the authorities' oversight and the level of awareness among businesses in the ZLC remains very weak.

Progress since the last assessment or mutual evaluation

1. **A mutual evaluation was conducted by the Caribbean Financial Action Task Force (CFATF) in July 2001**. The CFATF evaluation made several recommendations that have been partially acted on.

- The amplification of money laundering to include asset forfeiture was not effective. For the staff's AML/CFT assessment, the Public Prosecutor advised that the process is now in place, since the AML law refers specifically to and adopts the freezing, seizing, and forfeiture powers of the prosecutor in the Unified Text of Drug Laws.
- The UN Convention Against Transnational Organized Crime (Palermo) was ratified by Panama through law No. 23 of July 7, 2004. However, full implementation will require the inclusion of additional predicate offenses.
- It was recommended, and Panama acted accordingly, to adopt regulations on money remitters. However, implementation and supervision of these new requirements are not yet effectively implemented.
- The money laundering criminal law has not been changed to expand the list of predicate crimes to include those required by article 6(2)(b) of the Palermo Convention.
- Panama has complied with the CFATF recommendation to negotiate and sign Mutual Legal Assistance Treaties (MLATs) and has signed various other

conventions and treaties which support the fight against money laundering and financing of terrorism.

B. Detailed Assessment of the Observance of the FATF Recommendations

Table 4.1 Detailed Assessment of the Observance of the FATF Recommendations

Legal System and Related Institutional Measures

Criminalization of Money Laundering (R.1 & 2)
Description and analysis
Panama has criminalized money laundering through Articles 389 to 393 of the Penal Code, as adopted through Law 41 of October 2, 2000 and Law 1 of January 5, 2004. This Law 41 amended the previously existing AML law, stating in Article 389 of the Penal Code that, "Whoever receives, deposits, trades, converts, or transfers monies, titles, securities, goods, or other financial resources knowing that the origin of the activities is related with drug trafficking, qualified embezzlement, illegal weapons trafficking, human trafficking, kidnapping, extortion, embezzlement, public corruption, terrorism, robbery, or internal vehicle contraband established in the Panamanian Law, with the purpose of hiding or covering their illicit origin to assist evasion of juridical consequences of such punishable acts shall be sanctioned with prison from 5 to 12 years and 100 to 200 days of fine." Law 1 of 2004 added intellectual property violations as a predicate within Article 389 of the Penal Code. Panama's law takes the predicate list approach to the crime of money laundering. Panama has ratified both the Vienna Convention and the Palermo Convention, The Vienna Convention, Article 3(1)(b)(i) is satisfied by the language of Penal Code Articles 389 and 390. However, Article 6(2)(b) of the Palermo Convention is not fully satisfied, in that the list of predicate offenses does not include a fully comprehensive range of offenses associated with organized criminal groups. Penal Code Article 389 does cover 11 felony predicate offenses, but does not include all of the FATF Recommendations noted in the Glossary of Definitions. In order to comply with this list, there should be predicate offense of terrorist financing, participation in an organized criminal group and racketeering, sexual exploitation including of children, trafficking in stolen goods (as opposed to only vehicles), counterfeit currency, environmental crime, murder, the general act of smuggling, piracy, fraud, and insider trading/market manipulation. ML is considered to be an autonomous offense. It is not subordinated to the predicate offense, and can be independently charged. The crime of money laundering applies to an individual who has committed a predicate offense, provided that the person carries out one or more of the terms governing the legal provisions in Articles 389–393. Penal Code Article 389 applies to the listed predicates established in Panamanian law. The authorities advised that the crime of money laundering extends to conduct of predicate offenses which occur in other countries, as well as in Panama, and that Panamanian law would apply in either circumstance. Articles 8 and 9 of the Penal Code provide legal support for this position. Article 8 provides that Panamanian law will apply to punishable acts committed outside the borders of Panama, where those laws relate to acts against the government of Panama, crimes against public health [such as drug offenses], crimes against the national economy and public administration, and the falsification of official documents or money destined for Panama. Article 9 also applies Panamanian law to acts committed outside the country where the results of the crime are produced in Panama, or there are other various listed effects on Panama. Appropriate ancillary offenses do apply to the offense of money laundering. Articles 389–391 of the Penal Code sanction behavior relating to aiding and abetting, facilitating, and counseling the commission of criminal offenses, including money laundering pursuant to Law 41, Article 6. Penal Code article 61 punishes these other forms of criminal participation: "The authors, primary accomplices, and instigators shall be liable to the penalty indicated in the law for the punishable act. Secondary accomplices [assistance after the fact] shall be punishable by no less than half the minimum and no more than half the maximum penalty established for the

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punishable offense."

Regarding conspiracy, Article 1 of the Unified Text of the Special Law on Drugs establishes as a crime the association of two or more persons with the intention of committing offenses related to drugs, including money laundering related to drugs, which is punishable by five to eight years in prison. In non-drug cases, the general crime of conspiracy found in Penal Code Article 242 provides that when three or more persons associate with an agreement to commit a crime, the sanction is a prison term of one to three years. Further, under this general conspiracy statute, those participants who are found to have been directors or managers of the conspiracy by 25 percent. This difference in the two types of conspiracy in statutes means that different definitions and penalties will apply to conspiracy to commit money laundering, depending on the predicate offense or on which statute the law enforcement authorities have chosen to use.

The element of intent and its proof are defined in Article 44 of the Penal Code. Intent may be proved both directly and indirectly, as it may be inferred from an act of execution of the crime. According to authorities, the judge determines the rule of law as it applies to the evidence of intent, and decides whether intent may be clearly inferred from the evidence that the actor knew or must have known that assets were unlawfully obtained in the case of money laundering. The mission was concerned that although the intent of the law is broadly worded, there is not sufficient detail to provide guidance to the trial court in financial crimes cases.

Circumstantial evidence may be used as proof in criminal cases, including money laundering cases. Article 2046 of the Penal Procedure Code provides that proof is of equal value whether it is direct testimony, documents, confessions, expert reports, or other rational methods which do not violate human rights or are not prohibited by law. The offense of money laundering extends to all kinds of property, independent of its value, since it may be applied to money, securities, assets, or other financial resources. Further, the anti-money laundering law refers to "financial resources derived from any of the illicit activities." (Articles 389–391 of the Penal Code). The offense of money laundering extends to all kinds of property, independent of its value, since it may be applied to money, securities, assets, or other financial resources. Further, the money laundering law refers to "financial resources derived from any of the illicit activities." (Articles 389–391 of the Penal Code). In support of this, Article 1 of Law 42 also permits the Executive Branch to examine with special attention any operation, without regard to the amount involved, that may be particularly linked to laundering of capital arising from illicit activities. Articles 389–393 apply only to natural persons and not to legal persons.

The Panamanian legal framework provides for criminal sanctions only for natural persons. However, civil and administrative penalties will apply to legal persons, based on the conduct of its directors, officers or employees. The Judicial Code (Article 1969), establishes civil liability for legal persons derived from a criminal violation. Also, the banking, securities and insurance laws contain provisions that could be used to justify corrective actions or sanctions due to the criminal behavior of the directors, officers or employees of their respective regulated entities.

For natural persons, the crime of money laundering, Article 389 is punishable by imprisonment from 5 to 12 years and a fine. Based on article 391 imprisonment from 3 to 8 years is applicable for those who knowingly use their position, employment or occupation for money laundering. A violation of Article 392 is committed when proceeds of money laundering are knowingly used for financing political (and similar) campaigns. The sanction is imprisonment from 5 to 10 years and disqualification from public office for an equal term. A violation of Article 393 occurs when a public official tampers with evidence, seeks evasion of the accused or receives compensation and is punishable by imprisonment from 5 to 15 years and disqualification from public office for up to 10 years. Further, in connection with the criminal sentence, the court may order forfeiture of assets resulting from laundering upon sentencing for the crimes. See Penal Code Articles 55, 101, and 102. Pursuant to Penal Code Article 55, forfeited assets as part of a criminal sentence are defined as assets adjudicated by the state to have been instruments used to commit a crime and/or proceeds of the crime, except for those pertaining to an innocent third party. Under Articles 101 and 102 of the Penal Code, neither the extinguishment of the penal case and its penalty, nor the conditional suspension of the

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criminal case or penalty, will affect the forfeiture action of civil responsibility derived from the same acts.

The fines for breach of the preventive measures are without prejudice to the measures set forth in the Penal Code and in any other law, decree, or regulation (in Law 42-2000, article 8). The financial penalties apply to legal entities through the acts of their directors, executives, administrative, or operational staff.

Recommendations and comments

Amend Article 389 to clearly criminalize all the types of AML predicate offenses as required by the Vienna and Palermo Conventions as well as FATF Recommendation 1. See the listed offenses in Paragraph 2. Members of the mission were advised that Panamanian authorities are discussing the possibility of amending the money laundering law to a serious crimes approach. Thus, rather than a list of specific predicate offenses, money laundering would be applied where a grave offense is committed. This approach would fully satisfy the Conventions and the standard established by the FATF Recommendations.

Amend appropriate laws to ensure that there is consistency in the conspiracy law which applies to money laundering. Currently, both the definition and punishment of the offense can be different depending on whether the conspiracy is drug-related. This could be accomplished by amending the money laundering law to include a specific conspiracy law, or to select which existing law would apply to all AML offenses regardless of the predicate offense.

In connection with the money laundering predicate offense of corruption, the mission notes that Panama's National Assembly has approved the United Nations Convention against Corruption on May 10, 2005. Under the legal system of Panama, these conventions are superior law. This mission recommends that Panama takes specific actions to fully implement the Convention against Corruption.

Compliance with FATF Recommendations

R.1	Largely compliant	ML predicates not fully consistent with Palermo convention. Article 1 of the Penal Code defines conspiracy differently with regard to money laundering and applies a lesser penalty which is problematic for consistent enforcement.
R.2	Compliant	Although no criminal penalty applies for legal persons, civil and administrative penalties do apply to legal persons, based on the conduct of its directors, officers and employees based on the Penal Code Article 125. Penal Code Article 393-A, as amended by Law 50 (Chapter VII Financial Crimes) covers this for banks, securities and insurance companies.

Criminalization of terrorist financing (SR.II)

Description and analysis

In Panama, the Penal Code (CC) contains in Book I, Title VII: Chapter VI, Terrorism, which sets forth sanctions in Articles 264 (a) to 264 (e). These legal provisions were introduced in Law 50 of July 2, 2003. The law classifies terrorism and the financing thereof as independent crimes.

The FT is covered in Article 264 (b): "Anyone who intentionally finances, subsidizes, hides or transfers money or assets to be used to commit any of the acts described in 264 (a) of this Code, even though that person is not involved in its implementation or the implementation is not carried out, shall be sanctioned with 15 to 20 years in prison." The team was advised that this language covers the act of collection of funds. Further, the acts listed in Article 264 (b) refer to both individual and group terrorist activities. See reference to Article 264 (a), which defines terrorism to include both factual situations. The team notes that no cases have been brought under Article 264 (a) and no judicial interpretation of this section exists at this time.

Article 264(a) criminalizes and defines terrorism itself: "Anyone who individually or as a member acts in the service of or collaborates with armed bands, organizations or groups whose purpose is to subvert the

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constitutional order or cause a serious breach of the peace, carries out acts against the persons, assets, public services or communications media or public transport, who generates alarm, fear or terror in the population or in a group or sector thereof, using explosives, toxic substances, arms, fire, flood or any other violent means or means of mass destruction, shall be sanctioned with a penalty of 15 to 20 years in prison." This statute has not been tested to determine whether acts of individual terrorists, unrelated to organizations, are covered.

Thus, Article 264(b) does cover the funding of (i) the carrying out of a terrorist act, (ii) by a terrorist organization; or (iii) by an individual terrorist. The Panamanian authorities pointed out specifically that the Republic of Panama has no experience with cases of FT.

Article 264(b) refers to terrorism financing through "money or assets," and does not limit the form of assets in any way, consistent with the Terrorism Financing Convention which defines "funds" as "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers checks, bank checks, money orders, securities, bonds, drafts, letters of credit."

Article 264(b) criminalizes intent to commit the crime of FT. Article 264 (a) goes beyond specific acts of terrorism by including "any other violent crime or mass destruction." The words "collect" as in collecting funds and "indirectly," as in indirect participation are not mentioned in Law 50. However, in Article 264(b), "collecting" is covered by the broader phrase: "intentionally promotes or aids in the commission of activities" and "indirectly" facilitating is covered by the phrase: "whether or not he/she intervenes in their execution" in the Articles 264(b) and 264(c).

With regard to aiding and abetting, Article 264(c)(1) provides that whoever intentionally promotes or assists persons or groups to commit terrorist financing has committed a crime, even though he or she has not intervened in the realization of the violation of Article 264(a).

Article 264(c)(1) provides that whoever intentionally promotes or assists persons or groups to commit terrorist financing has committed a crime, even though he or she has not intervened in the realization of the violation of Article 264(a).

Article 264(c)(2) provides that whoever conceals, shelters, or recruits others for the execution of any of the acts described in Article 264(a) is guilty of a crime.

Article 264(e) provides that whoever knew of the existence of persons or groups who were preparing or contributing to the planning or execution of the acts noted in Article 264(a), or hid the whereabouts of its authors, or intentionally omitted to denounce the acts before the national authorities, will be sanctioned with a prison term of 5 to 10 years.

While "acts of terrorism" is on the predicate act list in the AML law, FT does not appear on the list. (Penal Code Article 389).

The Republic of Panama has signed the UN Terrorist Finance Convention.

According to the authorities, Panama's current terrorism activity involves incursions by Colombian narco-terrorists into Panama's remote Darien region.

Panama has increased the security of its key infrastructure and of the Panama Canal significantly. The government has installed surveillance technology at critical points, such as the Bridge of the Americas and container ports. The Panama Canal Authority has improved its collection of information on ships that use the

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Canal and has modernized its incident management center.

Panama took part in the ratification of the Inter-American specialized conference on terrorism in Lima, Peru, on April 23 to 26, 1996. The agreements adopted by the conference were:

- The Declaration of Lima to Prevent, Combat and Eliminate Terrorism;
- The Plan of Action on Hemispheric Cooperation to Prevent, Combat, and Eliminate Terrorism;
- The Framework Treaty on Democratic Security in Central America, signed by Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, which constitute examples of sub regional coordination to prevent acts of terrorism.
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Panama also approved the Inter-American Convention against Terrorism by Law 75 on December 3, 2003, which was ratified on January 21, 2004.

The UN Convention for the Repression of the Financing of Terrorism was adopted by the General Assembly of the UN on December 15, 1999. It was approved by law in Panama on May 9, 2002 and was ratified on July 3, 2002.

The UN Convention of Trans-National Organized Crime (Palermo Convention) was signed on December 15, 2000 and was ratified by Law 23 on July 7, 2004.

The National Government has signed instruments of the UN against terrorism: The first, the "Agreement for the Oppression of Illicit Acts Against the Security of the Marine Navigation" was made in Rome on March 10, 1988. The second, "The UN Convention Against Organized Crime and Its Complementary Protocols" was adopted in New York on November 15, 2000 and signed by the Republic of Panama on December 12, 2001.

The Republic of Panama presides the Hemispheric Security Commission of the Organization of American States, which is in the process of adopting a new resolution that considers the support to the efforts of the Inter-American Committee against Terrorism.

Panama also took part in the Second Inter-American Specialized Conference on Terrorism in Mar del Plata, Argentina, in November 1998. During this conference, the countries that participated adopted rules in order to contribute to the cooperation against terrorists acts and also took measures to eliminate the funding of terrorism.

Panama has adopted several multilateral treaties and other international instruments, some as follows: International Convention Against the Taking of Hostages Taking, adopted on August 19, 1983; Convention on Physical Protection of Nuclear Materials, adopted on April 1, 1999; Protocol for the Repression of Illicit Acts of Violence in Airports that offer services to civil aviation, complementary to the Agreement for the Repression of Illicit Acts Against Civil Aviation Security, adopted on April 10, 1996; Convention on the Security of the United Nations Personnel and Associated Personnel, adopted on January 15, 1999; and International Agreement for the Repression of Terrorists Acts Committed with Bombs, adopted on May 23, 2001.

The National Government has signed and approved Bilateral Agreements on Cooperation in the fight against Organized Crimes with countries such as Brazil—signed in Brasilia on August 21, 2001 and approved by Law No. 62 of December 5, 2001; Italy—signed in Rome on September 12, 2000 and approved by Law No. 31 of July 4, 2001; and the Arab Republic of Egypt—signed in Cairo on October 18, 1998 and approved by Law No. 6 of May 3, 1999.

The offense of terrorist financing applies to natural persons, since it applies to "anyone who intentionally

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acts." Criminal liability is not applied to legal persons as a result of a fundamental principle of Panamanian law. Civil responsibility (and administrative responsibility where applicable) are applied to legal persons in relation to all acts which would be criminal if committed by natural persons. As with all criminal offenses, the Penal Code provides that intent may be inferred from objective factual circumstances. This offense extends to all funds, whether from legitimate or illegitimate sources. This offense further extends to persons designated in Article 2(5) of the Terrorist Financing Convention. Authorities advised that the terrorist financing offense applies regardless of the country in which the terrorist organization is located or where the specific terrorist act will occur, as long as there is a nexus to Panama. FATF criteria 2.2-2.5 apply to the offense of terrorist financing in the same manner as described above for the offense of money laundering.

Recommendations and comments

Place FT specifically on the predicate act list of the AML Law.

Panama should ensure that all UN conventions and resolutions relating to terrorism have been ratified.

Compliance with FATF Recommendations

SR.II	Largely Compliant	With regard to financing of terrorism and associated money laundering, implementation is needed on the Conventions and Treaties to which Panama is a party. FT needs to be inserted in the list of predicate crimes in Panamanian AML law or adequately addressed if Panama moves to a serous crimes approach as opposed to list of specific predicate offenses (Para 41 refers).

Confiscation, freezing and seizing of proceeds of crime (R.3)

Description and analysis

In general, forfeiture of assets is listed in Penal Code Article 46 as one of the penalties which may be imposed in criminal cases. Because this definition of the penalties available in criminal cases is in Chapter 1 of the Penal Code on general matters, it applies to all criminal offenses, under the Panama legal system, and therefore forfeiture is available to the court as a penalty in any type of criminal case, including money laundering, terrorism, and FT.

Penal Code Article 55 defines forfeiture as the adjudication to the government of the instruments used in the commission of the crime and which are the proceeds of crime, with an exception for innocent third parties. Article 55 further states that in general, forfeited illicit assets will be sold, and where appropriate, applied to cover the civil and criminal sanctions. Good-faith third parties are further protected in Judicial Code Articles 2028, 2029, and 2030, as well as through the adoption of the Palermo Convention by Panama.

Drug and money laundering forfeitures are treated differently. The Unified Text of Drug Laws, Article 55, provides the general authority to the prosecutor to pursue criminal action in all crimes within his or her competence. Law 41, Article 6, authorizes the prosecutor in charge of the investigation to order a preliminary seizure of instruments, money, securities and other assets used to commit crimes related to drugs and the direct and indirect proceeds of said crimes, consistent with the same broad authority possessed by prosecutors in drug-related cases. Further, Articles 29–31 of the Unified Text of Drug Laws apply. Under Article 29, the act of freezing of assets by the prosecutor will then be recorded in the Public Register. Preliminary seizure of inmovables must always be recorded in the Public Registrar. A party has the right under Article 31 to a hearing before the judge to seek release of the provisional seizure. Additionally, the Penal Code as amended by Law 41 of October 2, 2000 a bank or credit agency may request judicial action regarding assets in their control which have been ordered forfeited, in order to compensate the obligation. These funds can be provisionally seized and submitted to the competent judge for final determination of forfeiture. (Articles 30 and 31 of the Unified Text on Drug Laws.) Ultimately, in money laundering cases, the laws and procedures which apply to drug-related money laundering cases will permit preliminary seizure of assets, while the rules applying to non-dug-related money laundering cases do not permit such actions without court order.

Specifically, the final decision on forfeiture is a criminal punishment imposed by the competent judge. This authority is found in Articles 55, 101, 102, and 263 of the Penal Code. Article 55 provides that assets which

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were used to commit the crime, and those which are the result of the commission of the crime, may be forfeited by the judge. Articles 101 and 102 provide that neither the conclusion of the criminal case nor the suspension of the criminal penalty will affect the judge's power to forfeit the related assets, nor from any civil responsibility derived from the same acts.

According to the authorities, the Panamanian criminal system focuses only on the person, not the asset as in other countries' in rem proceedings. There is no civil forfeiture to take assets; forfeiture occurs only through a related criminal case. The authorities informed that the asset forfeiture process is applied to cases involving the property of organizations which are criminal in nature, consistent with the adoption by Panama of the Palermo Convention. This occurs through the criminal case against the individual, through which the prosecutor must prove a connection between the defendant and the asset.

If assets are connected with drug trafficking activities (as a predicate offense), the accused is required to demonstrate that the assets subject to precautionary seizure have been acquired legally. This reversal of the burden of proof does not apply to other predicate offenses.

Assets which are seized by the prosecutor are under the control of the Ministerio Público. Funds are left in accounts in financial institutions under seizure order. Authorities advised that it is the practice of the Ministry to permit prosecutors and police officials to use seized vehicles for their related work. Other non-cash assets are placed into a depository facility owned by the Ministerio Público; there is no process in place to maintain the assets pending the final order of forfeiture or return to the owner, as ordered by the court.

Pursuant to Article 35 of the Unified Text on Drug Laws, once the money and assets have been ordered confiscated by the judge in a drug-related case, they must be placed at the disposal of the Panamanian Commission for the Study and Prevention of Drug-Related Crimes (CONAPRED). The money laundering law further provides in Penal Code, Title XIII, Article 7, that when there has been a court order to confiscate assets, instruments, money or securities that are the proceeds of money laundering, other than in the case of drug-related crimes, the judge shall order that the assets are placed at the disposal of the Special Retiree and Pensioner Fund.

Law enforcement agencies, including the prosecutors and the police, have adequate powers to identify and trace property that is or may become subject to confiscation or is suspected of being the proceeds of crime. Authorities advise that problems in this area arise from the lack of resources and training, not in any lack of legal authority. The above described laws provide protection for the rights of bona fide third parties. Any party has the right to a court hearing shortly after a preliminary seizure (in drug-related cases) or the right to a court hearing prior to seizure in other cases. Full due process is provided in these hearings, consistent with the standards noted in the Palermo Convention. Further, the courts have authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons knew or should have known that as a result of those actions, the authorities would be prejudiced in their ability to recover property subject to confiscation. The mission could not find any cases in which this step has been taken, however.

Recommendations and comments

Extend the authority of the investigating authority to permit provisional freezing and seizure in all criminal cases, including those of terrorist financing and the offenses which are required by the Palermo Convention to be predicate offenses under the AML law.

Amend the forfeiture provisions to permit forfeiture in all appropriate cases where the property is owned by criminal organization, without having to show a nexus to a particular defendant. This can be accomplished in several ways, including the establishment of in rem quasi-criminal forfeiture proceedings.

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Establish/improve the system to hold and maintain seized assets pending forfeiture orders. This also applies to the provisionally seized assets while waiting for the judge to determine their final destination. The potential for impropriety or the appearance of impropriety exists regarding maintenance of assets which have not been determined to belong to the government, and which could be ordered to be returned to a defendant or good faith third party.		
Compliance with FATF Recommendations		
R.3	Largely compliant	Steps should be taken to ensure that seized assets are held under proper conditions pending the final forfeiture in order to preserve human rights. Freezing and seizure authority of prosecuting authority should extend to other predicate offenses mandated under Palermo Convention.
Freezing of funds used for terrorist financing (SR.III)		
Description and analysis		
The prior section's description of the forfeiture process applies to money laundering cases involving terrorist acts. In such a case, the prosecutor would have access to the full authorities provided under the Unified Text on Drug Laws to freeze and seize assets, and to seek judicial forfeiture as part of the criminal case against a defendant. However, since the financing of terrorism is not a predicate offense to money laundering,, the AML law would not apply to this act. The same forfeiture process discussed in the prior section relates to laundered funds, proceeds of the crime, and instrumentalities used for the financing of terrorism. These laws provide for provisional measures (freezing and seizure), and for initial seizure to be made ex parte and without prior notice. Further, law enforcement officials have full authority to identify and trace property for seizure. Prosecutors have authority to seek court orders to void actions knowingly taken to prevent seizure by authorities, although they note that this has not occurred in Panama. In direct cases of terrorism financing which do not involve money laundering, the general provisions of the Penal Code would apply to permit forfeiture of assets connected to that crime. There is no administrative system for the freezing of assets related to terrorist finance, since Panama's constitution reserves such functions to the judicial system, as the freezing and forfeiture of assets are already covered in the Penal Code. However, Panama has a system in place to respond to the UN Resolutions 1263 and 1373 on terrorism and terrorist finance. The UAF is the authority responsible for publishing the terrorist lists to financial authorities, and they have created a process to carry out this responsibility. Banks are required to immediately report any information on terrorists on the UN lists to the UAF. The UAF then will immediately report this information to the appropriate prosecutor's office, which will then seek a court order forthwith to freeze the funds. In the single instance in which a Panamanian bank found that an account was connected to a terrorist on the UN list, this procedure was implemented in approximately 45 minutes. Affected persons have the legal right to petition the court for return of the property. Authorities have advised that there have been no cases of terrorism or terrorist finance since Law 50 was passed in 2003. This is a substantially lesser issue in Panama according to authorities, as compared to the very large problem of drug-related money laundering. Panama does have experience in dealing with requests by other countries to freeze assets. The procedure followed is virtually identical to that listed in Paragraph 53 above, except that formal requests are channeled through the Ministry of Foreign Affairs. Additionally, there is strong informal cooperation between Panamanian and foreign law enforcement authorities, such that once the necessary information is provided, the appropriate prosecutor proceeds immediately to court to seek an order freezing assets. Although the team was unable to assess whether a process exists to permit release of seized funds for use by a defendant, Panama has an effective and publicly-known method of unfreezing assets. Once an asset is preliminarily seized, notice is placed in the Public Registrar. Only thereafter will a court enter the formal seizure order. A prompt court		

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hearing will be held at the request of an owner or innocent third party. There are additional guarantees in the law, as described above, which permit financial institutions to request a hearing regarding seized assets which are within the institution's control.

Recommendations and comments

FT should be made additionally a predicate offense to money laundering, in order to permit application of the prosecutor's provisional freezing and seizure authority under the Unified Text on Drug Laws to this offense.

Panama should ensure that the High level Presidential Commission is effectively monitoring the compliance by authorities with relevant legislation and regulations.

Compliance with FATF Recommendations

SR.III	Partially Compliant	Provisional measures should be available to freeze and seize funds related to financing of terrorism; this is not available since FT is not on the predicate list for money laundering Funds in Panamanian banks belonging to international business companies with statutory seat in another country cannot be seized or confiscated in Panama if the underlying crime committed in the foreign country is not a crime in Panama.

The Financial Intelligence Unit and its functions (R.26, 30 & 32)

Description and analysis

The UAF was created by Executive Decree No. 136 of June 9, 1995 for the prevention of money laundering resulting from Drug Trafficking. Decree No. 163 of October 3, 2000 amended Decree No. 136 of June 9, 1995, changing the name of the UAF to the Financial Analysis Unit for the Prevention of money laundering. The UAF is attached to the Public Security and National Defense Council (C.S.P.D.N.), which is the highest level advisory body created to advise the President of the Republic on matters of public security. The Public Security and National Defense Council was created through Cabinet Decree No. 38 of February 10, 1990, which also created the Police Force of the Republic of Panama.

The UAF operates in coordination with the C.S.P.D.N. In the draft law regarding the budget for the fiscal year 2006, the UAF officially requested the Ministry of the Presidency to assign a budget to the UAF in accordance with the provision in Decree 136 of 1995. Mentioned article stipulates that the expenditures and necessary emoluments for the operation of the UAF shall be included in the budget of the Ministry of the Minister President.

The powers of the UAF as set out in Decree 78 of June 5, 2003 were amended to include gathering from public institutions and private reporting entities all information related to financial, trading, and business transactions that may be linked to the crime of money laundering and financing of terrorism, pursuant to the legal provisions in effect governing these matters in the Republic of Panama. This information is analyzed in order to determine suspicious or unusual transactions, as well as operations or patterns related to money laundering and financing of terrorism.

The specialized case-analysis software tool known as Analysis Notebook is used by the analysts to present their cases graphically. No other analytical tools are available to the analysts.

On the national level, when the UAF determines that a STR could merit investigation by the prosecutors, the information is disseminated directly to the Panamanian Attorney General, based on subparagraph (e) of Article 2 of Decree No. 163 of 2000.

The UAF also responds to the prosecutors' requests for assistance in the analysis and furnishing of financial intelligence that may help in criminal investigations of acts and crimes related to money laundering and

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financing of terrorism.

The UAF exchanges information with the hereto appointed officers at the SdB, with the objective to support this institution with financial intelligence that could be related to the illegal activities listed in Article 2, subparagraph (f), of Decree No. 78 of 2003.

On the international level, Article 2 (d) of Decree 136 of 1995 (as amended by Decree 163 of 2000 and Decree 78 of 2003), sets forth the powers for the UAF to establish Memoranda of Understanding (MOUs) for the exchange of information with foreign FIUs.

The cooperation between the UAF and the reporting entities is satisfactory. Law 42, in its Preamble, summarizes the financial institutions obliged to report to the FIU: banks, trust companies, money exchanges or remitters and persons either natural or legal that exercise the money exchange or money remittance activity, whether it is the main activity or not, finance companies, savings and loans cooperatives, stock exchanges, stock centers, stock houses, stock brokers and investments administrators, are obligated to keep, in their operations, the diligence and care which are necessary to prevent that those operations are performed with funds or regarding funds that arise from activities related to the crime of money laundering and to prevent its perpetration.

Based on Law 42, Article 7, the Executive Branch determines by regulations, the cash transactions reporting and cash equivalent (defined in the Executive Decree 234 of October 17, 1996, Article 3, paragraph 3) referred to in paragraph 2 of Article 1, for amounts exceeding ten thousand Balboas ($10,000), for nonfinancial entities like the enterprises established in the ZLC and processing zones, national lottery of beneficence, casinos and other establishments for gambling and games of chance, promoter enterprises or enterprises for real estate brokerage, insurance and reinsurance companies, and reinsurance brokerage companies. These two lists of reporting entities are sufficiently broad under law.

The UAF has developed reporting forms for each kind of reporting entity, depending on the nature of its operations and based on transactions made by its customers for amounts over $10,000 or amounts adding up to this figure in one business week. Said reports are sent to the UAF once every month through each of the bodies that supervises and controls the various reporting entities.

There is a separate form for reporting suspicious or unusual transactions known as UAF-STR, which is sent directly to the UAF by the reporting entity at the time it identifies any suspicious transaction, independently of the amount. All relevant documentation is included in the report, allowing identification and analysis of the customers and the transactions carried out. Each of the forms described has instructions that include some examples enabling the user to apply the procedure of reporting properly.

Upon reporting a suspicious transaction, the reporting entity is obligated to keep the UAF up-to-date regarding any relevant situation or activity that occurs in the account or relationship maintained by the reporting entity with the customer. Examples include opening of new accounts, closing of accounts or any other event relevant to the analysis, as described in Law 42, Article 1.

Law No. 42, October 2000, which establishes measures for the prevention of the crime of money laundering, authorizes the UAF in Article 2 to request further information from reporting entities as well as from the supervisory and control bodies in the course of performing their supervisory tasks.

Law No 42, Article 5, paragraphs 2 and 8 constitute an obligation for the reporting entities to comply with

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such requests.

The UAF also has access, directly or indirectly and on a timely basis, to a number of information sources that include obtaining information from other official state authorities of an administrative, investigative, and intelligence-gathering nature including the department of economic affairs, the civil registry, police units, and the national secret service. Such access is effected through electronic inquiries applied to the databases of some official institutions, while in other cases, it takes place through written inquiries sent to the institutions.

The UAF currently maintains inter-institutional cooperation agreements with the Attorney General's Office, the SdB, and signed a cooperation agreement with the Public Registry of Panama.

Confidential treatment of the information is regulated in the legal provisions stated in subparagraphs (e) and (f) of Executive Decree No. 78 of 2003, which amends Executive Decree No. 163 of 2000. Also in Article 5 of Executive Decree No. 163 of 2000 and Article 6 of Executive Decree No. 136 of 1995.

Regarding compliance with the principles of confidentiality, professional behavior and ethical conduct, the UAF applies the utmost care to the reserved and legally authorized use of information. These basic concerns are reinforced through support technology and strict security measures at its installations, including assignment of a security agent and strategic placement of each UAF office in an area with a closed perimeter continuously guarded by employees of the Institutional Protection Service (SPI), one of the main strata of state security.

Although the information handled by the UAF is treated with a high level of confidentiality at the UAF, the information furnished by the UAF to domestic authorities is sent by (un-armed) messenger, who also collects the reports from the reporters on behalf of the UAF. This constitutes an unnecessary risk for the UAF. Currently, the UAF is contemplating projects to digitalize receipt of information by reporting entities and eliminate physical delivery of dissemination data to the Office of the Public Prosecutor. The information exchanged with FIUs in other countries is sent through the adequately secured web of the Egmont Group.

Panama is a member of the Egmont Group since 1997 and complies with the Egmont procedures. The information exchanged between the UAF and other FIUs is mostly transmitted through Egmont's secured web and through the mechanisms of the MOUs established for this purpose. To date, Panama has signed 37 MOUs.

Statistics are maintained on cash movements in Panama related to money laundering and financing of terrorism. The Panamanian UAF is authorized to develop statistics on the economic activities of Panama, based on subparagraph (c) of Article 2 of Executive Decree No. 78 of 2003. These statistics basically refer to cash and near-cash transactions for amounts over $10,000 or adding up to this figure in one business week, carried out at the different reporting entities.

Disclosure of this statistical information is through official conduits to other authorities such as the Ministry of Foreign Affairs, the President's Advisory Commission on money laundering and financing of terrorism, the SdB and the CONAPRED of the Panamanian Attorney General's Office. The latter office has the task of reporting the data furnished by the UAF to international agencies whose mission is to combat money laundering and financing of terrorism.

The organization of the UAF is currently structured in the following way: a Head Office and four departments, specifically: the Legal Department, the Financial Analysis Department, the Information Gathering Department, and the Technical Support Department. The organizational chart also includes the Office of the

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Secretary General and Office Services.

There is a total of 22 staff members of which 19 are professionals. They are part of the organization chart of the Public Security and National Defense Council of the Office of the President and consist of one Head (lawyer), a deputy Head (accountant), three lawyers, five analysts (of which one has a masters in economics and a MBA), two assistant analysts (charged with the international information exchange), one secretary, two administrative assistants, three data-entry persons, one engineer in information technology, one janitor, and two drivers/messengers.

This combination of practical and academic knowledge and work experience in the areas of law, accounting, finance, banking, economics, and technology is enhanced with continuous participation in training events on matters related to prevention, control and countering of money laundering and the financing of terrorism.

One of the UAF's main objectives is the further training of personnel and acquisition of state-of-the-art technology for analysis of suspicious transactions of money laundering and the financing of terrorism.

Further training should also cover matters related to the laws in effect, with joint participation in simulation exercises with other authorities whose jurisdiction is the prevention and countering of crime. Most of the persons interviewed indicated that they do not have sufficient information about the UAF and its activities.

The UAF monitors the ethical conduct of its personnel by applying the personnel standards and procedures of both the Public Security and National Defense Council and the Office of the President.

According to the authorities, the UAF exercises its powers with full operational autonomy based on Executive Decree No. 78 of 2003 and sends cases directly to the Attorney General when it deems that a criminal investigation might be called for. However, to date, the UAF does not have an autonomous operating budget. The Public Security and National Defense Council handles the operating expenses of this unit. The most significant problem for the UAF is lack of sufficient technical resources.

This could probably explain the poor final results of the reporting system; a surprisingly large amount of the reports received are disseminated by the UAF to domestic authorities. In 2001 708 were received, 663 disseminated and only 1 reached the courts. In 2002, 343 received, 290 disseminated, and only 2 reached the courts. In 2003, 329 received, 309 disseminated, only 2 reached the courts, and in 2004, 719 received, 717 disseminated, and none reached the courts. This probably means that i) there is not sufficient analysis and value added at the UAF; ii) there is a mismatch between the needs of prosecutors and the results that the UAF can produce; and iii) the Ministerio Público is inadequately prepared to make good use of the information that the UAF provides.

Since ML was criminalized in 2000 until the mission's visit in May 2005, there have been 10 investigations of ML but only 1 conviction. Seven of those cases were tried to a conclusion, one case remains active and two cases were dismissed. The average prosecution time for ML cases is 18.9 months. All of the existing ML cases have been predicated on drug-related offenses.

Various other institutions involved in the Panamanian AML/CFT system, including the Financial Investigation Section, other police units, law enforcement, and the courts do not have sufficient resources to operate in an optimal fashion.

Recommendations and comments
The UAF should have an independent budget in order to allow the UAF to make its own administrative

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decisions and to better comply with the FATF requirement of independency.

The budget should be determined after a study identifies the additional personnel, tools, and training the UAF needs to do its task adequately.

Improve protection of the information reported to the FIU and the disseminations sent by the FIU to the authorities by maximizing the security of the electronic receipt and dissemination of intelligence information.

The UAF should refrain from absorbing the cost and the constant risk for the protection of the information during transport to and from the UAF, by instructing those reporters who cannot report on-line, because of economies of scale, to send their reports to the UAF by courier on CD, diskette, or UBS (memory stick).

In order to increase the number of convictions, the UAF should research, together with the Public Prosecutors including the SIF and the Courts, if there are reasons why so few convictions result from the disseminations other than insufficient funding, personnel, AML/CFT training, and state-of-the-art technology..

Release the annual report of the UAF publicly, including statistics, typologies, and trends as well as information regarding its activities. Introduce a program for UAF outreach and awareness raising in government agencies, reporting entities, and the public in general. A government public relations officer could present the information prepared by the UAF to the general public in order to protect the identity of UAF personnel, when necessary[4].

Compliance with FATF Recommendations		
R.26	Largely Compliant	Lack of clarity on budget/independence; need for coordination/outreach.
R.30	Partially Compliant	The UAF needs more funding, training, personnel, and coordination with other relevant agencies.
R.32	Largely Compliant	The UAF should produce more statistical data and apply it for long-term managerial planning and for feedback to the sectors and the policy makers.

Law enforcement, prosecution and other competent authorities–the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32)

Description and analysis

Recommendation 27

The following main law enforcement, prosecution, and other competent authorities handle AML/CFT issues in Panama.

Office of the Attorney General (PGN): Established under Article 219 of the Political Constitution, this office applies the Judicial Code and the Penal Code in Panama. It receives information from the UAF and other investigation sources and initiates formal investigation. The Penal Code as by Law 41 of 2000, governing the crime of ML, establishes that investigations into ML may be launched by the special prosecutor's offices created by resolution of the Panamanian Attorney General's Office No. 8 of 2000. If the investigation is

[4] Post-assessment, the authorities informed the mission that an ongoing awareness raising program is being conducted within the public and private sectors explaining the role, the objectives, and the functions of the UAF.

triggered by a request for international assistance, depending on the predicate offense in question, it may be appropriate to transfer the investigation to the competent special prosecutor's office. If the investigation is triggered by a suspicious transaction report issued by the UAF, the mechanism to launch the pertinent proceedings would be that of a preliminary investigation launched in coordination with the Financial Investigation Unit of the Judicial Technical Police (PTJ).

The Immigration Office of the Ministry of Government and Justice regulates all immigration and residency of foreigners in Panamanian territory.

General Customs Office: The General Customs Office of the Ministry of Economy and Finance (MEF) has a presence throughout Panamanian territory, primarily at points of entry into the Republic of Panama (airports, ports, borders). In general, its principal task is to facilitate trade among domestic and foreign economic agents, to participate in the control of foreign exchange entering Panamanian territory, and to interdict prohibited substances and the monitoring of precursor chemical agents, as part of its collaboration in AML/CFT efforts. Customs also has police authority in relation to customs offenses, as well as a customs court, which can issue both fines and prison terms in connection with customs offenses. The General Directorate of Customs maintains some statistics on cross-border currency transport reports.

National Police: Responsible for vigilance, monitoring, and capture of suspicious persons engaged in ML, in coordination with the Office of the Attorney General. The jurisdiction of the National Police involves basic police work and internal affairs supervision; the formal investigation is conducted by the PTJ within the Attorney General's Office. The National Police within the Ministry of Government and Justice has the responsibility of investigating internal corruption within the police authority. Authorities from the National Police advised that they have no experts on money laundering and the financing of terrorism issues, nor have they received any training.

Judiciary: Responsible for administering justice on an ongoing basis in pertinent instances such as the Supreme Court of Justice, the Courts of Appeals, and the Circuit and Municipal Courts, including in relation to ML, terrorism, and terrorist finance.

Office of the Prosecutors

The authorities responsible for investigating and processing ML crimes are authorized to carry out all kinds of investigation to enable them to determine whether a crime was committed and to establish the link to the person(s) who committed it. The various offices within the Attorney General's Office which enforce AML laws include corruption, intellectual property infringement, fraud, and drugs. Penal Procedure Code Article 1951 establishes the prosecutors' direct investigations and determines the criminal offenses to be charged. Under Article 2031 of the same Code, these "agents of instruction" have the authority to direct police activity, obtain witness declarations, complete the investigation, determine the evidence, file the criminal case, and order the freezing of assets connected with the crimes.

The authorities indicated that criminal investigations are led by the prosecutor. In the case of ML investigations, the UAF can only conduct financial investigative activity within its own database or through requests for further information from respondents or from counterpart FIUs. There is an office which by law takes witness statements regulated in Article 2104 of the Code of Criminal Procedures.

Further, if the National Tax Commission receives complaints of acts related to financial crimes found in Penal Code sections 393-A through 393-G (securities offenses), it must provide the information to the Public Ministry no later than two months after the completion of its investigation. For example, if the crime is

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"insider trading," the CNV, based on section 393-G of the Penal Code must provide the information to the Public Ministry. If the Public Ministry requests more technical information from the CNV or the SdB, the period can exceed two months. On the other hand, if the CNV already has incriminating information at hand, this period can be less than two months. The Superintendency of Banks, the National Tax Commission and the Panamanian Securities Commission are required by laws and regulations to investigate any evidence of financial crimes and to provide that data to the prosecution. The UAF also is tasked to collect this information and to provide it to the competent authorities, under strict ethical standards.

Undercover operations have been established as special investigation techniques with respect to drug-related crimes. The authority by the prosecutors to order raids, registrations, and freezing of funds, compelling production of documents or other evidence, take witnesses' statements, obtain search warrants, and seize evidence among other measures, is included in the Code of Criminal Procedure (Articles 2041, 2077, 2078, and 2178) and may be used in money laundering and the financing of terrorism investigations. (Penal Procedure Code). Prosecutors also have the authority to postpone the arrest of suspected persons and/or the seizure of money for the purpose of further investigation of additional offenders or additional evidence. There remains a need for additional training on these issues, as well as the ethical matters involved.

Article 27 of Law 13 of 1994 provides that the Prosecutor General of the nation may authorize and supervise the procedure for controlled deliveries of illicit drugs for the purpose of permitting investigation and identification of persons involved in drug-related crimes. This statute also permits international controlled deliveries in good coordination with the foreign country. Article 29 of Law 13 provides that goods related to drug-related crimes will be provisionally seized by the special drugs prosecutor until the case is decided by the competent court. The provisional seizure order will be written in the public registry. Article 23 of Law 13 provides that the burden of proof shifts to the defendant to show, when the goods have been provisionally seized, that they are not the product of a drug-related crime, or used in the execution of that crime.

Statistics are gathered on decisions, real property, and cash seized with respect to ML, as well as the cases received and handled by the prosecutors. The appointment of three prosecutors focusing on banking fraud and credit cards and commissioned with the investigation of ML cases has allowed better handling of these cases. Moreover, with the promulgation of Law 45 of June 4, 2003 on financial crimes, various activities that attack the financial system, have been raised to the level of crimes associated with severe penalties, thus protecting and safeguarding the financial system.

However, authorities noted that the large majority of ML cases are drug-related. Most of the experience in ML cases resides in the Office of the Special Prosecutor on Drugs.

The prosecutors have extensive authority to cooperate with international requests for assistance, since they may use all of their authorities to support the development of evidence and information for foreign cases where there is dual criminality. Responses to most such requests are made within two to three months.

The various directorates for financial crimes prosecutions advised the mission that the low personnel levels and budget shortfalls prevent the bringing of large numbers of criminal cases. Most of these units have only 10–12 staff members in important criminal investigative areas such as drugs, corruption, and fraud. This staffing problem has increased since the expansion of ML predicate offenses and the need to conduct forfeiture investigations in these cases. There is a lack of sufficient revolving funds for the conduct of ML, drug, and other predicate offense cases, which interferes with the ability to conduct long term and complicated investigations.

Judicial Technical Police

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According to the authorities, the PTJ, which reports to the Ministerio Público, has a financial intelligence unit (SIF) that acts as the technical and support arm of the investigations being conducted by prosecutors of financial crimes, including ML. This unit works closely with the prosecutors. In the case of joint investigations with other countries, this work is coordinated by the prosecutor responsible for the investigation. The SIF has a staff of 10 persons to conduct the police investigation of all serious financial and other crimes, such as drugs, robbery, corruption, bribery, extortion, intellectual property violations, and trafficking in persons. In the case of ML, the SIF will receive the reports sent by the UAF to the prosecutors, conduct a net worth investigation, determine the origin of funds used in the course of the crimes, prepare the financial interrogatories, and assist in the development of any related forfeiture case.

The PTJ itself has only two specialized units due to lack of resources: the SIF and the Drugs Unit. Authorities expressed that this is a difficulty as there are so many predicate offenses for ML. There is a budget shortfall of about $3 million every year. The PTJ has an academy for basic police training, but not for specializations. Sporadic training has been received from international sources on subjects such as ML. Both the PTJ in general and the SIF in particular need increased funds to carry out their financial crimes investigative responsibilities fully. The PTJ's coordination with Interpol is very good.

Courts

The judicial organ of the government has the power to independently and rapidly decide conflicts, assuring respect of the Constitution and laws of Panama. The Panamanian court system is organized into four levels: there are 96 Municipal Judges, 105 Circuit Judges, 12 Superior Courts, and 9 magistrates that compose the Supreme Court of Justice. The other judicial offices include a public defender's office, an office providing assistance to victims of crime, and a mediation center, among others.

Law 6, 2002 provided that the courts should set norms of transparency. Further, the judiciary follows norms in the selection of personnel, and employee job classification. Ethical norms for judges can be found in Sections 1–2 of Chapter II of Title XVI of Book I of the Judicial Code. Regulations of conduct may also be found in Articles 447–455 of that code. Each judge must file reports with the Controller General on personal assets when they enter employment as a judge and when they leave employment.

The courts recognize the need to carefully handle ML and terrorist finance cases. However, there have been only 10 ML cases brought before the courts, and no terrorist finance cases, so there is little experience in these types of cases. Some occasional specialized training has been provided by foreign sources.

The number of cases per judge were 463 in 1995; this number increased to 539 in 2004. There were a total number of 304 criminal cases initiated in 2004, with 600 cases resolved.

There have been 10 cases of ML since it was criminalized, with 7 cases tried to a conclusion, 1 case remaining active and 2 cases dismissed. The average prosecution time for ML cases is 18.9 months. All of the existing ML cases have been predicated on drug-related offenses.

Other Offices

The National Securities Commission (CNV) has independent investigative authority within their own jurisdictions. If they determine the existence of any potential criminal case, this information is referred to the Ministry of Public Prosecution.

Legal System and Related Institutional Measures

Statistics
All the agencies responsible for implementing the AML/CFT regime keep their own statistics on the work they performed. However, there is no centralizing of the overall data on this subject, nor is the data maintained in a consistent format, so that certain important conclusions can be drawn from the data to measure the effectiveness of the AML/CFT efforts.
Recommendations and Comments
An in-depth budget analysis should be made of all the enforcement needs, indicating those most urgent, so that the low numbers of ML cases and convictions can be addressed. Review the dependence on a general budget allotment, to ensure proper distribution of funds for enforcement purposes. Develop a government coordination group on AML/CFT, which would meet regularly for all relevant government enforcement agencies to enhance their efforts, exchange ideas, and report policy recommendations to the High Level Commission against money laundering and the financing of terrorism. Develop a system through which all the law enforcement investigative agencies are connected to a central database on money laundering and the financing of terrorism and other financial crimes. The existing database of the courts on financial crime convictions could be also linked with this new database with different security levels and access to information for different levels of authority. Develop training for prosecutors and financial police, including protection of informants and investigative techniques. Increase personnel for the SIF since, according to the SIF, the current work load would require additional investigators/analysts. Develop systematic training for the courts with emphasis on financial crimes, ML, anti terrorism, and FT for judges and magistrates working in criminal law. Enhance training for all the government agencies involved in money laundering and the financing of terrorism investigations by the UAF and the judicial police (SIF within PTJ), including typologies. Develop a process for the courts to independently obtain expert forensic and accounting assistance on complicated financial matters related to financial crimes and ML. Consider whether special courts should be created for financial crimes and ML which would allow training efforts to be focused on the judges who would use it most. Extend database system at the courts so that records of all financial crime cases, including money laundering and the financing of terrorism and their results are accessible for the benefit of analysis and statistical review. Consider linking it to other databases in the other agencies, maintaining security of the information by permitting different levels of access for the different levels of authority. Develop training for the national police on corruption, ML, and FT, so that they can better carry out their responsibilities. Develop process of coordination of government statistics so that AML/CFT data can be interpreted across

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agency divisions concerned.

Expand both technical resources and infrastructure in order to carry out the investigative work effectively.

Train employees responsible for performing financial crimes investigations.

Compliance with FATF Recommendations		
R.27	Compliant	
R.28	Compliant	
R.30	Partially Compliant	The UAF, law enforcement, and prosecutors not adequately funded, trained nor staffed. Budgetary autonomy should be clarified for the UAF.
R.32	Largely Compliant	The government coordination group does not yet use statistics to review effectiveness of the AML/CFT program. Statistics are maintained but not coordinated in a uniform way, per type of financial institution, so that they can be better used to measure the effectiveness of the AML/CFT system periodically and systematically.

Cash couriers (SR.IX)

Description and analysis

Cabinet Decree No.10 of 1994 establishes the mandatory filing of a written declaration by every passenger or traveler who enters the country through any airport or border carrying with him cash or equivalent "values readily convertible into cash" in excess of $10,000.

The traveler's declaration is mandatory at all airports, seaports and borders, but in practice, only those collected at the Tocumen Airport are entered into a database which is then shared with the UAF by means of a monthly update. The UAF also receives a faxed copy of each declaration.

The obligation to declare does not apply to the movement of cash contained in freight, postal, or cargo shipments or in any way different than the personal transportation by the passenger. It also applies only to incoming travelers and not to the exportation of cash from Panama. It is important to clarify that the declaration of outbound transportation of money does not amount to a limitation in the flow of capitals which would be contrary to Panamanian legislation, as some local authorities mistakenly interpreted.

Customs authorities at the Tocumen Airport use dogs to detect cocaine and cash hidden in passengers' luggage, but there has been little evidence of the authorities' efforts to detect cash that is smuggled into cargo shipments passing through the free zone.

Any failure to declare the incoming money, or any false declaration of it (including inflated amounts), constitute a crime of "customs fraud" (Law 30 of 1984, Article 18, as modified by Article 9 of Law 41 of 1996) which is sanctioned with a penalty of up to five times the amount of the fraud and one to three years of imprisonment. Failures to declare or false declarations are also administrative violations subject to the same fines applicable to other customs infractions (article 550 of the Fiscal Code). The money may be stopped and seized pursuant to investigation of any possible crime. Customs authorities are responsible for investigating and sanctioning both the administrative violations and the crime of customs fraud. If they suspect that a different crime may have been committed (such as ML or TF), they must inform the pertinent section of their investigation to the ordinary courts for further action (Article 35 of Law 30, 1984). Customs officials are authorized to review the truthfulness of the declaration, and they do so on an occasional basis. In 2004, $2,038,442 in cash was seized as a consequence of either failures to declare or false declarations. Customs officials maintain good communications with all other law enforcement authorities and they often conduct

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joint operatives.

The statistics at the Tocumen Airport for the last three years indicate that $339.5 million was declared in 2002, $266.3 million in 2003, and $264.7 million in 2004. Most of this money was from Colombia (total of $452.3 million since 1999), followed by Mexico ($224.1 million), and Haiti ($43.9 million). Many travelers carrying large cash amounts explained that they intended to buy merchandise at the ZLC for later importation into their home country, but authorities have expressed concern that, often times, the money does not reach the ZLC and is used for other purposes outside the ZLC.

The ZLC generates a substantial amount of cash transportation into the country. Several companies established in the free zone estimate that payments in cash for goods that are to be re-exported amount to approximately one-third of the total value of their sales. This estimate is consistent with that of one bank located in the ZLC, which informed that at least one-third of its deposits are made in cash.

A special feature of the introduction of currency into Panama is the existence of a teller window (of Banco Nacional de Panamá) located inside the Tocumen Airport, which specializes in receiving cash deposits from travelers both customer and non-customer, who come to Panama to buy goods from the companies located in the ZLC. This office was established with the objective of preventing people from being robbed while they were transported between the airport and the ZLC. Nowadays, these people can deposit their cash in the bank account of the ZLC merchant to whom they intend to purchase their merchandise, provided that the Banco Nacional de Panama obtains prior authorization from the merchant (the Bank's customer) and the depositor fills and signs a CTR form.

The mission was informed that some of the free-zone merchants which make use of this service have adopted some measures to prevent their bank accounts from being misused by their customers: they require a CTR from the customer or a copy of the one filed with the Banco Nacional de Panama; they do not reimburse the customer for any balance when he ends up buying merchandise for less than the amount originally deposited unless it is minimal; in case of reimbursements these are paid only in cash, not by check or wire transfer. Many banks located in the ZLC also have adopted the precaution of not accepting any deposits in checks in which their customer (the ZLC merchant) is not the original beneficiary

The mission was informed by several ZLC merchants and companies of their need for training and awareness raising on how ML can occur through the activities of a free trade zone (see more details in Recommendation 20).

Recommendations and comments

Modify the travelers' declaration obligation to comply with FATF Special Recommendation IX to include currency and bearer negotiable instruments that are taken out of ("exported" from) the country.

Make it mandatory to declare currency that is mailed, transported as non-accompanied luggage, or shipped by any means of transportation.

Customs should strive for a systematic approach at spot-checking containers, especially in the ZLC where there has been little detection of smuggled currency.

Make better use of the available information and of the current investigative powers of customs, in cooperation with the UAF, to identify the possible trends and vulnerabilities of the Panamanian system for detecting the physical cross-border transportation of currency, and to take appropriate actions. Priority should be given to speeding up the plans to enhance the intelligence capabilities and to create the Risk Analysis Office of

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Customs that is being devised within the framework of the National Project for Transparency supported by the Inter-American Development Bank. Customs will require active cooperation from other governmental agencies to obtain relevant information for its new risk-based system. The SdB should promote, through its risk-based inspection practices, that banks dealing with ZLC customers maintain a closer monitoring of those accounts to detect cases where their deposits are inconsistent with their sales.		
Compliance with FATF Recommendations		
SR.IX	Partially Compliant	The declaration obligation does not apply to outgoing transportation of cash; it does not apply to cash transported in non-accompanied freight; it is enforced only at the Airport of Tocumen; and there is little control of cash smuggled in freight containers.

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Risk of money laundering or terrorist financing
Description and analysis
The risks of money laundering and financing of terrorism were described earlier in this report. Based on the interviews with the authorities and other information gathered by the mission, the Government of Panama seems committed to implementing the necessary measures to deter criminals from using the financial system, which is considered one of the most sophisticated in Latin America, for their illegal activities. Since 2001, the Government of Panama has demonstrated their ability to effect change in those areas where strengthening was needed in order to have Panama's name removed from the NCCT list. In doing so, the competent authorities in Panama have enacted and implemented AML/CFT laws and regulations, executive orders, regulatory agreements with other supervisors and counterparts abroad. All these initiatives were taken with the intent of establishing a sound and effective AML/CFT program that complies with most of the international standards. The FATF methodology requires that certain elements of the AML/CFT regime be comprised in laws or regulations being primary and secondary legislation, such as laws, decrees, implementing regulations or other similar requirements, issued or authorized by a legislative body, and which impose mandatory requirements with sanctions for non-compliance. The assessors were able to determine that the Agreements issued by the SdB were "regulations" based on their understanding of the legal and constitutional arrangements that exist in Panama. The AML/CFT legal and regulatory framework in Panama for financial institutions consists of four tiers: (i) laws that set the enabling provisions and basis requirements; (ii) agreements (regulations issued by the SdB by the powers granted under the Banking Law) that define the legal requirements and implementation aspects of the laws; (iii) executive decrees (issued by the president and a sector specific ministry) and cabinet decrees (issued by the president and all the ministers) that further define the legal requirements and implementation aspects of laws and agreements; and (iv) resolutions and circulars (issued by the SdB) that serve as supervisory letters/instructions/administrative decisions which provide further guidance with respect to specific legal and regulatory requirements. All issued under the powers vested on the SdB by the Banking Law. While laws and decrees are issued and approved by the legislative and executive bodies, respectively, the agreements, resolutions, and circulars are issued by resolution on the Board of the SdB. Under the Banking Law, the SdB is empowered to enforce and sanction financial institutions for non-compliance with the applicable laws and decrees, as well as with the agreements and resolutions and circulars it issues. The AML Law 42-2000 provides the general framework for customer identification, including the necessary steps

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to be taken for identification of beneficial owners of accounts and customer due diligence, cash and suspicious transaction reporting, record retention requirements, supervision responsibilities, and sanctions. However, coverage of the law does not extend to insurance brokers and agents, leasing, and factoring companies. This lack of coverage represents deficiencies within the overall Panamanian AML/CFT regime and exposes the country to potential money laundering and the financing of terrorism risk. Of equal importance and due to limited resources and capacity, some supervisory authorities including the SSRP and the Banco Hipotecario Nacional (BHN) are not conducting AML/CFT supervision of the institutions under their responsibility.

Panama's banking system is the largest in the Central American region. It accounts for approximately 90 percent of all activities in the financial sector on the basis of assets. For example, at the end of 2004, assets in the banking system totaled approximately $40 billion compared to less than $800 million for both the insurance sector, and the cooperative sector, and $70 million for savings and loans institutions. The remaining activities are conducted by the securities sector, cooperatives, finance companies, leasing, and factoring companies.

The mission took into account the size, complexity, and risks within the banking sector in relation to the other sectors. Banks on this basis are the most significant of the "financial institution" and therefore more weight is given to the strengths and weaknesses of the banking sector in coming up with the rating of compliance with individual FATF Recommendations that pertain to the types of financial institutions. Although significant deficiencies were identified within the insurance sector and the savings and loans sector, both sectors on the basis of materiality are very small and represent a lesser factor in overall money laundering risk exposure for the financial center. On the basis of assets, the insurance sector is less than 2 percent of the banking sector, and savings and loans are less than 1 percent. For insurance, only half of insurance premiums are associated with life insurance products, which further mitigates the potential level of money laundering risk. However, should future factors affect the scale of the vulnerability of the non-banking areas, then the overall rating of the financial sector will require reappraisal.

Customer due diligence, including enhanced or reduced measures (R.5 to 8)

Description and analysis

R.5

Article 1 of Law No. 42 - 2000 establishes the legal reporting requirements for all financial institutions, including banks, trust companies, money exchanges (bureaus de change) and money remitters, (covering natural and legal persons that are involved in these activities, whether as a main activity or not), finance companies, savings and loans cooperatives, stock exchanges, stock centers, stock houses, stock brokers, and investment administrators. All of these entities are required to maintain and perform adequate due diligence procedures to prevent illegal transactions/operations from being conducted with funds coming from or activities linked to ML. The obligation to identify the true owner or beneficial owner in contained in Article 1(1) of Law 42-2000, where financial institutions are required to obtain from their clients i) adequate references or recommendations; ii) certifications evidencing the incorporation and existence of the trust or legal person, including bearer share corporations; and iii) identification of its directors, officers, attorneys-in-fact appointed with broad powers and legal representatives of such juridical persons to adequately establish and document the true owner or beneficial owner of the account, direct or indirect. Within Panama, it is legally understood that financial institutions are obligated (under Article 1(1) above) to identify the true owner and beneficial owner, which is understood to require the identification of the natural person. The SdB verifies this during its on-site inspections. Failure to maintain adequate identification has resulted in supervisory sanctions. Officials of financial institutions visited confirmed that the common understanding is that there is an obligation to identify a person that is the owner of a company. Also, for trusts or legal persons to carry out transactions, the entity must be a bank customer. In addition, Article 7 of the same law establishes the reporting obligation for insurance, re-insurance and re-insurance agents (among others), but only

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with respect to reporting currency and cash-like transactions.

For trust companies, the customer identification obligation is also set out by Article 1(1) of Law 42-2000 and the SdB is responsible for verification of compliance during on-site inspections. Circular FID 3-2000 of the SdB, affirms the customer due diligence obligation requirements for trust companies and that trust companies refer to Agreement 9-2000, which is in place for banks. Agreement 9-2000 imposes an obligation to identify the settlor because he/she is the owner of the assets used to establish the trust. Consequently Article 4(1)(e) requires that the true owner be identified. Also, per the Law 1-1984 (Trust Law), Article 1, the settlor is defined as the owner of the assets and per Decree No. 16-1984 (implementing regulation), Article 2(b) the settlor is either the natural person or legal person that establishes the trust. Though Article 2(b) allows either a natural or legal person to establish a trust, the obligations of Agreement 9-2000 require that the true owner be identified. Consequently, in the event that a legal person is to establish a trust, the financial institution is obligated to identify the true owner of the legal person. The SdB intends to introduce specific obligations on trust companies into the revised Agreement 9-2000.

NOTE: The SdB recently issued Agreement 12-2005 (which revises Agreement 9-2000) detailing additional guidance with respect to performing CUSTOMER DUE DILIGENCE procedures for trust companies. This revised Agreement also i) incorporates an obligation to pay additional attention to transactions that could be linked to terrorists or used for the financing of terrorism; and ii) removes the threshold for conducting ongoing due diligence and monitoring of accounts. The effective date of the revised Agreement is February 27, 2006.

Banks in Panama still maintain numbered accounts. In this case, the identity of the true owner or beneficial owner is known to senior bank officials (Law 18-1959), compliance officers, and the information is available to the competent authorities. Banks are required under Law 42-2000, Article 1(1) to adequately identify the true owner or beneficial owner of the account. Agreement 9-2000 specifies the requirements for identifying the owner of the account, maintaining documentation to properly identify the owner, as well as frequency for reviewing operations in the account. Requirements and procedures are in place to ensure adequate customer due diligence for account owners of this type of account to comply with the law.

Article 1 of Law 42-2000 is implemented through Articles 4, 6, and 7 of Agreement 9-2000 of the Superintendency of Banks (SdB). Article 4 defines the criteria, regardless of the client, for customer identification and due diligence in the establishment of a banking business relationship; requirements for reporting cash and cash equivalent transactions in excess of the designated threshold of B10,000; monitoring of transactions on a weekly basis; and monitoring of account holder transactions on a bi-annual basis with the purpose of determining if the criteria for regularity established by the bank for such account holders remains the same. These requirements also apply to legacy accounts and account holders (owners/beneficial owners) of numbered accounts. With respect to wire transfers, only banks can perform these activities and only for account holders. For all wire transfers, the banks are required to perform customer due diligence measures including obtaining and maintaining adequate information when establishing the identity of the transfer originator, including account number, address, transfer date, beneficiary, intermediary, if applicable, and receiving bank information. In addition to the general requirements established in Agreement 9-2000, the recently enacted Agreement 2-2005, which came into effect on February 2005, complements the wire transfer requirements in accordance with the requirements of SR VII. This new agreement establishes a prohibition on processing wire transfers without the name of the originator, in addition to the originating bank. Banks visited are already complying with the requirements of SR VII and the SdB has conducted on-site inspections to ensure compliance. In addition, under Articles 4 and 5 of the new Agreement 12-2005, financial institutions are required to perform customer due diligence measures when there is a suspicion of money laundering or terrorist financing, as well as when the institution has doubts about the veracity or adequacy of the customer's identification information.

Article 6 establishes the obligation for customer due diligence regarding the establishment of a regular banking

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relationship. In this regard, customer due diligence is required for all clients before a business relationship is initiated or established. The banks are required to include in their files the client profile, in order to determine the purpose, the type, number, volume and frequency of the banking operations, products or services that will later be reflected in the client's account. The procedures adopted by each bank should permit to gather sufficient information to adequately complete the profile of each client, when needed, and to monitor their operations. Article 7 establishes the obligation for all banks to develop a "know-your-customer" manual to develop the implementation of the know your customer policy of the bank, which should be periodically updated. This manual should be established taking into consideration the level of complexity of the bank's activities and may contemplate different categories of clients established on the basis of the potential risk of illicit activity associated with the accounts and transactions of the clients. The know your customer manual, including policies, procedures, and customer due diligence measures are reviewed by the supervision staff of the SdB during on-site inspections. Because there is no exemption or threshold established for occasional transactions, customer due diligence measures are always performed before establishing the relationship.

Article 9 sets the obligation for institutions to maintain a registry for suspicious operations originated in or linked with money laundering, as well as the obligation to report these operations to the UAF. The institutions shall register the information pertaining to the operation. The information shall contain the detail(s) of the account(s) that originate the(se) transactions(s), the date(s) of said operation(s), the amount(s) and the type of operation, and notify the Compliance Office of the suspicious operations. The Compliance Office will review the operation to verify its suspicious character; write down in the registry, in a succinct manner, the observations of the employee that recorded the operations and of the Compliance Officer. A record of said notation there shall also be placed in the file of the person(s) and the account(s) that originated the transaction(s); when required, notify the suspicious operation to the Director of the UAF in the forms established for this purpose. The notice shall be channeled by way of the Compliance Officer, within 30 days following the notation mentioned above; write down in the registry the date and the form for the notice to the UAF, as well as the date and the number of the reply letter from the UAF; and update the respective client's profile, when relevant.

Article 18 (iii) of Legislative Decree 5-2002 establishes the obligation on financial institutions to report suspicions of terrorist financing. In addition, Article 10 provides by way of examples, some operations that deserve careful observation by each bank to determine, together with other elements of analysis, if they constitute suspicious operations. Although Articles 9 and 10 do not make particular reference to terrorist financing or related suspicious operations, Circular No. 39-2001 (issued November 2001), makes reference to a list of individuals and legal entities potentially linked to terrorist activities.

Article 4 of Agreement 9-2000, sets the measures for identifying customers and validating information when a business relationship is initiated include obtaining:

- customer's full name;
- civil status;
- profession or occupation;
- identity documentation;
- nationality;
- residence address or domicile;
- references;
- passport information, in the case of persons residing outside Panama;
- certification that the person is the beneficial owner of the account or is conducting the transaction/operation on behalf of another beneficiary. If there is another beneficial owner, proper identification is required; and
- articles of incorporation and/or any other certification to establish the true account owner or beneficial owner when establishing accounts for legal entities, including trusts, companies, and societies. It is also required to

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provide identification on the trustees, officials, directors, owners, and representatives of these legal entities.

For example, officials of the financial institutions visited explained the existing mechanisms or internal measures in place used to validate and verify the information provided by the individuals/legal entities establishing an account: These include comparing photograph(s) from the identity card(s) or passport(s) provided to the individual opening the account; comparing signatures on forms and signature cards against the signature on the identify card(s) or passport(s); verifying the entry stamps, signatures, or any other data that refers to the authenticity of the passport, if one is provided for identification purposes; verifying the telephone numbers provided (residence/employment) by placing corresponding calls; verifying the source of funds opening the account; and verifying references provided. In the case of legal entities, financial institutions verify the information contained in the Articles of Incorporation against the information in the corporations' certificate of good standing or its equivalent issued by the authorities of the corporation's country of origin; verify names of directors/officials listed against the Articles of Incorporation or equivalent document or financial statements, the public register for companies or its equivalent; verify signatory powers/individuals; and verify other documents like operating/occupational licenses. Although the public company register in Panama does not include shareholder or ownership information, some financial institutions have implemented additional measures to comply with the requirements of the law and agreement with respect to identifying the true owner of the account. For example, when opening/establishing an account relationship to a legal person, the institutions use a questionnaire/application form where the following information is obtained: i) name of shareholders; ii) ownership percentage; and iii) place of birth or incorporation. This information is then matched against other documents obtained to validate the identity of the true owners.

The measures in place for identifying the individuals/legal entities, as well as the measures for verifying the information adequately comply with the obligations imposed by Article 1(1) of Law 42-2000 and Articles 2 and 4 of Agreement 9-2000.

Before establishing the business relationship, financial institutions are required to show that customer due diligence procedures performed by maintaining and documenting in the file the customer's risk profile, in order to determine the purpose, type, amount, volume, and frequency of transactions to take place in the products or services requested by the customer. Article 4 of Agreement 9-2000, also requires to identify and document whether the individual opening the business relationship is acting as an intermediary for another person who is the true beneficiary and in case of an affirmative answer, to identify such person. In the case of trusts and juridical persons, including corporations with nominative shares issued to bearer, the institutions should require appropriate certifications evidencing the incorporation and existence of such juridical persons, as well as the identification of its directors, officers, attorneys-in-fact appointed with broad powers and legal representatives of such juridical persons, in order to establish and document the identity of the beneficial owners of the account. The information provided to the institutions by its clients or their representatives, related to the identification of the beneficial owners of the account must be kept in strict reserve and may be disclosed only to the national judicial and administrative authorities.

Article 1 of Law 42-2000 establishes the general obligation for financial institutions to conduct ongoing due diligence and to pay attention to all their customers' operations. This obligation is implemented through Article 4 of the new Agreement 12-2005, where financial institutions are required to conduct ongoing customer due diligence on all accounts. Furthermore, paragraph 2 of Article 4, requires financial institutions to maintain the documentation and due diligence conducted on the customer's account(s) and transaction(s) to ensure they are consistent with the established customer profile. It also requires financial institutions to have available tools designed to detect patterns of unusual or suspicious activities. Paragraphs 3 and 4 of the same law, establish additional ongoing due diligence requirements for certain customers based on a pre-determine threshold. Financial institutions visited perform ongoing due diligence, regardless of the threshold. These institutions also comply with the obligation for conducting ongoing due diligence triggered by the designated threshold. The SdB asserts that the

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financial institutions understand the obligation for ongoing due diligence and that records must be complete and current. The SdB through its on-site inspections verifies compliance with the requirements. SdB indicated that there have been sanctions for noncompliance with these requirements. Officials from financial institutions visited, confirmed that these customer due diligence measures apply also to legacy and numbered accounts, and that the supporting information is available even for accounts pre-dating the Agreement 9-2000, because the legal obligation for customer due diligence has been longstanding, though now there is a more heightened requirement.

Article 8 of the Agreement 9-2000, requires the institutions to retain a signed copy of the forms and documents utilized to identify the client and those used to perform due diligence, and maintain available to the authorities copies of the documents for a period not less than five (5) years, counted as of the end of the business relationship with the client. The forms and documents must be presented at the request of the inspector authorized by the Superintendency for this purpose.

Under Article 7, institutions are required to develop and establish a written manual that will develop the implementation of the "know-your-customer" policy of the institution, which will be updated periodically and reviewed by the authorities during on-site visits. This manual should followed guidelines issued by the SdB and should be developed according to the level of complexity of the institutions' activities, and may contemplate different categories of clients established on the basis of the potential risk of illicit activity associated with the accounts and transactions of such clients. The procedures in this manual should allow the institution to gather sufficient information to adequately update the risk profile of the client, when needed, and to monitor their operations.

Panamanian authorities do not allow institutions to apply "reduced or simplified" customer due diligence measures when identifying and/or verifying the identity of the customer or beneficial owner, nor institutions allow customers to use the account before the identity is verified and the due diligence is conducted. Failure to satisfactorily complete customer due diligence measures when establishing a regular banking relationship requires the institution to report the operation to the UAF for insufficient or suspicious information.

As mentioned earlier, the current legal framework does not cover customer due diligence measures for insurance brokers and agents, savings and loans, leasing, and factoring companies.

R.6

Banking Circular No. 001-2005, issued by the SdB on January 11, 2005, which also became effective on the same date, establishes the obligation on financial institutions to adopt customer due diligence measures for Politically Exposed Persons (PEPs). The obligations mirror those recommended by FATF, including: a) establishing risk management systems to determine whether the customer is a PEP; b) obtaining senior management/board of directors approval for establishing account relationship; c) performing enhanced due diligence to determine source or wealth and funds; and d) conducting ongoing monitoring of account transactions. customer due diligence measures for PEPs should be incorporated in the policies and procedures manual for preventing ML. Article 5 (3) of Agreement 12-2005, requires financial institutions to pay special attention and to have adequate risk management systems/measures in place with respect to customers identified as PEPs both domestic and foreign, and to conduct enhance due diligence. Both the Agreement and the Banking Circular provide sanctions for noncompliance.

To implement the obligations of the Agreement and the Banking Circular, regulated entities like banks and securities companies have established their own internal lists of high-risk customers, including PEPs. Many banks and securities companies are subscribed to outside sources of information (i.e., World Check) that track foreign prominent public officials. These outside sources of information together with their internal lists allow the

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institutions to monitor foreign PEPs, potential businesses of PEPs, and other activities considered high risk. In addition, these financial institutions have staff dedicated to review other public sources of information, including newspapers and public databases to identify existing account holders that subsequently have been identified as potential PEPs. Institutions interviewed maintain a list foreign PEPs, as well as an internal list of domestic (Panamanian) high ranking government officials which they have also classified as PEPs. This list includes, members of the current administration, family members, known business partners and/or associates.

Officials from the financial institutions visited stated that their internal policies and procedures for opening accounts to individuals identified as PEPs included, in addition to normal customer due diligence procedures, some of the following measures i) written approval of the branch manager, regional manager, and in many cases approval from the board of directors; ii) obtaining information with respect to the PEPs reputation (from independent and private sources); iii) verification of wealth and source of funds; and iv) once established, ongoing and thorough review of the activities in the account

The CNV and the IPACOOP have established similar requirements for their institutions with regard to enhanced customer due diligence measures for PEPs.

However, it is a common practice for reporting entities to use as a secondary source of information the United States' Office of Foreign Asset Control (OFAC) list and the United Nations – Counter Terrorism Committee list to identify potential PEPs. Although these lists are not intended to identify PEPs, the use of this secondary source of information does not affect the obligations imposed by the supervisory authorities.

As mentioned in Rec. 5, the current legal framework in Panama does not extend the coverage to include insurance brokers and agents, savings and loans institutions, leasing, and factoring companies. Therefore, measures for establishing business relationships with PEPs have not been developed for these activities/operations, representing additional money laundering and the financing of terrorism risks to the country.

R. 7

For purposes of Agreement 9-2000, Article 3, Banks are exempted from customer identification and customer due diligence measures. Although there is no specific obligation for financial institutions to perform due diligence in relation to cross-border correspondent banking and other similar relationships in accordance with this recommendation; in practice, financial institutions visited provided evidence to support that they have established internal controls, policies and procedures to carry out the essential requirements of Rec. 7 when establishing correspondent banking relationships, in line with the FATF standard. Procedures for establishing correspondent banking relationships are established within the institutions' AML policy and documented on the application for establishing correspondent banking relationships. In other instances, some financial institutions in Panama act as respondent banks to institutions abroad (mostly banks in the United States of America) and have been required to provide their AML policies for review. Responsibilities for both correspondent and respondent institutions are set out in the contractual relationship agreements. With respect to payable-through accounts, financial institutions visited indicated that they do not provide this service to their clients. Interviews with the SdB confirmed this.

The SdB agrees that there is no obligation through regulation that binds the banks to comply with the requirements of this recommendation and has revised the existing Agreement 9-2000 to establish the obligation.

NOTE: The SdB revised Agreement 9-2000 to reflect the new obligations. Article 3 of the new Agreement 12-2005, establishes the obligation on financial institutions when establishing correspondent banking relationships. It also prohibits the establishment of such accounts with shell banks. Resolution 032-2005 addresses the due diligence measures needed for establishing correspondent banking relationships, including the essential elements of

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Recommendation 7. This Resolution provides specific guidance on what financial institutions need to follow when establishing correspondent banking relationships. Taking into consideration that the banks are already conducting the necessary due diligence with respect to correspondent banking relationships, additional time is required to ensure that all financial institutions are complying with the requirements of the new Agreement and related Resolution, when the new Agreement becomes effective on February 27, 2006.

Similar obligations are contained in Article 31 of Decree 1-1999, which authorizes Panamanian investment/brokerage houses to maintain correspondent banking relationships with foreign investment/brokerage houses authorized to operate in jurisdictions recognized by the CNV, with the goal of conducting transactions outside Panama through these foreign entities. Institutions in the securities sector maintain similar policies and procedures in line with the essential elements of Recommendation 7.

R. 8

Financial institutions, mostly banks, have measures in place to manage technological risk, including procedures in place to prevent the misuse of their institutions via internet or any other electronic means. For example, the SdB under Agreement 5-2003, establishes the requirements for those institutions that provide electronic banking services, via phone or e-banking, to their clients. Article 3 requires the SdB to authorize all electronic banking services to be provided by the institutions. Article 7 lists the electronic banking services that are allowed by the SdB. However, opening an account via internet is not permitted. As mentioned earlier, it is a requirement in Panama for the potential account holder to be present before opening a bank account. In addition, the authorities indicated, and the financial institutions visited validated that it is a requirement for the person opening the account to be present. Agreement 5-2003 establishes the obligation for financial institutions providing electronic banking services to have in place the following: operations manual, policies, procedures, and internal controls necessary to support these activities; designation of an unit responsible for identifying, evaluating, and controlling risks associated to electronic banking activities; registry of transactions conducted by the customers; information to the client with respect to usage of electronic banking services, security controls for safeguarding the transaction and privacy of customer information, relations with providers of electronic banking services, measures to prevent the electronic banking from being used for illegal activities, including customer identification and customer due diligence, reporting of suspicious transactions, and other activities as required by Agreement 9-2000. Agreement 7-2003 sets the requirements for the measures, policies, and controls that need to be in place within the financial institutions with respect to credit card transactions, including those where accounts for internet casinos are involved.

Within the securities sector, clients interested in opening an account can download , via internet, the necessary forms and documentation needed~~;~~ however, the client is required to be present to sign the necessary forms to establish the account. Thus, similar to banking, it is not possible to open a securities account via internet. In this case, the customer needs to provide all documentation as required by the agreement, including signing a statement with respect to the origin/source of funds.

Although there are no policies or measures in place within the insurance sector, the technological risk is mitigated given that the insurance companies (through their agents) conduct face-to-face transactions when selling their products. Management of insurance companies visited indicated that transactions are conducted after proper customer identification and due diligence procedures are performed.

This risk is not applicable to other institutions like savings and loans, insurance, finance companies, leasing and factoring because they do not offer this type of service/product to their customers.

Recommendations and comments

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R. 5

The SdB should introduce further guidance to trust companies for performing due diligence procedures. Currently, trust companies apply the requirements of Agreement 9-2000.

Note: The SdB has issued additional guidance under Agreement 12-2005, which revises Agreement 9-2000. The new guidance specifically addresses CCD procedures for trust companies.

The current legal framework (Law 42-2000), should be amended to extend the coverage to insurance brokers and agents, savings and loans institutions, leasing and factoring companies, as well as issuing related measures for performing customer due diligence.

- **R. 6**

Supervisory authorities including the SSRP, BHN, and the MICI should develop specific requirements or guidelines similar to those issued by the SdB and the CNV to ensure compliance with the requirements of the law. Once in place financial institutions in these sectors should follow these guidelines when establishing business relationships with politically exposed persons (PEPs). In addition, the current legal framework should be amended to extend the requirements of addressing PEPs to cover insurance brokers and agents, savings and loans institutions, leasing and factoring companies.

R. 7

SdB should further clarify the obligation for financial institutions to perform due diligence when establishing correspondent banking relationships in accordance with the essential elements of Rec. 7.

NOTE: The SdB recently revised the Agreement and established the obligation and requirements for establishing correspondent banking relationships through Agreement 12-2005 (which revises Agreement 9-2000) and Resolution 032-2005 which provides further clarification. Although banks visited are already complying with the obligations and conduct adequate due diligence, additional time is needed to ensure that all banks fully comply with the requirements of the revised Agreement and related Resolution. The SdB should take the necessary measures during future on-site inspections to determine the level of compliance of financial institutions with the new requirements.

R. 8

Although the technological risk is mitigated within the insurance sector by face-to-face transactions, the SSRP should consider developing and establishing the necessary measures and guidelines for handling of non-face-to-face and other activities that clients could conduct via internet, given the global focus on technology and internet-based products and services that might favor anonymity.

Compliance with FATF Recommendations		
R.5	Largely Compliant	Lack of AML/CFT coverage and customer due diligence obligations, within the existing legal framework, for insurance brokers and agents, savings and loans institutions, leasing and factoring companies.
R.6	Largely Compliant	Lack of specific requirement or guidelines in place for institutions under the responsibility of the SSRP, BHN, and the MICI for establishing business relationships with politically exposed persons. Lack of AML/CFT coverage within the existing legal framework for insurance brokers and agents, saving and loans institutions; and leasing and factoring companies to address the requirements for PEPs.
R.7	Largely	In practice, banks are complying with the essential elements of this

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	Compliant	recommendation and conducting adequate due diligence when establishing correspondent banking relationships. However, the specific obligation on Agreement 9-2000 was too general. In response, the SdB recently established the obligation in line with the essential elements of Rec. 7 and additional time is needed to ensure that the banks are fully complying with the revised Agreement and related Resolution requirements, when the revised Agreement becomes effective on February 27, 2006.
R.8	Largely Compliant	Lack of measures and guidelines in place at the SSRP for handling of non-face-to-face and other activities that clients could conduct via internet.

Third parties and introduced business (R.9)

Description and analysis

Law 42-2000 and implementing regulation Executive Agreement 1-2001 set the obligations for the supervisory agencies to compliance with the requirements of Law 42-2000. For example, the SdB under Agreement 9-2000 requires all banks and trust companies in Panama to conduct their own customer due diligence (identification of customer and validation of customer information). The law does not explicitly prohibit the application of the use of third parties or introducers; however, financial institutions interviewed stated that they do not rely on third party or intermediary customer due diligence. The financial institution establishing the account relationship is ultimately responsible for adequately identifying the client and conducting effective due diligence, including obtaining the necessary documentation to identify and verify the true owner of the account. The mission team was informed that in certain situations where the person or the company wishing to establish the account relationship is represented by a lawyer, the owner/beneficiary of the account needs to be present to sign the required documents. In other instances, the lawyer could establish the account relationship after the complying with the financial institution's customer due diligence requirements. Further discussions revealed that some banks have accepted the opening of an account when conducted by a lawyer on behalf of his/her client, where the lawyer has provided certified documents attesting to the identity of the customer, including a customer signed affidavit. However, even in these cases where certified documents are provided, the financial institution accepting the business relationship conducts its own independent customer identification and enhanced customer due diligence procedures, regardless of the information provided by the attorney or third party. Some of the enhanced customer due diligence procedures include i) obtaining original or authenticated copy of Special or General Power of Attorney given to the lawyer to represent the individual on whose account the relationship will be established. (This document should indicate the powers and authority that may be exercised.) ii) obtaining adequate identification (passport, if applicable, identity card to verify signatures) of the individuals on whose behalf the intermediary acts; and iii) obtaining copy of By Laws, Articles of Incorporation, certificate of good standing issued by a competent authority and verifying the names and signatures against other documents provided.

In the case of the CNV, Agreement 1-2005 (February 3, 2005) sets similar requirements for customer due diligence measures and customer risk profiling are establishes to ensure that a relationship account will not be established unless all requirements for identifying the customer or account beneficiary(ies) are satisfied, including the physical presence of the true owner.

In the insurance sector, insurance companies require the physical presence of the client before a premium is issued.

Recommendations and comments

The regulations should address the issue of third parties or introducers and provide specific guidelines for relying on customer due diligence measures performed by third parties or introducers. Guidelines issues should include the necessary customer due diligence measures that third parties or introducers must perform to ensure compliance with the customer identification requirements and due diligence measures contained in Rec. 5. In the case of Panama, these guidelines should be directed to lawyers acting as introducers given the limited customer due

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diligence requirements in place for this profession.		
Compliance with FATF Recommendations		
R.9	Partially Compliant	The existing law and regulation do not specifically address third parties or introducers nor prohibit the application of the use of third parties or introducers. Lawyers are common introducers and are not covered by the existing AML Law nor required to perform customer identification and due diligence procedures in line with the essential elements of Rec. 5.
Financial institution secrecy or confidentiality (R.4)		
Description and analysis		

Several legal provisions establish civil, administrative and criminal sanctions for the breach of secrecy duties, both for public officials and private persons. In particular, the "banking law" (Decree-Law 9-1998) provides the following:

(i) "the information about individual customers of a bank, obtained by the Superintendency in the exercise of its functions, can only be revealed to the competent authorities in accordance with the law and in the context of a criminal procedure;"

(ii) "the banks can only disclose information about their customers (...) with the express authorization of their customers, except when there is a formal request from a competent authority in accordance with the law" (Article 85); and

(iii) the violation of these provisions are subject to fines of up to $100,000, "without prejudice of the applicable civil or criminal penalties."

Article 170 of the Penal Code, on the other hand, prescribes criminal sanctions of up to two years, fines equivalent to 150 days of salary and prohibition to exercise the trade or profession for two years, to the person who "because of his occupation, employment, profession or art, knows of secrets that could be harmful if revealed, and it reveals them without the agreement of the interested party or without the need to protect a higher interest." There are also special and aggravated provisions for public servants.

An enhanced duty of secrecy with respect to trusts, which was established by Articles 20 and 21 of Decree 16-1984 (the securities supervisor could only disclose information in the context of criminal investigations initiated in Panamanian territory) was modified by Decree 213-2000 which allows the Superintendency to furnish such information to the competent administrative and judicial authorities. Also, an apparent limitation for banking supervisors to obtain information about numbered accounts contained in Article 5 of Law 18-1959 (which states that banks can only give that information to criminal judges) has been overridden by the provisions of Law 42-2000 ("the AML/CFT Law"), as described next.

The professional or financial institution's secrecy described above does not, however, inhibit the implementation of the FATF Recommendations in Panama, neither domestically nor internationally.

In the context of criminal investigations, competent authorities have unrestricted access to confidential information from any natural or legal person, and information can be shared with foreign countries through the normal mutual legal assistance procedures (please refer to the section on International Cooperation at the end of this report).

For supervisory purposes, Law 42-2000 explicitly authorizes the competent supervisory and control agencies to "inspect the procedures and mechanisms of internal control of each of the legal persons and professionals that are

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subject to their supervision, in order to verify their compliance with the provisions of this Law" (Article 5). Access by the supervisors to the necessary information from reporting institutions was perceived, in practice, as unrestricted by all the authorities and the financial institutions met during the visit.

The administrative authorities responsible for supervising compliance with AML/CFT requirements, as well as the UAF, have unrestricted access to any information kept by reporting institutions. Besides the general powers of inspection assigned to the competent supervisory and control agencies in their respective laws, Law 42-2000 contains provisions that override the confidentiality obligations imposed on reporting institutions (as described above), in the following situations:

(i) Article 3 states that "All information that is communicated to the Financial Analysis Unit or to the authorities of the Republic of Panama in compliance with the present Law or its implementing regulations (...) will not constitute a violation of the professionals secret, neither a violation of the restrictions about disclosure of information derived from contractual confidentiality or from any legal or regulatory provision, and neither will it imply any responsibility for the natural or juridical persons mentioned in this Law nor for their dignitaries, directors, employees or representatives."

(ii) Specifically with regards to the power of the UAF to obtain all necessary information, Article 2 authorizes the reporting institutions and their corresponding supervisory agencies "to collaborate with the UAF in the exercise of its duties and to provide it with any information in their possession, at the UAF's request or on their own initiative, conducive to prevent the commission of the crime of money laundering (...)."

With respect to the international sharing of information through channels other than mutual legal assistance, one of the UAF's functions is to "exchange with homologous entities of other countries information for the analysis of cases that could be related with the laundering of money or the financing of terrorism, with the prior subscription of memorandums of understanding or other cooperation agreements" (Article 2-d of Decree 136-1995, as modified by Decree 163 of 2000 and Decree 78-2003).

The banking law establishes that the Superintendency may enter into agreements with foreign supervisors and that "foreign supervisory entities can request information and carry out inspection visits to the branches and subsidiaries of foreign banks on which they perform consolidated supervision" (Decree-Law 9-1998, Article 29). These MOUs can allow access to information for the verification of compliance with AML/CFT requirements and some of the MOUs signed by the Superintendency of Banks already include this subject.

Recommendations and comments		
Not applicable		
Compliance with FATF Recommendations		
R.4	Compliant	

Record keeping and wire transfer rules (R.10 & SR.VII)

Description and analysis

R.10:

Law 42-2000, Article 1, paragraph 9 establishes the main requirement for financial institutions to maintain for a period of at least five (5) years all customer transaction information and also documentation used to identify and validate the customer and account relationship, including information obtained from the customer when conducting transactions/operations on his/her own or on behalf of someone else. Article 7 of Agreement 12-2005 further requires that financial institutions maintain, for the same period of time, all documentation obtained through the due diligence process, documentation evidencing verification of source of funds, and any other documentation that

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allows for the reconstruction of an individual transaction, if necessary, covering the essential elements of Recommendation 10. All the documentation, as required by law and agreement should be available for inspection to SdB personnel.

Compliance with these requirements is validated by the competent supervisory authorities during on-site inspections, as required under Articles 5 and 6 of Law 42-2000.

However, because the supervisory authorities for insurance and savings and loans institutions, the SSRP and the BHN respectively, are not conducting AML/CFT supervision, compliance with record keeping requirements in these sectors may be lacking. It is important to note that in those instances where the insurance company is a subsidiary of a bank, the SdB, through its consolidated supervision approach provides limited oversight with respect to AML/CFT matters minimizing the risk.

SR VII:

Financial institutions follow the general obligations imposed by Law 42-2000 and Agreement 9-2000 when performing customer due diligence measures, including obtaining documentation, validating customer identity, and maintaining customer and transaction documentation for at least five (5) years. Measures for handling wire transfer transactions/operations are covered in a general manner. Most recently, the SdB under Agreement 002-2005 (issued on February 2005), imposed the obligation for financial institutions to comply with the essential requirements of Special Recommendation VII, complementing the general requirements mentioned above. The Agreement follows the specific requirements of SR VII, requiring institutions to comply with the documentation requirements including among other aspects the definition and identification requirements for the originator of wire transfers, as well as the distinction between those conducted at the domestic level and those conducted internationally. All information obtained by the remittance or money transfer bureaus to process a wire transfer request, including the name and address of the originator; account or reference number; intermediary institution, if applicable; name of receiving institution; and beneficiary must flow through the payment chain. Although remittance and money transfer bureaus obtain and maintain the necessary documentation for each customer transfer request they get, the wire transfer activity can only be performed/carried out by banks. Therefore, these remittance and money transfer bureaus process their requests for transfers through their individual banks, which in turn request similar information in order to carry out the wire transfers. All information accompanies the wire transfer.

Panamanian authorities stated that there is no minimum threshold established for wire transfers, therefore, all documentation/information is needed before the wire is executed. In addition, financial institutions interviewed provided evidence to support that in those case where wires were received with insufficient information, the transaction was not completed and returned to the originating party for additional information.

Other non-bank financial institutions do not have the ability to conduct wire transfers on their own, therefore, their transactions must be conducted through a bank.

Recommendations and comments

R. 10

The SSRP and the BHN, as supervisory entities for these sectors/activities should conduct AML/CFT supervision of the institutions under their responsibility to ensure compliance with customer identification and retention of records in accordance with Law 42-2000.

Compliance with FATF Recommendations

R.10	Largely	Lack of supervision within the insurance and savings and loans sectors, does not

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	Compliant	provide for compliance with customer identification and record retention requirements. Limited oversight is provided by the SdB when insurance companies are subsidiaries of a bank, which mitigates some of the risk in the insurance sector.
SR.VII	Compliant	

Monitoring of transactions and relationships (R.11 & 21)

Description and analysis

R.11

Article 1, paragraph 3 of Law No. 42, 2000 sets out the general obligation for financial institutions to pay special attention to any transaction/operation, regardless of amount. This obligation is further detailed in Article 10 of Agreement 9-2000 by way of a list of examples that includes transactions that are not consistent with the customers' profile, unusual transactions, and transactions reflecting a change in the usual pattern of activity. In Panama, this obligation is implemented by financial institutions by monitoring all unusual transactions, being the functional equivalent of large, or complex, regardless of the amount. Article 18 (1)(b)(iii) of Legislative Decree 5-2002 also establishes the obligation for financial institutions to report any transaction, including complex, large, or unusual without an apparent economic or lawful purpose. This Article also requires financial institutions to further examine the transactions and to maintain the related documentation for at least five years. All this information should be available to the supervisory/competent authorities.

In addition, Article 9 of Agreement 9-2000, establishes the obligation for banks to register the information pertaining to the transaction once a determination has been made that it is in fact a suspicious transaction. The Agreement requires financial institutions to document the detail(s) of the account(s) that originate the(se) transaction(s), the date(s) of said operation(s), the amount(s) and the type of operation. If after further analysis, it is determined that the transaction is suspicious, the Agreement further requires financial institutions to notify the Compliance Officer (CO) for him/her to review the operation to verify its suspicious character. The Agreement also requires that all reviews, analysis and conclusions be documented, including in a registry, in a succinct manner, the observations of the employee that recorded the operations and of the CO. Also when required, notify the suspicious operation to the Director of the Financial Analysis Unit (UAF) in the forms established for this purpose. The notice shall be channeled by way of the CO, within thirty (30) days following the determination of the suspicion. financial institutions are also required to update the respective client's profile, when relevant. All of these documents should be available to the supervisory/competent authorities.

As stated on Article 9, suspicious transactions are the functional equivalent of large, complex, or unusual transactions. The equivalence is demonstrated by a way of a list of examples of types and categories of large, complex, and unusual transactions in Article 10. There is no threshold for when a transactions that could be considered suspicious is to be reviewed. However, in addition to the ongoing transaction monitoring, banks must have systems that at the end of each week identify if successive deposits or withdrawals occurring within short periods of time could exceed $10,000. There is a general five (5) year document retention requirement. The SdB contends that it is commonly understood to apply to the analysis/findings prepared by employees and the CO. That said, they agreed that there could be additional clarity provided and that they will consider this in the revision of the agreement that is under preparation. The SdB ensures compliance with these requirements during its on-site inspections.

In addition, officials from financial institutions visited confirmed that their management information systems generate reports for branch managers that identify customer cash transactions in/out over a period of time, wire transfers in/out, cashiers checks purchase, as well as withdrawals of cash from automated teller machines in foreign countries. There is no threshold requirement for the monitoring system. Training of staff on transactions that may

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be large, complex, or unusual is part of the overall internal control system and mandatory. In addition, their policy manuals include a list of examples of transactions to be alert to.

The SdB is reviewing the Agreement 9-2000 and will introduce some clarification as to the obligation for ongoing monitoring for large, complex, and unusual transactions, not just those above a threshold.

NOTE: The SdB recently issued Agreement 12-2005 and Agreement 12-2005 E (revising Agreement 9-2000 and providing additional guidance and clarification, respectively) provides further clarification with respect to procedures for handling trust companies. This revised Agreement also covers those transactions that could be linked to terrorists or used for the financing of terrorism and record retention requirements.

Although Article 1 of Law 42-2000 does not extend to insurance companies, brokers and agents, and savings and loans associations with respect to monitoring complex, unusual large transactions or unusual patterns of transactions the authorities indicated that the risk of complex and unusual transactions taking place within these sectors was minimal and although the insurance companies were not included in the Law, those insurance companies that were subsidiaries of a bank receive limited oversight by the SdB.

R.21

Article 1 of Law 42-2000 establishes the obligation on financial institutions to maintain adequate measures in place and to conduct adequate due diligence to prevent illegal transactions, including money laundering and the financing of terrorism. Article 3 of Agreement 12-2005 imposes the obligation on financial institutions to pay special attention to financial institutions located in jurisdictions with inadequate measures to prevent money laundering and the financing of terrorism. Article 4 of the same Agreement requires financial institutions to pay special attention to customer transactions that appear to be unusual or there is uncertainty as to the adequacy of the information obtained from the customer. Article 18 (1)(b)(iii) of Legislative Decree 5-2002 also establishes the obligation for reporting any transaction, including complex, large, or unusual without an apparent economic or lawful purpose. This Article also requires financial institutions to further examine the transactions and to maintain the related documentation for at least five years. All this information should be available to the supervisory/competent authorities.

Financial institutions are maintained informed of AML/CFT issues taking place in Panama as well as abroad by information disseminated by the supervisory authorities. Some of this information includes information on persons (natural and legal), jurisdictions, financial institutions, or international transactions that are of primary concern with respect to money laundering and the financing of terrorism, or countries where AML/CFT measures are ineffective. For example, the SdB periodically provides this type of information to financial institutions via Banking Circulars. Financial institutions are required to exercise additional care and perform enhance due diligence if dealing with persons, institutions designated as primary concern with respect to money laundering and the financing of terrorism. The SdB and the CNV also require their reporting entities to inform on a monthly basis, of any revisions to these lists or potential unusual/suspicious transactions originating from designated jurisdictions. Articles 10 and 11 of Agreement 12-2005 complement these measures by providing guidance with respect to transactions that have no apparent economic or lawful purpose, as well as the obligation to document in writing the findings and making this information available to the supervisory authorities.

In addition, the SdB through Special Agreement 12-2005E, provides, by way of examples, a list of activities/transactions that require special attention, including transactions linked to countries, territories or jurisdictions of primary concern with respect to money laundering and the financing of terrorism activities. Article 10 of Agreement 12-2005 requires that additional due diligence be conducted for these transactions and evidence

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of this process documented.

To ensure compliance with the requirements of the law and agreements, the SdB may impose the following countermeasures in relation to jurisdictions with weak or insufficient AML/CFT measures in place: i) enhance due diligence measures for persons (natural/legal) from these jurisdictions; ii) refusal to approve the licensing of Panamanian institutions for the establishment in such jurisdictions; iii) refusal to approve licenses to institutions with main offices or a presence in these jurisdictions; and iv) Warnings on potential transactions identified as linked to money laundering and the financing of terrorism. In practice, the SdB has imposed special requirements on a financial institution for having inadequate AML/CFT measures in place in foreign subsidiaries. The SdB is monitoring progress in strengthening AML/CFT measures.

In complementing the measures taken by the SdB, financial institutions have developed their own counter-measures including sophisticated software to match against a current list of high-risk customers and jurisdictions that could pose additional risk to their institutions or where the level of compliance with AML/CFT measures is deficient. Officials of financial institutions visited stated that their lists are closely followed by their staff and transactions with persons from countries identified as no-cooperating (NCCT list) and/or with inadequate AML/CFT regimes are prohibited.

The application of Recommendation 21 to insurance firms and savings and loans associations is not applicable because insurance firms are prohibited by law from carrying out cross-border operations, and activities of savings and loans are domestic only.

Recommendations and comments

R.11

The SdB should provide further clarification to banks with respect to:

- the obligation for ongoing monitoring for large, complex, and unusual transactions, not just those above a threshold; and
- record retention requirements when monitoring complex, large, or unusual transactions.

NOTE: Further clarification is now provided under Agreements 12-2005 and Agreement 12-2005 E (revising Agreement 9-2000, where appropriate).

Law 42-2000 should be amended to extend its coverage to insurance companies, brokers and agents, and savings and loans associations to require them to:

- pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose;
- examine as far as possible the background and purpose of such transactions and to set forth their findings in writing; and
- keep such findings available for competent authorities and auditors for at least five years.

Compliance with FATF Recommendations

R.11	Largely Compliant	Lack of specific obligation on insurance companies, brokers and agents, and savings and loans associations to pay special attention to complex, large, or unusual transactions and retention of records to comply with the essential elements of this recommendation.
R.21	Compliant	

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Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)
Description and analysis
R.13 Article 1, numeral 5 of Law 42-2000 establishes the general obligation for financial institutions to report to the UAF any act (which includes attempted transactions), transactions or operations suspected of or linked to money laundering activities. In the context of money laundering activities, financial institutions are required to report suspicious transactions including trafficking or firearms, trafficking of humans, kidnapping, corruption, extortion, terrorism, theft, international trafficking of vehicles, or any crime against intellectual property in general. Although there is no reference to tax matters in Agreement 9-2000, banks are obligated to report suspicious transactions to the UAF, regardless. If a transaction gives rise to suspicion for what ever reason, there is the obligation to report to the UAF. There is no exemption from this requirement if also the transaction is otherwise considered to involve tax matters. Article 18(iii) of Legislative Decree 5-2002, which implements the international convention for the repression of the financing of terrorism, establishes the obligation on financial institutions to report promptly all transactions that are complex, large, unusual, or that have no apparent legal economic purpose, including those potential linked or related to terrorism or terrorist acts. The new Agreement 12-2005 of the SdB includes now the obligation to report suspicious transaction related to terrorism financing or any other illegal activity. NOTE: The SdB recently issued Agreement 12-2005 and Agreement 12-2005 E (revising Agreement 9-2000 establishing the requirements and providing additional guidance and clarification, respectively) incorporates the obligation to report with respect to transactions suspected to be linked to the or related to financing of terrorism, terrorist acts, or terrorist organizations. Numeral 5 also establishes the obligation for financial institutions to communicate to the UAF any transactions/operations considered suspicious of ML or linked to ML. The SdB under Agreement 9-2000, article 9, and the CNV under Agreement 4-2001 (modified by Agreement 1-2005), have established the implementing enforceable regulation and provided additional guidance as well as the obligations requiring their regulated entities to report to the UAF through their compliance officers transactions that appear suspicious. Article 10 of Agreement 9-2000 provides a list of examples of types of transactions that could be considered large, complex, unusual, or suspicious, including attempted transactions. Reporting of suspicious transactions should be performed within 60 days of identifying the suspicion. In addition, both the SdB and the CNV in their agreements provide examples of transactions that deserve additional attention as they could be linked or associated to transactions suspected of ML. Also, Article 11 of Agreement 9-2000 requires the SdB to report to the UAF suspicious transactions identified during the course of an inspection. To comply with Legislative Decree 5-2002, institutions have established internal controls and developed/purchased IT systems and software to monitor unusual activities based on the pre-determined profile of the customer. As a secondary control, the systems in place are capable of matching (on real-time) against the list of persons or groups linked to terrorist activities provided by the UN counter terrorism committee . Interviews with senior management of the institutions visited validated that their systems are programmed to access the UN-counter terrorism committee list on line and conduct searches through their customer database to identify potential names, if any. If a name on the list is identified as a possible customer, then the institutions are required to prepare and forward a suspicious transaction report to the UAF with the supporting documentation. During 2005, the UAF has received a few STRs related to accounts of persons with names similar to those listed on the UN-counter terrorism committee and OFAC lists. With respect to these STRs, the UAF is currently verifying the information, as part of the analytical process. In accordance with Law 42-2000, the reporting institutions are only authorized to send STRs directly to the UAF

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and not to the supervision and control authorities.

Similar reporting requirements are not yet in place for the insurance (including agents and brokers) and the Banco Hipotecario Nacional (including savings and loans associations) as these entities are not covered by Law. However, limited coverage is provided by the SdB when conducting AML/CFT supervision only when insurance companies are subsidiaries of a bank. This take place as part of the SdB's consolidated supervision approach.

The table below reflects the level of suspicious transaction reporting for the period 2001-2004.

STRs for the Period 2001–2004

	2001	2002	2003	2004
Banks	708	341	315	581
Cooperatives	1		4	
Authorities	1			6
Exchange			2	126
Securities	1	2	8	2
Insurance	1			
Casinos				4
Total	712	343	329	719
Total STR 2001-2004				2103

As reflected in the table, the level of STRs has fluctuated due to: i) different money laundering and the financing of terrorism schemes (typologies) ii) implementation of new Laws 41 and 42-2000; iii) strengthening of internal controls and preventive measures by financial institutions directly related to the new obligations imposed by law and regulations; iv) implementation of new law for exchange bureaus and money remitters in 2004; and v) regulation of casinos by the competent authority, among other factors. Overall, it appears that the reporting mechanisms in place provide adequate reporting of suspicious transactions, with banks forwarding most of the STRs, being the largest activity in the financial sector.

R.14

Law 42-2000, Article 3 states that "all information communicated to the FIU or to authorities of the Republic of Panama in accordance with the requirements of the Law or implementing regulations, by persons (natural and legal), directors, employees or agents, will not constitute a violation of the professional secrecy or tipping off."

Article 1, numeral 6 of the same Law establishes the obligation of not disclosing to the customer or to third parties involved, that a report has been transmitted to the UAF as required by the Law, or that the customer or third parties are being investigated because of a transaction suspected to be linked to ML.

With regard to supervisory bodies, Law 42-2000, Article 4 stipulates that government employees (public sector) that receive or are aware of information of customer or third parties suspected of or linked to ML shall maintain strict confidentiality, can only provide this information to the competent authorities as established by Law.

A government employee who violates this disposition will be subject to pecuniary penalties and sanctions as established in Article 8 of the Law. These penalties and sanctions will be imposed by the competent authority without prejudice to the sanctions foreseen in the Penal Code for a violation of professional code or bank secrecy.

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Protection to directors, employees or agents is also covered under Agreement 1-2005,of article 11 of the CNV.

R.19

A system is in place requiring reporting institutions to report currency and currency-equivalent transactions in excess of $10,000, to their respective supervisory authorities. Once received by the supervisory authorities, these reports are forwarded to the UAF, which is the national central agency responsible for receiving, analyzing, and disseminating information. A similar process is in place for reporting suspicious transactions. The only difference is that these STRs are submitted directly to the UAF.

R.25

Agreement 9-2000 of the SdB establishes measures for the prevention of ML from taking place within the financial institutions (banks and trust companies). This agreement also provides typologies of transactions/operations that could require additional oversight and/or attention to determine whether they are suspicious or not. For example, the SdB periodically provides this type of information to financial institutions via Banking Circulars of persons, jurisdictions, activities that represent a primary concern with respect to money laundering and the financing of terrorism. Through these Banking Circulars, the SdB also communicates to financial institutions new trends and typologies as identified by FATF, providing direct link to the sites. In addition both the SdB and the CNV require their reporting entities to inform on a monthly basis, of any revisions to these lists or potential matches. Articles 10 and 11 of Agreement 12-2005 complements these measures by providing guidance with respect to transactions that have no apparent economic or lawful purpose, as well as the obligation to document in writing the findings and making this information available to the supervisory authorities. The CNV under Agreement 1-2005 has established similar preventive measures to prevent their entities from being used by criminals. However, some supervisory authorities (i.e., insurance and savings and loans associations) have not yet established implementing regulation to ensure that regulated entities report, not only currency transactions, but also unusual or suspicious transactions to the UAF.

The SdB has also been the driving element in planning, coordinating, and delivering AML/CFT workshops to the financial sector in Panama, as well as regional workshops. Within the financial system in Panama, the SdB provides training and feedback in new money laundering and the financing of terrorism trends to other stakeholders including the CNV, the IPACOOP, the SSRP, the MICI, financial institution compliance officers, and the banking association. The Superintendent of Banks, in her capacity as President of CFATF, has provided ongoing feedback to the financial system in new typologies or trends identified by CFATF during their plenary meetings.

However, there is no system in place for providing feedback to the reporting institutions. In general, STRs are reported directly to the UAF, and although the supervision personnel of the SdB has access to copies of these reports when conducting AML/CFT inspections, there is no mechanism in place for the SdB to receive feedback from the UAF as to the adequacy of reporting by financial institution.

SR.IV

As required by law and other implementing regulations, reporting entities are required to report suspicious transactions (including attempted transactions), to the UAF. Although there is no reference to tax matters in Agreement 9-2000, reporting entities are obligated to report suspicious transactions, regardless. There is no exemption from this obligation if also the transaction is otherwise considered to involve tax matters. Legislative Decree 5-2002, which implements the international convention for the repression of the financing of terrorism (Article 18(iii)), establishes the obligation for financial institutions to report to the UAF all transactions that are complex, large, unusual, or that have no apparent legal economic purpose. The SdB will add STR reporting

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requirement for terrorism financing based on legislative decree to the revised Agreement 9-2000.

NOTE: The SdB recently issued Agreement 12-2005 and Agreement 12-2005 E (revising Agreement 9-2000 and providing the obligation and additional guidance and clarification, respectively) with respect to reporting transactions suspected to be linked to the or related to financing of terrorism, terrorist acts, or terrorist organizations.

To date no reporting related to FT has been reported to the UAF. Financial institutions indicated that the reporting mechanism in place to report suspicious transactions related ML could also be used to report transactions related to FT, if any. In order to keep the reporting institutions informed, the UAF provides, through the supervision and control authorities (supervisory authorities), the lists of potential terrorists (persons and groups) from the UN-counter terrorism committee, as well as secondary sources of information, like the OFAC list.

Additional oversight is needed over the money remitters with respect to STR reporting related to FT. Presently, the main focus has been on complying with the cash reporting requirements.

Recommendations and comments

R. 13

Currently financial institutions are required to report transactions related to terrorism under a legislative decree, hence, the Agreement 9-2000 should be revised to specifically include the reporting of suspicious transactions related to terrorist financing, terrorist acts, or terrorist organizations, which is currently an obligation under Article 18(1)(b)(iii) of Legislative Decree 5-2002.

NOTE: The SdB recently issued Agreement 12-2005 and Agreement 12-2005 E (revising Agreement 9-2000 and providing additional guidance and clarification, respectively) with respect to reporting transactions suspected to be linked to the or related to financing of terrorism, terrorist acts, or terrorist organizations.

In addition, the Law 42-2000 should be amended to impose the obligation on the SSRP and the BHN to establish measures to ensure that financial institutions comply with the requirements to report suspicious transactions acts, transactions or operations suspected to involve tax matters or to be linked to or used for terrorism, terrorist acts, or by terrorist organizations. Once the obligation is established, the SSRP and the BHN should develop implementing regulations/agreements and implement an effective AML/CFT supervision program to ensure that institutions under their responsibility comply with the requirements of Law 42-2000 and related regulations/agreements.

R. 25

Except for the SdB, the other supervisory and competent authorities (including the FIU) in Panama have not been effective in establishing a system or feedback process to maintain their respective reporting institutions informed. Currently, reporting institutions are not aware of general information like: statistics on the number of disclosures, with adequate breakdowns and results of disclosures; examples of actual cases within the sector or the region; if a case is closed or completed, subject to domestic legal principles, provide the reporting institution with information concerning the decision or result. These supervisory/competent authorities should consider strengthening the existing process by establishing adequate mechanism for providing timely feedback like via forums, quarterly meetings with representatives from reporting institutions, or through any other adequate means.

SR.IV

Supervisory authorities should take measures to establish the obligation on their financial institutions to report all

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transactions, including those suspected to be linked to terrorism, terrorist acts, or terrorist organizations.

NOTE: The SdB recently issued Agreement 12-2005 and Agreement 12-2005 E (revising Agreement 9-2000 and providing additional guidance and clarification, respectively) with respect to reporting transactions suspected to be linked to the or related to financing of terrorism, terrorist acts, or terrorist organizations.

Compliance with FATF Recommendations

R.13	Largely Compliant	Reporting of suspicious transactions related to terrorism is covered under a Legislative Decree. The SdB revised Agreement 9-2000 (now Agreement 12-2005 and Agreement 12-2005 E) to include the reporting requirement of suspicious transactions related to terrorism; however, additional time is needed to ensure that all financial institutions are fully complying with the revised requirements. Lack of obligation under existing Law 42-2000 imposed on the financial institutions supervised by the SSRP and the BHN comply with the STR requirements.
R.14	Compliant	
R.19	Compliant	
R.25	Partially Compliant	Supervisory/competent authorities, including the SSRP, BHN, UAF) lack adequate mechanisms to provide timely feedback to reporting entities.
SR.IV	Largely Compliant	Reporting of suspicious transactions related to terrorism is covered under a Legislative Decree. The SdB revised Agreement 9-2000 (now Agreement 12-2005 and Agreement 12-2005 E) to include the reporting requirement of suspicious transactions related to terrorism; however, additional time is needed to ensure that all financial institutions are fully complying with the revised requirements. Additional oversight needed over the money remitters with respect to STR reporting related to FT, where the focus has been on complying with the cash reporting requirements.

Internal controls, compliance, audit and foreign branches (R.15 & 22)

Description and analysis

R.15

Articles 1(1), 1(7), and 1(8) of Law 42-2000 cover the requirements for reporting institutions to have in place the necessary policies, procedures, internal controls, and communication mechanisms to prevent ML; employee training for the customer due diligence, detection/identification of suspicious transactions and reporting obligations. In addition, Articles 5 and 6 set the obligation for the supervisory authorities to inspect the procedures and internal control mechanisms in place within the financial institutions to comply with the requirement of the Law. Supervisory authorities, under the power delegated by the Law, have developed implementing regulations to ensure regulated entities comply with the requirements of the law with respect to establishing effective control systems, measures, and practices. In the banking sector, Agreement 9-2000, Articles 4, 5, 6, 7, 8, 9, 10, and 13 establish the implementation requirements to comply with the Law. Agreement 8-2000, establishes the obligations on financial institutions to appoint a compliance officer at the senior management level with complete authority and independence for reporting and conducting day-to-day activities, as well as the functions and responsibilities for this individual, including training, reporting of STR, compliance with internal controls, and development of internal policies. In the securities sector, Law Decree 1-1999 sets the obligation for the securities reporting entities to designate a compliance office, at management level to ensure that brokerage houses, directors, officials, broker agents, and employees comply with the requirements of the law and regulations. Furthermore, the CNV, under Agreement 9-2001, establishes the requisites, responsibilities, and functions of the compliance officer. The Agreements also set the obligation for financial institutions to establish the structure that will adequately support the activities of the Compliance Officer, taking into account the nature and volume of the activities of the institution.

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Agreement 9-2000 stipulates that the banks shall have in place a handbook/manual covering and explaining the "know-your-customer" policies of the bank and this manual shall be updated periodically. The manual shall be customized taking into account the level of complexity of the activities of the banks and shall include different types of customers. The manuals shall also take into account the probability of risk for an illegal transaction to be linked to the accounts and transactions of their customers. Article 5 of Agreement 1-2005 of the CNV establishes similar obligations to reporting institutions with respect to "know-your-customer" policies.

It is also a requirement for Banks to deliver, at least once a year, training to all bank staff on the procedures related to the requirements for ensuring compliance with the Agreement. Article 13 of Agreement 1-2005 establishes the obligation on reporting institutions to provide training to their staff in AML/CFT matters. At a minimum, the staff should receive training annually and the compliance officer should receive at least training twice a year through courses, workshops, seminars, or conferences. The training should be deliver with the following objectives: i) communicate, revise, and update staff on AML/CFT policies, procedures and norms; and ii) ensure compliance with and implementation of the requirements of the AML/CFT law and related agreements.

Agreement 10-2000 (which modifies Agreement 8-2000) establishes the obligation of the Compliance Officer for banks and the obligation to have a compliance training program customized to the organization, structure, resources, and complexity of the operations of the institution. Article 2 highlights that the CO should have the authority and independence to implement and administer the compliance program within the institution., as well as the authority to implement corrective actions. Article 7 highlights the functions of the CO within the bank, including: a) providing guidance to the bank in the development and implementation of internal policies designed to prevent risks, including ML; b) organizing training for bank staff and reporting of suspicious transactions to the FIU in matters linked to ML; c) Communicating at all levels throughout the bank the requirements of the law and implementing regulations established by the Panamanian authorities as well as the internal bank procedures related to the compliance program of the bank.

With regard to the appointment of the CO, Agreement 10-2000, Article 2, stipulates that:

1. The CO should be at management level;
2. The CO cannot be involved in operational functions of the bank, affiliates, or financial group;
3. The board of directors and senior management shall delegate full authority and independence with respect to the rest of the bank staff that allows the CO the ability to implement and manage the compliance program and effect corrective action where necessary;
4. Each bank will establish the administrative structure to support the activities of the CO, in accordance with the activities and complexity of operations of the bank;
5. The functions stipulated by Article 2 will extend to branches and subsidiaries of the bank, domestic and foreign.

Agreement 4-2001 covering corporate governance establishes the auditing requirements. Article 7 covers the surveillance of the internal control system, delegating responsibility to the internal audit function of the bank for the assessment and ongoing monitoring of the internal control system. It requires the internal audit function to be independent from the board of directors, through an internal audit committee, which should meet frequently. With respect to operational aspects, the internal audit function shall be granted the authority to assess bank's level of compliance with risk management policies/practices as established, individually and on a consolidated basis, that could impact the bank. Agreement 4-2001, Article 20 sets the obligation for financial institutions (banks and trust companies), through their Board of Directors to consider the selection (which includes screening, recruiting and hiring measures) and promotion of staff, based on aptitude and professional merits, as well as on the professional improvement of the staff and the implementation of measures ensuring the mitigation of risks derived from professional inadequacy or dishonesty. Interviews with institutions visited revealed that the internal procedures in place for screening, recruiting, and hiring procedures appear adequate and provide for effective measures and

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controls with respect to selecting their employees. In addition, some of these financial institutions stated that they also conduct background checks on individuals seeking employment (both permanent and temporary), including requesting from the individuals their police records (expediente policivo) and conducting independent investigations, if needed. The adequacy of those procedures, systems and mechanisms is validated by the competent authorities, which in some cases have proposed corrective action(s), in accordance with the feasibility of operations of the institutions. The policy and implementation is reviewed by the SdB through the on-site inspection process.

In the case of branches/subsidiaries of foreign banks with general or international license, the internal audit function shall be carried out by the parent/holding company or regional office internal audit group.

In addition to the reports that the internal audit function needs to present as part of its responsibilities, it shall present, at least twice a year, a report to the board of directors or audit committee and senior management, on the overall condition of internal controls including at a minimum:

a) results of testing performed;
b) recommendations with respect to deficiencies, as well as an action plan for effecting corrective action; and
c) responses from the individuals responsible for the areas audited and corrective actions recommended.

The external auditors shall assess, at least annually, the internal control systems of the bank.

Although a requirement for all financial institutions the appointment of a Compliance Officer is not consistently enforced. For example, not all fiduciaries have a compliance officer in place. The same situation is observed in the savings and loans, given their size and personnel constraints

However, supervision by the SSRP and the BHN is weak. As identified, limited supervision of the operations and activities in these sectors is taking place, and only when an institution under the supervision of the SSRP or the BHA is a subsidiary of a bank. In that instance, the SdB provides limited supervision as part of its consolidated supervisory approach. For the most part, both supervisory authorities lack adequate resources and supervisory tools to conduct supervision. In addition, implementing regulations with respect to Law 42 is also lacking.

R.22

Article 1 of Law 42-2000 requires all banks to comply with the requirements established to prevent money laundering from taking place within the financial sector. In Panama, these requirements apply to banks holding general licenses (GL), as well as those holding international licenses (IL). Through the on-site inspections process of foreign branches, subsidiaries (including those subsidiaries of Panamanian bank holding companies), the SdB does impose the requirement that there be consistency between home and host procedures for AML/CFT. The review of AML/CFT is a specific area of review in all inspections of foreign offices.

In addition, through the licensing process (under Article 12 of Agreement 3-2001), the SdB requires and ensures that financial institutions satisfy all the licensing requirements to operate in Panama including, having policies, procedures, and internal control systems in place to address potential risk of money laundering and the financing of terrorism before the banking license is granted. These requirements apply to foreign branches and subsidiaries. Also as part of the licensing process, the SdB requires financial institutions to comply with the higher standards, including AML/CFT and allows the SdB to contact the supervisory/competent authorities abroad when deficiencies in the system/regime are of concern to the SdB. In practice and prior to granting the license, the SdB verifies that foreign branches and subsidiaries have appropriate measures for AML/CFT, as well as for safety and soundness, consistent with the Panamanian requirements. The implementation of these requirements is validated by the SdB

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during its on-site consolidated supervision process, which complements its licensing process that policies, procedures, and practices remain consistent. As an additional measure, the SdB makes it a requirement to execute a Memorandum of Understanding to facilitate the inter-institutional cooperation, exchange of information, and on-site inspection of the bank, foreign branches or subsidiaries, which allows the SdB to require the financial institutions to apply a higher standard with respect to branches and subsidiaries in countries with weak AML/CFT regimes or insufficient application of the FATF standard. The consolidated supervision process, which is a requirement for foreign branches or subsidiaries for obtaining a license, gives the SdB the ability to conduct the supervision on its own or jointly with the local supervisor. In this context, inspections are conducted using the higher standards, as permitted by local laws and regulations.

The SdB also has measures in place to ensure that financial institutions inform if unable to apply appropriate AML/CFT measures if there is an impediment by local laws or regulations. In practice, if there is such an impediment the SdB would not grant a banking license to branches or subsidiaries

In general terms, the AML Law requires that all institutions, domestic and foreign, to have mechanisms in place to ensure compliance. These mechanisms and internal controls are inspected and validated by the SdB, through onsite visits. With respect to banks established in Panama with foreign branches or subsidiaries, the SdB has the power and authority to assess their level of compliance with respect to AML matters by performing an onsite inspections of the entity in Panama, as well as the subsidiary or parent company abroad. This onsite inspection is part of the SdB's consolidated supervision framework. These consolidated inspections are conducted in accordance with procedures and arrangements established in MOU signed with the foreign counterparts and provide the necessary safeguards to ensure that banks comply with the higher standard, to the extent that is permitted by law. To date, the SdB has signed 21 MOUs with supervisory agencies in North, Central, and South America, as well as the Caribbean.

Recently, the SdB identified through its consolidated on-site inspection process that AML/CFT measures in one of their financial institution (with foreign subsidiaries) needed to be strengthened. In this instance, the SdB report of examination included recommendations to address the deficiencies and required the Panamanian institution to report the status of the corrective action. The SdB is monitoring the strengthening efforts.

Although, banks are the only ones with a presence abroad, there are no measures in place within the SSRP to ensure consistency between home/host country requirements when insurance companies expand their activities and operations outside of Panama.

Recommendations and Comments

R.15

The SSRP and the BHN need to establish the necessary mechanism are in place to ensure that financial institutions under their responsibility have adequate AML/CFT programs, including for the effective development of 1) policies, procedures and controls, including appropriate management arrangements, and adequate screening procedures to ensure high standards when hiring employees; 2)an ongoing employee training program; and 3) an audit function to test the system. Once established, the SSRP and the BHN should validate the adequacy of these programs by conducting ongoing and timely AML/CFT supervision.

- **R.22**

Although this activity is not taking place at this time, as the insurance sector develops further, measures similar to those established by the SdB should be developed and implemented by the SSRP to ensure that a system is in place to require foreign branches and subsidiaries of insurance companies to observe AML/CFT measures consistent

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with home country requirements and in line with the essential elements of this recommendation.		
Compliance with FATF Recommendations		
R.15	Largely Compliant	The banking sector has adequate AML/CFT program in place; however, there is no program in place at the SSRP and the BHN for the effective development of 1) procedures and controls, including appropriate management arrangements, and adequate screening procedures to ensure high standards when hiring employees; 2) an ongoing employee training program; and 3) an audit function to test the system.
R.22	Largely Compliant	The banking sector has adequate system in place; however, there are no measures in place at the SSRP to require foreign branches and subsidiaries to observe AML/CFT measures consistent with home country requirements, in anticipation of further development in the insurance sector.

Shell banks (R.18)

Description and analysis

R.18

The Superintendency of Banks does not license shell banks. The Agreement 3-2001 (covering the licensing process) establishes the obligation that in order to obtain a banking license, a physical presence in Panama is required. Article 11 of the same Agreement, highlights that a bank that has been granted a banking license shall begin operations within six months after the license is issued. The new bank is also subject to a pre-operational inspection by the SdB personnel to verify that the bank has the physical presence and the ability to deliver its banking services and products. Newly-licensed banks are also required to notify the SdB, in writing, of the initial operations commencement date and the exact location of its main offices/headquarters.

Although there is no specific obligation that prevents the establishment of correspondent banking relationship with shell banks, nor is there a requirement that financial institutions satisfy themselves that respondent financial institutions in a foreign country not allow their accounts to be used by shell banks, the SdB does not license shell banks. The SdB will provide further guidance in this area when revising the Agreement 9-2000.

In practice, the safeguards are in place and incorporated into the internal policies of financial institutions. For example, institutions visited already cover the essential elements of this recommendation by addressing in their policies that: “It is prohibited to establish relations with Shell Banks which are defined as banks that do not have a physical presence in any jurisdiction and that its owners are not a bank with physical presence and duly authorized to operate by the regulatory agency in its jurisdiction. Also financial institutions require a certification from the respondent institution indicating that the institution does not allow its accounts to be used by shell banks.

NOTE: The SdB recently issued Agreement 12-2005 establishing, in line with the essential elements of this recommendation: 1) the prohibition for establishing a correspondent banking relationship with a shell bank; and 2) the requirement for financial institutions to ensure that respondent financial institutions do not permit their accounts to be used by shell banks.

Recommendations and comments

None

Compliance with FATF Recommendations

R.18	Compliant	

The supervisory and oversight system–competent authorities and SROs: Role, functions, duties and powers (including sanctions) (R.17, 23, 29 & 30)

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Description and analysis
R.17 Article 8 of Law 42-2000 establishes the administrative sanctions for noncompliance with the requirements of the Law. These sanctions are imposed by the supervisory authorities on their own or at the request of the UAF. Sanctions for noncompliance include fines ranging from B5,000 to B1,000,000, based on the severity of the violation and the frequency of these violations. These sanctions are applicable to the officers, directors, senior management, administrative or operational personnel of the legal entities, as well as to the legal entities. In addition, the persons conducting such acts of noncompliance are subject to civil penalties as prescribed by the law. Under Article 1 of Executive Decree 1-2001, which implements Law 42-2000, also establishes the obligation for the supervisory authorities to impose sanctions on reporting institutions for noncompliance with the requirements of the Law and makes specific reference to the sanctions established under Article 8 above. The sanctions for noncompliance with Law 42-2000 and Executive Decree 1-2001 are imposed on natural persons, as well as legal entities. The SdB has adequate sanction and enforcement powers ensure financial institutions and individuals comply with the requirements of the Law and Agreements. The sanctions available to the SdB range from reprimand, fines, suspension, removal, intervention, and in extreme circumstances the revocation of the banking license. Compliance with the Law and Agreements is tested by the SdB during the on-site inspections. For the CNV, Law Decree 1-1999 regulates the capital market and delegates to the CNV the powers to impose sanctions/penalties for violations of the Law and/or noncompliance with the requirements of the Law. When imposing sanctions/penalties, the CNV should take into consideration the level of noncompliance or the severity of the violation, as well as the frequency of noncompliance/violation. The Decree also established the powers to suspend or revoke the license granted to a brokerage house, an investment administrators, principal, stock brokers or analyst. Also, the powers to prohibit and/or reprimand principals, stock brokers or analysts, and brokerage houses. Although the sanctions and enforcement powers available to the SdB and CNV appear adequate, the lack of supervision identified within the other supervision and control bodies, the SSRP and the BHN, respectively, makes it difficult to assess the effectiveness of their sanction and enforcement powers. **R.23** Law 42-2000, Articles 5 and 6 designate the supervisory authorities with responsibilities over AML matters and also establish the obligation on the supervisory authorities to conduct inspections to ensure that reporting entities comply with the requirements of the Law. Executive Decree No. 1-2001, which implements Law 42-2000, establishes the competent authorities for supervision and control and the obligation of these authorities for ensuring compliance by reporting entities. The SdB has issued Agreement 9-2000 as the enforcing regulation for banks to prevent ML within the banking system. CNV Agreement 5 of 2005, Article 14, numeral 4, encourages investment advisors to designate and/or appoint a person to monitor this area, to act as a Compliance Officer, although this is not required under Law 42 - 2000. In addition, Agreement No. 1-2005 of the CNV establishes the code of conduct for brokerage houses, agents, investment advisors, and administrators for the prevention of ML in accordance with Law No. 42-2000. This same Law vests the CNV with the responsibility and obligation to effect supervision over the entities mentioned earlier and to impose the necessary measures to prevent ML activities. Decreto Ley No. 1-1999 establishes the requirements for granting a license including measures designed to prevent criminals from holding a controlling

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interest in an investment entity.

However, AML/CFT supervision by the SSRP is not taking place. SSRP supervisors lack resources and the necessary supervisory tools including a supervision manual for AML/CFT, a formal training program, and adequate knowledge of trends and techniques. Contrary to the SdB and CNV, the SSRP has not yet issued implementing regulations with respect to Law 42. Although the SSRP is receiving technical assistance in these areas through an IDB program, implementation is not yet anticipated. The current scope and frequency of inspection, which mostly focuses on currency reporting requirements is not sufficient to determine the institutions' level of compliance with the law.

A similar deficiency was identified at the Banco Hipotecario de la Vivienda, the competent authority for savings and loans institutions. Supervision personnel of the BHV is not currently conducting AML/CFT inspections. Management of the BHV cited similar constraints and resource impediments as the SSRP.

R.29

Law 42 - 2000 establishes the powers and authority of the supervisory and/or competent authorities to ensure compliance with the requirements of the law when conducting on-site inspections. In addition, Executive Decree No. 1 of 2001, Article sets additional obligations on the supervisory authorities including responsibility over reporting institutions' reporting requirements; proper recordkeeping measures; power to sanction and assess fines for noncompliance; and apply any other measures needed to ensure compliance with the requirements of Law 42. For example, Law Decree 9-1998 establishes that the SdB should conduct inspections, including AML/CFT matters, of each bank every two years. In practice, this takes place every 18 months. With respect to ALM/CFT, the SdB conducts inspections, as established by Decree 9-1998, to verify the banks' level of compliance with the Law, including reviewing the policies and procedures manuals for know your customer, reports generated by the CO, board of directors involvement in ALM/CFT oversight, adequacy of compliance program, detection and reporting of suspicious transaction to FIU, and customer due diligence procedures performed. In practice, those the largest banks (based on total assets) are inspected every 12 months, while the rest falls within the 18 month cycle. The SdB has the powers and authority to conduct inspections and impose sanctions/penalties without a judicial order.

The CNV has established similar inspections procedures and an inspection program reflecting that its institutions are inspected at least every 18 months, others more frequently depending on their risk profile and activities conducted.

However, deficiencies were identified within the insurance and savings and loans sectors. Currently, the SSRP, although possessing ample powers and authority, does not conduct comprehensive AML/CFT supervision due to resource constrains, as identified in Recommendation No. 23 above. The same lack of supervision applies to the savings and loans industry where the supervisory authority, Banco Hipotecario de la Vivienda, lacks capacity and resources to conduct AML/CFT inspections.

R.30

As explained in other Recommendations, several of the supervisory authorities in Panama (with the exception of the SdB and possibly the IPACOOP) cannot perform their delegated responsibilities with respect to enforcing the AML/CFT laws because of inadequate resources, including human, financial and technical, which inhibit these institutions from developing the necessary institutional capacity to deter and prevent illegal activities from taking place in the institutions they supervise.

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Recommendations and comments
R. 17 In order to assess the effectiveness of the sanctions and enforcement powers of the SSRP, as the sole supervisor of the insurance sector, the SSRP needs to strengthen its overall AML/CFT supervisory function and processes to ensure that on-site inspections are conducted in a timely and frequent manner. The authorities should also amended the Law 42-2000 to extend the obligations to the BHN, as the supervisor for the savings and loans associations sector. As indicated in other parts of this assessment, these institutions are not subject to AML/CFT inspections by the BHN. **R. 23** The supervisory authorities for insurance and savings and loans need to develop the necessary supervisory tools to conduct effective supervision as required by the AML/CFT law. The supervisory tools should take into account the risks facing the institutions as well as the overall risk profile in relation to money laundering and the financing of terrorism issues. The supervisors for insurance and savings and loans sectors should also focus on evaluating the adequacy of internal control systems in place, risk management practices, board oversight and involvement, as well as those requirements to comply with the law and enforcing regulations. The goal is to ensure that the institution's risk management systems in place are performing as intended. **R.29** The supervisory authorities, especially for insurance and saving, loans, and remittances should conduct AML/CFT inspections, as required by law and implementing regulations. Supervisory authorities should also establish a formal inspection program to ensure that all institutions, or those identified as posing the greatest risk to the system, received timely and effective supervision. Supervisors should also consider implementing a risk-based approach culture to maximize current resources available. The AML/CFT approach should focus on evaluating the internal control systems and measures in place to deter and detect money laundering and the financing of terrorism, including suspicious or unusual activities. **R.30** The supervisory authorities need to re-assess the manner in which they conduct AML/CFT compliance inspections to ensure that they have the necessary resources, including human, financial, and technical. Some supervisory authorities with responsibility over entities in the financial sector do not have a trained pool of supervisors to conduct effective supervision. In other cases, the number of regulated entities is overwhelming when compared to the number of supervisors available. Against this background, it is important that the supervisory authorities consider adopting a risk-based supervisory approach or methodology to effectively identify, measure, control, and monitor risk within their institutions. This approach will also assist the authorities in prioritizing resources and developing an adequate scope for AML/CFT inspections.

Compliance with FATF Recommendations		
R.17	Largely Compliant	Sanctions and enforcement powers available to the SdB and CNV and in force appear adequate However, limited supervision by the SSRP and lack of supervision by the BHN, within their respective sectors, raise concerns with respect to the ensuring compliance with the requirements of the AML Law and evaluating effectiveness of their sanctioning powers.
R.23	Largely Compliant	There is concern about the quality of licensing process and fit and proper test performed when applying for a license (insurance, savings, and loans). Competent

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		authority in the insurance industry relies heavily on the comments/observations of the UAF, while the measures in place for savings and loans are based on providing the necessary documentation as required by law in order to obtain a license. In addition, although AML/CFT supervision in banking, securities, and cooperatives appears adequate, there is no AML/CFT supervision taking place in the insurance and savings and loans areas. The supervisory agencies in these areas lack the expertise, resources, and supervisory tools to conduct inspections and understand money laundering and the financing of terrorism risks.
R.29	Largely Compliant	Although AML/CFT supervision in banking, securities, and cooperatives appears adequate, there is no AML/CFT supervision taking place in the insurance and savings and loans areas. The supervisory agencies in these areas lack the expertise, resources, and supervisory tools to conduct inspections and understand money laundering and the financing of terrorism risks.
R.30	Largely Compliant	Effective supervision to ensure compliance with the AML/CFT law and implementing regulation is not taking place in all areas. The main constraint is the limited resources available in light of the increasing number of reporting entities. Considering the number of regulated entities, a risk-based supervisory approach should be adopted to effectively identify risky institutions, resources needed, and scope of inspections to be conducted.

Financial institutions–market entry and ownership/control (R.23)

Description and analysis

R. 23

The process of licensing a financial institution in Panama is established under several laws, including the Banking Act, the Securities Act, the Insurance Act, the Cooperatives Act, etc. Measures in place also include performing "fit and proper" tests of owners/beneficial owners and senior management, interviews, review of business, strategic and operational plans, obtaining references, physical inspections of premises, as well as contacting counterparts abroad for that application coming from other jurisdictions. As an additional measure, the UAF solicits feedback, to ascertain whether there is any criminal record (expediente policivo). Individuals with criminal background cannot establish a financial institution in Panama.

The final approval decision remains with the respective supervisory authority.

Once the license is approved, the supervisory authorities conduct a visit to confirm the existence of the entity as well as to validate that the activities conducted are similar to the ones presented in the business and operations plans.

The evaluation of the insurance sector, specifically IAIS Principle No. 6 identified shortcomings in this area. The measures in granting licenses are currently being strengthened by the technical assistance project under the oversight of the IDB.

Recommendations and comments

R.23

The SSRP needs to strengthen and formalize the licensing process, including fit and proper tests to potential owners and senior management to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding in a financial institution.

Preventive Measures–Financial Institutions

As it is the case in the insurance and savings and loans sectors, the scope, frequency and quality of the supervision performed is a concern. For the most part, supervisors only focus on ensuring that the institutions are complying with the currency transaction reporting requirements. No other assessment or evaluation of the institution's risk management systems is performed to ensure that proper controls are in place and are working effectively.

Compliance with FATF Recommendations

Recommendations and comments

R.23

The SSRP needs to strengthen and formalize the licensing process, including fit and proper tests to potential owners and senior management to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding in a financial institution.

As it is the case in the insurance and savings and loans sectors, the scope, frequency and quality of the supervision performed is a concern. For the most part, supervisors only focus on ensuring that the institutions are complying with the currency transaction reporting requirements. No other assessment or evaluation of the institution's risk management systems is performed to ensure that proper controls are in place and are working effectively.

Compliance with FATF Recommendations

Recommendations and comments

R.23	Largely Compliant	Procedures in place for the insurance sector, (covered also under IAIS Principle No. 6) are not adequate to ensure that there is comprehensive process for granting licenses, including adequate background investigation of prospective owners, including "fit and proper" tests.

AML/CFT Guidelines (R.25)

Description and analysis

The SdB has issued guidelines instruction financial institutions on the requirements for effective implementation of AML/CFT measures. Law 42-2000 requires financial institutions to establish procedures and internal control mechanisms, including communication standards, designed to prevent ML. The adequacy of these mechanisms and procedures is evaluated by the SdB during on-site inspections. The SdB also has in place a reporting mechanism for communicating to financial institutions money laundering and financing of terrorism techniques or new trends. This includes issuing Banking Circulars to reflect persons, jurisdictions, activities that represent a primary concern with respect to money laundering and the financing of terrorism. Through these Banking Circulars, the SdB also communicates to financial institutions new trends and typologies as identified by FATF, providing direct link to the sites. In addition both the SdB and the CNV require their reporting entities to inform on a monthly basis, of any revisions to these lists or potential matches. Articles 10 and 11 of Agreement 12-2005 complements these measures by providing guidance with respect to transactions that have no apparent economic or lawful purpose, as well as the obligation to document in writing the findings and making this information available to the supervisory authorities. The CNV under Agreement 1-2005 has established similar preventive measures to prevent their entities from being used by criminals. However, some supervisory authorities (i.e., insurance and savings and loans associations) have not yet established implementing regulation to ensure that regulated entities report, not only currency transactions, but also unusual or suspicious transactions to the UAF.

The SdB also plans, coordinates, and delivers periodic AML/CFT workshops/seminars to the financial sector in Panama, as well as regional workshops to discuss issues in the Caribbean region. The SdB periodically provides training and feedback in new money laundering and the financing of terrorism trends to other stakeholders including the CNV, the IPACOOP, the SSRP, the MICI, financial institution compliance officers, and the banking association. The Superintendent of Banks, in her capacity as President of CFATF, has provided ongoing feedback

Preventive Measures–Financial Institutions

to the financial system in new typologies or trends identified by CFATF during their plenary meetings.

However, guidelines are not in place for institutions within the insurance and savings and loans sector. Except for the SdB, there is no system in place for providing timely and constructive feedback to the reporting institutions as required by this recommendation.

Recommendations and comments

R. 25

Except for the SdB, the other supervisory and competent authorities (including the FIU) in Panama have not been effective in establishing guidelines to ensure financial institutions comply with their respective AML/CFT requirements nor a system or feedback process to maintain their respective reporting institutions informed. These supervisory/competent authorities should develop and establish adequate guidelines, similar to those established by the SdB to ensure compliance with the law and regulations. In addition, consideration should be given to establishing a mechanism for providing timely feedback like via forums, quarterly meetings with representatives from reporting institutions, or through any other adequate means.

Compliance with FATF Recommendations

R.25	Partially Compliant	Lack of guidelines in place to ensure compliance with AML/CFT requirements at the SSRP and BHN. Lack of mechanism to provide adequate and appropriate feedback to reporting entities.

Ongoing supervision and monitoring (R.23, 29 & 32)

Description and analysis

R.23

Supervision to ensure compliance with Law 42 - 2000 and other implementing regulations appears adequate with respect to banks, securities, and cooperatives. The supervisory authorities perform periodic inspections, as required by law or regulation, to ensure compliance by the reporting entities.

However, there is no AML/CFT supervision within the insurance and savings and loans areas to ensure that reporting institutions have the necessary systems and controls in place to deter and prevent money laundering and the financing of terrorism. The main obstacle to these areas is the lack of resources, knowledge of AML/CFT trends and techniques, and capacity to conduct risk-based AML/CFT inspections.

R.29

The supervisory authorities have all the powers and authority under Articles 5 and 6 of Law 42-2000 to conduct inspections of financial institutions to ensure compliance with the AML Law. The supervisory authorities delegated with responsibility for ensuring compliance with the AML Law are listed on Paragraph 11 of this report. All supervisory authorities have access to information without requiring a court order. Although some of these supervisory authorities have adopted and are currently conducting risk-based supervision (mostly banks and securities supervisors), others conduct “compliance-based” supervision, which only determines whether the institution is complying or not with the requirements of the law and regulations. The supervisory authorities also have powers to compel production of documents, as well as access to all types of customer information, as necessary. Interviews with management of financial institutions visited revealed that the SdB, the CNV, and the IPACOOP are conducting on-site visits on a periodic basis and consider the scope and coverage adequate. Evidence of the quality of supervision was validated by the BCP assessment of the banking sector, which reflected adequate supervisory powers and adequate supervision. The assessment of the securities sector, under the IOSCO Principles, also revealed adequate supervisory powers and supervision of the sector. However, the assessment of the insurance sector, under the IAIS Principles identified supervisory shortcomings, including weak supervision.

Preventive Measures–Financial Institutions

Powers for enforcement and sanctions for noncompliance are explained under R.17 and are applicable to both, natural and legal persons.

Although the obligation to inspect reporting entities to ensure compliance with the law is granted to the supervisory authorities within the financial system, there is no AML/CFT supervision taking place in the insurance and savings and loans areas. The supervisory agencies in these areas lack the expertise, resources, and supervisory tools to conduct inspections and understand money laundering and the financing of terrorism risks. For those insurance companies that are subsidiaries of banks, the SdB provides limited oversight through its consolidated supervision approach.

R.32

Supervisory authorities develop an annual inspection program and maintain statistics of the inspections performed in both the prudential and AML/CFT matters. Supervisors also maintain records/statistics of sanctions reported to the UAF or coming from the UAF for noncompliance with AML/CFT laws and regulations. However, a similar supervisory program is not in place for the insurance and savings and loans sectors. Inspections in these areas are limited to reviewing compliance with currency reporting.

Recommendations and comments

R.23

Supervisors for the insurance and savings and loans sectors need to strengthen overall supervisory frequency and practices as required by the standards.

R.29

Supervisory authorities for the insurance and savings and loans sectors need to effectively use the supervisory powers granted under the AML/CFT law to carry out their supervisory responsibility for ensuring compliance by reporting institutions with requirements to prevent ML and combat FT.

R.32

Competent authorities in Panama need to create a process for sharing statistical information and statistics to ensure that information on the effectiveness and efficiency of the AML/CFT regime in Panama can be reviewed and measures for enhancing the regime established, if needed.

Compliance with FATF Recommendations

R.23	Largely Compliant	Although AML/CFT supervision in banking, securities, and cooperatives appears adequate, there is no AML/CFT supervision taking place in the insurance and savings and loans areas. The supervisory agencies in these areas lack the expertise, resources, and supervisory tools to conduct inspections and understand money laundering and the financing of terrorism risks. With respect to remittances, supervision focuses on reporting requirements only. Also, the SSRP relies on the UAF for “fit and proper” measures.
R.29	Largely Compliant	Although AML/CFT supervision in banking, securities, and cooperatives appears adequate, there is no AML/CFT supervision taking place in the insurance and savings and loans areas. The supervisory agencies in these areas lack the expertise, resources, and supervisory tools to conduct inspections and understand money laundering and the financing of terrorism risks.
R.32	Largely Compliant	Statistical information is maintained; however, there is lack of coordination and uniformity of statistical data within and between agencies.

Preventive Measures–Financial Institutions

Money or value transfer services (SR.VI)
Description and analysis
SR.VI In Panama, money or value transfer services are conducted by banks and money remittance services. These institutions are already covered by Law 42 – 2000, which imposes the full range of obligations in line with the FATF requirements. Regarding licensing, both are required to be licensed and are supervised by the SdB and the MICI, respectively. Implementation of control and preventive measures for remittances within the banking system is considered adequate. Money remittance services provided by businesses other than banks and the national post service (which have their own laws), are regulated by Law 48-2003. The applicant for a license must furnish (through an attorney) an application before the Directorate of Finance Companies of the MICI with his identification details (or those of the company's directors), a business plan and evidence of a minimum capital of $50,000, among other requirements. Article 6 of Law 48-2003 requires that the MICI undertakes a due diligence process "to verify the veracity of the information." Licensees pay a one-time application fee and an annual "fiscalization fee" which are exclusively destined to cover the expenses that this activity entails for the MICI. The licensees and the representatives of money remitters must be domiciled in Panama. Licensed money remitters are authorized to operate through intermediaries or "sub-agents" (a business model not yet common in Panama), and the MICI maintains a registry of all of them, including a copy of each contract between a money remitter and his sub-agent. In 2004 the MICI issued Resolution 328 which describes in more detail the requirements for non-bank money remitters with regards to identification of customers, reporting of suspicious transactions and filling of cash-transaction reports. However, implementation of suspicious transaction requirements is still weak, as most reports prepared by this businesses have been based only on the established cash-threshold, with little attention given to suspicious transactions. Additionally, the amount of $10,000 appears too high given that, according to industry representatives, most transactions are below $300. In practice, the major remittance business licensed in Panama is already requesting customers to complete the CTR form for amounts much lower than the legal threshold. The customer identification requirements issued by the MICI, appear to be adequately implemented and supervised. However, other aspects of the preventive systems revealed an excessive reliance on cash-thresholds for the detection and reporting of transactions with little attention given to assessing the overall AML/CFT policies, training or internal controls both by the money remittance businesses and the MICI. This is likely due to resource constrains at the Directorate of Finance Companies and to lack of training of its auditors in this area which was regulated only recently. The non-bank money remittance industry in Panama is relatively small. Only six money remitters have been licensed. During 2004 they paid approximately $104 million in remittances from abroad and sent $72 million. Except for concerns about the large amounts of cash carried into Panama by travelers for their purchases at the Free Zone of Colon (discussed in the appropriate sections of this report), there are no indications of a significant informal or alternative remittance system. Such a system would be illegal in Panamá (given the need for a license) and Law 48-2003 provides for appropriate sanctions for illegal remitters (articles 31 and 32) and for breach of the licensee's obligations (articles 29 and 30).
Recommendations and comments
SR.VI

Preventive Measures–Financial Institutions

Consideration should be given to adjusting the threshold amount for filing currency transaction reports to provide the UAF with useful information for the detection of structured transactions in the remittance area. Priority should be given to enhancing the auditing capabilities of the Directorate of Empresas Financieras of the MICI which is responsible for overseeing compliance by remittance businesses. The current plans within the framework of the National Project for Transparency constitute a good step in that direction, and should be accompanied by efforts to evaluate the risk management systems, internal controls, and record keeping systems in place for monitoring suspicious or unusual transactions. The authorities responsible for overseeing compliance need training on issues of AML/CFT specific to the remittance industry.

Compliance with FATF Recommendations		
SR.VI	Largely Compliant	Implementation and supervision of AML/CFT requirements needs to be strengthened as reports are almost only cash-threshold based (there is little detection of suspicious transactions by the licensed remitters).

Preventive Measures–Designated Non-Financial Businesses and Professions

Customer due diligence and record-keeping (R.12)

Description and analysis

Overview:

There are three categories of "designated non-financial businesses and professions" (as defined by FATF) which are subject to various degrees of AML/CFT regulations in Panama. These are trust service providers, casinos and real estate agents. The DNFBPs that are not subject to AML/CFT laws or regulations are: company service providers, dealers in precious metals and stones, accountants, lawyers, notaries and other independent legal professionals. The authorities have not undertaken an explicit review of the level of risk in any of these sectors.

With respect to casinos and real estate agents, Law 42 - 2000 (article 7) only requires them to report cash -and cash equivalent- transactions above $10,000 and to keep records of them (regulatory authorities are empowered by Law 42-2000 to lower the threshold and they did so for casinos). Other basic requirements, especially the basic obligations under FATF Recommendations 5, 10 and 13 to identify customers, keep adequate records and report suspicious transactions, were introduced by the regulatory authorities of these sectors.

The Executive Decree No. 1 of 2001, which regulates Law 42 - 2000, designates the competent authorities for all reporting institutions. This decree empowers the authorities to "adopt measures for the reporting institutions under their regulation and supervision which contribute to fulfilling the objectives of Law 42 - 2000" (article 5). Given that the law only establishes a CTR requirement for these two categories of DNFBPs, there is a loophole in the authority of the MICI and of the Gaming Board to create additional obligations and to impose sanctions for lack of compliance.

According to the FATF methodology, those basic AML/CFT provisions must be prescribed in the law or in "secondary legislation", which means "decrees, implementing regulations or other similar requirements issued or authorized by a legislative body" (paragraph 21 of the methodology). The assessors consider that those additional provisions do not meet the "secondary-legislation test" and there is no evidence to support the authority of the MICI and the Gaming Board in this area, as their regulations have not been tested in courts (which is, in turn due to the fact that there have been no enforcement actions against real estate agents and no sanctions against casinos

Preventive Measures–Designated Non-Financial Businesses and Professions

for reasons other than not filing a CTR).

DNFBPs that are subject to AML/CFT obligations

Casinos:

Licensed gaming businesses operating in Panamá amount to 12 full casinos (totaling 185 game tables and 2206 slot machines), 27 additional slot-machine rooms (with 2495 machines), seven betting agencies, six bingo rooms, one internet casino (not yet in operation), 1 horse-race and 3 telematic gaming centers (i.e., sports betting). In addition, the National Lottery is an independent, government-owned institution which is subject to the same AML/CFT obligations (basically the filing of CTRs, but it also files STRs by agreement with the UAF).

In the first three months of 2005 casinos, slot machines and bingos alone reported bets of approximately $666,500,000 (preliminary data from Contraloría General de la República).

The gaming industry in Panama is a state monopoly that has been promoted since 1998 through the issuance of concessions to private investors in exchange of royalties plus a minimum dollar amount or a fixed percentage of their betting income, whichever is higher. Its regulations follow the model of The Nevada Gaming Commission and the U.S. government has provided training to the Gaming Board. Panamanian casinos offer modern facilities and state of the art gaming services. Panamanian residents. comprise the bulk of clientele at casinos, even more than tourists.

Detailed AML/CFT regulations for each type of licensee have been issued by the Gaming Board, as it has been explained, exceeding its legal regulatory faculties: Resolution 9 of 2003 (appointment of compliance officers), Resolutions 373 and 286 of 2003 (manual and reporting templates for CTR), Resolution 18 of 2001 (AML requirements for bingo rooms), Resolution 19 of 2001 (AML regime for the hippodrome), Resolution 29 of 2003 (AML requirements for telematic games). Lastly, Resolution 92 of 1997 (article 46) prohibits that owners, managers or senior employees play at their own facilities, a limitation aimed at preventing the use of these businesses for money laundering purposes by the people who control them. While these regulations are positive demonstration of the authorities commitment to prevent ML in the gaming industry, their legal enforceability is lacking.

There are no legal or regulatory restrictions as to the form in which customers can buy their chips or tokens, nor on how the casinos should pay the prizes to their customers (except for telematic centers). Customers can be paid with check, wire transfers and other means which could be used for the placement of illicit cash into the financial system. However, casinos are required to monitor these patterns and the common practice seems to be that only cash is paid, except when the prize is so high that it would make a cash payment impractical. Also, it is worth noting that checks are considered “quasi-cash” means of payment an therefore fall within the obligation to file CTRs.

With regards to fit and proper tests prior to the issuance of a casino license, Decree-Law No. 2 of 1998 (article 42) and Gaming Board’s Resolution 92 of 997 (article 5) establish the Board’s obligation to perform background checks of the applicants (and of any owner of more than 10 percent of a casino). However, according to information provided during the mission’s interviews with the authorities, the Gaming Board relies excessively on consultations with the UAF which is not in a position to provide all the necessary information. Neither the Gaming Board nor the UAF are considered “competent authorities” under the law to obtain the criminal record of any person.

There is a very low level of suspicious-transaction reporting by casinos: only four STRs were filed in 2004, which

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raises questions when compared to the large size of that industry.

Real estate businesses:

The real estate market is significant for the Panamanian economy. The total number of mortgage loans increased 18.32 percent and the dollar amount rose 23 percent just from January to April of 2005, greatly fueled by expectations of a possible elimination of certain tax incentives on real estate investments.

Real estate agents and promoters are subject to the licensing requirements of Law-Decree No. 6 of 1999 and to the AML/CFT preventive obligations enacted by the Ministry of Commerce and Industry, MICI (Resolution 327 of 2004). As part of the licensing procedures, the MICI (unlike other regulatory authorities) has access to the police records of the applicant.

However, only the real estate agents that have legal personality (as opposed to natural persons) are subject to AML/CFT requirements. The authorities estimate that only 20 percent of all real estate sales are intermediated by licensed legal persons, while 30 percent of properties involve a natural person with a realtor license, and 50 percent are sold by the owners themselves.

No STRs have been sent to the UAF by this sector and, in practice, very few cash transactions of $10,000 or more are reported. According to the authorities, of the approximately 100 reports per month, 98 percent are simply sent to comply with the obligation to notify that "there are no CTRs to be reported."

Trust service providers:

Unlike the rest of the DNFBPs, trust service providers ("empresas fiduciarias") are designated as reporting institutions under article 1 of Law 42 - 2000 which makes them subject to the core set of AML/CFT measures established in that law. They are also under the supervision of the SdB (Law 1 of 1984 and Executive Decree 16 of 1984) and subject to its regulation and inspection, even if they are not part of a financial group. There are currently 53 trust companies licensed by the SdB, of which seven are legal persons owned and operated by law firms. The assessment of FATF R.34 (legal arrangements) in a later section of this report explains the main AML/CFT controls applicable to trust service providers. Please refer to the preventive measures of the financial sector for an assessment of the AML/CFT regulation and supervision performed by the SdB.

DNFBPs not subject to AML/CFT obligations

Dealers in precious metals and stones:

Jewelers and related businesses are not obliged to identify their customers, keep records of this information or report suspicious transactions. However, most of the high value transactions in precious metals and stones are done by jewelry merchants located in the Free Zone of Colón, which makes them by default subject to the CTR requirements of Article 7 of Law 42 - 2000, and to the more general AML/CFT measures of Resolutions 3/97, 2/01 and 3/01 of the ZLC Administration (see details for the Colon Free Zone in assessment of R.20 below).

Notaries:

FATF Recommendation 12 is not applicable to notaries in Panama due to the fact that they cannot legally engage on behalf of a customer in the activities described in FATF Recommendation 12. Notaries do not represent clients in any way and are not responsible for the substance of the documents that they notarize.

Notaries are lawyers who must complete a specialized course of study, have a minimum number of years of

Preventive Measures–Designated Non-Financial Businesses and Professions

professional prescribed in the law and meet the same requirements as a Magistrate of the Supreme Court. Notaries are appointed by the President of Panama for periods of 4 years and there are 23 of them, of which 12 are located in Panama City. Their primary function is to authenticate and "protocolize" documents (to list and keep them in a public registry).

Panamanian law requires notarization of all contracts, acts and documents involved in the incorporation of a company and Executive Decree 32 of 1997 states that only lawyers can prepare these documents. Also, in 2004 it was established that notaries can protocolize documents only when these are referred by a lawyer. Therefore, only lawyers can prepare the documents/contracts which require notarization, for example, the sale or lease of real estate.

Company Service Providers:

By law, company incorporation services in Panama can only be provided by lawyers, because the law requires that all corporate documents be prepared by a lawyer, as well as any document that is to be notarized (see details in next section and in the assessment of FATF R. 33 and 34). Therefore, Company Service Providers in Panama with respect to the incorporation of companies, are not a separate type of DNFBP but only a subgroup within the category of "lawyers."

Lawyers:

Lawyers are not subject to Law 42 - 2000 and no AML/CFT obligation exists for lawyers (neither for C&TS, accountants, notaries or for any other similar profession).

Executive Decree 468 of 1994 establishes that some lawyers acting as resident agents must have a minimum knowledge of their customers. Article 1 of the Decree states: "It is the obligation of every lawyer or law firm which acts as resident agent of a Panamanian bearer-share corporation (sociedad anónima) to know the client and to maintain enough information to identify him whenever the competent authorities so require."

The Executive Decree 468 of 1994 does not amount to an AML/CFT preventive system as required in the FATF Recommendations. The scope and level of detail of such "customer knowledge" is thereby limited to a basic identification of the customer (i.e., name and address) and no information is required on the nature of his business or the purpose of his subsequent transactions. Also, the Decree simply obliges resident agents to provide information to judicial authorities (not to the FIU) in the course of criminal investigations, which is what judicial authorities are empowered for by law, anyway. The decree limits access to that information only to cases of drug-traffic related investigations. Finally, there is no supervisory or self-regulatory body responsible for monitoring compliance with this requirement of Executive Decree 468.

Industry representatives informed during the visit that it is very difficult to identify their real customer when they deal with foreign institutional counterparts, these are, foreign law firms or company and trust service providers acting on behalf of a client who needs, for example, to incorporate a company in Panama. In these cases, the foreign counterpart hardly ever discloses sufficient information about its customer to avoid potential competition from the Panamanian law firm.

The assumption that all dealings that are exposed to ML risks are always channeled through banks is widespread among Panamanian lawyers. They rely heavily on the banks to gather more in depth information about their clients, including other possible (ultimate) beneficiaries and their source of funds, and to detect and report any suspicious transaction to the UAF. Many lawyers in Panama assert that they need to accept the identification information the client gives them at face value and feel it is not their responsibility to challenge the authenticity of

Preventive Measures–Designated Non-Financial Businesses and Professions

the identification information or to question the client as to possible ultimate beneficiaries the client might be representing.

According to the information received during the visit, Panamanian lawyers do not offer safekeeping of securities for clients neither do they have cash or non-cash assets of clients in escrow or otherwise. They advise that they keep only the certificates of associations/companies that they incorporate, and the respective licensing and registration documents.

Law 9 of 1984 regulates the practice of law and states that only Panamanian nationals can practice in Panama. Lawyers must obtain a "certificate of adequacy" from the Supreme Court, which serves as professional license. It is a crime to practice without this certificate, for which the only requirement is to have a law degree from any of the approved universities in Panama or, in the case of law degrees from foreign universities, to validate them at the University of Panama.

There is a procedure to investigate and sanction the breach of the ethical provisions of Law 9 of 1984. The Supreme Court can impose the penalty of suspension or cancellation of the certificate of adequacy. Nonetheless, there have been very few cases of cancellation of the certificate (equivalent to a disbarment) for unethical behavior

There are two main professional associations of lawyers which have their own additional ethical codes and disciplinary proceedings. In case of grave wrong doing, besides expelling the member, the associations forward the case to the Supreme Court for disciplinary proceedings and/or to the Attorney General if the conduct could be criminal.

However, membership in a lawyers' association is not mandatory and only a minority of attorneys are active members (less than 10 percent of the approximately 9,000 practicing lawyers in Panama belong to any association). Several lawyers interviewed expressed concern about the fact that the disciplinary sanctions imposed by the professional associations command little or no practical effect, due to a lack of legal enforceability which they used to have when membership to the National Association of Lawyers was a legal requirement for the practice of law.

Accountants:

Company incorporation services in Panama cannot be provided by accountants (only by lawyers). However, accounting firms are able to act through attorneys that are part of their staff. Some accounting firms also offer non-accounting services as a package for their clients, which fall under FATF R.12 such as buying, selling or managing their customers' property or bank accounts.

The Central Accounting Board (Junta Central de Contadores) of the MICI is the competent authority to investigate and sanction the unethical behavior of accountants, and it deals with approximately one to fifteen complaints per year. There have been only 6 sanctions in recent years. According to information from accountants interviewed, the only reason for imposing the maximum disciplinary penalty (cancelling of the license) is the commission of a crime. Only 10 percent of the approximately 12,000 licensed accountants in Panamá belong to a professional association and the more active of these have proposed an updating of the laws on accountancy, including of the ethical code enacted by law in 1984.

Recommendations and comments

Preventive Measures–Designated Non-Financial Businesses and Professions

Establish the legal obligation of lawyers and accountants to comply with appropriate AML/CFT measures when they engage, on behalf of their customers, in any of the activities described in FATF R.12.

Impose identification, reporting, and record-keeping requirements for all dealers in precious metals and stones.

Provide guidance to DNFBPs for the graduation of their customer due diligence procedures according to the specific risks and nature of each activity.

Review the legal framework applicable to all DNFBPs to make sure that the regulations issued by each competent authority are supported by clear legal powers and are enforceable.

Compliance with FATF Recommendations

R.12	Partially complaint	• Lawyers, accountants, and dealers in precious metals and stones are not covered. • Lack of legal basis for (and implementation of) preventive measures other than currency-transaction reporting. • UAF cannot obtain information from lawyers, which play a significant role in gate keeping the Panamanian system, given their active incorporation services. • Most regulations don't take into account the different nature of risks in each sector. • Threshold that triggers identification of customers by casinos is higher than the $3,000 recommended by FATF.

Monitoring of transactions and relationships (R.12 & 16)

Description and analysis

There are preventive obligations for casinos and other gaming businesses established in Resolutions 29, 286 and 373 of 2003 of the Gaming Board. Also, for real estate agents in Resolution 327 of 2004 of the MICI. These regulations contain comprehensive AML/CFT requirements which include identification of customers, internal controls, record-keeping obligations (5 years), reporting of cash transactions above $10,000 and of suspicious transactions, regardless of value.

However, as explained before, the legal basis for the AML/CFT obligations of DNFBPs, other than reporting cash transactions, is not clear. Law 42 - 2000 does not include any of these institutions among those listed in Article 1 which are subject to the full range of AML/CFT obligations (especially customer due diligence and reporting of suspicious transactions, as required by FATF R.12). Article 7 only establishes the obligation of gaming businesses and real estate agents and promoters to file CTRs, but not to detect and report suspicious transactions.

Implementation and supervision of these measures has also been excessively focused on the filing of CTRs above $10,000, as reflected in the meager amount of suspicious transaction reports received from these sectors. Specifically, with regard to casinos, the current $10,000 reporting threshold which triggers CTR and customer due diligence controls does not comply with the $3,000 threshold recommended by FATF.

The office of the MICI responsible for overseeing real estate agents has no personnel available to perform fiscalization of this businesses. On the other hand, the Gaming Board has a reasonable number of auditors and inspectors, but little attention is given to AML/CFT matters in their inspection procedures and during their visits. Several casino operators interviewed reported that some customers often claim that other casinos normally don't bother them with identification procedures regardless of the amount and are able to threaten to take their business to the competition. The actual policy among casino operators still seems to be that identification and CTR-filing

Preventive Measures–Designated Non-Financial Businesses and Professions

is only mandatory above the $10,000 threshold (without regard to Resolution 31 of 2003, which requires them to consolidate and report multiple operations of $2,000 or higher made by a single customer during a one-week period).

Recommendations and comments

Give legal status to the obligation of real estate agents and promoters to properly identify customers who meet the FATF thresholds, and for both casinos and real estate agents, to monitor customer activity and to report any suspicious transaction to the UAF.

Authorities should identify the risks that DNFBPs face according to their special nature and provide guidance as to what extent they should be able to monitor customer activity. Different degrees of control may be warranted for casinos than for real estate businesses.

Compliance with FATF Recommendations

R.12	Partially Compliant	• Lack of legal basis for the obligation to monitor client activity. • Compliance programs are not required of lawyers (including company service providers), auditors, dealers in precious metals and stones.
R.16	Partially Compliant	• Not all DNFBPs are covered by the obligation to report suspicious transactions. • There is little evidence of reporting of suspicious transactions by the gaming and real estate industries.

Suspicious transaction reporting (R.16)

Description and analysis

The same description as in the previous two sections applies with respect to coverage and breath of the AML/CFT requirements for DNFBPs. In addition, the following information is relevant:

Law 42-2000 does not specifically mandate to file a suspicious transaction report (STR) when transactions are suspected to involve tax matters or to be linked to or used for terrorism, terrorist acts, or by terrorist organizations.

STR regulations and guidance for casinos: The regulations of the Gaming Control Board apply to casinos practically the same obligations prescribed in Law 42 – 2000 for financial institutions. They also provide adequate examples of red flags or alerts that casinos should take into consideration for the detection of suspicious transactions. However, these regulations rise the same problem mentioned earlier regarding the weak legal basis for obligations other than CTR-filing. Not surprisingly, there were only four suspicious transactions reported by all the casinos and gaming businesses in 2004 and no sanctions have been imposed on casinos for failing to report a suspicious transaction.

Trusts secrecy: Trust service providers (fiduciarias) are subject to all the obligations set forth in Law 42 – 2000. There is no limitation on access by the UAF.

Real estate businesses: The AML/CFT regulations issued by the MICI for this sector largely follow the same structure and requirements established in Law 42, 2000 and in the regulations that the SdB has issued for the financial sector. Besides its weak legal basis, implementation by the regulated entities has not been tested, and they have not reported any suspicious transactions to the UAF.

Recommendations and comments

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DNFBPs should be clearly required to report transactions suspected to be linked to or used for terrorism, terrorist acts, or by terrorist organizations, and even when the transaction is thought to involve tax matters. `

DNFBPs should be legally protected from civil or criminal liability derived from reports made in good faith.

Authorities should receive training for, and provide guidance to, DNFBPs on the typologies applicable to their respective sectors. Particularly, the AML/CFT regulations of the MICI for real estate businesses merit review to make them sector specific, having regard of the different risks and the nature of this business, as opposed to that of financial institutions.

Compliance with FATF Recommendations

R.16	Partially Compliant	Reporting of suspicious transactions by casinos is very low and nonexistent for real estate agents and promoters. Lawyers and other professionals should be covered (see rating of R12). STR obligations imposed in regulations are not clearly supported by law.

Internal controls, compliance & audit (R.16)

Description and analysis

In addition to the description in the previous three sections all the regulations applicable to DNFBPs provide for the reporting of suspicious transactions regardless of the amount. Implementation in the areas covered by the MICI, however, is excessively focused on cash thresholds.

Regulations issued by the MICI for real estate agents have not specifically addressed the role that internal control policies and external auditors should play in the prevention of money laundering and the financing of terrorism.

Recommendations and comments

The difference between the obligation to file Cash threshold reports and suspicious transaction reports should be clearly explained to the regulated institutions.

When DNFBPs fall in the circumstances described in FATF recommendation 16, they should be required to develop programs against ML and TF according to their specific activities.

Compliance with FATF Recommendations

R.16	Partially compliant	Internal controls by DNFBPs are focused almost exclusively on the reporting of CTRs. Lack of comprehensive and risk-based perspective.

Regulation, supervision and monitoring (R.17, 24-25)

Description and analysis

Sanctions: Article 8 of Law 42 - 2000 which establishes the sanctions for not complying with the AML/CFT obligations of said law, is applicable to casinos and real estate businesses only if they fail to report cash transactions in excess of $10,000, which is the only requirement for those entities under that law (threshold lowered for casinos by the Gaming Board)). Therefore, non-compliance with other preventive obligations (mainly the reporting of suspicious transactions regardless of their amount) would not have a corresponding sanction. The oversight or “fiscalization” functions of these authorities for AML/CFT purposes constitute an addition to pre-existing industry specific and customer protection responsibilities. In the exercise of their general responsibilities, both the Gaming Board and the MICI can supervise these two categories of reporting institutions whenever they breach their AML/CFT requirements. However, the imposition of sanctions is limited to the few really

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enforceable regulations.

This legal construction has not been put to test in court, as no sanction has ever been imposed on any DNFBP for not reporting a suspicious transaction.

Competent authorities: For AML/CFT purposes, Executive Decree No. 1 of 2001, Article 2, establishes that the Gaming Control Board of the Ministry of Finance is the competent authority to oversee compliance by casinos, and the National Directorate of Commerce of the MICI is the competent authority for the real estate sector (among other non-financial businesses not covered by the FATF recommendations but subject to AML/CFT controls under Panamanian law).

The Decree-Law No. 2 of 1998 gives the **Gaming Control Board** ample powers to regulate and supervise all gaming activities (albeit not specifically for AML/CFT regulations). Its operational structure is formally adequate and it currently has twenty three (23) inspectors and auditors responsible for supervision of compliance, including the AML/CFT requirements of casinos and the other gaming businesses. Staff have received frequent training, for which the Gaming Board has set aside a budget of $50,000 in 2005, and some of it has been on AML/CFT related areas.

However, a high turnover of auditors and inspectors every time there are changes in government causes a drain of scarce expertise which is difficult to find anywhere else given the technicalities of the gaming industry. Such turnover, and the absence of any impediments or governance policy at the auditors' level, may affect the objectivity with which auditors approach the supervised institutions.

With regards to fit and proper tests prior to the issuance of a casino license, Decree-Law No. 2 of 1998 (Article 42) and Gaming Board's Resolution 92 of 997 (Article 5) establish the Board's obligation to perform background checks of the applicants (and of any owner of more than 10 percent of a casino). However, according to information provided during the mission's interviews with the authorities, the Gaming Board relies excessively on consultations with the UAF which is not in a position to provide all the necessary information. Neither the Gaming Board nor the UAF are considered "competent authorities" under the law to obtain the criminal record of any person.

Inspections practices established by Resolution 92 of 1997 should be updated. The prevalent theme of the manuals and guidelines, in the few instances that they touch on AML/CFT issues, are almost exclusively focused on the search for unreported currency transaction over $10,000.

The Minister of Commerce and Industry is the competent authority to regulate and oversee three categories of non-financial businesses and professions for AML/CFT purposes (real estate, pawn brokers and export processing zones). The General Directorate of Internal Commerce of the MICI, is responsible for overseeing 184 Real Estate Brokers ("empresas corredoras de bienes raíces") and 108 Real Estate Promoters currently licensed. However, the Directorate's only function with respect to AML/CFT is to receive the CTRs from these companies and forward them to the UAF. It has no inspectors assigned and it performs no supervision of regulatory compliance.

In addition, registered pawn brokers (of which there are 134) have been recently subjected to AML/CFT preventive measures (Law 16 of May 23, 2005) and put under the regulatory responsibility of the MICI. The General Directorate of Financing Companies within the Ministry is responsible for this sector. It also regulates and supervises 137 financing companies, 105 leasing companies and 7 money remitters (referred to in previous sections of the report) for a total of 383 reporting institutions. Given that this Directorate counts with only 5 inspectors (possibly adding 2 shortly), it is unlikely that any supervision of pawn brokers will be performed in the near future. The authorities are hopeful of totaling 12 staff for this area in the longer term as part of a plan that

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would be financed by the Inter-American Development Bank (IADB).

Finally, the 48 companies established in export-processing zones are also under licensing and regulatory responsibility of the MICI. Given that the respective office within the Ministry doesn't have any inspectors, in December 2004 they joined efforts for the first time with Customs authorities to include some coverage of AML/CFT in their visits.

Recommendations and comments

Given the large number of regulated entities, the wide range of their activities, and the scarce human resources available to oversee compliance, MICI needs to evaluate the most pressing money laundering and the financing of terrorism risks within each industry in order to implement a risk-based policy, which should include a methodology for monitoring (off-site surveillance) and inspecting (on-site visits) these institutions on a spot check basis, depending on the level of risk posed to the system and the results of surveillance reviews.

The auditors of MICI should receive training on AML/CFT issues in order to be able to identify areas of priority or risks.

Efforts should be made towards guaranteeing the stability and independence of personnel of the Gaming Board, and to update the regulations and inspection procedures, with a special focus on preventing the misuse of casinos by their own owners or operators.

Compliance with FATF Recommendations

R.17	Compliant	(only with respect to sanctions for non compliance with the preventive obligations that exist for DNFBPs in Panama)
R.24	Partially Compliant	• Fiscalization of real estate agents and pawn brokers for compliance with AML/CFT requirements has not been implemented in practice. • Licensing of casinos requires improved due diligence.
R.25	Partially Compliant	• Although the regulations for casinos include some examples of suspicious transactions for this businesses, the authorities have not been able to provide feedback to the rest of the regulated DNFBPs given their own lack of training on AML/CFT issues.

Other nonfinancial businesses and professions—Modern secure transaction techniques (R.20)

Description and analysis

The 10 export-processing zones of Panama and, especially the Colon Free Zone (ZLC), pose a heightened risk of money laundering through cash payments and trade-based typologies. With more than 1,800 merchants registered, the ZLC generates approximately $11 billion in goods introduced and re-exported annually and it receives more than 250,000 visitors per year. Its minimized customs procedures, its huge volumes of trade and, the prevalence of payments in cash for certain types of high-value goods (like jewelry and electronics) make the free zone an attractive area for criminals to conduct money laundering activities.

Additional concern regards the role that the ZLC can play in the black market peso exchange typology of ML. For this trade-based laundering mechanism, financial institutions are not needed initially where illicit dollars in cash are sold at a discounted exchange rate to Latin-American importers who then use them to purchase goods in the ZLC. ZLC merchants can be willingly or unwillingly used to receive that cash and deposit it in their bank accounts as legitimate proceeds from real sales.

All the companies within the ZLC are required to identify their customers and report any cash transaction above $10,000 (Article 7 of Law 42-2000).

Although many report monthly to the UAF (through the Administration of the ZLC) that there are no cash

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transactions to report, there is little oversight in place to sanction underreporting. The sanctions applicable for failing to file a CTR would be those prescribed in article 8 of Law 42-2000 (as is the case with all other reporting institutions).

The ZLC Administration's resolutions 3-1997, 2-2001 and 3-2001 impose additional AML/CFT regulations (i.e., knowing the customer and reporting suspicious transactions), but they exceed the requirements of Law 42-2000 without clear legal basis for that (as has been explained in the case of DNFBPs). In practice, these additional requirements are not being implemented by the industry and no reports of suspicious transactions have been filed by the ZLC merchants or the companies established in export processing zones. On the contrary, many ZLC merchants declared that they can not be expected to reject customers that could be suspicious of committing crimes in other countries (contrabandists and drug dealers being common examples). On the contrary, they believe that the authorities should be able to detect instances of money laundering by analysis of their CTRs.

The ZLC Administration is an independent governmental agency charged with overseeing compliance. However, it lacks the minimum human and technological resources needed to perform well targeted inspections and audits. Even the issuance of import and export documents for merchandise that moves through the ZLC, which is a responsibility of the ZLC Administration, is performed manually. The ZLC Administration is in the process of training and reassigning its 6 auditing officers, it appointed a specialized AML person and it plans to increase the depth of its audits. Nevertheless, the number of audits focused on the AML/CFT requirements is still very low compared to the number of companies under its supervision (53 visits in 2004) and sanctions for breach of those requirements other than for not filing a CTR, are lacking.

Other nonfinancial businesses that Panama has regulated for AML/CFT purposes are pawn shops, as recently as May 30, 2005 (Law 16 - 2005). According to officials interviewed, the reason for the enactment of this law was the increasing questioning among authorities and the regulated private sector (namely "empresas financieras") about an inexplicably high volume of funds available to this type of retail lenders and the excessively low rates that they offer to the public. The law established a series of requirements to obtain a license, and made the Directorate of Empresas Financieras of MICI responsible for licensing and supervising them. Pawn shops where also obliged to "comply with the requirements of Law 42-2000" (article 57 of Law 16-2005). No implementing regulation had been issued at the time of visit.

Recommendations and comments

Panama has taken positive steps with regards to the AML/CFT risks in its ZLC. However, the new requirements need to be better enforced by the ZLC ADMINISTRATION.

ZLC merchants need training and awareness of the modalities by which their businesses could be misused for ML in order to foster compliance with the obligation to report suspicious transactions.

Strengthening of audit procedures and resources of the ZLC ADMINISTRATION and close cooperation with the UAF and Customs are needed to improve compliance.

Oversight of the newly-regulated pawn shops needs to be well targeted according to their identified risks in order to prioritize the assignation of resources under the responsibility of the MICI.

The MICI should provide the Directorate of Empresas Financieras of MICI with more adequate resources to perform its regulatory and supervisory functions, mainly through the appointment of additional inspectors and the provision of training specific to the sectors under its responsibility.

Compliance with FATF Recommendations

R.20	Largely Compliant	Regulations need to address sector specific risks. CTR and other requirements for ZLC are still insufficiently implemented despite

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		major risks being identified. New AML/CFT law for pawn shops not yet implemented.

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Legal Persons–Access to beneficial ownership and control information (R.33)
Description and analysis
There are several types of corporate associations or companies in Panama, ranging from individually-owned companies, to limited liability companies and bearer-share companies, the latter being the most predominant. The lack of detailed statistics about the number and type of companies registered every year, limits the authorities' ability to adequately address the different risks that this activity entails. Bearer share companies are used both for local and offshore purposes, so there is not a special category of International Business Company in Panama. All companies, including bearer-share companies are subject to the same incorporation requirements, including the obligation to have a resident agent and of being registered in the Public Registry, which is regarded as efficient and reliable with respect to information on companies. At the time of registry disclosure is made of the identity of directors and resident agents only, while disclosure of the identity of shareholders is not required. Any change of these officers needs to be updated in the Public Registry in order to have effect in contracts with third parties. According to Law 32 of 1927, only lawyers can draft the contract to incorporate a company and request its notarization for the incorporation of companies. The same requirement is applicable to any minutes that need to be registered in the public registry. Therefore, Corporate Service Providers are mostly a separate sub-category of the legal profession in Panama. As explained in the section on DNFBPs, accountants can only provide those services in conjunction with the legal services of a lawyer. Lawyers, in turn, are not subject to any AML/CFT requirement even when acting as company service providers. Lawyers expressed not having difficulty in obtaining information about the beneficial owner of any company whose shareholder is a Panamanian resident. However, access to that same information is very limited in the case of bearer-share companies incorporated in Panama whose shareholders are foreign residents or companies domiciled abroad. Reportedly, this occurs because foreign customers are normally represented by foreign law firms who fear that their customers may be enticed to deal with the Panamanian law firm directly. In many cases lawyers get to know only the identity of their immediate correspondent counterparts in a different country (usually a lawyer or another type of company service provider and not the real owner of the company being incorporated). Some areas of the Panamanian system partially mitigate the risk of legal persons being used for money laundering and the financing of terrorism purposes, namely: i) banks' strict customer due diligence practices with respect to legal persons: this is immaterial if the Panamanian system is used in the layering, not the placement, state of an international ML scheme; ii) the availability of some information (described above) in a centralized public registry; iii) the unrestricted access of judiciary authorities by court order (in the context of a formal investigation) to the records of any company, its resident agent or any service provider; and iv) the fact that all companies are required to have a resident agent and the obligation imposed by Decree

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468–1994 on resident agents to know the customer and to keep his data on record. As noted before, this requirement has the following limitations: no evidence of implementation by the private sector or supervision from the Government; no legal obligation for service providers to get to know the real beneficiary of the companies that they incorporate, and access to information potentially limited to drug-related investigations.

However, the existence of bearer shares constitutes, by nature, a significant limitation to the proper identification of customers by banks and other reporting institutions, as well as by judicial authorities. This is compound by other aspects of the Panamanian corporate legislation, such as the following:

i) Resident agents are not required to keep any records of the corporation (only the identity of the immediate client to whom the company was sold, which is a foreign company or company service providers;

ii) Share certificates, stock registers, accounting records and minutes of meetings of companies registered in Panama can be maintained anywhere in the world;

iii) Annual meetings of shareholders or directors are not required;

iv) Legal persons (foreign or local) can act as officers and directors of Panamanian companies;

v) Officers and directors are not required to be shareholders, and nominee-directorship services are widely offered by Panamanian company service providers;

vi) As stated earlier, the identity of shareholders is not disclosed in the public registry.

In practice, the information available in the public registry and in the resident agent's files is not useful enough to determine the real ownership and control structure of legal persons, especially of bearer-share companies.

The Panamanian authorities did not provide any indication of plans to address this issue. Given the country's specialization as a provider of offshore incorporation services, this constitutes a serious gap in its AML/CFT system unless there is sufficient evidence that judicial and other investigative authorities have been successful at identifying the beneficial owner of companies under investigation.

Recommendations and comments

To the extent that lawyers are involved in the financial activities or non-financial activities described under the FATF recommendations, these activities should be regulated and supervised.

The authorities should take measures to ensure that legal persons in general and those that may issue bearer shares in particular are not misused for money laundering, Thos measures should aim at providing adequate, accurate and timely information on beneficial ownership and control structures, especially to law enforcement authorities and to the UAF.

Compliance with FATF Recommendations

R.33	Non-compliant	• The potential misuse of corporations that may issue bearer shares has not been specifically addressed in the AML/CFT law and regulations. • The Panamanian registration system does not have information on the ownership structure of most legal persons incorporated in Panama and is not kept current. • There is no evidence that judicial and other authorities have been successful at identifying the beneficial owner of companies under investigation.

Legal Arrangements–Access to beneficial ownership and control information (R.34)

Description and analysis

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Trust service providers (fiduciary enterprises) are included in Article 1 of Law 42, 2000, and are therefore subject to the core set of AML/CFT measures established in that law.

They are also under the supervision of the SdB according to the Law 1 of 1984 and the Executive Decree 16 of 1984. They require a previous license and are subject to comprehensive regulation and inspection by that Superintendency, even if the trust company is not affiliated to any financial institution (see section on the financial sector above for an assessment of regulations in this area).

According to Law 1-1984 all trusts must be in writing (Article 4), trust companies must maintain a registry of the trusts that they administer (Article 35-2) and the trust instrument shall contain the following information (Article 9):

1. The complete and clear designation of the founder of trust, trustee and beneficiary;
2. When it is future beneficiaries or classes of beneficiaries, sufficient circumstances shall be expressed for their identification;
3. The sufficient designation of the trustees or substitute, if any;
4. The description of the assets or the patrimony or share thereof on which it is constituted;
5. The express declaration of the willingness to constitute a trust;
6. The powers and obligations of the trustee;
7. The prohibitions and limitations that are imposed to the trustee in the exercise of the trust;
8. The rules of accumulation, distribution, or disposition of the assets, revenues and products of the assets of the trust;
9. Place and date of the constitution of the trust;
10. The designation of a resident agent in Panama;
11. Domicile of the trust in the Republic of Panama;
12. Express declaration that the trust is constituted in accordance with the laws of the Republic of Panama.

Secrecy provisions do not inhibit access by competent authorities to trust information. According to article 20 of Law 1-1984, the information obtained by the SdB and other Government entities authorized by Law to perform inspections or collect documents related to trust operations and their respective officers may be disclosed to competent administrative and judicial authorities.

Law 42 - 2000 allows the UAF to obtain additional information from all reporting institutions regardless of confidentiality or professional secrecy provisions. The Executive Decree No. 213 of 2000 modified Articles 20 and 21 of Executive Decree 16 of 1984 in order to allow for reporting to the UAF of information covered by trust secrecy (which previously required a judicial order).

Of the 53 trust companies currently licensed and supervised by the SdB, there are seven licensees which are owned by law firms. These fiduciaries are independent legal persons normally with the form of a subsidiary of the law firm, as a means to facilitating comprehensive services to their clients.

When a law firm provides company incorporation services to a client of its own fiduciary, the service package can often involve the formation of a trust in combination with the incorporation of various company structures and advice thereof as defined by FATF R. 12.

The mission considers it unlikely that, in these cases, a fiduciary company will report any suspicious

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transaction involving the grantor of a trust to whom its affiliated law firm owes a duty of confidentiality. In practice, no STRs have been reported by any fiduciary company to the UAF.

The SdB has authority to regulate and supervise the fiduciary company for AML/CFT purposes. However, the SdB is not entitled to inspect any company formation aspects of the same client with the law firm, even though that information may be closely related to the purpose of the trust agreement., neither can the UAF request that type of information.

In brief, the fact that there are some fiduciary companies owned by law firms which are not subject to any reporting obligations, neither to supervision, poses practical and legal obstacles for full compliance with AML/CFT requirements of trust service providers.

Recommendations and comments

Same as Recommendation 33 (make lawyers subject to AML/CFT requirements)

Compliance with FATF Recommendations

R.34	Largely Compliant	AML/CFT requirements on trust service providers may be turned inapplicable when the client of a law firm is also the client of a trust service providers (fiduciaria) which is owned and controlled by that law firm. Effective supervision is also hampered in these circumstances Although there is a reporting obligation for trust service providers (fiduciaries), implementation remains weak.

Nonprofit organizations (SR.VIII)

Description and analysis

Nonprofit organizations and commercial companies are subject to very similar requirements, mainly, the intervention of lawyers and the obligation to be registered, although registration is administered the Ministry of Justice instead of the Public Registry of Companies. In addition, they must file a petition with the Ministry of Justice to obtain their legal personality and the procedure amounts to the granting of a license which can be revoked, albeit under very limited circumstances (Executive Decree 160 of 2000).

NPOs are not subject to any AML/CFT requirements, except for the fact that Article 3 of Law 50, 2003 requires them to document and maintain a book of the identity and source of all donations received.

The Ministry of Justice is currently unable to determine how many NPOs have been licensed in Panama, what their activities are and the level of money laundering and the financing of terrorism risks associated to the numerous NPOs (and NGOs) in Panama. However, they are concerned that the sector is being misused for tax evasion and fraud. Therefore, the Ministry has made significant advances in gathering information that will allow them to enhance their oversight and define what strategy to follow, including strengthening of regulation and oversight.

Before this report was concluded the authorities issued Decree 524 of 2005, which entered into force in November 2, 2005. Reportedly, said decree grants powers to the Ministry of Justice to revoke the legal personality of associations and foundations and creates the obligation to be registered. However, the assessors did not have the opportunity to evaluate the formal adequacy of this new decree or its relevance to overcome the present difficulties.

Recommendations and comments

Priority should be given at the Ministry of Government and Justice to creating a database and registry (inventory) of these organizations, assessing their risks and, depending on the results of the assessment, updating the regulatory framework to include CFT regulations and oversight of these entities.

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Compliance with FATF Recommendations		
SR.VIII	Partially Compliant	The Ministry of Justice has just began to create a database of the licensed NPOs in order to be able to assess the risk in this sector and enhance its oversight. Law 50, 2003 (article 3) has not been implemented.

National and International Cooperation

National cooperation and coordination (R.31)

Description and analysis

There is a newly reestablished national body which is given the responsibility for policy advice to the President on the subject of ML and terrorist finance issues. Executive Decree 29 of February 16, 2005 establishes the High Level Presidential Commission against ML and the FT. The AML/CFT Commission is comprised of head of relevant government bodies (such as the Attorney General's Office, the UAF, and the Superintendency of Banks, etc.) as well as representatives of the private sector organizations who are reporting entities under the AML laws and regulations. The UAF is a member and the Executive Secretary of the Commission. However, this commission is not yet operational.

A policy oversight body also exists for narcotics and related issues, including narcotics-based ML. The CONAPRED consists of high level representatives from the relevant government bodies such as the Ministry of Public Prosecution and the UAF, as well as several agencies representing the private sector on health issues such as drug addiction. The National Drug Strategy has been developed through CONAPRED for the years 2002–2005, with participation by the UAF, the SdB, the MICI, the IPACOOP, the CNV, the ZLC Administration, the National Lottery, the Gaming Control Board, the Office of the Attorney General, and the High Level Presidential Commission for the Prevention of ML. One of the specific objectives of the National Drug Strategy is to strengthen the exchange of information among Panamanian and international security agencies in order to prevent and suppress the crime of ML.

CONAPRED addresses both prevention and law enforcement matters related to drugs, and administers the fund of monies received from drug forfeiture cases. One concern expressed about the CONAPRED fund is that there are no mandates for the timely expenditure of funds, so that the funds are actually used promptly and effectively on requested projects. A second concern expressed is that the greater amount of expenditures made are for the prevention and health issues, as opposed to enforcement needs. When perhaps there should be more flexibility on these decisions.

Some separate mechanisms for coordination and exchange of information among institutions and between institutions and the UAF have been established. The UAF works closely with the SdB and the Attorney General's Office, effectively cooperating and coordinating on training and assistance in the analysis and provision of financial intelligence information that may be useful in criminal or administrative investigations of actions and crimes linked to money laundering and the financing of terrorism. The UAF currently maintains an inter-institutional cooperation agreement with the Attorney General's Office and the SdB, and as stated above, signed a cooperation agreement with the Public Registry of Panama on May 12, 2005 in order to have direct access to their database.

The authorities also advise that there is a close relationship and effective coordination and cooperation among regulated entities.

In addition, the Republic of Panama has a "Program to Enhance the Transparency and Integrity of the Panamanian Financial System." One of the objectives of this program is to define and lay out strategies in order to establish better communication and coordination among the oversight and control agencies with respect to the UAF for the prevention, detection and countering of ML. The participating institutions are the UAF, the Chief State Counsel/Attorney General Office, the Judiciary, the National Police, the ZLC, the General Customs Office, the General Trade Office, the Finance Companies Office, the SSRP, the CNV, the Gaming Control Board, the IPACOOP, the Immigration Office, the National Lottery, and the SdB.

Under the Ministry of Foreign Affairs, the Department of Analysis and Study Against Terrorist Activities was

created through Executive Decree No. 59 of June 15, 2004. This department serves to protect and serve national and world security. The object of this cooperation is to develop formal links to each ministry's specialized directorates and to define responsibilities and participation in carrying out the national security agenda. Among the cooperation projects are:

Proposed Inter-institutional Agreement between the Panama Maritime Authority and the National Maritime Service seeking to fortify the safety and protection of harbor areas and territorial waters of the Republic of Panama.

Proposed Safety Plan for Harbors, Cruise Ships, and Passenger Vessels seeking to have security forces and involved state agencies perform their work in an integrated and coordinated manner, prevent acts against ships, harbor installations and persons, and ensure that activities take place normally and safely.

According to the Office of the Government General Counsel, Panama has a Drug Interdiction Group made up of officials from the Directorate of Customs, officials from the Office of Specialized examination of Drug-related Crimes, and police agents. This group has rotating teams and adequate tools for detecting spaces serving to hide illicit substances, contraband, money, and any other illicit item. This Drug Interdiction Group coordinates efforts with the Anti-drug Directorate of the National Police, the National Maritime Service, the National Air Service, the General Directorate of Customs, the Offices of Specialized examination of Drug-related Crimes, and the Anti-Narcotics Division of the Technical Judicial Police, which is within the Office of Government General Counsel.

Recommendations and comments

Ensure that the High Level Presidential Commission against money laundering and the financing of terrorism becomes operational by assigning individual working groups or task forces to work on specific AML/CFT issues.

Determine whether the above coordinating committee may administer a non-drug related forfeiture fund, perhaps developed from asset sharing by other countries in financial crimes cases or from other available sources, which fund could be used for the strengthening of government enforcement of AML/CFT efforts.

It is recommended that the Panamanian authorities enter into asset-sharing agreements with such other countries and deposit the proceeds into said forfeiture fund.

Determine whether there is overlap between the authorities of the AML/CFT Commission and CONAPRED as to drug and non-drug related ML.

Develop a working group within the coordinating committee for the review of the supervision or need for supervision of DNFBPs.

Review the CONAPRED's use of the drug asset forfeiture fund, to determine whether current monies could be more promptly and effectively spent to combat drug and drug ML cases.

Determine whether CONAPRED could benefit from the use of lower level task forces to work on specific projects to improve coordination of law enforcement efforts in drug-related ML cases.

Compliance with FATF Recommendations

R.31	Partially Compliant	While a structure exists for national cooperation on AML/CFT matters, it is not yet functioning and does not have working groups or funds to administer strengthening enforcement efforts on this subject. The existing drug-related high-level policy group also does not have formal task forces and has numerous requests for law enforcement support from its forfeiture fund which have not been addressed.

The Conventions and UN Special Resolutions (R.35 & SR.I)
Description and analysis
Panama is a member of the United Nations and has taken steps to ratify numerous treaties: Panama passed Law 20 of December 7, 1993 approving the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention). Published in Official Gazette No. 22,429 of December 9, 1993. Panama ratified the United Nations Convention Against Transnational Organized Crime (Palermo Convention) by Law 23 of July 7, 2004. Panama ratified the International Convention for the Suppression of the Financing of Terrorism by Law 22 of May 9, 2002. To give effect to its international commitment to combat terrorism and FT, Panama passed Law 50. This adds Chapter VI entitled Terrorism to Title VII, Book II of the Penal Code, and established other dispositions with regard to terrorism. Panama has signed Mutual Legal Assistance and Cooperation Treaties since 1991 with several countries throughout the world. These treaties target the prevention and suppression of the crimes of drug trafficking and include crimes punishable in the signatory countries that arise out of, result from, are related to, or involve illicit activities involving drug trafficking, theft, violent crimes, fraud, violation of the law of any of the signatory states related to cash or other financial transactions. In 2002, Panama, Colombia, Venezuela, and the United States of America signed a cooperation agreement to combat the black market economy and to prevent ML. The United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was approved by Law 23 of July 7, 2004 and went into effect in Panama on July 16, 2004. Panama has also ratified the following conventions and treaties: 1. Inter-American Convention Against Terrorism: adopted on June 3, 2002, in Bridgetown, Barbados. Approved by Law No. 3 of December 2002. Published in Official Gazette No. 24,943 of December 9, 2003. Went into effect in Panama on February 19, 2004. 2. International Convention for the Suppression of the Financing of Terrorism. Adopted December 9, 1999 in New York, United States of America. Approved by Law No. 22 on May 9, 2002. Published in Official Gazette No. 24,551 of May 14, 2002. Went into effect on August 2, 2002. 3. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf: Adopted on March 10, 1988 in Rome, Italy. Approved by Law No. 21 of May 9, 2002. Published in Official Gazette No. 24,220 of May 14, 2002. Went into effect on October 1, 2002. 4. International Convention for the Suppression of Terrorist Bombings: Adopted December 15, 1997 in New York, United States of America. Approved by Law No. 89 of December 15, 1998. Published in Official Gazette No. 23,703 of December 31, 1998. Went into effect on May 23, 2001. 5. Law 14 of March 13, 2002: Published in Official Gazette No. 24,512 of March 15, 2002. Approves Statute of Rome of the International Criminal Court. 6. Law 61 of December 5, 2001: Published in Official Gazette No. 24,447 of December 7, 2001.

Approves Agreement between the Republic of Panama and the Government of the State of Israel on Cooperation in Combating Illicit Trafficking and Abuse of Narcotic Drugs and Psychotropic Substances and Other Serious Crimes.

7. Convention on the Safety of United Nations and Associated Personnel: Adopted on December 15, 1994 in New York, United States of America. Approved by Law No. 14 of January 3, 1996. Went into effect on January 15, 1999.
8. Convention on the Physical Protection of Nuclear Material: Adopted on March 3,1980, in Vienna, Italy [sic]. Approved by Law No. 103 of December 30, 1998. Published in Official Gazette No. 23,715 of January 19, 1999. Went into effect on May 1, 1999.
9. Law 20 of December 7, 1993, approving United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Went into effect on May 1, 1999. (Vienna Convention). Official Gazette No. 22,429 of December 9, 1993.

To give effect to the international treaties on terrorism, Panama passed Law 50. This adds Chapter VI entitled Terrorism to Title VII, Book II of the Penal Code, and established other dispositions with regard to terrorism, sanctioned with imprisonment from 15 to 20 years (Articles 264–A and B); for promoting or aiding, 8 to 10 years (Article 264-C); for endangering the existence or physical integrity of personnel of governments, embassies and international institutions or their physical structures; 10 to 15 years (Article 264-D); and 5 to 10 years for failing to report knowledge of actions of terrorism (Article 264-A) as per (Article 264-A) as per (Article 264-E).

As a member country of the UN, Panama complies with UN Security Council Resolutions 1267 and 1373. It has regularly received and distributed UN and OFAC lists of potential terrorists and terrorist organizations to its financial institutions. The SdB has distributed bank circulars periodically to all of its regulated institutions. Panama has responded to the UN with reports on the implementation of the resolutions and has also responded in more detail to the UN counter-terrorism committee requests.

Recommendations and comments

Review newly-ratified FT Convention to determine which of its provisions need national enabling legislation for effective implementation. Panama should ensure that it has adopted and implemented all UN treaties and resolutions relating to terrorism.

Amend Penal Code to add additional predicate act offenses, including FT.

Compliance with FATF Recommendations

R.35	Largely Compliant	Palermo Convention not fully implemented on inclusion of FT and other criminal offenses (noted in Paragraph 2 of this report) as a predicate offenses for ML.
SR.I	Largely Compliant	Palermo Convention not fully implemented regarding list of predicate offenses.

Mutual Legal Assistance (R.32, 36-38, SR.V)

Description and analysis

The Mutual Legal Assistance Treaty Directorate processes requests for identification, freezing, seizure or confiscation of:

(a) the laundered property, the fruits thereof;
(b) the proceeds that are the fruits thereof;
(c) means used in; or
(d) means alleged to have been used in perpetrating a crime of ML, FT, or other predicate offenses.

Mechanisms for coordinating seizure and confiscation actions with other countries are encompassed within MLATs.

The criteria of FATF Recommendation 38.1 are also complied with, when the request makes reference to a criminal act of corresponding type, regardless of its designation.

Mechanisms for coordinating seizure and confiscation actions with other countries are encompassed within the specified MLATs. Once the mutual legal assistance requests are admitted and the Prosecutor obtains the order for seizure and confiscation of the assets, the Mutual Legal Assistance Directorate determines the manner in which the assets will be released to the requesting country.

Law 41 (Oct. 2, 2000) was added to the Penal Code under Title XIII. In Article 7 that proceeds from confiscated property, except for those from laundering of profits of drug-related crimes, will be placed into the Special Fund for Retired and Pensioned. This Special Fund was created by Law 6 of June 16, 1987, amended by laws 18, of August 7, 1989, July 15, 1992 and Law 100 of December 24, 1998.

Foreign non-criminal forfeiture orders (as described in criterion 3.7) are not recognized or enforced. Orders for seizure and forfeiture must be criminal orders.

The principle of dual criminality applies to mutual legal assistance, based on Article 2500 of the Judicial Code and numerous treaties to which Panama is a party. If the conduct can be classified domestically as a crime and be subjected to criminal sanction, that the Ministry of Foreign Affair's Mutual Legal Assistance Directorate will initially decide to provide assistance regarding the extradition of a person to a requesting country. If the decision is appealed, the Supreme Court will resolve the case. Since Panama has established separate crimes of terrorism and terrorism financing, it generally may provide mutual legal assistance to requesting countries with similar laws.

Since Panama has criminalized the acts of ML, terrorism, and FT, the following general principles apply in relation to extradition:

The Republic of Panama, pursuant to Article 2500 of the Judicial Code and various treaties, has a requirement for compliance with the principle of dual criminality in order to proceed with extradition. While there is no requirement that the crime should have the same designation as in Panamanian law, the conduct engaged in by the person committing an infraction of the foreign penal code must be classified domestically as a crime and thus subject to criminal sanction. The Republic of Panama does not extradite its own nationals due to Article 4 of the Political Constitution. However, on a case by case basis Panama will make a determination whether to prosecute a national for offenses generated in an extradition request.

Panama signed the International Criminal Court Statute on July 18, 1998. This Statute creates the International Penal Court and defines terrorism like a crime against humanity under the principle of international penal justice. It also establishes a specific legal definition of terrorism, and expedites the extradition processes.

Article 35 of the Unified Text on Drugs (the unified drug law) provides that when there has been a judicial order in Panama of forfeiture goods, instruments, money, or other valuables which have been utilized or which supported the commission of any of the described crimes in this law, the judge will order as part of the sentence that these items be placed at the disposition of CONAPRED. The money which has been obtained from the sale of goods will constitute a fund which will be used for programs of prevention, rehabilitation, and repression of the crimes related to drugs. This fund will be regularly conformed to the fiscal procedures established by the Controller General of the Republic.

There is a simplified procedure of extradition by consenting persons who waive formal extradition proceedings

in Panama. Since terrorism and FT are crimes in Panama, this process is available.

Panama does not have any specific asset-sharing agreements with other countries through which it could share forfeited assets obtained by other countries as a result of coordinated law enforcement efforts. The authorities informed the mission that asset sharing with other countries would be possible under the provisions of some of the bilateral treaties signed by Panama (for example, with the United States of America and Argentina).

Recommendations and comments

Review the adherence to the dual criminality principle to determine whether Panama might render mutual legal assistance in cases where Panama would normally reject the request for MLA due to the lack of dual-criminality.

Consider the potential for asset-sharing agreements with countries which have obtained forfeited assets due to coordinated law enforcement efforts.

Review the policy that non-criminal forfeiture orders will not be recognized or enforced.

The mission notes that the Ministry of Government and Justice National Directorate of MLATs has conducted work to high standards for a period of several years and can demonstrate impressive statistics for prompt compliance with MLATs, as well as excellent internal coordination within Panama

Compliance with FATF Recommendations

R.32	Largely Compliant	Although government agencies keep statistics, these are not uniformly kept and not coordinated, so that the information cannot serve well to measure the effectiveness of the AML/CFT functioning.
R.36	Compliant	
R.37	Largely Compliant	Although Panama adheres to the principle of dual criminality it reviews each MLAT request carefully to determine whether legal and proper methods might be employed to comply with the spirit of the request. The authorities advised that the dual criminality requirement should not be an impediment to MLA simply because there are technical differences between the legal provisions of the requesting and the requested states. Nevertheless the country cannot render MLA in every case.
R.38	Largely Compliant	There is no evidence of the use or of the effectiveness of the asset-sharing provisions in MLATs with countries with which coordinated law enforcement actions are common.
SR.V	Largely Compliant	Same as R37 and R38.

Extradition (R.32, 37 & 39, & SR.V)

Description and analysis

The processing of extradition requests is handled directly in the Ministry of Foreign Affairs, which is responsible for receiving and sending to the Office of the Attorney General requests for preventive detention for purposes of extradition. The Ministry of Foreign Affairs receives and determines the merit of extradition requests when common crimes are involved; for drug-related crimes, it receives the documents that constitute a formal extradition request and sends it within a period of no more than five days to the Office of the Attorney General so that the latter may evaluate it and determine whether it complies with the requirements of domestic law. Once this evaluation by the Attorney General is complete, and in the event that the petition complies with Panamanian law, then the petition is returned to the Ministry of Foreign Affairs for a decision on the substance of the petition within a period not longer than 15 days. Once the viability of the petition has been decided, an Interlocutory Bill of Objections may be submitted before the Supreme Court of Justice. Upon final decision by the Supreme Court, the Ministry of Foreign Affairs sends it to the President of the Republic. The President

then decides as a final step whether to grant or deny the petition. When the extradition has been granted, the party being sought is immediately placed at the disposal of the requesting authorities for transfer.

Extradition is permitted only through compliance with the formalities of the extradition process. National law provides that, for reasons of public policy and the interests of society, a person should be surrendered to the requesting State despite the fact that penal proceedings are being pursued against him in Panama, or that he is serving a sentence imposed by a Panamanian court for criminal conduct. This requirement is found in Article 2505 of the Judicial Code.

In the Ministry of Foreign Affairs, extradition requests are handled through its Legal Matters and Treaties Directorate, whose function was established in Executive Decree No. 131 of July 13, 2001, Article 27. The fundamental texts on the subject of mutual legal assistance and extradition are: the 1972 Political Constitution of the Republic of Panama, the Penal Code, and the Judicial Code, which includes in part the 1987 Code of Criminal Procedure.

Under Article 2496 of the Judicial Code, extraditions shall follow the relevant provisions of public treaties to which the Republic of Panama is a party and, failing these, the extradition request will be handled according to provisions set out in said Code.

The Republic of Panama is a signatory to various bilateral conventions, agreements and treaties which include clauses on extradition with Colombia, Spain, the United States, the United Kingdom of Great Britain and Northern Ireland, Mexico, and Ukraine.

In addition, the Republic of Panama is a party to other conventions, multilateral in nature, concerning extradition:

- Convention on International Private Law (Bustamante Code). Title Three: Extradition. states that are Parties: Bolivia, Brazil, Costa Rica, Cuba, Chile, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru, Dominican Republic, and Venezuela.
- Convention on Extradition signed in Montevideo on December 26, 1993. States that are parties: Argentina, Colombia, Chile, Ecuador, El Salvador, the United States, Guatemala, Honduras, Mexico, Nicaragua, Panama, and the Dominican Republic.
- Inter-American Convention on Extradition, signed in Caracas on February 25, 1981. States that are parties: Antigua and Barbuda, Costa Rica, Ecuador, Panama, Santa Lucia, and Venezuela.
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Article 6, Extradition). Note: 168 States are parties.

For persons sought by Panamanian authorities, extradition requests are also handled through the Ministry of Foreign Affairs, upon the request of the Panamanian judge who issued the criminal charges or judgment, or upon the request of the official who was in charge of pre-trial investigation of the crime in question.

For persons sought by foreign authorities, the executing agency, through the Ministry of Foreign Affairs, may grant extradition on the basis of reciprocity of persons accused and subject to sanction by authorities of another State who are located in territories subject to the jurisdiction of the Republic of Panama. In the case of the Republic of Panama, for the legal classification of the conduct engaged in and for which the person is being requested, there is no requirement that the crime should have the same designation as in national laws. The key issue is that the conduct engaged in by the person committing an infraction of the foreign penal code be classified domestically as a crime and thus subject to criminal sanction. A request thus may be based on a statutory classification not provided for in Panama; however once the facts constituting the crime committed have been analyzed and checked against the elements of crimes in Panama, extradition may be recognized.

Under the terms of Article 4 of the Political Constitution, the Republic of Panama may not extradite its own nationals. However, when the Republic of Panama turns down extradition requests by reason of nationality, under the express terms of Article 2506 of the Judicial Code and under International Treaties, the State commits itself to prosecute this Panamanian citizen as if the crime had been committed within the jurisdiction of Panama. Once the Executive turns down the extradition of the person being sought on the basis of nationality, the extradition file is sent by the Ministry of Foreign Affairs to the Office of the Attorney General to initiate the actions appropriate to each case. In these cases, the requesting state is also requested to send all information and elements of proof that would contribute to the investigation of the case.

The principle of dual criminality applies to extradition assistance, based on Article 2500 of the Judicial Code and numerous treaties to which Panama is a party. If the conduct can be classified domestically as a crime and subject to criminal sanction, then Panama will provide assistance regarding a person to a requesting country. Since Panama has established separate crimes of terrorism and terrorist financing, as well as ML, it generally will provide extradition assistance to requesting countries with laws providing for the criminalization of similar conduct. Specifically, since the crime of ML was first incorporated in Panamanian criminal law in 1994, many extradition requests to extradite foreign nationals have been made and honored according to the statistics kept by the Ministry of Foreign Affairs.

A final limitation on the application of fundamental extradition process relates to crimes with a minimal penalty. If a crime has less than two years possible prison penalty, the extradition process is not used.

There is a simplified procedure of extradition by consenting persons who waive formal extradition proceedings in place. When the defendant is notified of the decision that the extradition order is correct by the Ministry of Foreign Affairs, the person may accede to the request. At that point, the process is changed to a Simplified Extradition, and the Ministry of Foreign Affairs will provide the defendant to the requesting State within a period of 30 days. Since ML, terrorism, and terrorist financing are crimes in Panama, this process is available for these types of crimes.

Recommendations and comments

Review the statutory authority regarding the requirement of dual criminality to determine whether Panama might render mutual legal assistance

Compliance with FATF Recommendations

R.32	Largely Compliant	Centralized statistics needed.
R.37	Compliant	
R.39	Compliant	
SR.V	Compliant	

Other Forms of International Cooperation (R.32 & 40, & SR.V)

Description and analysis

Neither the AML laws (41 and 42) or the law on anti-terrorism (law 50) refer specifically to international cooperation. However, through a variety of treaties, executive decrees and other documents, the authorities in Panama are authorized to cooperate internationally.

Panama has ratified numerous UN conventions relating to cooperation with regard to international crime (see the international conventions section above). Panama has also signed numerous bilateral and multinational treaties relating to international crimes, including terrorism. In 2002, Panama signed the Inter-American Convention on Mutual Assistance in Criminal Matters with 13 other countries in the region.

Based on Decree 78 of June 5, 2003, Article 2, section (f) provides that the UAF is permitted to exchange

information with counterpart authorities from other countries in order to analyze cases that may be related to money laundering and the financing of terrorism, subject to said authorities signing memoranda of understanding or other cooperation agreements. Based on the most recent version of the law authorizing the UAF, the collection of information on terrorist financing was added to the responsibilities of the UAF. Therefore, the UAF has the direct responsibility to cooperate with its international counterparts on the exchange of information regarding terrorist finance. The feedback from neighboring countries and other close counterparts was very positive as to the cooperation by Panama.

The UAF has signed 27 different MOUs for the exchange of information related to ML cases.

The UAF shares information with Egmont member countries through the Egmont Secure Web, which has all the necessary information protection protocols in place. Information exchanges are available on request or spontaneously, subject only to the parameters set forth in the memoranda of understanding, which reflect basic principles of international law.

There is both formal and informal cooperation by Panamanian law enforcement authorities with their counterparts in other countries.

Authorities in Panama advised that there is an Interpol Bureau in Panama which has access to the Interpol General Secretariat's Computer Database on Terrorism, as well as the ability to obtain the cooperation of Interpol members on criminal investigations. In 2002 Panama, Colombia, Venezuela and the United States of America entered into a cooperation to combat the Black Market Peso Exchange and to combat ML.

Requests for cooperation are not refused on the ground that the request is considered to involve fiscal matters as long as the request involves other crimes.

The SdB has signed multiple Memorandum of Understanding (MOU) with foreign counterparts to promote cooperation and exchange of information. In total, there were 21 MOUs in place with foreign counterparts including: the United States of America, Ecuador, El Salvador, Guatemala, Brazil, Colombia, Dominican Republic, Turk and Caicos, Anguila, Bolivia, Nicaragua, Venezuela, Antigua and Barbuda, Honduras, Costa Rica, Peru, Cayman Islands, Mexico, British Virgin Islands, Bahamas, and Canada. In practice, these MOUs provide the mechanism for facilitating the exchange of information, as established in the MOU, including for money laundering and the underlying predicate offences. In preparation for this assessment, the International Monetary Fund requested comments about from foreign supervisors about the degree of cooperation received from Panamanian supervisory authorities. Letters were sent to the authorities of neighboring countries, countries with significant financial institutions in Panama, and the membership of FATF, IAIS and IOSCO (through their secretariats). All the responses received were positive.

Recommendations and comments

The mission is not aware of any centralized statistics on the subject of international cooperation other than the specified above.

Compliance with FATF Recommendations

R.32	Largely compliant	Centralized statistics needed.
R.40	Compliant	
SR.V	Largely compliant	Centralized statistics on International cooperation needed.

Table 4.2 Summary Table of Compliance with the FATF Recommendations

FATF 40+9	Rating	Summary of Factors for Rating
Legal systems		
1. ML offense	**LC**	Incrimination of ML not fully consistent with Palermo convention regarding predicate acts.
2. ML offense–mental element and corporate liability	**C**	Corporate liability is against fundamental principles of Panamanian law, and appropriate civil/admin. penalties do apply.
3. Confiscation and provisional measures	**LC**	Confiscation and provisional measures not available for crimes not included as predicate offenses; safeguarding of assets not adequate.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	
5. Customer due diligence	**LC**	Lack of AML/CFT coverage and customer due diligence obligation for insurance brokers and agents, savings and loans institutions, leasing and factoring companies.
6. Politically exposed persons	**LC**	Lack of specific requirement or guidelines in place for institutions under the responsibility of the SSRP, BHN, and the MICI for establishing business relationships with PEP. Lack of AML/CFT coverage for insurance brokers and agents, savings and loans institutions, and leasing and factoring companies to address the requirements for PEPs.
7. Correspondent banking	**LC**	Although banks are performing the necessary customer due diligence when establishing correspondent banking relationships, the current obligation is too general. The SdB recently established the specific obligation; however additional time is needed to ensure that all financial institutions are fully complying with the revised Agreement and related Resolution requirements, when the new Agreement becomes effective on February 27, 2006.
8. New technologies & non face-to-face business	**LC**	Lack of measures and guidelines in place at the SSRP for handling of non face-to-face and other activities that clients could conduct via internet.
9. Third parties and introducers	**PC**	The existing law and regulation do not address third parties or introducers, nor prohibit the application of the use of third parties or introducers. Lawyers are common introducers and they are not covered by the AML law nor required to perform customer identification and customer due diligence procedures in line with the essential elements of this recommendation.
10. Record keeping	**LC**	Lack of supervision within the insurance and savings and loans sectors, does not provide for compliance with customer identification and record retention requirements. Limited oversight is provided by the SdB when insurance companies are subsidiaries of a bank, which mitigates some of the risk in the insurance sector.
11. Unusual transactions	**LC**	financial institutions visited are paying attention to all unusual transactions that fall outside the risk profile of the customer. The SdB, through the new Agreements 12-2005 and 12-2005 E, provides additional clarification to financial institutions to expand on the specific obligation to pay special attention to complex, large, or unusual transactions and retention of records. However, lack of similar obligation on insurance brokers and agents, and savings and loans associations to comply with the requirements of this

Table 4.2 Summary Table of Compliance with the FATF Recommendations

FATF 40+9	Rating	Summary of Factors for Rating
		recommendation.
12. DNFBP–R.5, 6, 8-11	**PC**	AML/CFT law doesn't apply to lawyers, company service providers, accountants and dealers in precious metals and stones (it does cover trust service providers, casinos and real estate agents). Regulations for regulated DNFBPs have no clear legal basis and this weakens their enforceability. Regulations do not cover natural persons engaged in real estate businesses. Implementation is weak and is excessively focused on cash-threshold reporting (not enough attention is given to detection of suspicious transactions).
13. Suspicious transaction reporting	**LC**	Reporting of suspicious transactions related to terrorism is an obligation under Legislative Decree, the SdB revised Agreement 9-2000 (now Agreement 12-2005 and Agreement 12-2005 E) to include the suspicious transaction reporting requirement for terrorism as well. Lack of obligation under the existing Law 42-2000 imposed on the financial institutions supervised by the SSRP and the BHN to comply with the STR requirements.
14. Protection & no tipping-off	**C**	
15. Internal controls, compliance & audit	**LC**	The banking sector has adequate AML/CFT program in place; however, there is no program in place at the SSRP and the BHN for the effective development of policies, procedures, and controls, including appropriate management arrangements, and adequate screening procedures to ensure high standards when hiring employees; and there is no ongoing employee training program; and no audit function to test the system..
16. DNFBP–R.13-15 & 21	**PC**	Compliance programs are not required of lawyers, auditors, dealers in precious metals and stones. Reporting of suspicious transactions by casinos is very low and non-existent for real estate agents. Internal controls by DNFBPs are focused almost exclusively on the reporting of CTRs. Lack of comprehensive and risk-based approach to regulation and supervision without having determined a lower level of risk to justify the gaps. Regulatory requirements lack enforceability due to weak legal basis.
17. Sanctions	**LC**	Sanctions and enforcement powers available to the SdB and CNV and in force appear adequate However, limited supervision by the SSRP and lack of supervision by the BHN, within their respective sectors, raise concerns with respect to the ensuring compliance with the requirements of the AML Law and evaluating effectiveness of their sanctioning powers.
18. Shell banks	**C**	
19. Other forms of	**C**	

Table 4.2 Summary Table of Compliance with the FATF Recommendations

FATF 40+9	Rating	Summary of Factors for Rating
reporting		
20. Other NFBP & secure transaction techniques	**LC**	CTR and other requirements for ZLC are still insufficiently implemented despite major risks being identified. New AML/CFT law for pawn shops not yet implemented.
21. Special attention for higher risk countries	**C**	
22. Foreign branches & subsidiaries	**LC**	The banking sector has adequate system in place; however, there are no measures in place at the SSRP to require its foreign branches and subsidiaries to observe AML/CFT measures consistent with home country requirements.
23. Regulation, supervision and monitoring	**LC**	Oversight on AML/CFT matters by the SSRP and BHN is weak. For remittances, supervision by the MICI tends to focus on reporting requirements only. Licensing procedures by the SSRP need strengthening to ensure adequate "fit and proper" tests.
24. DNFBP - regulation, supervision and monitoring	**PC**	Oversight/fiscalization by authorities lacks resources and does not adequately cover AML/CFT issues. Excessive focus on supervising compliance with formalistic CTR requirements. Licensing of casinos requires improved due diligence.
25. Guidelines & Feedback	**PC**	Except for the SdB, other supervisory authorities, including the UAF provide minimal feedback to reporting entities.
Institutional and other measures		
26. The FIU	**LC**	Lack of clarity on budget/independence; need for coordination/outreach.
27. Law enforcement authorities	**C**	
28. Powers of competent authorities	**C**	
29. Supervisors	**LC**	Although AML/CFT supervision in banking, securities, and cooperatives appears adequate, there is no AML/CFT supervision taking place in the insurance and savings and loans areas. The supervisory agencies in these areas lack the expertise, resources, and supervisory tools to conduct inspections and understand money laundering and the financing of terrorism risks.
30. Resources, integrity and training	**LC**	Effective supervision to ensure compliance with the AML/CFT law and implementing regulation is not taking place. The main constraint is the limited resources available in light of the increasing number of reporting entities. Considering the number of regulated entities, a risk-based supervisory approach should be adopted to effectively identify risky institutions, resources needed, and scope of inspections to be conducted.
31. National cooperation	**PC**	Lack of organized AML/CFT interagency cooperation on both operational and policy levels.
32. Statistics	**LC**	Statistical information is maintained, however, there is lack of coordination and uniformity of statistical data within and between

Table 4.2 Summary Table of Compliance with the FATF Recommendations

FATF 40+9	Rating	Summary of Factors for Rating
		agencies.
33. Legal persons–beneficial owners	**NC**	Company service providers are not subject to any AML/CFT measures. Lawyers must only identify the immediate client for whom they incorporate a company, and this requirement has not been enforced. The potential misuse of corporations that may issue bearer shares has not been addressed in the AML/CFT law or regulations. The Panamanian registration system does not have information on the ownership structure of most legal persons incorporated in Panama and is not kept up to date. The corporate legislation limits the ability of competent authorities to determine the ownership structure of most legal persons incorporated in Panama. There is no evidence that judicial and other authorities have been successful at identifying the beneficial owner of companies under investigation..
34. Legal arrangements – beneficial owners	**LC**	AML/CFT requirements on trust service providers may be turned inapplicable when the client of a law firm is also the client of a trust service providers (fiduciaria) which is owned and controlled by that law firm. Effective supervision is also hampered in these circumstances. Although there is a reporting obligation for trust service providers (fiduciaries), implementation remains weak.
International Cooperation		
35. Conventions	**LC**	Palermo Convention not fully implemented regarding list of predicate offenses.
36. Mutual legal assistance (MLA)	**C**	
37. Dual criminality	**LC**	Although Panama adheres to the principle of dual criminality it reviews each MLAT request carefully to determine whether legal and proper methods might be employed to comply with the spirit of the request. The authorities advised that the dual criminality requirement should not be an impediment to MLA simply because there are technical differences between the legal provisions of the requesting and the requested states. Nevertheless the country cannot render MLA in every case.
38. MLA on confiscation and freezing	**LC**	There is no evidence of the use or of the effectiveness of the asset-sharing agreements provisions in MLATs with countries with which coordinated law enforcement actions are common.
39. Extradition	**C**	
40. Other forms of co-operation	**C**	

9 Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN	**LC**	Same as R. 35

Table 4.2 Summary Table of Compliance with the FATF Recommendations

FATF 40+9	Rating	Summary of Factors for Rating
instruments		
SR.II Criminalize terrorist financing	**LC**	With regard to FT and associated ML, implementation is needed on the Conventions and Treaties to which Panama is a party. FT needs to be inserted in the list of predicate crimes in Panamanian AML law.
SR.III Freeze and confiscate terrorist assets	**PC**	Reporting institutions do not have a mechanism in place for freezing accounts of persons or entities involved in FT.
SR.IV Suspicious transaction reporting	**LC**	Reporting of suspicious transactions related to FT is covered under a Legislative Decree. The SdB revised Agreement 9-2000 (now Agreement 12-2005 and Agreement 12-2005 E) to include the reporting requirement for suspicious transactions related to terrorism. Additional oversight needed over the money remitters with respect to STR reporting related to FT, where the focus has been on complying with the cash reporting requirements.
SR.V International cooperation	**LC**	Same as R. 37; Panama has criminalized terrorism and terrorist finance, so would be able to cooperate regarding these crimes. But terrorist finance is not on ML predicate list.
SR.VI AML requirements for money and value transfer services	**LC**	Implementation of AML/CFT requirements is weak and reports are almost only cash-threshold based (there is little detection of suspicious transactions by the licensed remitters).
SR.VII Wire transfer rules	**C**	
SR.VIII Nonprofit organizations	**PC**	Authorities are in the process of updating a list of NPOs licensed in order to be able to assess the risk in this sector. Law 50, 2003 (Article 3) has not been implemented.
SR.IX Cash Couriers	**PC**	The declaration obligation does not apply to outgoing transportation of cash; it does not apply to cash transported in non-accompanied freight; it is enforced only at the Airport of Tocumen; and there is little control of cash smuggled in cargo containers.

C. Recommended Action Plan

Table 4.3 Recommended Action Plan in Relation to the FATF Recommendations

FATF 40+9	Recommended Action
1. Legal System and Related Institutional Measures	
Criminalization of Money Laundering (R.1 & 2)	• Amend Article 389 to criminalize all money laundering predicate offenses as required by the Vienna and Palermo Conventions. • Address the differing treatment for the conspiracy offense that depends on whether or not the offense is drug-related (treatment should be consistent). • Implement the UN Convention against Corruption following the National Assembly's approval May 10, 2005.
Criminalization of Terrorist Financing (SR.II)	• Expand predicate list to include financing of terrorism for the AML Law.

FATF 40+9	Recommended Action
Confiscation, freezing and seizing of proceeds of crime (R.3)	• Amend legislation to permit the investigating authority to freeze and seize in all criminal cases to conform to Palermo Convention. • Amend legislation to permit forfeiture of assets of criminals without necessarily showing nexus to a particular crime. • Establish/improve systems to hold and maintain seized assets pending forfeiture orders to reduce the potential for improper use or the appearance regarding maintenance of assets which have not been determined to belong to the government.
Freezing of funds used for terrorist financing (SR.III)	• Expand predicate list to include financing of terrorism for the AML Law in order that prosecutors gain freeze and seize authority under the Unified Text on Drug Laws to this offense.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• Review funding arrangements for UAF. • Strengthen protection of the information reported to UAF to maximize the secured electronic receipt and dissemination. • UAF undertake more outreach and awareness-raising to government agencies, UAF reporting entities, and the public.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• Review staffing levels and training requirements with a view to increasing capacity for investigations and prosecutions. Consider whether special courts should be created for financial crimes. Review the dependence on a general budget allotment to ensure proper distribution of funds for enforcement purposes. • Develop training for judicial authorities, prosecutors, financial police, and UAF staff to undertake the investigation of financial crime (e.g., fraud, corruption), protection of informants, investigative skills, and use of typologies. • Develop a process for the courts to independently obtain expert forensic and accounting assistance on complicated financial matters related to financial crimes and money laundering. • Develop secure data base systems for investigative agencies and the courts. • Develop process of coordination of government statistics so that AML/CFT data can be interpreted across agencies. • Carry out more frequent coordination meetings among relevant government enforcement agencies to exchange ideas and report policy recommendations to the High Level Commission.
Cash couriers (SR IX)	• Require the declaration in all circumstances for currency that is mailed, transported or shipped by any means of transportation. • Consider a more systematic approach for spot checking containers for smuggled currency. • Make better use of the current investigative powers of Customs, in cooperation with the UAF.
2. Preventive Measures–Financial Institutions	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• SSRP and BHN should take measures to put in place and implement requirements for customer identification and due diligence in the insurance and savings and credit institution sectors.
Third parties and introduced business (R.9)	• Supervisory authorities should issue guidance that considers customer due diligence measures performed by third parties or introducers in line with the essential elements of R.9.
Record keeping and wire transfer rules (R.10 & SR.VII)	• Extend full record-keeping requirements to the insurance sector (including for insurance brokers and agents) and to the savings and credit institution sector.
Monitoring of transactions and	• Amend the AML law to impose monitoring obligation on insurance and savings and credit institutions.

FATF 40+9	Recommended Action
relationships (R.11 & 21)	
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• Amend the law to extend coverage to reporting transactions related or linked to terrorism and require reporting by the insurance sector, and savings and credit institutions. • Supervisory/competent authorities should provide more feedback to reporting institutions by conducting forums, periodic meetings. • Supervisory/competent authorities should provide training to ensure greater awareness of obligations including when transactions do not take place.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	The SSRP and the BHN should extend internal control requirements to insurance sector and savings and credit institutions including obligations for: (i) policies, procedures and practices to deter money laundering and financing of terrorism; (ii) customer identification and due diligence; (iii) appointment of a compliance officer; (iv) Independent audit and compliance program; (v) training programs; and (vi) codes of ethics and policies for recruitment.
The supervisory and oversight system - competent authorities. Role, functions, duties and powers (including sanctions) (R. 17, 23, 25, 29, 30, & 32).	• Amend Law 42-2000 to extend AML/CFT obligations and sanctions authority to the BHN. • SSRP and BHN should develop supervisory capabilities to better evaluate internal controls, risk management, board oversight and involvement, and compliance with laws and regulations. • SSRP, BHN, and MICI should develop inspection programs to ensure that higher risk institutions and activities receive timely and effective supervision. • Ensure that the SSRP and BHN introduce formal licensing requirements and procedures, including fit and proper tests of owners and senior managers. • Supervisory/competent authorities should issue guidance on AML/CFT obligations for regulated entities and ensure that there are mechanisms for providing feedback on effectiveness consistent with Recommendation 25. • Ensure SSRP, BHN, MICI are adequately resourced (including human, financial, and technical skills) to effectively supervise consistent with Recommendation 30 all of the entities that they are responsible for. • Competent authorities need to create processes for collecting and sharing statistical information on the effectiveness and efficiency of the AML/CFT regime consistent with Recommendation 32.
Money value transfer services (SR.VI)	• Ensure that MICI is adequately resourced to supervise remittance and exchange houses. • Consider adjusting the threshold amount for filing currency transaction reports to provide the UAF with useful information for the detection of structured transactions in the remittance area.
3. Preventive Measures–Nonfinancial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• Extend customer due diligence and recordkeeping obligation to lawyers, accountants, and dealers in precious metals and stones. • Provide guidance to DNFBPs for customer due diligence that considers the specific risks from money laundering. • Review the legal framework for DNFBPs to ensure regulations are supported by clear legal powers.
Monitoring of transactions and relationships (R.12 & 16)	• Extend monitoring obligation to real estate agents and promoters for customers meeting FATF thresholds, and for both casinos and real estate agents, to monitor customer activity and to report any suspicious transaction to the UAF. • Authorities should identify the risks that DNFBPs face according to their special nature and issue relevant guidance based on the risk presented. Different degrees of control may be warranted in different industries.
Suspicious transaction reporting (R.16)	• Provide training to authorities and issue guidance to DNFBPs on the typologies of money laundering in their respective sectors. The AML/CFT regulations for

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	real estate businesses merit review to make them sector specific, having regard to the different risks of real estate as opposed to that of financial institutions. • Extend legal protection to DNFBPs from civil or criminal liability for reports made in good faith.
Internal controls, compliance & audit (R.16)	• Clarify the obligation of when to file cash-threshold reports or suspicious transaction reports by regulated institutions. • DNFBPs should be required to implement adequate internal controls (i.e., AML Programs) according to their specific activities.
Regulation, supervision and monitoring (R.17, 24-25)	• MICI should implement an AML/CFT oversight program that allocates resources based on money laundering risks within each sector. The program should include criteria for monitoring (off-site surveillance) and inspections. • The auditors of MICI should receive training on AML/CFT issues targeting in order to be able to identify areas of priority. • Ensure greater stability and independence of personnel of the Gaming Board, and update the regulations and inspection procedures to prevent the misuse of casinos by their own owners or operators.
Other designated nonfinancial businesses and professions (R.20)	• Strengthen enforcement of preventive requirements for Free-Trade Zone merchants, especially in higher risk areas. Better auditing capabilities and training for the administrator in the ZLC are needed, as well as close cooperation with the UAF and with Customs. • Free Trade Zone merchants need training and awareness of the modalities by which their businesses could be misused for money laundering, in order to foster compliance with the obligation to report suspicious transactions. • MICI should ensure that the Directorate of Finance Companies (Empresas Financieras) has adequate resources and training. • Regulation and oversight of pawn shops needs to be targeted according to its identified risks to better prioritize the scarce resources available to the MICI.
4. Legal Persons and Arrangements & Nonprofit Organizations	
Legal Persons–Access to beneficial ownership and control information (R.33)	• To the extent that lawyers are involved in the financial activities or nonfinancial activities described under the FATF recommendations, these activities should be regulated and supervised.
Legal Arrangements–Access to beneficial ownership and control information (R.34)	• Company incorporation and related services should be subject to AML/CFT reporting obligations, to avoid the negative incentive that trust companies owned by law firms do not have to report suspicious transactions.
Nonprofit organizations (SR.VIII)	• The Ministry of Government and Justice should create a registry (inventory) for NPOs, and undertake a risk assessment of the NPO sector. Depending on the result, an updating of the regulatory framework to include AML regulations and other oversight may be appropriate.
5. National and International Cooperation	
National cooperation and coordination (R.31)	• Ensure that the High Level Presidential Commission against money laundering and financing of terrorism is fully appointed and functioning. • Develop a coordinating government committee on AML/CFT matters, which assigns working groups to address specific issues, including sensitive internal matters. • Review overlaps between the authorities of the AML/CFT Commission and CONAPRED as to drug and nondrug-related money laundering. • Develop a working group within the coordinating committee for the review of the supervision or need for supervision of DNFBPs. • Review the CONAPRED's use of the drug asset forfeiture fund to determine

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	whether current monies could be more promptly and effectively spent. • Determine whether CONAPRED could benefit from lower level task forces to improve coordination of law enforcement efforts in drug-related money laundering cases.
The Conventions and UN Special Resolutions (R.35 & SR.I)	• Review newly-ratified financing of terrorism convention to determine which of its provisions need national enabling legislation for effective implementation. • Amend Penal Code to add additional predicate act offenses, including financing of terrorism.
Mutual Legal Assistance (R.32, 36-38, SR.V)	• Review dual criminality principle to determine whether Panama might render mutual legal assistance in cases where Panama would normally reject the request for mutual legal assistance due to the lack of dual-criminality. Consider eliminating the requirement of dual criminality. • Review the policy that noncriminal forfeiture orders will not be recognized or enforced.
Extradition (R.32, 37 & 39, & SR.V)	• Review the statutory authority regarding the requirement of dual criminality to determine whether Panama might render mutual legal assistance.
Other Forms of Cooperation (R.32 & 40, & SR.V)	• Ensure that all of the statistics required by R.32 are collected and maintained.

D. Authorities' Response to the Assessment

For the Government of Panama, under the leadership of His Excellency, President Martin Torrijos Espino, to be at the forefront to prevent money laundering and terrorist financing in our region is a priority.

As such, the evaluation of Panama's AML/CFT regime was dealt with as a matter of State and developed on the basis of an inter-institutional effort that involved the management and staff of the following institutions: the National Securities Commission (CNV); the Customs Department (DGA); the Autonomous Panamanian Cooperatives Institute (IPACOOP); the Gaming and Control Board; the National Lottery (LNB); the Ministry of Industries and Commerce (MICI; the Ministry of Government and Justice; the Ministry of Foreign Affairs; the Judicial Branch; the Panamanian National Police (PNP); the Attorney General; the Superintendency of Banks (SdB); the Superintendency of Insurance and Reinsurance (SSRP); the Financial Analysis Unit (UAF); and the Administration of the Colón Free Zone (ZLC).

The work and unquestionable commitment of these institutions facilitated the organization of their tasks and the work of the assessors. These tasks were undertaken in harmonious collaboration since all the involved sectors agreed that only a thorough and independent assessment of our regime could produce the necessary recommendations to further protect our economy of the serious threats that money laundering and the financing of terrorism are for the financial systems in the world.

Panama has been known for being a model country with respect to regulation and implementation of measures designed to prevent money laundering and terrorist financing

risks, and this is a responsibility that we take very seriously. We have achieved continuous and consistent achievements, although we still have a long way to go. Nevertheless, we appreciate the fact that we are not alone in this effort. The support that we receive from neighboring countries, international organizations, and cooperating nations are important incentives to continue our fight against these crimes.

We faced certain difficulties due to the fact that the initial draft assessment report received was in English and we had to translate it before distributing it to the relevant institutions for their review and comments. We experienced similar difficulties with the second draft, however, this time and given the urgency for submitting comments, the institutions worked with the English version. As a demonstration of our commitment and importance that we assign to this matter, and in spite of the difficulties and shortness of time, we provided our comments and observations to the Fund assessors in a timely manner.

It is important to mention that since the assessment visit, several actions have been taken with the objective of implementing the recommendations provided in the assessment report, even before the report is approved by the Caribbean Financial Action Task Force. Among the corrective actions taken, we would like to highlight the following:

- 1. The Financial Analysis Unit and the Superintendency of Banks will provide training and will collaborate in the development of supervisory programs for the savings and loans associations.

- 2. The National Securities Commission, the Superintendency of Banks, and the Superintendency of Insurance and Re-insurance signed an inter-institutional cooperation agreement.

- 3. A Tripartite Coordination Commission (the Financial Analysis Unit, the Public Ministry, and the Judicial Branch) was created to address the systemic disconnection among these institutions.

- 4. Training seminars by, and feedback from the Financial Analysis Unit have been delivered to supervision and control agencies such as the Administration of the Colón Free Zone and the National Securities Commission. Many others are currently scheduled to take place in the near– to medium term.

- 5. The risk analysis unit within the Customs Department will become operational on or around December 2006.

- 6. A specialized AML/CFT department was established within the Administration of the Colón Free Zone. This department was adequately staffed and is currently conducting AML/CFT on-site inspections, including imposing sanctions and collecting fines for noncompliance.

- 7. The legislation governing pawnshops was approved in May 2005. The Directorate of the Ministry of Industries and Commerce has received a total of 83 applications for pawnshop licenses. At the same time, and in partnership with the Financial Analysis Unit, a currency transaction report was developed. We anticipate delivering AML/CFT training to these new reporting entities during the month of November.

- 8. Modifications to the regulation that governs the accounting profession are currently undergoing its first debate at the National Assembly.

- 9. We have taken the necessary measures as a result of the assessment to revise and update the different reports and templates currently used by the reporting entities and the Financial Analysis Unit.

Based on the aforementioned observations, we agree with the assessors' conclusions and we think the assessment report fairly reflects the actual situation of Panama's AML/CFT regime.