



PANAMA

FINANCIAL SECTOR ASSESSMENT PROGRAM

July 2024

TECHNICAL NOTE ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM (AML/CFT)

This paper on Panama was prepared by a staff team of the International Monetary Fund and the World Bank. It is based on the information available at the time it was completed in January 2024.

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TECHNICAL NOTE

ANTI-MONEY LAUNDERING AND COMBATING THE
FINANCING OF TERRORISM (AML/CFT)

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This Technical Note was prepared by IMF and WB staff in the context of the Financial Sector Assessment Program in Country, led by Richard Stobo, IMF and Emile van der Does de Willebois, World Bank, and overseen by the Monetary and Capital Markets Department, IMF, and the Finance, Competitiveness, and Innovation Global Practice, World Bank Group. It contains technical analysis and detailed information underpinning the FSAP's findings and recommendations. Further information on the FSAP program can be found at <http://www.imf.org/external/np/fsap/fssa.aspx>, and www.worldbank.org/fsap.



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CONTENTS

Glossary	4
EXECUTIVE SUMMARY	5
INTRODUCTION	10
CONTEXT	11
A. The Road to Compliance with International Standards	11
B. Panama’s Corporate Sector: An Evolving Landscape	13
C. Money Laundering Risks in the Corporate Sector	16
BENEFICIAL OWNERSHIP REGISTRY	17
A. Legal Framework: A System Centered Around the Resident Agent	17
B. Onboarding: From Slow Start to Rapid Expansion	20
C. Verification and Enforcement Mechanisms: Ongoing Implementation	24
D. Access: A Private Registry with Timely Albeit Restricted Access	27
SUPERVISION OF RESIDENT AGENTS	30
A. New Obligations on Resident Agents	30
B. Enhanced Controls over Nominee Services	33
C. Supervision: Implementing and Fine-Tuning a Risk-Based Approach	35
D. Bearer Shares: Contained but not Abolished	38
FINTECH AND VIRTUAL ASSETS	39
A. Financial Technologies	39
B. Virtual Assets/Virtual Asset Service Providers	41
Reference	42
BOXES	
1. Beneficial Ownership—Criteria to Identify Beneficial Ownership	19
2. Trends and Implications of Suspended Companies for Beneficial Ownership Registration	23
3. Access to the RUBF by Competent Authority	28
FIGURES	
1. Recent Trends in the Incorporations, Suspensions, and Dissolutions	14
2. Risk Ratings of Legal Persons and Arrangements	17
3. Trends in Active Companies and RUBF Registration	23

4. SSNF Supervisory Cycle	36
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TABLE

1. Key Recommendations	9
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Glossary

AML/CFT	Anti-Money Laundering / Combating the Financing of Terrorism
CDD	Customer Due Diligence
CNA	<i>Colegio Nacional de Abogados</i> (Lawyers' Association)
CNBC	<i>Comisión Nacional contra el Blanqueo de Capitales</i> (National AML Commission)
DBF	<i>Dirección de Beneficiario Final</i> (Directorate of Final Beneficiary)
DS	<i>Dirección de Supervisión</i> (Supervision Directorate)
DGI	<i>Dirección General de Ingresos</i> (Tax Authority)
DNFBPs	Designated Non-Financial Businesses and Professions
FAQ	Frequently Asked Questions
FATF	Financial Action Task Force
FSAP	Financial Sector Assessment Program
FSRB	FATF-Style Regional Body
GAFILAT	Financial Action Task Force of Latin America
ICRG	International Co-operation Review Group
IMF	International Monetary Fund
ISNF	<i>Intendencia de Supervisión y Regulación de Sujetos no Financieros</i> (Intendency of Supervision and Regulation of Non-Financial Subjects)
los	Immediate Outcomes
MICI	<i>Ministerio de Industria y Comercio</i> (Ministry of Industry and Commerce)
MEF	<i>Ministerio de Economía y Finanzas</i> (Ministry of Economy and Finance)
MP	<i>Ministerio Público</i> (Prosecutors Office)
ML	Money Laundering
RPP	<i>Registro Público de Panamá</i> (Public Registry Office)
SBP	<i>Superintendencia de Bancos de Panamá</i> (Superintendency of Banks)
SSNF	<i>Superintendencia de Sujetos No Financieros</i> (Superintendency of Non-Financial Entities)
TF	Terrorist Financing
TN	Technical Note
UAF	<i>Unidad de Análisis Financiero</i> (Financial Intelligence Unit)
USD	United States Dollar
VA	Virtual Assets
VASP	Virtual Asset Service Providers
WB	World Bank
ZLT	<i>Zona Libre y Francas</i> (Free Trade Zones)

EXECUTIVE SUMMARY¹

Transparency of Beneficial Ownership

Panama has struggled to bring its anti-money laundering and combating the financing of terrorism (AML/CFT) regime in line with international standards, resulting in periods of being “grey listed”² by the international standard-setter, the Financial Action Task Force (FATF).

Panama’s AML/CFT regime was last assessed against the FATF standards in 2017. Panama’s mutual evaluation identified strategic deficiencies within the country’s AML/CFT regime, notably in preventing the misuse of legal persons and arrangements for money laundering purposes. As a result, Panama was grey listed by the FATF in June 2019, where it remained until October 2023, beyond the expiration of its action plan deadlines in January 2021 and following increased pressure from the FATF. Having demonstrated completion of all items of its action plan, confirmed through an onsite visit that took place in September 2023, the country exited the grey list at the FATF October 2023 Plenary.³

Its dollarized economy, the open nature of its financial sector and availability of wide-ranging corporate services, and its status as a regional, politically stable, financial hub render Panama vulnerable to foreign money laundering threats. Legal persons and legal arrangements established in Panama are particularly at risk of being misused to conceal the origin, beneficial ownership, or purpose of illicit financial flows. Panama’s corporate sector is dominated by corporations, followed by private interest foundations, trusts, and limited liability companies. In line with their predominance, corporations and private interest foundations were found to be exposed to a high level of money laundering risk, followed by trusts, exposed to a medium-high level of risk.

Enhancing transparency of legal persons and arrangements established in Panama has been a top priority for the country and remains the subject of ongoing reforms. Key reforms adopted by the authorities include the establishment of a beneficial ownership registry—*Registro Único de Beneficiarios Finales (RUBF)*—the strengthening of the supervisory framework and creation of an authority of non-financial obliged entities—*Superintendencia de Sujetos No Financieros (SSNF)*—and additional legal reforms aimed at enhancing controls over legal persons and arrangements, resident agents, and the use of nominee services. Implementation of these reforms is ongoing.

The continuous and large-scale outreach efforts to promote registration in the RUBF are commendable and need to be sustained. The *RUBF*, which provides a central repository of information on beneficial ownership of legal persons collected by resident agents, aims to facilitate access by competent authorities to such information. The *RUBF* is administered by the *SSNF* and is free, private, and only accessible by a limited number of agencies. The *RUBF* was formally launched

¹ This Technical Note has been prepared by Francisco Figueroa, IMF, and Yasmin Almeida, World Bank.

² The FATF grey list identifies jurisdictions under increased monitoring that are actively working with the FATF to address strategic deficiencies in their AML/CFT regimes through the implementation of a timebound action plan.

³ <https://www.fatf-gafi.org/en/publications/Fatfgeneral/outcomes-fatf-plenary-october-2023.html>

in April 2022. While implementation was initially slow, it has since picked up, most recently following a two-month enrollment campaign that took place in March and April 2023. In this period, the number of enrolled resident agents increased five-fold to 3,866—the total universe of resident agents is estimated at over 4,700—and the number of registered legal persons by 45 percent to 129,321, representing 65 percent of legal persons with active registration (*vigente*) in the public registry—*Registro Público de Panamá* (RPP).

While the implementation of the RUBF is a significant step forward, consideration should be given to expanding the scope and use of the registry to ensure it continues to be aligned with the evolving risk landscape. Access to the RUBF has been restricted to “competent authorities” since November 2022, and the registry is only searchable through the name of the legal person or registration number (*folio*). Going forward, consideration should be given to enabling searches of other data points (*e.g.*, name of ultimate beneficiary), which would enhance the usefulness of the RUBF for investigation and international cooperation purposes. Another consideration that can be explored is opening up the RUBF to other stakeholders, including obliged entities, to promote discrepancy reporting, which in turn improves the quality of beneficial ownership information maintained in the RUBF, and civil society.⁴ Moreover, as the corporate sector evolves, notably in response to these reforms, risks should be re-assessed periodically, and consideration should be given to including other types of legal persons and arrangements in the future so as to avoid leaving “gaps” in the system.

As a result of concerted efforts to “clean up” the public registry, Panama currently has a large number of suspended legal persons—close to half a million—that require a path to dissolution. In the past five years, there has been a dramatic reduction in legal persons with *active registration* with the RPP, from 500,479 in May 2017 to 218,806 in March 2023 and a concomitant significant increase in *suspended*⁵ companies. Since 2016, competent authorities have made an ongoing effort to “clean up” the public registry by suspending legal persons that failed to pay their annual registration fee, failed to appoint a resident agent, or failed to comply with obligations for which suspension was a sanction. While there is a legal presumption that suspended companies will be dissolved after a year (unless they address the underlying cause of suspension and are reactivated), in practice this is not happening. Agreement should be reached at the policy level, and procedures should be developed, to dissolve and unwind suspended companies that have passed the deadline for reactivation. In the meantime, obliged entities, including banks, would benefit from clarity on how to deal with existing clients whose legal status is suspended to facilitate ongoing identification of suspended legal persons and avoid asset dissipation.

In the medium-term, the evolving corporate landscape in Panama should be monitored closely, and risk assessments should be updated to reflect emerging business models and potential exposures to new threats and vulnerabilities. Anecdotal evidence suggests that some

⁴ A tiered approach could be considered, where not all information is available to all, to take into account data privacy and confidentiality.

⁵ Suspended companies can no longer initiate legal proceedings, conduct business, dispose of their assets, make claims or exercise rights, or perform any corporate action binding on the legal person.

law firms reduced their portfolios of legal persons incorporated in Panama significantly while existing and prospective clients are choosing to have legal persons incorporated in other jurisdictions, notably the British Virgin Islands (BVI), with law firms established and regulated in Panama still playing a significant role. Some law firms now appear to have larger portfolios of legal persons incorporated abroad than incorporated in Panama. It is unclear whether the activities of these foreign incorporated legal persons with significant business ties to law firms regulated in the country as resident agents pose money laundering risks, as these are currently not within the scope of supervisory activities. The SSNF, as the supervisor, should collect information, assess this risk, and adopt appropriate and proportionate controls accordingly.

The SSNF has adopted a risk-based supervisory model and tools and invested in technical and human resources to verify and enforce compliance by resident agents, although fine-tuning will be required as implementation continues. While the SSNF started conducting risk-based offsite and onsite supervision of resident agents, it is still in the process of onboarding and risk rating resident agents. The risk-based supervisory model requires some fine tuning and calibration, notably to ensure an adequate and realistic onsite supervisory plan for higher risk resident agents. The DGI also has supervisory responsibilities for the resident agent sector, namely to ensure that they comply with accounting records obligations, and has been conducting offsite supervision of resident agents since 2018. Greater coordination and information exchange between the DGI and the SSNF would enhance both processes, and consideration should be given to joint inspections.

Notwithstanding controls adopted to prevent misuse of nominee arrangements and bearer shares, more should be done in line with the FATF standards, as revised in March 2022. While risks related to bearer shares issued by corporations have been mostly curtailed through custodial requirements, corporations are still able to issue new bearer shares. To eliminate all risk and in compliance with FATF Recommendation 24, Panama should ensure that corporations can no longer issue bearer shares and require custodians to hold beneficial ownership information. Regarding nominee arrangements, consideration should also be given to making nominee status public through the RPP.

Financial Technologies (Fintech)

There is a need for the authorities to clearly define what types of financial products/services using financial technology in Panama are subject to AML/CFT obligations. The Fintech sector in Panama is developing slowly. Currently, there are over 20 companies using fintech, categorized as financial companies and money remitters providing payments, investments, and credit services as authorized by the ministry of industry and commerce—*Ministerio de Industria y Comercio* (MICI)—operating within Panama’s financial sector. Under MICI’s authorization process, only specific regulated financial activities are subject to additional requirements and scrutiny by the SBP before starting operations. It is not always clear how the definitions of these activities apply to newly offered services using digital channels, which in turn has constrained the development of these services. The effects of grey-listing and fear of falling foul of international AML/CFT standards may have contributed to a conservative approach in licensing these services. Additional regulatory measures are needed to ensure that the terms used in the AML law are further clarified – notably

“issuing payment means and electronic money”, so that it is clear which service providers qualify as financial reporting institutions and there is a uniform and consistent authorization process in place. These clarifications should be harmonized with the language to be used in the new payments law. Moreover, authorities should identify and assess potential ML/TF risks that may arise from these new and developing technologies.

Virtual Assets/Virtual Asset Service Providers

The authorities should enact legislation addressing virtual assets (VAs) and virtual asset service providers (VASPs) that complies with FATF Recommendation 15 and international best practices. Anecdotal evidence suggests that there may be a very limited volume of digital transactions involving VA within a peer-to-peer environment. Meetings with financial institutions revealed that a financial institution has established additional systems and controls, including for enhanced due diligence to allow a very small number of customers to settle VA transactions conducted on exchanges established abroad, in order to receive the proceeds of such transactions into their personal accounts. Considering Panama’s dynamic and evolving financial sector, there is a need for legislation, together with implementing regulation(s), to provide a sound framework for licensing and regulating VASPs, as well as mechanisms to identify, measure, control, and monitor potential ML/TF risks arising from VA related activities.

Key recommendations are summarized in Table 1 below.

Table 1. Panama: Key Recommendations

Financial Integrity Recommendations	To be adopted by	I/ST/MT^{1/}	Paragraphs
Reach agreement at the policy level and develop procedures to dissolve and unwind suspended companies that have passed the deadline for reactivation.	Government	ST	Box 2
Issue guidance clarifying expectations of how banks should deal with existing clients that have been suspended to facilitate identification and avoid asset dissipation.	SBP	ST	Box 2
Collect information and assess the risk posed by foreign legal persons and arrangements incorporated and/or managed abroad by Panamanian law firms and adopt appropriate and proportionate controls.	SSNF	MT	¶19
The SSNF should further calibrate its risk assessment tool and/or adjustments to the supervisory cycles to allow for a more risk-based approach and should continue coordination and information exchange with the DGI regarding supervision of resident agents.	SSNF, DGI	MT	¶¶50 and 62
Ensure corporations can no longer issue bearer shares, and require custodial arrangements to include collection and verification of beneficial ownership information.	Government	I	¶¶66 and 68
Clarify terms used in the AML law to determine which providers of services using financial technology fall under the definition of financial reporting institution for the purposes of that law.	SBP	ST	¶73
Assess the ML/TF/PF risks emerging from virtual asset service providers (VASPs) and identify measures to prevent or mitigate these risks.	SBP/SMV	ST	¶76
Regulate and subject VASPs to supervision or monitoring for AML/CFT purposes in line with the FATF Standards.	SBP, SMV, MEF	MT	¶76
^{1/} —Immediate (within 1 year), ST—Short term (within 1-2 years), MT—Medium term (within 3-5 years)			

INTRODUCTION

1. In light of Panama’s exposure to foreign money laundering (ML) risks, its recent inclusion in the Financial Action Task Force (FATF) “grey list”, and reforms adopted by the government, this Technical Note focuses on financial integrity issues. Panama’s dollarized economy, the open nature of its financial sector and availability of wide-ranging corporate services, and its status as a regional, politically stable, financial hub—characteristics that make the country attractive to legitimate investment—also make it vulnerable to foreign ML threats. In particular, the use of Panamanian companies and the role of its law firms in complex, cross-border, offshore structures, came under international scrutiny in April 2016 with the leak of 11.5 million documents from Panamanian law firm Mossack Fonseca. More recently, as a result of strategic deficiencies in its anti-money laundering and combating the financing of terrorism (AML/CFT) regime, Panama was placed in the FATF “grey list” in June 2019, suggesting lingering challenges in bringing its framework in line with international standards, where it remained until October 2023.

2. The authorities have adopted a number of significant reforms in recent years to address these strategic deficiencies, in particular to prevent the misuse of companies and other legal structures incorporated or registered in Panama. These reforms include the establishment of a beneficial ownership registry, the adoption of enhanced controls over nominee services and additional obligations on resident agents—lawyers or law firms that provide a central role in the incorporation and registration of most legal persons and arrangements—and the implementation of risk-based supervision over the corporate services sector. The Technical Note provides an analysis of these recent reforms, their current implementation status, and areas for fine-tuning and strengthening the AML/CFT regime. The Technical Note also reviews recent developments in the area of financial technology (Fintech) and provides recommendations on how to ensure that the sector is subject to effective, proportionate, and risk-based AML/CFT obligations and supervision, in line with international standards.

3. This Technical Note is a joint World Bank (WB) and International Monetary Fund (IMF) report. It draws on written responses to questionnaires and supporting materials provided by relevant authorities, meetings that took place during the onsite mission of May 24 to June 6, 2023, with relevant agencies, supervisors, competent authorities, and private sector representatives,⁶ and other sources, including reports produced in the context of the FATF ongoing monitoring process.

4. For the purpose of this Technical Note, unless otherwise specified, terms will be used per their FATF definition. Specifically, *legal persons* refer to “any entity other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property” including “companies, bodies corporate, foundations, anstalt, partnerships, or associations

⁶ The mission met with the *Superintendencia de Sujetos No Financieros (SSNF)*, the *Superintendencia de Bancos de Panama (SBP)*, the *Unidad de Análisis Financiero (UAF)*, the *Ministerio Comercio e Industrias (MICI)*, the *Ministerio Público (MP)* and *Departamento de Investigación Judicial de la Policía Nacional*, the *Registro Publico de Panama (RPP)*, *Dirección General de Ingresos (DGI)*, independent lawyers and law firms providing resident agent services, banks, fintech firms, and the association of public notaries (*Colegio de Notarios Públicos*).

and other relevantly similar entities.” *Legal arrangements* refer to “express trusts and other similar legal arrangements” including *fideicomiso* (FATF Recommendations, Glossary).

CONTEXT

A. The Road to Compliance with International Standards

5. Since 2010, Panama has been committed to implementing the international AML/CFT standards—the FATF standards. Panama has been a member of the Financial Action Task Force of Latin America (GAFILAT), a FATF-style regional body (FSRB), since 2010. Its AML/CFT regime was assessed most recently against the FATF standards in 2017 by GAFILAT, with a mutual evaluation report being adopted by the latter in December of the same year. The mutual evaluation assessed Panama’s AML/CFT legal, regulatory, institutional, and enforcement frameworks for technical compliance against 40 FATF Recommendations, and the overall effectiveness of its AML/CFT regime in achieving 11 Immediate Outcomes (IOs), ranging from policy, coordination and cooperation, preventive and supervisory measures, and detection, investigation, prosecution, and disruption of proceeds of crime.

6. At the time of its 2017 mutual evaluation, Panama’s AML/CFT regime had strategic deficiencies, notably in the areas of risk, policy and coordination, transparency of legal persons and arrangements, and quality and use of financial intelligence. Panama was rated as having a *low* level of effectiveness against three of the 11 FATF IOs—namely, the country was unable to demonstrate achievement of IOs on risk, policy, and coordination (IO.1), on legal persons and arrangements (IO.5), and on financial intelligence (IO.6)—a *moderate* level of effectiveness against six IOs—namely, demonstrating achievement to some extent on international cooperation (IO.2), monitoring (IO.3), preventive measures (IO.4), ML investigation and prosecution (IO.7), confiscation (IO.8), and terrorist financing (TF) investigation and prosecution (IO.9)—and a *substantial* level of effectiveness against the remaining two IOs—namely, demonstrating achievement to a large extent on TF preventive measures and financial sanctions (IO.10), and proliferation financing (PF) financial sanctions (IO.11).⁷ In contrast, Panama performed better on technical compliance, rating largely compliant or compliant on (33 out of 40 FATF Recommendations.

7. As a result of the strategic deficiencies identified in its mutual evaluation, Panama was “grey-listed” by the FATF in June 2019.⁸ Based on its ratings on effectiveness,⁹ Panama met the referral criteria for the FATF’s International Co-operation Review Group (ICRG)—the process through which the FATF identifies and reviews jurisdictions with strategic AML/CFT deficiencies and monitors their progress.¹⁰ Following a one-year observation period, during which a country is given an

⁷ Panama did not demonstrate a *high* level of effectiveness against any of the IOs.

⁸ Prior to its being grey listed in 2014 and 2019, Panama was publicly identified in 2000 as a “Non-Cooperative Country” under the precursor to the grey listing process.

⁹ Specifically, having a *low* or *moderate* level of effectiveness for nine or more IOs, with a minimum of two *lows*.

¹⁰ <https://www.fatf-gafi.org/en/topics/high-risk-and-other-monitored-jurisdictions.html>

opportunity to address the strategic deficiencies identified in its mutual evaluation, and having failed to demonstrate sufficient progress, Panama was added to the FATF “grey list” in June 2019. Countries under the FATF grey list are actively working with the FATF to address strategic deficiencies in their AML/CFT regimes through the implementation of a timebound action plan. Panama’s action plan agreed with the FATF (the “Action Plan”) included actions to enhance understanding of national and sectoral risks, strengthen supervision and enforcement of AML/CFT measures in the designated non-financial businesses and professions (DNFBPs)¹¹ sectors, ensure the availability of adequate, accurate, and up-to-date beneficial ownership information and prevent the misuse of nominee shareholders and directors, and enhance the use of financial intelligence products.

8. Panama exited the FATF grey list in October 2023, having substantially completed its Action Plan. In June 2023, the FATF made an initial determination that Panama substantially addressed the outstanding action items that has prevented the country from exiting the grey list on schedule, more recently by ensuring adequate verification of up-to-date beneficial ownership information by obliged entities¹² and timely access by competent authorities. This was a welcome development that followed harsher statements from the FATF as early as October 2021, expressing concern, strongly urging Panama to swiftly complete its Action Plan, and raising the possibility of further steps. An onsite assessment in September 2023 confirmed completion of the Action Plan, resulting in the country exiting the grey list at the FATF October 2023 Plenary.¹³

9. Enhancing transparency of legal persons and arrangements established in Panama remains a top priority for the country and the subject of recent reforms. At the time of the 2017 mutual evaluation, availability of adequate, accurate, and up-to-date information on beneficial ownership of legal persons and arrangements was found to be lacking. This significant gap was attributed to a lack of mechanisms to secure such information, including low and ineffective monitoring of resident agents who play a mandatory role in record keeping of certain types of legal persons, and an absence of controls over the use of nominee shareholders and directors. The mutual evaluation report therefore called for Panama to strengthen controls over the operation of the corporate services sector, notably by enhancing monitoring of the activity of legal persons, developing mechanisms to mitigate ML/TF risks of legal arrangements, and adopting controls to prevent misuse of nominee shareholders and directors. While significant reforms and progress have been achieved through the partial implementation of the Action Plan, including through the establishment of a beneficial ownership register—*Registro Único de Beneficiarios Finales* (RUBF)—and strengthening of supervision of resident agents, implementation is ongoing.

¹¹ As defined under the FATF standards, DNFBPs include casinos, real estate agents, dealers in precious metals and stones, lawyer, notaries, independent legal professionals, accountants, and trust and company service providers.

¹² The term “obliged entities” is used to refer to financial institutions, including VASPs, and DNFBPs under AML/CFT obligations.

¹³ <https://www.fatf-gafi.org/en/publications/Fatfgeneral/outcomes-fatf-plenary-october-2023.html>

B. Panama's Corporate Sector: An Evolving Landscape

10. Panama's corporate sector is dominated by corporations (*sociedades anónimas*), followed by private interest foundations (*fundaciones de interés privado*), trusts (*fideicomisos*), and limited liability companies (*sociedades de responsabilidad limitada*).

Corporations are overwhelmingly the most common form of legal structure in Panama. They consistently account for over 90 percent of legal persons registered in Panama's Public Register—*Registro Público de Panamá* (RPP)—even if this number is closer to 80 percent when it comes to legal persons with active registration (*vigente*)¹⁴ and 74 percent when it comes to legal persons registered annually (see Figure 1). Other forms of legal persons operating in Panama include general partnerships (*sociedades colectivas*), simple limited partnerships (*sociedades en comandita simple*), limited partnerships by shares (*sociedades en comandita por acciones*), foreign corporations (*sociedades extranjeras*),¹⁵ and non-profit organizations (*organizaciones sin fines lucrativos*).

11. Companies must be registered with the RPP to obtain legal personality. Any legal person incorporated in Panama requires the certification of a notary to be registered with the RPP, and corporations, private interest foundations, and limited liability companies—the three most common forms of legal persons—require the appointment of a resident agent.¹⁶ Different types of legal persons have different composition requirements, although they can be composed of national or foreign, natural, or legal persons, and do not require Panamanian residence, with the exception of non-profit organizations. Overall, legal persons are not required to: (i) provide the location of their business operations or activities, whether domestically or abroad; (ii) file income tax returns unless they earn income from national sources; or (iii) open a bank account in Panama.

12. If companies breach certain obligations, their corporate rights can be suspended¹⁷ and ultimately dissolved. According to the Tax Code,¹⁸ the RPP will suspend a legal person's corporate rights if any of the following three situations arise: (i) failure to pay the annual registration fee (*tasa única*) for three consecutive years results in suspension for delinquency (*morosidad*) upon notification from the tax authority—*Dirección General de Ingresos* (DGI)—to the RPP; (ii) failure to designate a resident agent for more than 90 calendar days following the resignation, removal, or termination of the previous resident agent—this situation arises for the types of legal persons that require a resident agent, namely, corporations, private interest foundations, and limited liability companies—and (iii) failure to comply with obligations for which suspension is a sanction—

¹⁴ Active registration refers to the status of registration before the RPP and is used in contrast to suspended or dissolved legal persons.

¹⁵ Per Panama's Commercial Code, foreign corporations that wish to establish themselves or create branches in Panama must register with the RPP by providing the requisite documentation (Art.60).

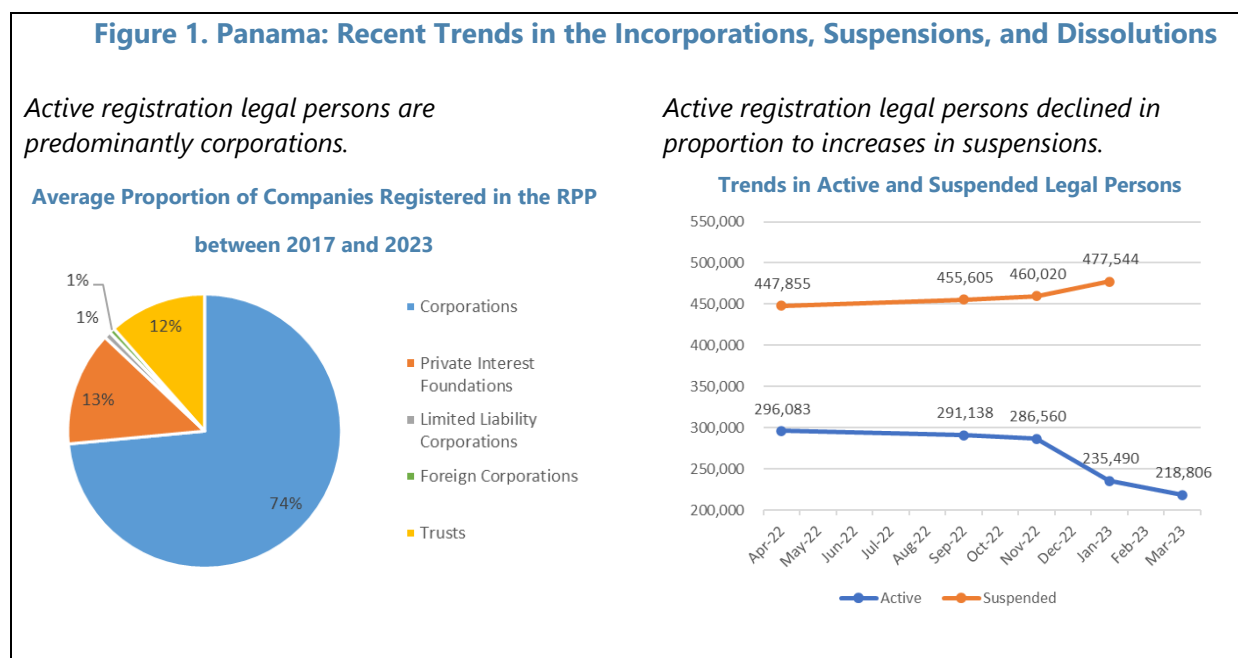
¹⁶ Law 31 of 1927 for corporations, Law 25 of 1995 for private interest foundations, and Law 1 of 1984 for limited liability companies.

¹⁷ Executive Decree No. 905 of September 20, 2019, requires the RPP to create the status of "suspended" in its electronic registration system.

¹⁸ Panama Tax Code, Art.318-A, as revised by Law 52 of 2016, Art.9, and Law 254 of 2021, Art.30.

competent authorities can order suspension three months after the deadline for compliance.¹⁹ Suspended companies cannot initiate legal proceedings, conduct business, dispose of their assets, make claims or exercise rights, or perform any corporate action binding on the legal person.²⁰ Once suspended, legal persons have one year to be reactivated by paying a fine and addressing the cause of the suspension. If the one-year period expires, the RPP will notify the competent authority that ordered the suspension so that the latter can order the dissolution.²¹

13. In the past five years, there has been a dramatic reduction in legal persons with active registration in the RPP, from 500,479 in May 2017 to 218,806 in March 2023. The decline in active registrations accelerated towards the end of 2022, dropping by 67,754 legal persons from November 2022 to March 2023, with a concurrent increase in suspended legal persons. The total number of suspended legal persons has been rapidly increasing since 2016, when the DGI started enforcing suspensions for delinquency, with the bulk of suspensions taking place in 2016 and 2017. In December 2022, the number of suspensions has seen an up-tick driven by failure to appoint a resident agent. As of the end of January 2023, 519,247 legal persons were subject to suspension orders, resulting in a total of 477,544 suspended legal persons.²² See Figure 1.



¹⁹ E.g., the SSNF can order suspension of a legal person for failure to register with the RUBF, per Law 129 of 2020, Art.24, as revised by Law 254 of 2021, Art.42.

²⁰ They can however make a request for reactivation, manage defense in proceedings initiated against it, and continue legal proceedings instituted prior to the date of suspension.

²¹ Panama Tax Code, Art.318-A, Paragraph 6, as revised by Law 254 of 2021, Art.44.

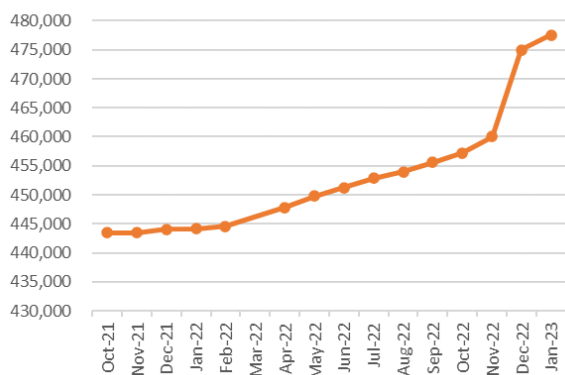
²² Some suspension orders were issued against legal persons that were registered with the RPP as dissolved, in bankruptcy, or as redomiciled.

Figure 1. Panama: Recent Trends in the Incorporations, Suspensions, and Dissolutions (concluded)

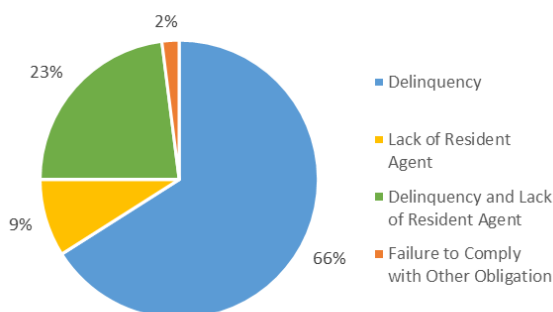
Suspensions have steadily increased from October 2021, seeing an up-tick in December 2022.

The main driver of suspension has been delinquency, although lack of resident agent is a factor in 32 percent of suspensions.

Monthly Trends in Suspended Companies



Drivers of Suspensions



Source: RPP

14. Resident agents often offer nominee services to their clients. A sectoral risk assessment of legal persons and arrangements adopted in December 2021 (the “2021 Sectoral Risk Assessment”),²³ based on a sample study, found that over three quarters of resident agents also offered services akin to those of a nominee director—*i.e.*, to act as a director or proxy of a legal person holding a directorship.²⁴ While less significant, the 2021 Sectoral Risk Assessment also found that close to 9 percent of resident agents offered services akin to those of a nominee shareholder—*i.e.*, to act as a shareholder for a legal person.

15. Trusts are a common form of legal structure in Panama and play a significant role in the local market. Trusts can only be constituted by a licensed trust service provider. A license is obtained from the banking supervisor— *Superintendencia de Bancos de Panamá* (SBP)—to provide trust services (Law 21 of May 10, 2017, Art.3). License holders include banks, trust companies, and trust companies linked to law firms. There are currently 63 trust companies registered and licensed with the SBP.²⁵ As of March 31, 2023, there were 174,896 trust agreements registered with the SBP.²⁶

²³ An inter-agency working group led by the national commission against ML—*Comisión Nacional contra el Blanqueo de Capitales* (CNBC)—conducted a sectoral risk assessment of legal persons and arrangements in December 2021, using the World Bank methodology, which analyzed data from 2016 to 2020.

²⁴ The term “nominee director” is not defined in Panamanian legislation. However, for purpose of this paper, the term will be used to describe those performing duties of a nominee director.

²⁵ See https://www.superbancos.gob.pa/documentos/fiduciarias/estadisticas/otros/Listado_de_Fiduciarias_Dic2023.pdf

²⁶ Only trusts involving real estate must be registered with the RPP.

The majority of agreements were for guarantee trusts²⁷ (over 98 percent), although in terms of assets, guarantee trusts account for only half of trusts, with investment, administration and other trusts accounting for roughly 15 percent of assets each. In recent years, assets of registered trusts have stayed more or less constant in general terms. As of March 2023, total assets held by registered trusts amounted to over US\$35 billion,²⁸ or the equivalent of 46 percent of 2023 projected GDP, with the majority of assets concentrated in the local market.

16. Most trusts are categorized as “guarantee” trusts, and are managed predominantly by banks and subsidiaries of banks. Trust agreements are categorized by type, namely investment, guarantee, administration, pension, severance, and other. Between 2016 and 2020, over 96 percent of trust agreements registered with the SBP were characterized as “guarantee” trusts—trusts used as a guarantee vehicle for consumer loan operations (*e.g.*, auto loans, or to a lesser extent, high-income residential mortgage financing), and in the creation of guarantees in structured corporate financing, and fixed-income market or syndicated loans.²⁹ However, when looking at the type of trust by value of assets, the proportion of assets held in guarantee trusts constitutes on average only half of total assets, with investments trusts, administration trusts and other trusts each accounting for 12 to 16 percent of total assets.

C. Money Laundering Risks in the Corporate Sector

17. Due to its dollarized economy, the open nature of its financial sector and availability of wide-ranging corporate services, Panama is particularly exposed to foreign threats of ML. These characteristics, which make the country attractive to legitimate investment, also make it vulnerable to the entry and subsequent transit or placement of proceeds of crime committed abroad, notably tax crimes and organized crime. Domestic ML threats, as identified in the country’s 2017 National Risk Assessment (NRA), include drug trafficking, corruption, financial crimes, and crimes against intellectual property. In line with the high ML external threat, the NRA identified as the most vulnerable sectors those that channel funds, investment, and assets from abroad, notably the banking sector with its significant exposure to cross-border flows, the real estate and construction sector, the legal services sector, and the free trade zones—*Zona Libre y Francas* (ZLF). The NRA also highlighted legal persons and arrangements established in Panama as being particularly at risk of being misused to conceal the origin, beneficial ownership, or purpose of illicit financial flows.

18. In line with their predominance in the corporate sector, the NRA found corporations and private interest foundations to be exposed to a high level of ML risk, followed by trusts, exposed to a medium-high level of risk. Based on the threat analysis of the 2021 Sectoral Risk Assessment, the most common ML typologies identified involved the issuance of corporate shares through foreign legal persons, the use of complex legal structures, nominee shareholders and

²⁷ Defined in paragraph 16.

²⁸ <https://www.superbancos.gob.pa/fiduciarias/estadisticas-fiduciarias>

²⁹ MER, at para.58.

directors, and front persons, the use of domestic and foreign legal persons with similar names, the use of falsified documents for company formation and registration or to legitimize banking transactions, and in some cases, the use of shell companies. The threat analysis, together with a vulnerability analysis, resulted in risk ratings assigned by type of legal person and arrangement (see Figure 2).



19. In the medium-term, the evolving corporate landscape in Panama should be monitored closely, and risk assessments should be updated to reflect emerging business models and potential exposures to new threats and vulnerabilities. Anecdotal evidence from discussions with the private sector suggests that some law firms have reduced their portfolios of legal persons incorporated in Panama significantly while existing and prospective clients are choosing to have legal persons incorporated in other jurisdictions, notably the British Virgin Islands (BVI), with law firms established and regulated in Panama still playing a significant role. Some law firms now appear to have larger portfolios of legal persons incorporated abroad than incorporated in Panama. It is unclear whether the activities of these foreign incorporated legal persons with significant ties to law firms regulated in the country as resident agents pose money laundering risks, as these are currently not within the scope of supervisory activities. In line with the FATF standards, as revised in February 2023,³⁰ the SSNF, as the supervisor, should collect information, assess this risk, and adopt appropriate and proportionate controls accordingly.

BENEFICIAL OWNERSHIP REGISTRY

A. Legal Framework: A System Centered Around the Resident Agent

20. At the time of the 2017 mutual evaluation, the legal framework governing transparency of legal persons and arrangements in Panama had moderate to major shortcomings. The AML/CFT legal framework is established in Law 23 of April 27, 2015, and Decree 363 of August 13, 2015, provides the implementing regulation—both of which have since been amended. Panama’s legal and regulatory frameworks were assessed at the time of the 2017 mutual

³⁰ Countries should assess the ML/TF risks associated with foreign legal persons and arrangements that have “sufficient links” with their countries (e.g., significant and ongoing business relations with financial institutions or DNFBPs). Interpretative Notes of Recommendation 24 and Recommendation 25.

evaluation and found to include moderate to major deficiencies. Most notably for purposes of this Technical Note, these deficiencies included: (i) the absence of mechanisms to ensure that information on shareholders and beneficial owners of legal persons are accurate and up-to-date, due to gaps in the AML/CFT obligations imposed on resident agents, as well as limited supervision and enforcement of these; and (ii) the absence of controls over the use of nominee shareholders and directors.³¹

21. On March 17, 2020, Panama enacted Law 129 creating a beneficial ownership registry for legal persons (RUBF). The purpose of the RUBF is to provide a central repository of information on beneficial ownership of legal persons collected by resident agents to facilitate access by competent authorities³² in the context of AML/CFT (Art.1). Any lawyer or law firm offering resident agent services to one or more legal persons incorporated or registered in Panama must register with the SSNF (Art.3), and is issued a non-transferrable unique registration code—*Código Único de Registro* (CUR)—through which to access the RUBF (Art.5). Failure to properly register as a resident agent with the RUBF will result in the suspension of the legal person(s) by the RPP until such registration is adequately completed, or until the legal person appoints another resident agent who is properly registered (Art.6). The RUBF, administered by the SSNF (Art.7), is intended to be free, private, only accessible by a limited number of agencies, and subject to the highest standards in data protection and privacy (Art.8). The RUBF is not legally responsible for the accuracy of the information provided (Art. 9, as revised by Law 254 of 2021, Art.32).

22. Resident agents are required to collect and submit information on beneficial ownership to the RUBF. The definition of beneficial owner has been harmonized in the relevant legislation by Law 254 of November 11, 2021.³³ It is defined as a natural person(s): (i) that, ultimately, directly or indirectly, possesses, controls and/or exercises significant influence over a client, an account, or a contractual and/or business relationship; or (ii) on whose behalf or for whose benefit a transaction is made; (iii) *including* the natural person(s) who exercise final control over a legal person. Criteria to determine ownership, control, or significant influence is defined under implementing regulation—Executive Decree No.13 of March 25, 2022 (see Box 1) and has been the subject of guidance issued by the SSNF in October 2022. Resident agents are required to provide beneficial ownership information, including full name, ID/passport number, date of birth, nationality, address, and date when he/she became a beneficial owner of the legal person, in addition to basic information on the legal person.³⁴ Resident agents have 15 business days to provide information on

³¹ As a result of these deficiencies, Panama was found non-compliant with Recommendation 24 and partially compliant with Recommendation 25.

³² Competent authorities include the SSNF, the financial intelligence unit—*Unidad de Análisis Financiero* (UAF)—the Public Prosecutor's Office—*Ministerio Público* (MP)—the Ministry of Economy and Finance, the DGI, and any other government agency given competencies in AML/CFT matters (Law 129 of 2020, Art.2(2), as revised by Law 254 of 2021, Art.30).

³³ Law 23 of 2015, Art.4(4) and Law 129 of 2020, Art.2(3), as revised by Law 254 of 2021, Art.1 and 30, respectively.

³⁴ Information required for the legal person includes full name, registration number under RPP, date of registration, address, principal activity, and jurisdiction where it operates. Publicly listed companies and state-owned companies are subject to different requirements. Law 129 of 2020, Art.10, as revised by Law 254 of 2021, Art.33.

the legal person and beneficial owner(s) following incorporation, registration with the RPP, or appointment of new resident agent.³⁵ Upon receipt of information, the system generates a registration certificate (Law 129 of 2020, Art.13). Information remains available in the RUBF for the period that the legal person remains active, and for at least 5 years following dissolution (Law 129 of 2020, Art.21).

Box 1. Panama: Beneficial Ownership—Criteria to Identify Beneficial Ownership

Article 10(iii) of Executive Decree No.13 of 2022, which regulates Law 129 of 2020, provides criteria to identify beneficial ownership:

- For **corporations**, the beneficial owner(s) is: (i) the natural person(s) who ultimately owns or controls, directly or indirectly, at least 25 percent of shares, participation, or voting rights, with the exception of publicly listed companies and state-owned companies; and (ii) the natural person(s) who exercises control through other means. If no natural person is identified based on these criteria, the resident agent must identify the natural person who occupies the highest administrative position or exercises effective control over the legal person.
- For **private interest foundations**, the beneficial owner(s) is the natural person(s) who receives economic benefits, directly or indirectly, and any other natural person(s) who exercises ultimate effective control.
- For **trusts**, the beneficial owners are the settlor, the trustee, the protector (when there is one), the beneficiaries, and any other natural person(s) who exercises ultimate effective control. For other forms of legal arrangements, the beneficial owners are natural persons occupying equivalent positions.^{1/}
- In the case of a legal person in **liquidation or bankruptcy**, the natural person appointed as liquidator or conservator of the legal person.
- In the case of a shareholder of a legal person that qualified as a beneficial owner but has subsequently passed away, the natural person that acts as the executor or personal representative of the deceased's estate.
- In any other situation, the natural person(s) who exercises ultimate effective and definitive control through any other means over the management of a legal person, including that has the capacity to make relevant decisions over the legal person.

^{1/} Trusts do not require a resident agent per law, although it seems that most have one. As such, these resident agents can register these trusts with the RUBF. The definition applies to the resident agents of trusts that register trusts in the RUBF.

23. Direct access to the RUBF is strictly limited to resident agents and designated officials authorized by the SSNF (Law 129 of 2020). Resident agents' access is limited to information pertaining to the legal person(s) for which they provide services, and this access is revoked upon resignation of the resident agent (Art.14 and 19).³⁶ Officials designated by the SSNF on a risk basis

³⁵ Law 129 of 2020, Art.11, as revised by Law 254 of 2021, Art.34. The legal representative of a legal person is under obligation to provide its resident agent with the required information to identify the beneficial owner and notify the resident agent of any changes within 15 business days. The resident agent than has 5 business days from the date of receipt of the information to update the information with the RUBF (Art.12).

³⁶ A newly appointed resident agent does not have access to information entered by a previous resident agent, although the information remains in the system and accessible by competent authorities (Art.20).

are also granted access to the RUBF for the exclusive purpose of making available necessary information to competent authorities upon request, as well as to comply with international cooperation obligations (Art.14, as amended by Law 254 of 2021, Art.36). Information must be provided by the designated officials to the competent authorities within seven business days of the request (Art.17). Designated officials must be Panamanian citizens, be at least 35 years old, hold a relevant³⁷ university degree and/or have related professional background with at least five years' experience in risk management and/or AML, not have criminal convictions, not be related by blood³⁸ or marriage³⁹ to the president of the Republic or State ministers, and not own directly or indirectly a majority of shares of a DNFBP (Art.15). No legal action can be taken by third parties, other than the competent authorities authorized by law, to access information from RUBF (Art.9). All information submitted to the SSNF must be kept confidential under penalty of US\$200,000 (Art.17).

24. The RUBF does not include information on legal persons that do not require the appointment of a resident agent, nor trusts, representing a potential gap going forward. Law 129 of 2020 defines legal persons for the purpose of the RUBF as legal persons with active registration, excluding suspended or dissolved legal persons, that require the services of a resident agent (Art.2(5))—namely, corporations, private interest foundations, and limited liability companies—and the RUBF relies on resident agents to collect and submit information. Other forms of legal persons⁴⁰ are not required to appoint a resident agent, although they may choose to do so—it is unclear to what extent resident agents are legally required to register these other forms of legal persons. While the current scope of the RUBF is broadly in line with risk—legal persons not requiring a resident agent account for a very small proportion of legal persons incorporated in Panama and were all rated low risk for ML purposes in the 2021 Sectoral Risk Assessment, with the exception of foreign corporations rated medium risk—their exclusion from the RUBF creates a potential gap in the system that could be exploited in the future. Similar concerns arise in the case of trusts, which are both more prevalent in Panama, in terms of numbers and assets, and were found to pose a medium to high ML risk, rendering their exclusion from the RUBF a potentially more significant gap.

B. Onboarding: From Slow Start to Rapid Expansion

25. The RUBF was formally launched on April 18, 2022. The SSNF, together with the government innovation authority—*Autoridad Nacional para la Innovación Gubernamental* (AIG)—started working on the development of the RUBF in November 2021, and the formal launch of the system took place in April 2022. A beneficial ownership directorate—*Dirección de Beneficiario Final* (DBF)—was established within the SSNF, with responsibilities to conduct intake, verification, management, and dissemination of beneficial ownership information in accordance with Law 129 of

³⁷ Relevant degrees include banking, finance, law, political science, and business/administration.

³⁸ Including parents, children, siblings, grandparents, grandchildren, uncles, aunts, nephews, nieces, and cousins.

³⁹ Include spouses and their parents, children, grandparents, and siblings.

⁴⁰ Legal persons that do not require a resident agent include general partnerships, simple limited partnerships, limited partnerships by shares, foreign corporations, and non-profit organizations.

2020. The DBF is composed of four units: (i) an administrative unit; (ii) an operational/functional unit, including customer relations, process, and legal; (iii) a data intelligence unit, staffed with data analysts; and (iv) a technology unit, including technical support, development, and cybersecurity. While not all positions have yet been filled, as of March 2023, 10 staff had been recruited to the DBF, with resources allocated for the hiring of 10 additional staff.⁴¹

26. Implementation of the RUBF was initially slow due to technical challenges, although it has since picked up. At the time of the launch of the RUBF in April 2022, the SSNF adopted a risk-based registration strategy, first focusing on the enrollment of law firms considered high or medium risk, before turning to the remaining law firms and independent lawyers. However, by the end of December 2022, progress in enrolling smaller law firms and independent lawyers was still lagging. The initial enrollment process for resident agents was lengthy and overly cumbersome from a technical perspective, creating a barrier to enrollment in particular for smaller law firms and independent lawyers. In addition, the recruitment of qualified personnel to staff the DBF was also lengthier than anticipated. Both of these factors resulted in slower enrollment of resident agents and registration of legal persons in the RUBF in 2022. In response to these challenges, the SSNF simplified the enrollment process from a technical perspective,⁴² took initial steps to improve staffing at the DBF, and is pursuing ambitious awareness raising and enrollment and registration campaigns, which have so far achieved concrete results. An outreach and support unit was also created within the SSNF to develop outreach strategies, content, and resources for resident agents, including an online resource library, online frequently asked questions (FAQ), and general and sector specific compliance courses.

27. The SSNF enrollment and registration campaigns rolled out in the first quarter of 2023 have yielded impressive results. In response to the challenges encountered following the launch of the RUBF, the SSNF adopted three main enrollment and registration campaigns: (i) through partnerships with lawyers' associations—*Colegio Nacional de Abogados* (CNA) and *Asociación de Abogados Internacionales*—and compliance associations—ASOCUPA and World Compliance—to raise awareness and promote enrollment, notably through registration sessions with members of professional associations; (ii) the large-scale, 60-day Mass Registration Campaign from March to April, 2023, where resident agents received in-person technical support and assistance on the RUBF registration, the SSNF platform, the UAF platform, and data upload from 40 trained staff of different agencies; and (iii) the national registration sessions from April to May 2023 in the main provinces in Panama to support local small firms and independent lawyers. As a result of these efforts, and in particular of the Mass Registration Campaign that took place in March and April 2023, there was over a five-fold increase in the number of resident agents enrolled (from 721 to 3,866), and a 45

⁴¹ Five expected to be hired during the first half of 2023, and the remaining five in the second half of 2023, including two programmers, one data processor, one process analyst, one data analyst, three technical support staff, and two lawyers.

⁴² From relying on a fixed internet protocol (IP) address to a two-step verification process, per Resolution No. S-016-2022 adopted on November 22, 2022, which replaced Resolution No. S-011-2022 adopted on July 5, 2022.

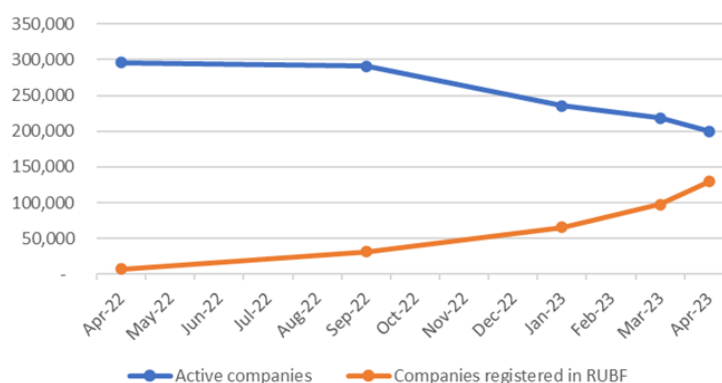
percent increase in legal persons registered in the RUBF (from 88,972 to 129,321) in the same time period.

28. The procedures for registration of resident agents and initial registration of legal persons are established in Resolution No. S-016-2022 adopted on November 22, 2022, by the SSNF. Per the procedures, the SSNF sends a link and registration instruction to the resident agent's registered email address. Resident agents are then given five business days, with one possible five-day extension, to create a profile in the system and provide the necessary information, after which resident agents receive their CUR. Once registration is completed, resident agents are given a deadline to upload information in the RUBF on the legal persons to which they provide services, from 30 to 90 calendar days depending on the number of legal persons⁴³ (the "uploading phase"). For newly established or registered legal persons, or newly appointed resident agents, the deadline for registration of the legal person with RUBF is 15 business days. Once the uploading phase is completed, the RUBF system generates certificates of registration, which must be kept as proof of compliance. The SSNF then validates the information uploaded to ensure that data is not incomplete, imprecise, and/or out-of-date. The SSNF can request the resident agent to rectify, clarify, and/or expand on the information provided, as appropriate, within five business days of the request (the "validation phase"). Competent authorities are required to inform the SSNF whenever it comes across any information or documentation that is imprecise, out-of-date, or false, so that the SSNF can take the appropriate actions. Resident agents are under continuous obligation to keep the information and documentation in the RUBF up to date.

29. While registration of legal persons in the RUBF has been steadily accelerating, the overall number of legal persons with active registration has been decreasing. As of April 2023, 129,321 legal persons were registered in the RUBF, against a total of 200,182 active companies.⁴⁴ The proportion of active legal persons registered in the RUBF reached 65 percent in April 2023, up from 45 and 28 percent in March and January 2023, respectively, reflecting a combination of these converging trends. The decrease in legal persons with active registration has been driven by an increase in suspended companies as noted in paragraph 13 and figure 1, the implications of which are further explored in Box 2. Nevertheless, the rate of increase in registration of legal persons in the RUBF between January and April 2023 has significantly outpaced the rate of decline in *active* companies in the same period—96.5 percent increase compared with a 15 percent decline (see Figure 3).

⁴³ Information must be uploaded within 30, 60, and 90 calendar days, for resident agents providing services to 1-30, 51-500, or more than 501 legal persons, respectively. Extensions are available for technical difficulties beyond the control of the resident agent.

⁴⁴ The latest numbers for May 2023 indicate that over 140,000 legal persons are now registered in the RUBF.

Figure 3. Panama: Trends in Active Companies and RUBF Registration

Box 2. Panama: Trends and Implications of Suspended Companies for Beneficial Ownership Registration

In the past five years, there has been a dramatic reduction in legal persons with active registration status, from 500,479 in May 2017 to 218,806 in March 2023. The decline in active registrations reflects a concurrent increase in *suspended* companies. A suspended company's status is reflected in the RPP, which is open to the public and searchable by third parties—although a sign up is required, access is then granted automatically. The suspended status will also be reflected in any certificate of good standing requested and issued by the RPP. An active registration with the RPP is often a licensing requirement, and therefore a suspension of the legal person's registration with the RPP will often result in a suspension of license as well. Onboarding customer due diligence (CDD) requirements on obliged entities should also make it impossible for suspended companies to open an account or enter into a business relationship with these regulated sectors, although how obliged persons identify suspended legal persons among their existing customers on a timely basis to ensure they are not able to move or dissipate their assets remains unclear. It is also unclear whether foreign financial institutions consistently check the RPP to determine the registration status of a prospective or existing client, during onboarding or whenever a transfer is requested, leaving open the possibility of suspended companies accessing and transferring their assets in spite of the legal limitations of their registration status in Panama.

This significant increase in suspended legal persons results from an ongoing effort by competent authorities to “clean up” the public registry, and concurrent efforts undertaken by resident agents in response to increased scrutiny and controls. While suspension for delinquency has been codified for many years, the DGI started enforcing this rule in 2016, around the same time as the suspension for lack of resident agent was introduced. The majority of suspension orders issued have been for delinquency and were concentrated in 2016 and 2017. Since then, the total number of suspended companies has been steadily increasing, more recently driven by failure to appoint a resident agent—which accounted for 21 percent of orders of suspensions as of January 2023.^{1/} Most delinquent companies are also not paying the resident agent fees. According to anecdotal information, while resident agents felt comfortable in the past foregoing the fee in the expectation of future business, the increased cost of compliance and scrutiny has driven many resident

Box 2. Panama: Trends and Implications of Suspended Companies for Beneficial Ownership Registration (concluded)

agents to review their client portfolios and resign from legal persons that were not paying their fees. While less frequent, it appears that resident agents have also resigned when their clients did not cooperate with the new requirements, for instance, regarding beneficial ownership or accounting records.

It is currently unclear how the large number of suspended legal persons—close to half a million—that do not proceed with reactivation will eventually be dissolved and unwound. Once suspended, legal persons have one year to be reactivated by paying a fine and addressing the cause of the suspension.^{2/} If the one-year period expires, the amendments introduced by Law 254 of 2021 provide that the RPP will notify the competent authority that ordered the suspension so that the latter can order the dissolution of the legal person.^{3/} However, currently suspended companies have not been subject to involuntary dissolution orders, as the relevant stakeholders—including the RPP, the DGI and the SSNF—have yet to agree on a procedure and policy for dissolving and unwinding suspended legal persons.^{4/} Moreover, because suspended legal persons cannot record acts with the RPP, only reactivated legal persons can opt to voluntarily dissolve, after having met the reactivation requirements. Agreement should be reached at the policy level, and procedures should be developed, to dissolve and unwind suspended companies that have passed the deadline for reactivation.

^{1/} This percentage excludes orders of suspension issued against dissolved, liquidated, redomiciled, and transformed.

^{2/} Of the hundreds of thousands of legal persons suspended for delinquency, only 18,120 have been reactivated.

^{3/} Panama Tax Code, Art.318-A, Paragraph 6, as revised by Law 254 of 2021, Art.44.

^{4/} If close to 79 percent of suspended legal persons are subject to suspension orders for delinquency, which presumes that they owe at least three years of annual fees of at least US\$300 and a US\$1,000 fine for reactivation, and as of January 31, 2023, there were 477,544 suspended legal persons registered in the RPP, the DGI is owed at a minimum US\$716,793,544.00. To the extent that suspended legal persons hold assets or funds, a dissolution process should explore the liquidation of the assets to meet the legal persons' liabilities.

C. Verification and Enforcement Mechanisms: Ongoing Implementation

30. The RUBF relies on multiple layers of verification to ensure that beneficial ownership information is accurate, complete, and up to date, starting at the resident agent level. The first layer of verification falls on resident agents, who are required by law to identify the beneficial owner(s) of the legal person(s) to which they provide services, and take reasonable risk-based measures to verify the information and supporting documents.⁴⁵ Failure to upload beneficial ownership information of a legal person to the RUBF or failure to keep it up to date results in sanctions against the resident agent ranging from US\$1,000 to US\$50,000 depending on the severity of the failure, magnitude of the harm, size of the resident agent, and level of recidivism.⁴⁶ Evidence of false declaration by the resident agent results in aggravated sanctions.⁴⁷ Four sanctions have been imposed in 2022 and 2023 under Law 129 of 2020, all of which for failure to register with

⁴⁵ Law 23 of 2015, Art.26-A, as amended by Law 254 of 2021, Art.8, and Art.27.

⁴⁶ Law 129 of 2020, Art.23, as amended by Law 254 of 2021, Art.41.

⁴⁷ Law 129 of 2020, Art.25.

the RUBF and levying a fine of US\$5,000, only one of which has been executed so far.⁴⁸ In addition, the RUBF also relies on verification of the identity and good standing⁴⁹ of the resident agents to ensure the reliability of the source of the beneficial ownership information.

31. The next layer of verification is intended to validate key data points through interoperability of the RUBF with other official databases, although efforts to operationalize this step are still ongoing. The implementation of the RUBF is seen as an opportunity to add coherence to official databases by cross-checking information and ensuring consistency. For this purpose, an interagency agreement of interoperability was signed on November 21, 2022, by representatives of the SSNF, the RPP, the AIG, the UAF, the DGI, and the ministry of commerce and industry—*Ministerio de Comercio e Industrias* (MICI). It stipulates that the AIG will develop modules to ensure interoperability between the databases managed by the parties to the agreement, and specifies the types of data that will be subject to validation with the RUBF. Moreover, the SSNF is required under SSNF Decree 13 of March 25, 2022, to run the information uploaded in the RUBF against international and domestic sanctions lists, and searches of open sources and other databases to identify individuals potentially involved in illicit activity (Art.12, amended by Decree 15 of May 30, 2022, Art.1), although it has yet to do so.

32. This second layer of verification is currently being implemented and automated. In 2023, the SSNF is working on automating interoperability with the Civil Registry attached to the Electoral Tribunal, which it uses to validate the identity of the natural persons who are either resident agents or represent a resident agent (in the case of a law firm),⁵⁰ and with the RPP, to validate the registration number (*folio*) of legal persons, although it is unclear if other information contained in both databases are also cross-checked. Once CUR is fully rolled out, the expectation is to validate it against the RPP as well. The SSNF expects to expand interoperability with other databases, with plans to do so in 2024 with databases managed by: (i) the UAF, to validate the identify and registration of resident agents; (ii) the DGI, to validate information on legal persons operating outside of Panama; and (iii) the MICI, to validate the type of activity of the legal person.⁵¹ The SSNF also expects to start running the information uploaded to the RUBF against sanctions lists later in 2023.

33. The final layer of verification is through the SSNF’s risk-based onsite inspections. Resolution No. S-014-B of November 7, 2022, establishes the SSNF risk-based verification procedures. The SSNF supervision directorate—*Dirección de Supervisión* (DS)—is responsible for

⁴⁸ SSNF published list of sanctions available through their website at <https://ssnf.gob.pa/index.php/sanciones/>.

⁴⁹ Resident agents, as lawyers, are regulated by Law 9 of April 18, 1984, and Law 8 of April 16, 1993, under which they are required to have a certificate of good standing issued by the Supreme Court of Justice to exercise the profession. In addition, resident agents are required to be registered with the SSNF under Law 124 of 2020, Art.44, and the SSNF is currently rolling out the CUR registration for each resident agent, which is expected to become mandatory in the second half of 2023.

⁵⁰ It is currently not used to validate the identity of beneficial owners who are Panamanian nationals, although it could do so in the future.

⁵¹ The RUBF uses the same drop-down list of “activities” as the one used in MICI to facilitate future cross-check.

verifying and validating information registered in the RUBF through onsite supervision of resident agents, in coordination with the DBF, to ensure information is sufficient, precise, and up to date. The resolution creates a working unit within the DS composed of at least four supervisors, charged with conducting thematic beneficial ownership onsite inspections of resident agents.⁵² The DS's working unit develops and executes supervision plans based on risk, informed by statistical reports produced and shared by the DBF, to verify the beneficial ownership information registered in the RUBF.⁵³

34. A sample of higher risk legal persons is selected for onsite inspection based on the statistical reports produced by the DBF. These reports are extracted periodically from the RUBF based on fixed parameters. Currently, these include: (i) the nature of the economic activities; (ii) whether the legal person conducts operations locally or offshore; and (iii) country or jurisdiction where it operates (*e.g.*, the FATF grey or black lists; the U.S. Department of State list of major money laundering countries or state sponsors of terrorism; the score and ranking on Transparency International's Corruption Perception Index; etc.). The SSNF's intention is to adjust and revise these parameters as deemed appropriate, with a specific plan to add a parameter on the use of nominee services in the second half of 2023.⁵⁴ These reports provide lists of legal persons registered in the RUBF categorized as low, medium, or high risk, and the DS's working unit selects a sample of 500 high-risk legal persons to develop its monthly supervisory plan of resident agents—most inspections involve multiple legal persons per resident agent.

35. The SSNF DS's working unit started thematic onsite inspections of resident agents to verify beneficial ownership information registered in the RUBF in November 2022, although the verification process has its limits. From November 2022 to March 2023, 71 thematic onsite inspections of resident agents had been conducted, representing 1,353 high-risk legal persons. The SSNF indicated that the DS working unit verifies beneficial ownership information held in the RUBF against independent sources, including open sources, before the onsite visit. During the onsite visit, the supervisors verify the beneficial ownership information against the supporting documents held by the resident agent. So far, the onsite inspections found that only for a small number of legal persons the beneficial ownership information held by the resident agent and uploaded to the RUBF did not match, and these cases were referred for sanctioning. Given this finding, it is unclear to what extent independent verification of beneficial ownership information is conducted systematically in practice—beyond checking consistency between information held in the RUBF and information held by the resident agent, which may not enable the SSNF to verify complex structures designed to conceal the true beneficial ownership.

⁵² The unit has four supervisors, with two additional supervisors currently being recruited.

⁵³ These supervision plans to verify beneficial ownership information are different from the SSNF annual supervision plan to verify compliance of DNFBNs, including resident agents, with their AML/CFT obligations.

⁵⁴ This information is currently checked manually, as it is kept by the SSNF but not within the RUBF.

D. Access: A Private Registry with Timely Albeit Restricted Access

36. Access to the RUBF is limited to competent authorities in AML/CFT matters, as defined in Law 129 of 2020 (Art.2(2)) and revised by Law 254 of 2021 (Art.30). These expressly include the SSNF, the UAF, the MP, and the DGI, as well as any other agency with an AML/CFT mandate (see footnote 27). Notwithstanding, only the SSNF has *direct* access to the RUBF through designated officials that meet the requirements under Article 15 of Law 129 of 2020 (see paragraph 22) and who are specifically authorized to make information available to other competent authorities upon request (Art.14 of Law 129 of 2020, as revised by Art. 36 of Law 254 of 2021). Currently, one SSNF official has been designated for this purpose. Other competent authorities must submit a request for access to the SSNF designated official, which the latter must process expeditiously, in line with SSNF Decree No.13 of 2022 (Art.16). Competent authorities are in turn required to notify the SSNF of the existence of any information or documents contained in the RUBF that are imprecise, out of date, or false (SSNF Decree No.13 of 2022, Art.17).

37. Since November 2022, information on beneficial ownership is made available to competent authorities on a timely basis, mostly for purposes of domestic investigations and international cooperation. Competent authorities received training on how to access information from the RUBF on November 9, 2022,⁵⁵ and have had access since November 21, 2022, ahead of schedule. Each competent authority is responsible for establishing internal procedures for requesting access to the RUBF and designating authorized officials to enroll in the RUBF according to its own criteria. Most have one or two authorized officials enrolled. As of November 2022, the UAF, the DGI, the MP and the SBP have all requested and been granted access to beneficial ownership information on specific legal persons in the context of domestic investigations or international cooperation requests, and in the case of the SBP, in the context of supervision. Requests for access from competent authorities usually include the legal basis for the request and a brief description of the purpose, as well as the name of the legal person and RPP registration number (*folio*). Access is expected to be granted within 24 hours, and in practice, has often been granted within an hour. The competent authority is then able to access the information requested for a specified period of time (*e.g.*, 45 minutes), during which it is able to print the information.⁵⁶

38. As of May 2023, competent authorities have been granted access to the RUBF in response to over 134 requests—all requests have been granted so far. The SSNF reported a 91 percent success rate of requests for information, reflecting the number of requests for which the beneficial ownership information had been uploaded to the RUBF. When information had not yet been uploaded to the RUBF, as onboarding is ongoing, competent authorities have obtained it from the resident agent or other obliged entity. Competent authorities will often seek information from more than one source, especially as their information needs for domestic investigations or

⁵⁵ Specifically on functionality of the competent authority module, creation of users, information request process, receivables, and FAQs.

⁵⁶ Once the time has expired, the competent authority needs to submit a new request for access if it requires additional time with the information.

international cooperation requests are rarely limited to beneficial ownership, and will often use the RUBF as a complementary tool to validate the beneficial ownership information—which is in line with the multipronged approach to beneficial ownership information under the FATF standards. While access to the RUBF is still relatively new, overall, competent authorities reported satisfaction with the quality, usefulness, and completeness of the information maintained in the RUBF so far, and when responding to international requests, have not received requests for follow up information. See Box 3 for access to the RUBF by competent authority.

Box 3. Panama: Access to the RUBF by Competent Authority

MP: Since being granted access to the RUBF, the MP requested access 23 times—16 in the context of domestic investigations and seven in the context of international cooperation requests—and received positive results to 20 of the requests. The three requests for which information on beneficial ownership was not available through the RUBF were from December 2022 and January 2023, when onboarding was still lagging, and the MP obtained the information from the resident agents directly. The MP has used the RUBF both to identify the beneficial owner of a legal person and to validate information on beneficial ownership obtained from other sources (e.g., from a financial institution). The RUBF has also enabled the MP to prioritize requests for beneficial ownership information and respond to international cooperation requests in a more timely manner.

UAF: The UAF has requested access to the RUBF 11 times from November 2022 to April 2023, regarding beneficial ownership information pertaining to 35 legal persons—nine requests related to international cooperation requests and two related to internal analysis needs. It obtained positive results for 26 legal persons and obtained beneficial ownership information for the remaining nine directly from the resident agent. The UAF has other mechanisms to obtain information and does not rely exclusively on the RUBF (e.g., when a legal person is suspended, the information is unlikely to be available through the RUBF), although the RUBF is treated by UAF as the first option for access to beneficial ownership information. The UAF has assigned access to three officials, two for international cooperation requests and one for internal analysis needs, although according to internal procedures, all requests require the signature of the UAF director.

DGI: The DGI has requested access twice in March and April 2023, for beneficial ownership information on seven legal persons, all in connection with international cooperation requests. They request information simultaneously from the resident agent and use the RUBF to verify the information. Information was available through the RUBF for six out of the seven legal persons. The DGI can also request access to information from the RUBF in connection with tax crimes investigations, although it has yet to do so, as it has other tools at their disposal. The DGI General Director has access and has assigned access to two officials within the DGI, one for international cooperation requests and another for requests related to domestic investigations.

SBP: The SBP has accessed the RUBF to verify beneficial ownership information obtained from special inspections to banks conducted to support an investigation by the MP, as well as through random verifications of beneficial ownership information unconnected with investigations. The SBP conducted 15 of these checks against the RUBF in March 2023, and 92 checks in April 2023, and found that the information collected by banks matched the information held in the RUBF in most cases—exceptions involved beneficial ownership information on legal persons that had yet to be uploaded into the RUBF, which as of April 2023 included only 65 percent of active status legal persons.

39. The RUBF currently only enables searches by competent authorities through the name of the legal person and *folio* number. Without the name of the legal person and its *folio* number—the latter can be obtained through the RPP using the former—competent authorities cannot access information from the RUBF. Given that the RUBF contains many other fields, including regarding the legal person (*e.g.*, date of registration, management, etc.), and the beneficial owner(s) (*e.g.*, name, ID number, date of birth, nationality, address, etc.), it would be technically possible to enable searches using other fields. The extent to which to enable searches by fields other than name of legal person and *folio* number can be balanced against the concern of avoiding “fishing expeditions.” At the very least, enabling searches through the name of the beneficial(s) owner(s), or other identifiers alone or in conjunction (*e.g.*, ID number, date of birth, nationality, address, etc.) would undoubtedly improve the usefulness of the RUBF to competent authorities, without necessarily opening the door to unsubstantiated or frivolous searches.

40. Enabling a broader scope of searches should be considered both by the RUBF and the RPP, in line with international best practices. The FATF Guidance on Beneficial Ownership of Legal Persons, published March 2023,⁵⁷ invites countries to consider allowing competent authorities to search beneficial ownership registries “in a way that serves their needs adequately,” for instance by the name of the beneficial owner (¶188(g)), and adopting search functions that support searches by multiple fields (¶189(ix)). The Puppet Masters, published by the World Bank in 2011,⁵⁸ included among its recommendations the need for company registries—which can be extended to beneficial ownership registries—to expand searchability to enhance the added-value of these registries, notably by enabling Boolean searches⁵⁹ and allowing queries by natural persons (by first or last name), company secretary, registered office, or agent, shareholders, addresses, business activity, country of registration, date of registration, and date of incorporation.

41. Moreover, other jurisdictions have opted to expand access to beneficial ownership registries beyond competent authorities. In particular, the FATF Guidance on Beneficial Ownership of Legal Persons highlights the benefits of granting access to beneficial ownership information: (i) by public authorities in the context of public procurement for timely access to basic and beneficial ownership information on legal persons bidding on public contracts and awarded public contracts; (ii) by obliged entities to complement and facilitate compliance with CDD obligations and identification of beneficial ownership information, and enable discrepancy reporting, which in turn would enhance the quality of the information available through the RUBF; and (iii) by civil society, or other interested parties, who could cross check the information and in turn enhance the quality of

⁵⁷ FATF (2023), *Guidance on Beneficial Ownership for Legal Persons*, FATF, Paris, <http://www.fatf-gafi.org/publications/FATFrecommendations/guidance-beneficial-ownership-legalpersons.html>

⁵⁸ van der Does de Willebois, Emile; Halter, Emily M.; Harrison, Robert A.; Park, Ji Won; Sharman, J. C.. 2011. *The Puppet Masters : How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. © World Bank. <http://hdl.handle.net/10986/2363> License: [CC BY 3.0 IGO](https://creativecommons.org/licenses/by/3.0/).

⁵⁹ Searches that enable the input of combined search queries using AND/OR/NOT to better triangulate information.

the information available through the RUBF. A tiered approach could be considered, where not all information is available to all, to take into account data privacy and confidentiality considerations.⁶⁰

SUPERVISION OF RESIDENT AGENTS

A. New Obligations on Resident Agents

42. Lawyers providing resident agent services have been subject to AML/CFT obligations, including reporting obligations, and supervision since 2015. Law 23 of 2015, as amended by Law 254 of 2021, provides the legal basis for Panama’s AML/CFT framework, including by identifying the DNFBPs subject to the AML/CFT regime (*sujetos obligados no financieros*)⁶¹ and establishing AML/CFT obligations, notably of CDD, record keeping, internal controls and ongoing monitoring, and suspicious transaction reporting. Included among DNFBPs are lawyers when they provide specified services in the exercise of their professional activities on behalf of or for a client. Specified services include, among others: (i) resident agent services; (ii) nominee⁶² services; (iii) services involving the creation, operation, or administration of legal persons or arrangements, including organizing financial contributions, and buying and selling legal persons or arrangements; (iv) providing a registered address, commercial or physical address, or postal or administrative address to a legal person or arrangement; and (v) acting as a participant in an express trust.⁶³

43. The SSNF was established by Law 124 of January 7, 2020, taking over the mandate of the *Intendencia de Supervisión y Regulación de Sujetos no Financieros (ISNF)*⁶⁴ for supervision of DNFBPs, including resident agents. The SSNF is an autonomous government agency, with its own budget and administrative independence (Art.1). Its mandate is to supervise all DNFBP sectors in matters of AML/CFT, adopting a risk-based approach to: (i) ensure compliance with AML/CFT legal requirements and impose sanctions for failure to comply; (ii) issue directives, norms, guidelines and feedback, including procedures for the adequate identification of beneficial owners of legal persons and arrangements; (iii) maintain up-to-date statistics regarding implementation and effectiveness of the law; and (iv) conduct outreach and promote ongoing capacity building of DNFBPs (Art.3). It can also order the suspension of a legal person for a resident agent’s failure to comply with AML/CFT obligations (Art.2(11), as revised by Law 254 of 2021, Art.24). The SSNF is composed of three directorates: a supervision directorate (SD) and a regulation directorate,

⁶⁰ *E.g.*, expanding access to licensed obliged entities, where the latter would only be able to request access to information for existing or prospective clients, with written consent from the client.

⁶¹ Per Law 23 of 2015, Art.23, as amended by Law 254 of 2021, which provides that DNFBPs are defined under Law 124 of 2020, Art.40.

⁶² While the legislation does not include the term “nominee”, the services described under Law 124 of 2020, Art.40(11)(g) and (i)—agreement for a person to act as a director or shareholder of a legal person—correspondent to FATF’s definition, namely “an individual or legal person instructed by another individual or legal person [...] to act on their behalf in a certain capacity regarding a legal person.” For ease of reference, the term of nominee director and shareholder will be used to mean the activities described in Law 124 of 2020, Art.40(11)(g) and (i).

⁶³ Law 124 of 2020, Art.40(11), as amended by Law 254 of 2021, Art.26.

⁶⁴ Law 124 of 2020, Art.52 amended Law 23 of 2015, Art.19, listing the AML/CFT supervisory bodies.

established in Law 124 of 2020 (Art.4), and a beneficial ownership directorate (DBF),⁶⁵ established to implement Law 129 of 2020.

44. For the purpose of conducting risk-based supervision, the SSNF can request from resident agents any information that it deems necessary (Law 124 of 2020, Art.3). More specifically, the SSNF has the authority to request from resident agents information and supporting documents related to their operations, activities, products, services, compliance manuals, among others deemed necessary for the execution of its supervisory functions or relevant to the adoption of AML/CFT preventive measures (Art.43). The SSNF can impose sanctions, as provided under Law 23 of 2015, for failure to comply with obligations under Law 124 of 2020 (Art.48). In addition, legal persons must provide accounting records and supporting documents whenever requested by a competent authority—defined as the DGI, MP or UAF⁶⁶—within the time period established in the request.⁶⁷ Competent authorities may also request the accounting records and supporting documents, or copies thereof, from the resident agent.⁶⁸

45. Under Law 23 of 2015, resident agents are required to undertake risk-based CDD, taking into account the types of clients, services and products offered, channels of distribution, and geographic location of its offices, and that of its clients and beneficial owners (Art.26 and 26A). Moreover, resident agents must ensure that documents, data, and information collected through the CDD process are kept up to date and are updated at a higher frequency for higher risk clients (Art.26), and that records are kept for at least five years (Law 23 of 2015, Art.29). When a client does not cooperate with CDD measures, resident agents are required not to open the account, enter into the business relationship, or process the transaction, and should report a suspicious transaction to the UAF (Art.36).

46. Resident agents are required to identify and verify the beneficial owners⁶⁹ of their clients and the nature of their business activities. Under Law 23 of 2015, basic CDD includes identifying the beneficial owner of a legal person or arrangement—or behind a client that is a natural person (Art.27(4))—and taking reasonable measures to verify the beneficial owner using relevant information obtained through reliable sources (Art.28(2)-(3)). Other basic CDD measures required for legal persons or arrangements include requesting the necessary certificates of incorporation and good standing, identifying its officers, directors, legal representatives, and signatories, and understanding the nature of the client’s business and the ownership and control structure (Art.28(1);(4)). Resident agents must also collect, and verify as appropriate, information on their clients for the purpose of determining the nature of their business activities (Art.38, as

⁶⁵ See paragraph 25

⁶⁶ Law 52 of 2016, Art.6(1), as amended by Law 254 of 2021, Art.22.

⁶⁷ Law 52 of 2016, Art.1, as amended by Law 254 of 2021, Art.17.

⁶⁸ Law 52 of 2016, Art.4, as amended by Law 254 of 2021, Art.20.

⁶⁹ The definition of beneficial owner has been harmonized across the AML/CFT law—Law 23 of 2015 (Art.4(4))—and the RUBF law—Law 129 of 2020, Art.2(3)—by Law 254 of 2021, Art.1 and 30, respectively. See paragraph 22 above for more information.

amended by Law 254 of 2021, Art.10), and obtain information and documents related to their clients' financial and transactional profile commensurate to the risk (Art.26B). Resident agents must conduct ongoing monitoring of operations performed through their services to ensure that these are aligned with the client's professional, business, financial, and transactional profile, and must adopt procedures to update CDD information periodically (Art.39, as amended by Law 254 of 2021, Art.11).

47. As of 2021, legal persons operating exclusively outside of Panama or whose sole activity is holding assets must provide accounting records to their resident agents annually.

Legal persons that do not carry out operations performed or having effects within Panama, or whose sole activity is to hold assets within or outside of Panama, are required to keep accounting records (*registros contables*)⁷⁰ and maintain supporting documents in the offices of its resident agent within Panama, or in any other location within or outside of Panama, for a period of at least five years.⁷¹ If the records and documents are not kept in the offices of the resident agent, the legal person must provide the resident agent, in writing, with information pertaining to the physical address where the records and documents are kept, and the name and contact information of the custodian. Moreover, these legal persons are required to provide to their resident agents, annually on April 30, their accounting records, or a copy thereof, from the fiscal period ending December 31 of the previous year.⁷²

48. Compliance with accounting records obligations is enforced by the DGI and is required of legal persons to maintain active registration status with the RPP.

Under Law 52 of 2016, resident agents are required to present sworn statements to the DGI annually on July 15, containing a list of their legal persons and indicating which maintain accounting records and supporting documents in the resident agents' offices in Panama, which keep the originals outside of Panama and copies and information on the location of the originals with the resident agent, and which comply with neither. The DGI can apply sanctions to legal persons falling in the third category (Art.3, as amended by Law 254 of 2021, Art.19), or more broadly against legal persons and resident agents for failing to comply with the obligations imposed in Law 52 of 2016—fines range from US\$5,000 to US\$5 million depending on the severity of the failure, magnitude of the impact, and recidivism. Where a legal person fails to comply with its obligations under the law, the DGI will order the RPP to suspend it (Art.7, as amended by Law 254 of 2021, Art.23).

49. Changes in resident agent or registration status require compliance with accounting records obligations.

Under Law 52 of 2016, in situations of change of resident agent, the legal

⁷⁰ Accounting records are defined as those that include clearly and precisely the operations of the legal person, its assets, liability and equity, and enable the determination of the financial situation of the legal person, and the preparation of financial statements (Art.6(5)). Supporting documents include contracts, invoices, receipts, or any other documentation necessary to substantiate the transactions performed by the legal person (Art.6(2)).

⁷¹ Law 52 of October 27, 2016 (Art.1), as amended by Law 254 of 2021 (Art.17).

⁷² With exception of publicly listed companies, publicly owned companies, and shipowners or charterers of ships registered exclusively under international service in Panama. Legal persons without commercial activities must provide information that demonstrates the value of their assets, as well as income and liability related to these assets. Legal persons with commercial activities must provide a diary or ledger, or in specified situations, a balance sheet.

person must provide the incoming resident agent, before registration of the designation in the RPP, its accounting records and supporting documents or copies thereof, to be kept at the resident agent's offices in Panama. In case of dissolution of the legal person, the accounting records and supporting documents, or copies thereof, pertaining to the previous five years, must be kept by the resident agent. The RPP will require express declarations of compliance with these requirements to register a new agent or the legal person's dissolution (Art.2, as amended by Law 254 of 2021, Art.18). A legal person that is suspended will need to provide its resident agent with its accounting records, or copy thereof, to be kept in the resident agent's offices in Panama, to be able to pursue reactivation (Art.1, as amended by Law 254 of 2021, Art.17).

50. In practice, supervision of resident agents by the DGI has been exclusively offsite and not risk based. The DGI started conducted supervision of resident agents in 2018, and currently conducts four offsite inspections cycles per year. For each offsite inspection, the DGI selects a random sample of 25 to 30 resident agents from those registered with its eTax system—the sample selections include resident agents that have received information requests in the past as well as those that have not, as a way of educating and raising awareness. The DGI issues a letter to the selected resident agents requesting information on five legal persons, including on the beneficial ownership, share registry, and accounting requests, and usually provides a 15 working days timeframe for response. The DGI then reviews the responses and follows up if information is missing. Findings of non-compliance are communicated to the SSNF, and supervision plans are aligned and coordinated. Notwithstanding, further cooperation is needed, notably on assessing the risk of resident agents and adopting a risk-based approach to the DGI inspections.

B. Enhanced Controls over Nominee Services

51. Nominee arrangements pose higher ML risks as they add a layer in the ownership or control structure of a legal person, and therefore require additional controls. The use of nominee directors, notably in Panama, featured prominently in the coverage of the leaked documents of Panamanian law firm Mossack Fonseca.⁷³ In recognition of these higher ML risks, the FATF standards require countries to take measures to “prevent and mitigate the risk of misuse of nominee shareholders and nominee directors.” These measures include either prohibiting nominee arrangements, or adopting different combinations of licensing and disclosure requirements, whereby the information on the status of the nominee shareholder or director and on the identity of the nominator are recorded by a public authority or alternative mechanism.⁷⁴

⁷³ As noted in a recent World Bank publication on nominee directors, a Panamanian employee of law firm Mossack Fonseca served as nominee director for tens of thousands of companies, without “any ties to beneficial owners or any corporate managerial experience,” and it appears that as of the date of publication, she continued to be listed as an active member of management for more than 16,000 companies in Panama. “Nielson, Daniel Lafayette; Sharman, Jason Campbell. 2022. Signatures for Sale: How Nominee Services for Shell Companies are Abused to Conceal Beneficial Owners. © Washington, DC: World Bank. <http://hdl.handle.net/10986/37335> License: [CC BY 3.0 IGO.](https://creativecommons.org/licenses/by/3.0/)”

⁷⁴ FATF Recommendation 24, Interpretative Note 13

52. As part of its offsite supervision, the SSNF has been requesting from resident agents information on nominee services, including the names of the legal persons for which they act as nominee directors or shareholders, since 2018. With the adoption of Agreement JD-01-2020 of June 25, 2020, lawyers and authorized public accountants, among which resident agents are included, must disclose in the course of onsite inspections by the SSNF the names of legal persons for which they provide services as nominee director (Art.9), and provide access to information and documents supporting the services provided and/or business relationship, as well as contracts, agreements, minutes, or others, in the absence of which they must provide a signed declaration (Art.4). The SSNF started supervising and enforcing compliance with this agreement in 2021.

53. Since 2022, resident agents are required to provide annual sworn statements to the SSNF containing information on nominee services they provide. Regulation (*Acuerdo*) JD-02-2022 of July 28, 2022, replaces Agreement JD-01-2020 (Art.19). In particular, Article 11 requires lawyers and authorized public accountants to submit annual sworn statements to the SSNF on July 15 containing information on: (i) the name, ID number, occupation or profession, nationality, and address of those who have been designated as nominee directors or shareholders, as well as the natural person for whom or on whose behalf the services are being provided, directly or indirectly; (ii) the name and registration of the legal persons for which nominee services are provided; and (iii) any other additional information requested in connection with the provision of these services. Resident agents of legal persons incorporated or registered in Panama are also required to provide this information to the RUBF in connection with legal persons for which they provide nominee services. Based on the sworn statements received, the SSNF identified over 800 resident agents that also provide nominee services. These sworn statements are being used to inform the SSNF onsite supervisory plan for 2023, which includes thematic inspections on nominee services.

54. Regulation JD-02-2022 establishes additional controls over nominee directors and shareholders. Clients requiring nominee services are considered higher risk and therefore must be subject to enhanced due diligence (Art.6(b)). Lawyers and authorized public accountants must adopt effective measures that enable adequate understanding of the purpose behind nominee services and verify that the latter is legitimate (Art.10). For this purpose, they are required to: (i) conduct risk-based due diligence on nominees; (ii) have signed contracts, agreements or similar with their client, identifying the natural person for whom the service is being provided and on whose behalf the nominee is acting, directly or indirectly; (iii) document the express acceptance of the nominee for each legal person for which he/she acts, and his/her understanding of the purpose of the arrangement and the nature of the business and activities; and (iv) provide at least eight hours of AML/CFT training to those who will perform the function of nominees, followed by annual refreshers. Lawyers and authorized public accountants must maintain adequate, precise, and up to date supporting documents for each of these measures (Art.12).

55. More broadly, lawyers and authorized public accountants are required to know the nature of the business of their clients. Under Article 13 of Regulation JD-02-2022, this includes the shareholding and control structure, the source of funds or wealth of the client and beneficial owner—i.e., the origin and domestic or foreign source. Resident agents also need to know this

information for the legal person(s) for which they provide services, including the purpose of the legal structure. Lawyers and authorized public accountants must verify through independent and trusted sources the activities declared when the client and/or beneficial owner is deemed high risk, when transactions are not in line with the activities declared, or when they identify unusual transactions per Law 23 of 2015.

56. In addition to these comprehensive controls, consideration should also be given to making nominee status public through the RPP. When allowing for nominee directors and shareholders, the FATF standards call on countries to apply either transparency requirements, licensing requirements, or both. In Panama, while lawyers and authorized public accountants are obliged entities when providing nominee services, there is nothing in the Law 23 of 2015 that expressly requires nominees to be licensed—*i.e.*, whether someone who is not licensed as a lawyer or authorized public accountant could provide these services—in which case, the licensing requirements would not be fully satisfied. If not clear under current legislation, the authorities should consider adopting licensing requirements for nominee services, and/or requiring nominee status to be disclosed publicly, for instance through the RPP, which already includes public information on the board of directors.

C. Supervision: Implementing and Fine-Tuning a Risk-Based Approach

57. As obliged entities, resident agents must register with the SSNF in accordance with Article 44 of Law 124 of 2020. The SSNF can⁷⁵ and intends to publish a list of all registered obliged entities, including a list of registered resident agents, on its website by the end of 2023. Previously, obliged entities were required to fill out a form available on the SSNF's predecessor's website. Resolution No.S-010-2021 of December 2, 2021, established the SSNF Online (*SSNF en línea*), through which obliged entities, including resident agents, can register directly online. New resident agents or resident agents not previously registered with the SSNF had 15 business days to do so through the SSNF Online platform, although enrollment of new resident agents is still ongoing. For resident agents previously registered with the SSNF or its predecessor, the process of registration with the SSNF Online has been staggered, starting with enrollment of law firms considered high or medium risk, before turning to the remaining law firms and independent lawyers.

58. While the total number of resident agents in Panama is currently in flux, the SSNF expects the full universe to be registered by the end of the year. Considering both the SSNF's predecessor's database, which was transposed electronically in 2016, and the registrations through SSNF Online, there are 4,798 resident agents in total registered with the SSNF, not all of which are actively providing resident agent services.⁷⁶ Through large scale enrollment campaigns, notably

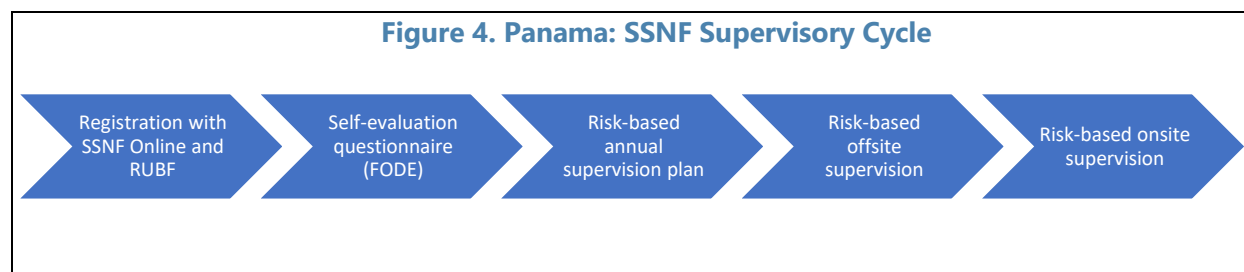
⁷⁵ Law 124 of 2020, Art.45.

⁷⁶ The RPP also has a number of resident agents based on legal person registrations, which is higher than the SSNF number. However, the understanding of the SSNF is that this number includes a significant amount of "double counting", as one resident agent may appear under numerous variations of the same name. The adoption and enforcement of the CUR, at the RUBF, UAF, SSNF and RPP levels, will enable a consolidation of this information and consistency going forward.

those done in conjunction with the RUBF, as of April 2023, 3,670 of these resident agents are registered through the SSNF Online platform and with the RUBF. These resident agents have been assigned CUR, which as of June 2023, notaries will be required to verify when registering legal persons in the RPP. The expectation is to make the CUR mandatory for RPP registration later in the year, through automated validation, once outreach and enrollment campaigns have been completed.

59. To understand and assess the risks in the sector, the SSNF has been using offsite supervision tools since 2018 and has so far assigned risk ratings to 1,585 resident agents. The SSNF has been scaling up offsite supervision of DNFBPs over recent years, reaching a total of 3,064 obliged entities across all sectors in 2022, up from 379 in 2021, 90 percent of which in professional sectors including resident agents. The creation and roll out of the SSNF online platform, through which the offsite supervision forms are now sent to DNFBPs, enabled this significant increase. For resident agents, offsite supervision forms request information regarding client portfolio, list of legal persons under a resident agent, services provided, and number and geographic location of beneficial owners. Based on this information collected through offsite supervision from 2018 to 2022, the SSNF has so far classified 1,585 resident agents between high, medium, and low risk, with a total of 410 resident agents rated high risk—118 of which are law firms, and 292 of which are independent lawyers.

60. With the increase in resident agents now registered through the SSNF Online platform, the SSNF is introducing a self-evaluation tool to help inform a risk-based approach to the offsite supervision. The self-evaluation tool—*Formulario de Datos Extra Situ* (FODE)—includes 114 questions covering a number of factors, such as size and type of legal person, years in operation, client base, geographic location, products and services, and delivery mechanisms. This initial input is intended to generate an automated risk rating, which will be used to design a risk-based supervision plan for the year, starting with an offsite supervision plan. The findings of the offsite supervision will in turn inform the onsite supervision plan. See Figure 4 for an illustration of the SSNF supervisory cycle following the introduction of the self-evaluation tool.



61. The SSNF conducts risk-based onsite inspections of resident agents, informed by the offsite supervision. Onsite supervision is aimed at reviewing the effectiveness of the resident agent's beneficial ownership identification and verification process, with special attention to the treatment of high-risk clients, activities, and jurisdictions, and legal persons for which nominee services are provided. For this purpose, the SSNF relies on interviews and reviews samples of client

files, in both digital and physical form. Resident agents are required to complete a template providing information on beneficial ownership for a sample of clients. This includes information on controls implemented by the resident agent to identify and verify the beneficial owner of a legal person, other measures adopted to mitigate the ML/TF risks identified, and the questionnaire used to identify and verify the beneficial owner. The onsite inspection then verifies the documents evidencing the identification and verification of the beneficial owner (*e.g.*, ID document, share certificate, certification or sworn statements, etc.). It also validates information received from resident agent through other sources, such as documents evidencing services rendered (*e.g.*, invoices, emails, contracts). Finally, supervisors also review evidence of controls implemented, such as United Nations listing, World Check, U.S. Office of Foreign Assets Control (OFAC), among others.

62. Onsite supervision of resident agents has steadily increased since 2019, although the risk-based supervisory framework needs to be fine-tuned to ensure that higher risk resident agents are subject to higher frequency inspections. Onsite inspections of resident agents went from 17 and 18 inspections conducted in 2019 and 2020, respectively, to 46 in 2021 and 90 in 2022. These figures correspond to the number of resident agents, and represent higher numbers of legal persons. For instance, in 2022, the 90 resident agents subject to onsite inspections represented a total of 111,116 legal persons, of which 1,790 sample files were reviewed by the SSNF. The plan for 2023 is to conduct 100 onsite inspections. Despite the steady increase, it falls significantly short of the 410 resident agents currently rated as high risk, which according to the May 2023 draft supervision manual,⁷⁷ should be subject to annual onsite inspections. Instead of using a sample of resident agents rated high risk under current parameters, the SSNF should consider fine tuning its risk-based supervisory tools. For instance, consideration could be given to further calibrating the risk parameters to identify a narrower set of higher risk resident agents, and/or extending the supervisory cycle for high-risk resident agents from one year to 18 months. The SSNF reported that it is currently considering adjustments to the supervisory cycle criteria.

63. Sanctions have also mostly been increasing since 2019, with the SSNF observing greater levels of compliance in the sector. Of the 90 resident agents subject to onsite inspections in 2022, most were found to have adequate controls and processes in place for identifying beneficial ownership (84 percent), while the remaining resident agents were either subject to remedial action plans and follow-up supervision, or were referred for sanctions proceedings for noncompliance. Sanctions went from one in 2019, to five and four in 2020 and 2021, respectively, and reaching 23 in 2022. So far, nine sanctions have been imposed for failure to comply with AML/CFT obligations in 2023.

⁷⁷ The SSNF is in the process of approving the up-dated supervision manual.

D. Bearer Shares: Contained but not Abolished

64. In spite of reforms adopting custodial requirements, Panamanian corporations can still issue bearer shares.⁷⁸ Law 47 of August 6, 2013, establishes a custodial regime for bearer shares (*acciones emitidas al portador*) intended to immobilize them. It requires owners of bearer shares to designate an authorized custodian to maintain custody of the share certificates (Art.3). The issuing corporation must authorize the custodial regime for bearer shares, which must be reflected as such with the RPP, and the owner of bearer shares must provide the issuing corporation the name, address and contact point for the authorized custodian (Art.5, as amended by Art.2 of Law 18 of April 23, 2015).⁷⁹ Failure to deliver the bearer shares certificate to an authorized custodian within the timelines established in the law will result in the owner's inability to exercise its political and economic rights before the issuing corporation (Art.21). Under Law 18 of 2015, any bearer shares issued prior to the entry into force of Law 47 of 2013 must either be placed in custody or be converted into nominal shares by December 31, 2015 (Art.4).

65. Law 47 of 2013 requires bearer shares certificates to be held by authorized custodians. Local authorized custodians must be either a general license bank or trust companies licensed by the SBP, a brokerage house licensed by the securities regulator (*Superintendencia del Mercado de Valores*), or a lawyer in good standing with the Supreme Court of Justice (Art.6). Foreign authorized custodians include banks, trust companies, and financial intermediaries duly licensed in jurisdictions that are members of the FATF or FSRBs and registered with the SBP (Art.7).⁸⁰ Authorized custodians must maintain records of all documents related to the custodial arrangement for a period of at least five years, and make this information available to competent authorities or the resident agent of the issuing corporation upon request (Art.10-11).

66. Owners of bearer shares must provide authorized custodians a sworn statement containing specific information, although beneficial ownership information is not required. The sworn statement must include information on the identity of the owner of the bearer shares—specifically, full name, nationality or country of incorporation, ID number or registration number, address, telephone number, email, and fax—and of the resident agent of the issuing corporation (Art.8-9). Based on these requirements, a declared owner of the bearer shares could be a legal person, and therefore there is no requirement to identify the beneficial owner of the shares as part

⁷⁸ Per the FATF definition, "*Bearer shares* refers to negotiable instruments that accord ownership in a legal person to the person who possesses the physical bearer share certificate, and any other similar instruments without traceability. It does not refer to dematerialized and/or registered forms of share certificate whose owner can be identified" (FATF Glossary).

⁷⁹ Failure to do so within the established deadlines results in the issuing corporation cancelling the bearer shares.

⁸⁰ While relevant regulators must maintain up to date public lists of authorized custodians, it seems these may not be up to date—there are currently three local and one foreign authorized custodians registered with the SBP, although the lists have not been updated since 2018 and 2019, respectively. See

<https://www.superbancos.gob.pa/en/custodians/list> Moreover, there are currently 312 authorized custodians registered with the Supreme Court of Justice, although the list has not been updated since 2018. See https://www.organojudicial.gob.pa/uploads/wp_repo/uploads/2017/08/Lista-de-Abogados-y-Firmas-registradas-como-Custodios-de-Acciones-emitidas-al-Portador.pdf

of the sworn statement. Notwithstanding, the SSNF reported that it ensures that resident agents identify and verify the beneficial owners of legal persons using bearer shares as part of its onsite supervision.

67. Bearer shares are still a feature of Panama’s corporate landscape, and the SSNF is collecting information to obtain a clearer picture. According to Panama’s mutual evaluation, as of March 31, 2017, it was reported that 2,282 companies filed for custody of bearer shares. Panama does not currently have information on the total number of bearer shares in circulation. As of 2023, the SSNF is collecting through offsite supervision, and verifying through risk-based onsite supervision, information on the number and names of resident agents registered as authorized custodians before the Supreme Court of Justice, a list of Panamanian corporations with bearer shares, the share certificate numbers, number of shares, and value of shares.

68. Panama should ensure that corporations can no longer issue bearer shares and require custodians to hold beneficial ownership information, in line with international standards. Under the FATF standards, as revised in March 2022, countries should not permit legal persons to issue new bearer shares and should adopt measures to prevent the misuse of existing ones (Recommendation 24). For existing bearer shares, the FATF standards call on countries to either convert them into registered shares or immobilize them, by requiring that they be held by a regulated financial institution or professional intermediary and ensuring timely access to information by competent authorities (Interpretative Note 12). The FATF Guidance on Beneficial Ownership of Legal Persons, published in March 2023, clarifies that in the context of immobilization of bearer shares, the regulated custodians should undertake “full identification of the bearer to be able to record the relevant information for competent authorities” (¶1119).

FINTECH AND VIRTUAL ASSETS

A. Financial Technologies

69. Financial technology (so called “fintech institutions”) operating in Panama are granted an operational notice by the Ministry of Industry and Commerce (“Ministerio de Industria y Comercio-MICI”) before starting operations. The MICI is the authority responsible for issuing the operational notices (“Aviso de operación”) to any company conducting commercial or industrial activities within the Panamanian territory, including fintech institutions delivering financial services/products. The operational permit process is limited to complying with all technical requirements as per Law No. 42 of 23 July 2001, applicable to finance companies; and Law No. 48 of 23 June 2003, applicable to money remitters, both considered financial institutions under Panama’s AML/CFT Law (Law No. 23 of 2015), as defined by the Financial Action Task Force (FATF) standard. All fintech institutions at the time of the mission were granted operational permits as subsidiaries of finance companies and/or money remitters.

70. The process for registering a new company, including for fintech institutions, and obtaining the operational notice from MICI has been fully automated. The process is regulated

by Law No. 5 of November 2007 which requires all applicants (natural or legal persons) to obtain the operational notice to conduct any commercial or industrial activity, including for specific regulated activities⁸¹ as defined in Law No. 5. Using a web-based platform – “*Panama Emprende*” – all applicants upload the necessary legal and technical information, including the name of the company, personal information on the owners, directors, and shareholders of the company, anticipated activity(ies) to be conducted (i.e., manufacturing, construction, retail business, wholesale business, etc.), physical location of operations, tax identification number, etc. However, no beneficial ownership information is submitted as part of the web-based application process.

71. The granting of an operational permit includes a limited number of measures addressing AML/CFT. The authorities indicated that all applications for an operational permit include a general/high-level assessment of AML/CFT issues, mostly compliance based. In the case of regulated activities, as described in Law No. 5 of 2007, these are subject to additional requirements, review, and approval by the sector specific authority. For example, if the disclosed regulated activity includes or is related to the banking or the securities sector, then the operational notice will not be issued until the applicant obtains an approval (by way of a Board Resolution) issued by the SBP or the SMV, respectively.

72. There are inconsistencies in determining which fintech institutions providing credit, investment, and payment related services should be subject to additional reviews and AML/CFT obligations. At the time of the mission, there were twenty fintech institutions operating within Panama’s financial sector and subject to AML/CFT obligations (Law No. 23, of 2015). Thirteen of these fintech institutions had been granted operational permits by the *MICI* and Resolutions had been by the SBP as they were conducting regulated activities, as per Law No. 5 of 2007. There were also seven additional fintech institutions that at their own initiative approached the SBP to undertake a review of their activities to determine whether they should be subject to AML/CFT obligations and SBP supervision thereof. The authorities indicated that, after reviewing the activities disclosed by these fintech institutions, it was determined that the activities were considered regulated and subject to the requirements of Law No. 5 of 2007, Law No. 23, of 2015 and supervision of AML/CFT obligations by SBP. The authorities also indicated that there are also other institutions conducting similar activities in Panama that have not been reviewed or granted a Resolution. Against this background, it is possible that other fintech institutions may be conducting regulated activities using digital channels and new technologies without being subject to AML/CFT obligations and supervision thereof by the SBP.

73. The terms and definitions used in Law No. 23 of 2015 (AML/CFT Law) need further clarification. Article 22 of the AML/CFT Law provides the list of reporting entities in Panama. Under 22(g), reporting entities subject to AML/CFT obligations include those institutions “issuing payment means and electronic money” (“*entidades emisoras de medios de pago y dinero electrónico*”), while Article (22)(1)(f) limits the coverage of “processors” to those processing credit or debit cards. In the

⁸¹ Under Article 2(4), regulated activities requiring previous approval include: banking, trust, insurance, re-insurance, real estate, pawn shops, money remitters, finance companies, brokerage firms, investment advisors, and stock exchanges.

case of Panama, these institutions are under the supervision of the SBP, including “fintech institutions” delivering these financial products/services. However, given the narrow interpretation of the concept of “issuing payment means and electronic money” as applied in Panama, and the lack of further clarification or guidance, it is probable that there are other fintech institutions that fall outside the concepts stated under Articles 22(1)(f) and 22(g) which are not subject to a uniform and consistent authorization process, AML/CFT obligations, and supervision by a designated competent authority like the SBP or SMV.

B. Virtual Assets/Virtual Asset Service Providers

74. Anecdotal evidence suggests that a very limited number of customers are conducting digital transactions (so called “virtual assets”) in Panama. These transactions involved the sales of digital assets processed through exchanges abroad, with the proceeds being deposited into the customer’s personal account at a local financial institution. Meetings with the financial institution providing these financial services to its customers revealed that additional enhanced customer due diligence measures are applied to the few customers allowed to conduct these transactions, including providing the nature of the transaction(s) and the country of origin of the service provider(s) (so called exchanges) before a deposit transaction was accepted. Transactions involving the purchase of digital assets were not permitted.

75. Panama does not currently have a legal framework in place covering virtual assets/virtual asset service providers (VA/VASPs) activities. Two previous bills of law had been debated and approved by Congress in 2022 and 2023, respectively, but both bills were vetoed by the President of the Republic of Panama due to many concerns including operational, regulatory and supervisory aspects, risk management issues, and AML/CFT concerns. Also, the Government of Panama did not consider adequate nor timely the proposed VA/VASP bills as approved by Congress, considering Panama’s protracted grey listing by the FATF/ICRG as a jurisdiction with strategic deficiencies in its AML/CFT regime. Following the last veto, the bill of law was sent to the Supreme Court for consideration.

76. AML/CFT policies and measures should be reviewed and updated to ensure they are effective and responsive to emerging risks. The authorities should assess potential ML/TF/PF risks emerging from VAs/VASPs and identify measures to prevent or mitigate these risks. The results of such assessment should provide the basis for regulating and supervising VAs and VASPs in line with FATF Recommendation 15.⁸² The content and timing of the regulatory framework should be coordinated with broader reforms to the legal framework for payment services providers (see separate technical note) and in line with the clarifications needed in the AML Law (Law 23) as previously mentioned.

⁸² In line with and as established by the legal principles and legislative process of the Republic of Panama.

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