



SECOND ENHANCED FOLLOW-UP REPORT OF PANAMA



August 2019



Citing reference:

GAFILAT (2019) – Second Enhanced Follow-up Report of Panama.

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PANAMA: SECOND ENHANCED FOLLOW-UP REPORT

I. INTRODUCTION

1. In accordance with GAFILAT's Fourth Round of procedures, Panama's Mutual Evaluation Report (MER) was adopted in December 2017 under the framework of the XXXVI Plenary of Representatives of GAFILAT. This second follow-up report analyses Panama's progress in addressing the technical compliance deficiencies identified in its MER. New ratings are granted when sufficient progress is observed. This report also analyses Panama's progress in implementing the new requirements related to the FATF Recommendations that have changed since the on-site visit to the country¹: Recommendation 2. Overall, the expectation is that countries have addressed most, if not all, technical compliance deficiencies before the end of the third year since the adoption of their MER. This report does not address Panama's progress in improving its effectiveness. A subsequent follow-up evaluation will analyse the progress made on effectiveness, which may eventually result in a new rating of the Immediate Outcomes.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. The MER and the previous follow-up report classified Panama as follows in relation to technical compliance:

Table 1. Technical Compliance Ratings, December 2018

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

Note: There are four possible levels of technical compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non-Compliant (NC.)

* Ratings amended in the framework of Panama's First Follow-Up Report.

Source: Panama Mutual Evaluation Report and Panama's First Follow-up Report [www.gafilat.org].

3. Considering these results, GAFILAT placed Panama under the enhanced follow-up process². The Executive Secretariat of GAFILAT evaluated Panama's request for a new technical compliance rating and prepared this report.

¹In addition to the amended FATF Recommendations that were previously discussed in the country's First Enhanced Follow-Up Report published in January 2019.

² The regular follow-up is the default monitoring mechanism for all countries. The enhanced follow-up process is based on the FATF traditional policy that approaches members with significant (technical compliance or effectiveness) deficiencies in their AML/CFT systems, and it involves a more enhanced follow-up process.

4. Section III of this report summarizes Panama's progress in improving technical compliance. Section IV presents the conclusion and a table showing which Recommendations were re-rated

III. OVERVIEW OF THE PROGRESS MADE TO IMPROVE TECHNICAL COMPLIANCE

5. This section summarizes Panama's progress in improving its technical compliance by:

- (a) Addressing the technical compliance deficiencies identified in the MER, and
- (b) Implementing the new requirements in cases where the FATF Recommendations have changed since the on-site visit to Panama.

3.1 Progress made to address technical compliance deficiencies identified in MER

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

- Recommendation 24, originally rated NC.
- Recommendations 3, 20, 25 and 30, originally rated PC.

7. As a result of this progress, Panama was re-rated in relation to Recommendations 3, 20, 24 and 30. GAFILAT acknowledges the progress made by Panama in improving the technical compliance of R. 25. However, it is considered that the progress made so far does not allow a new rating of this recommendation.

Recommendation 3 – (originally rated PC – re-rated LC)

8. Panama's MER established as the main deficiency in R.3 that tax offences were not criminalized as predicate offences to money laundering (ML). As a result, there is an impact on one of the main risks identified in the country such as the placement of proceeds of crimes committed abroad.

9. The Panamanian authorities, through article 2 of Law 70 of January 31, 2019, added Chapter XII to Title VI of the Second Book of the Criminal Code, comprising articles 288-G, 288-H, 288-I and 288-J. In this regard, the crime of tax fraud (article 288-G CP) was incorporated into its legal framework as part of the crimes against the National Treasury. In addition, Article 1 of the aforementioned Law adds article 254-A to the Criminal Code (CC) as a new criminal type of ML derived from crimes against the National Treasury, thereby including tax crimes as predicate offences to ML, as indicated below:

10. In this regard, Article 1 of Law 70 of January 31, 2019 provides that:

"Article 254-A. Anyone who, directly or through an intermediary, receives, owns, deposits, negotiates, transfers or converts money, securities, assets and other financial resources, knowing that

they come from crimes against the National Treasury established in this Code, with the object of hiding, concealing or disguising its unlawful origin, or anyone who helped to evade the legal consequences of such a punishable act shall be sanctioned with two to four years' imprisonment.

If it were determined that the offence referred to in this article has been committed through one or more legal persons, the sanction shall be imposed on the legal person concerned and it shall be a fine of one to three times the amount of the tax defrauded."

11. In turn, Article 2 of Law 70 of January 31 states:

"Chapter XII is added to Title VII of the Second Book of the Criminal Code, comprising articles 288-G, 288-H, 288-I and 288-J, as follows:

*"Chapter XII
Crimes against the National Treasury*

Article 288-G. Anyone who in its own benefit, or for the benefit of a third party, wilfully incurs in tax fraud against the National Treasury of the Republic of Panama and affects the correct determination of a tax obligation to stop paying, in whole or in part, the corresponding taxes, will be punished with two to four years' imprisonment.

The penalty provided for in this Article shall apply only where the amount of the tax defrauded in a tax period is equal to or greater than three hundred thousand balboas (PAB 300,000.00), excluding fines, surcharges and interest in the calculation of the sum.

In cases of less than three hundred thousand balboas (PAB 300,000.00), the tax authority shall have jurisdiction on the matter.

The criminal conduct included in this article shall apply as defined in the Code of Tax Procedure..."

12. For this reason, it is necessary to develop the analysis of the obligations set out in R.3 criteria in the light of changes in the domestic legislation.

13. From the analysis of article 254-A of the CC, it is not apparent that all the guiding verbs of the criminalization of the ML offence in accordance with the Vienna Convention and the Palermo Convention are addressed since it does not contemplate mere concealment, disguise or acquisition, knowing that the assets are the proceeds of crime (criterion 3.1.).

14. In addition, said article 288-G of the CC, in its second paragraph considers that the expected penalty of two to four years' imprisonment for committing tax fraud shall apply where the amount defrauded is equal to or greater than USD 300,000 in a fiscal year. Cases below that threshold will be dealt with by the Panamanian tax authority.

15. As recognized in other assessments³, according to the Glossary of FATF Recommendations, each country may decide, in accordance with its domestic legislation, how it will define the predicate offences and the nature of the particular elements of those crimes that turn them into felonies. Consequently, for the purposes of the Technical Compliance assessment, the scope of the range of

³See analysis of criteria 3.2 and 3.3 in the Swiss Mutual Evaluation Report, <http://www.fatf-gafi.org/media/fatf/content/images/mer-switzerland-2016.pdf>

predicate offences within each category is not assessed, as is the case of the threshold established by the Panamanian standard for tax fraud to be considered a predicate offence to ML (criterion 3.2.)

16. In accordance with the analysis carried out in the MER concerning criterion 3.3, Panama does not use a threshold approach for the determination of the predicate offences to ML, but rather makes an exhaustive list of them (article 254 of the CC.) In this context, article 254-A of the CC includes the criminal definition of ML resulting from tax offences, when these exceed the threshold of USD 300,000.

17. As aforementioned, the penalty provided for in article 288-G of the CC shall apply only where the amount of the tax defrauded in a fiscal year is equal to or greater than three hundred thousand balboas (PAB 300,000.00), excluding fines, surcharges and interest in the calculation of the sum. In cases of less than three hundred thousand balboas (PAB 300,000.00), the tax authority shall have jurisdiction on the matter. In that regard, it is considered that, as a result of that threshold, ML does not extend to any type of property, irrespective of its value, which directly or indirectly represents the proceeds of crime, in accordance with criterion 3.4.

18. In the terms of article 254-A of the CC, for the configuration of the ML offence, it is sufficient that the person receives, owns, deposits, negotiates, transfers or converts money, securities, assets and other financial resources, knowing that they come from crimes against the National Treasury (including the case of article 288-G when the threshold applies); in other words, criminal verification of the predicate offence is not necessary.

19. Article 19 of the Panamanian CC provides that the legal provisions of that country shall apply, even for offences committed abroad, in the case of crimes against the National Economy, among others. In this regard, the amendments made to article 254-A, correspond to Title VII of offences against the economic order, therefore article 19 CC cited above is applicable. Additionally, there are doubts about how the established threshold may impact the dual criminality analysis when Panama provides MLA and if this situation would prevent Panama from investigating a ML crime. However, the authorities have stated that in the MLA the threshold would not have an impact since the legal type is considered at a general level and the threshold does not represent a factor that prevents the principle of dual criminality as required by the International Treaties on the subject. In this context, the authorities indicated a case in which the MLA was carried out.

20. As stated in the Panamanian CC, the perpetrator of a crime is the person who commits the action, either by himself or through a third party (article 43); similarly, in the terms established through the analysis of article 254-A of the CC, no impediment is identified for the person committing the predicate offence to also be prosecuted for ML.

21. Article 254-A of the CC, excluding the deficiencies referred to in criterion 3.1, makes it possible to infer from objective factual circumstances the intention and knowledge to prove the crime of ML.

22. In accordance with the MER, Article 254 of the CC provides for a minimum penalty of 5 years' imprisonment and a maximum of 12 years applicable to the commission of ML in respect of the list of predicate offences referred to in the article itself.

23. Article 254-A provides for a minimum sentence of 2 years' imprisonment and a maximum sentence of 4 years applicable to the commission of ML, where the predicate offences are offences against the National Treasury. The same penalty shall apply both to the person who performs the act, by himself or through an intermediary.

24. In this sense, there are doubts about the proportionality and dissuasiveness of the ML crime when it derives from predicate offences under Article 254-A of the CC (crimes against the National Treasury); since the sentence established in this case consists of 2 to 4 years' imprisonment and is not proportional to the penalties imposed for the commission of ML related to the predicate offences of article 254 which are considerably higher (5 to 12 years' imprisonment). Additionally, it is not clear yet how many times a person can benefit from the exception established by art. 288-J⁴ and how could this situation impact the proportionality and dissuasiveness of the ML offence related to crimes against the National Treasury.

25. As stated in the MER, articles 43 to 47 of the CC provide a description of the cases in which a person is the perpetrator of a crime and in which a person is an accomplice. In that regard, Article 254-A of the CC provides for indirect participation and aid to evade legal consequences.

26. According to the analysis of the information presented, Panama has addressed the deficiency related to the lack of criminalization of tax crimes, as required in the Standard. However, some minor deficiencies remain in the context of the criminalization of ML derived from crimes against the National Treasury, such as: 1) The criminalization of Article 254-A of the CC does not consider some guiding verbs according to the criteria of 3.1, (mere concealment, disguise or acquisition), 2) The criminalization of Article 254-A does not extend to any type of property (as set out in criterion 3.4), and 3) There are doubts about the proportionality and dissuasiveness of sanctions. In this regard, it is considered that the country has made significant progress in this Recommendation with the criminalization of tax offences and including them as predicate offences to ML. Although some minor deficiencies remain, it is considered that these deficiencies do not have a direct impact on the overall implementation of the Recommendation as, through regulatory reforms to the Panamanian legal framework, the inclusion of tax crimes as ML predicate offences was achieved, the only category of predicate offences to ML that was not criminalized pursuant to the Standard.

27. For this reason, it is proposed that the rating **be raised from Partially Compliant to Largely Compliant.**

Recommendation 20 – (originally rated PC – re-rated Compliant)

28. Panama's MER noted as a deficiency that the deadline for the submission of STRs was (15) days, counted from the detection of the event, which does not comply with the requirement of promptness defined in criterion 20.1.

⁴ "Article 288-J. In the cases provided for in this Chapter, the person who pays the amount of the defrauded tax obligation and its formal accessories will be exempted from penalty, unconditionally and totally, prior the judgment of first instance. If the payment is made during the investigation phase, no criminal action will be taken arising from any crime of tax fraud against persons investigated for the amounts of the tax fraud canceled."

29. In this regard, the country, through the enactment of Article 4 of Law 70 of January 31, 2019 (which amended Article 54 of Law 23 of April 27, 2015), indicates that STRs should be forwarded to the UAF immediately, from the detection of the event, suspicious transaction, the execution of the transaction or operation or its attempt. In this regard, Panama is considered to have overcome the deficiency identified in the MER.

30. With regard to the second deficiency of R. 20 under the MER, in relation to the legal framework of the country that does not expressly include the need to report those transactions that have not been carried out (attempts), through Article 4 of Law 70 of 2019 (which amended Article 54 of Law 23 of April 27, 2015), Panama expressly includes the possibility of reporting attempted transactions.

31. Accordingly, it is estimated that the deficiency identified in the MER has been addressed.

32. Based on the analysis of the information submitted by the country, it is considered that the deficiencies regarding the obligation to submit STRs and that of attempted suspicious transactions are overcome by the amendment of Law 70 of January 31, 2019, in particular through article 4.

33. For this reason, it is proposed that the rating **be raised from Partially Compliant to Compliant.**

Recommendation 24 – (originally rated NC – re-rated Partially Compliant)

34. With regard to the deficiency on the failure to expressly establish that the information of corporations should be available in the country, through Article 3 of Law 70 of January 31, 2019, which amended Article 29 of Law 23 of 2015, Panama establishes the obligation to safeguard and update the customer's and BO's documentation.

35. As regards the obligation to update records of natural persons or BO of legal persons or arrangements, the second paragraph of Article 3 of Law 70 of January 31, 2019 sets forth that it will be carried out in cases of high-risk customers with a minimum frequency of once a year.

36. In addition, Panama notes that information on the BO should be provided to the authorities by the resident agent as a non-financial reporting institution, in charge of the supervision and regulation of the Intendency.

37. However, it is considered that the deficiency identified in the MER with respect to criterion 24.4 is not overcome since, while the obligation to safeguard and update the customer's and the BO's documentation is reconsidered, it is not specified that the information should be kept within the country and that the place where it is located should be notified to the company register.

38. The regulatory framework referred to by the country has already been analysed and correspondingly evaluated in the MER. As a result, there is no additional information to demonstrate the overcoming of the deficiencies raised under criterion 24.4.

39. With regard to the deficiency of criterion 24.5 under the country's MER, which provides that the legislation does not have a specific mechanism that allows the resident agent's authorities to keep updated all records of due diligence documentation and information conducted for the

identification and verification of the natural person and the BO of the legal persons or other legal arrangements. Therefore, there is no exception to the fulfilment of this obligation.

40. In addition to the obligation to update all due diligence information and documentation records, the standard includes a minimum period of once a year to update the due diligence information and documentation of high-risk customers.

41. However, there still are concerns about the mechanisms to ensure that the information in criteria 24.3 and 24.4 is accurate and kept up to date in a timely manner. In that regard, although in accordance with the regulations provided by the country it is established that there is an obligation to update and safeguard records and documentation (Article 3, Law 70), the inclusion of a minimum frequency for updating high-risk customers is to ensure that those high-risk customers, their information and documentation are updated at least once a year. Therefore, for cases of non-high-risk customers of the resident agent there is no clarity about the updating mechanism in a timely manner.

42. With regard to the deficiency that the resident agent had no legal obligation to keep a permanent track of the customer's activity that would allow him to detect changes in the BO, the country noted that by amending Article 29 of Law 23 of 2015, the resident agent's obligation to update all records of due diligence information and documentation for the identification and verification of the natural person and the BO of the persons is expressly established.

43. In addition, the standard includes a minimum period of once a year to update due diligence information and documentation for those identified high-risk customers.

44. In this sense, it is considered that the deficiency is partially covered since the inclusion of a minimum frequency for the updating of high-risk customers is to ensure that those high-risk customers, their information and documentation are updated at least once a year, so for cases where resident agent's customers are not considered high-risk, there is no clarity about the obligation to make a continuous monitoring on the customer's activity to allow detecting changes in the beneficial ownership.

45. With regard to the deficiency identified in the MER concerning the use of Law 23 of 2015 as to the obligation of the resident agent to subsequently monitor customer's activity, the country noted that article 3, Law 70, which amended Article 29 of Law 23 of 2015, expressly establishes the obligation of the financial RIs, Non-Financial RIs and activities carried out by professionals subject to supervision (including the resident agent) of identifying the risk of their customers and, in addition, in relation to those that result to bear a high risk in the light of the risk assessment carried out by the SONF, the updating of all the records of the due diligence information and documentation must be carried out at least once a year, as mentioned on paragraph 40.

46. In this regard, it is considered that the regulations mentioned allow the resident agent, through the obligation to update due diligence information and documentation, to follow up on the activity of the customers, in accordance with the Update requirement under criterion 24.7.

47. Therefore, the deficiency is considered to be overcome.

48. As noted in the analysis of criterion 24.4, the legal framework referred by the country for this criterion was the subject of analysis and evaluation in the MER. As a result, there is no additional information to demonstrate the overcoming of the deficiencies raised under criterion 24.12.

49. According to the information provided by Panama and its analysis, the progress that the country has made in developing the regulatory framework to enable the country to comply with the obligations of transparency and BO of legal persons under R. 24 is acknowledged.

50. In this regard, it is estimated that the amendments introduced by Law 70 of January 31, 2019 have allowed the country to overcome some of the deficiencies.

51. However, it is considered that there are still moderate deficiencies that need to be addressed, such as those relating to the information in corporations, it is not expressly stated that the information should be available in the country, nor is the information that resident agents must keep on all shareholders or members of a company clearly established, and finally, mechanisms are not specified to ensure that the information in criteria 24.3 and 24.4 is accurate and kept updated in a timely manner.

52. For this reason, it is proposed that the rating **be raised from Non-Compliant to Partially Compliant**.

Recommendation 25 – (originally rated as PC - not re-rated)

53. Panama's MER notes in relation to the deficiency related to criterion 25.2 that while trust companies safeguard the records and update the information in accordance with their legal framework, the risk that the information available on shareholders or BOs is accurate or up to date has not been assessed.

54. Panama noted that the SBP verifies the information concerning legal persons, as well as the controls that the trust company has implemented in this regard for the identification of nominal directors and shareholders, and that this is done as part of the internal procedures of that authority; however, no information was provided with respect to the regulatory provisions establishing the obligation of the trust companies upon setting up the trust to verify the identity of nominal shareholders and/or directors. For this reason, the deficiency identified by the MER is considered pending for improvement.

55. Panama's MER points out as a deficiency under criterion 25.7 that, at the time of the report, there was no information on the application of sanctions related to the lack of information from the BO, but only sanctions related to the delay in the submission of information to the UAF.

56. In this regard, the country submitted information on the sanctions imposed by the SBP in the period 2017 and 2018, which include those breaches in the area of BO identification. In this regard, it is apparent that the sanctions related to this type of non-compliance represent about 80% of the total sanctions.

57. The comparison between the total sanctions imposed and the percentage of sanctions due to failures in the identification of BO shows that the measures taken by the country overcome the deficiency addressed under criterion 25.7.

58. Based on the information provided by Panama, it is considered that it has overcome one of the two remaining deficiencies in R. 25, and its efforts to continue addressing the requirements under the MER in order to comply with R. 25 are acknowledged.

59. In this regard, it is proposed that the rating should **remain as Partially Compliant** since the deficiency under 25.2 where no information was provided in relation to the regulatory provisions that set forth the obligation of trust companies upon setting up the trust of verifying the identity of its nominal shareholders and/or directors, is an important deficiency in the context of the country and impacts on the essential component of the obligation under R. 25 on ensuring transparency and knowledge of the BO of legal arrangements.

Recommendation 30 – (originally rated PC – re-rated Compliant)

60. With regard to the MER deficiency which states that Panama's legal framework does not explicitly establish the possibility of conducting parallel investigations, the country showed information about the Practical Guide to Parallel Investigations that the PGN's Specialized Anti-Money Laundering and Terrorism Financing Unit uses, which establishes a patrimonial, business and/or financial investigation strategy, as well as the international legal framework for conducting parallel investigations.

61. The general objective of this guide is to establish procedures to assist Prosecutors, Officials and other agents of the Public Prosecutor's Office that investigate about predicate offences to money laundering and/or terrorist financing, to initiate parallel financial investigations in order to determine the effectiveness of the operational regime for these offences.

62. The document also seeks to make financial investigations a regular part of all profit-making crimes.

63. For this reason, and considering that Article 276 of the CPC empowers the Public Prosecutor's Office to conduct all kinds of investigations with the collaboration of investigation agencies, it is considered that the deficiencies related to criterion 30.2 on the lack of regulations that allow conducting parallel investigations are addressed.

64. According to the analysis of the information presented, it is considered that the implementation of the PGN's Practical Guide to Parallel Investigations allows conducting parallel investigations. In this regard, the deficiency of criterion 30.2 contained in the MER is considered to have been overcome.

65. Therefore, taking into account that the only deficiency of this Recommendation according to the MER has been overcome, it is proposed that the rating **be raised from Partially Compliant to Compliant**.

3.2. Progress on Recommendations that have changed since the adoption of MER

66. Since the adoption of Panama's MER and subsequent follow-up report, the FATF amended Recommendation 2. This section considers the country's compliance with the new requirements.

Recommendation 2 – (originally qualified as LC - not re-rated)

67. Pursuant to Article 55 of Law 23 of April 27, 2015, which adopts measures to prevent money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction, and issues other provisions in Panama, it is established that information obtained by a supervisory body and the Financial Analysis Unit for the Crime of Money Laundering and Terrorist Financing in the exercise of its duties shall be kept under strict confidentiality and it may only be disclosed to the Public Prosecutor's Office, agents with criminal investigation functions and to the jurisdictional authorities in accordance with the legal provisions in force.

68. Thus, the country has no limitations relating to Data and Privacy Protection and other similar provisions that prevent the competent authorities from developing their cooperation and coordination mechanisms in the field of AML/CFT with those rules of Data and Privacy Protection applicable in the country.

69. Taking into account the analysis of the information provided by Panama, it was concluded that the country does not have limitations relating to Data and Privacy Protection that prevent competent authorities from developing its cooperation and coordination mechanisms in AML/CFT matters. For this reason, it is suggested to **maintain the rating as Largely Compliant** until the country addresses the MER deficiency that the measures provided for in the National Strategy do not satisfactorily address all the risks faced by the country identified in their NRA.

IV CONCLUSION

70. In general, Panama continues to make significant progress in addressing the Technical Compliance deficiencies identified in its MER and has been re-rated in R. 3 (from Partially Compliant to Largely Compliant), R. 20 (from Partially Compliant to Compliant), R. 24 (from Non-Compliant to Partially Compliant) and R. 30 (from Partially Compliant to Compliant.) It also showed progress in Recommendation 25.

71. In view of Panama's progress since the adoption of its MER, its technical compliance with FATF Recommendations was re-rated as follows:

Table 2. Technical Compliance Ratings, June 2019

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

Note: There are four possible levels of technical compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non-Compliant (NC.)

Source: Panama Mutual Evaluation Report and Panama’s First Follow-up Report [www.gafilat.org].

72. Panama will continue in the enhanced follow-up process and will continue to report to GAFILAT on the progress made to strengthen its implementation of AML/CFT measures.