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Panama: Detailed Assessments of Observance of Standards and Codes for Banking Supervision, Insurance Supervision, and Securities Regulation

These detailed assessments of the observance of standards and codes in the financial sector of Panama were prepared by a staff team of the International Monetary Fund. They are based on the information available at the time the report was completed in September 2006**.** The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of Panama or the Executive Board of the IMF.

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REPUBLIC OF PANAMA

DETAILED ASSESSMENTS OF OBSERVANCE OF STANDARDS AND CODES

SEPTEMBER 2006

INTERNATIONAL MONETARY FUND
MONETARY AND CAPITAL MARKETS DEPARTMENT

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ACRONYMS

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

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

I. Assessment of Observance of the Basel Core Principles

A. General

1. **This assessment of observance of the Basel Core Principles (BCPs) for Effective Banking Supervision has been completed as part of an evaluation of Panama's observance of regulatory standards for the financial sector**.[2] The assessment is a follow up to the 2001 BCP assessment that reviewed the regulation and supervision by the Superintendency of Banks (SdB).

2. **The SdB has established clear objectives for the supervision of banks and fiduciary institutions.** The SdB was created by the Decree-Law No. 9 1998 (the Banking Law), as an autonomous body to: (i) promote public trust and integrity of the banking sector; (ii) prevent unauthorized people from running banks; (iii) ensure the soundness and efficiency of banks; (iv) contribute to the development of the international financial center; (v) control the adequacy of capital and liquidity banking ratios; (vi) develop procedures to facilitate national and international coordination with other supervisory bodies; and (vii) sanction banking activities carried out in contravention of legal provisions.

3. **The assessors observe the substantial autonomy provided to the SdB** to accomplish its legal mandate. Article 14 of the Banking Law states that *"…Once appointed, neither the Directors nor the Superintendent can be removed with the only exceptions of the reasons included in this Decree-Law, according to the decision of the Supreme Court of Justice…."* Article 15 provides a closed list of six reasons for removing the Superintendent and Directors. Together, the two articles provide a legal foundation for independence that limits political pressure on supervisory tasks.

4. **The autonomy is reinforced because the SdB has independent resources that derive from fees charged supervised entities.** Quantitatively, the charging for on-site inspection is the most relevant service to collect funds.

5. **The SdB has two ruling bodies—the Superintendent and the Board of Directors.** The Superintendent has a five-year mandate renewable just on one occasion. The five Directors have an eight-year mandate, also renewable. The superintendent is responsible for technical bank supervisory tasks and day-to-day administration of the Superintendency. The Board has two basic functions: developing a sound regulatory framework and counseling the superintendent. The SdB has 236 employees. About 200 employees have completed university studies in law or finance. They actively participate in seminars and educational events.

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[2] The assessment was conducted by Mr. Alvir Alberto Hoffmann (consultant to the Fund from the Central Bank of Brazil) and Mr. Jose Antonio Monreal (private consultant to the Fund and formerly with the Central Bank of Spain).

6. **Two other categories of deposit-taking institutions are very small by comparison with the banking sector.** The credit cooperatives are supervised by the Panamanian Autonomous Institute for Cooperatives (IPACOOP), and the saving and credit institutions are supervised by the National Mortgage Bank (BHN).

7. **The differences in regulatory treatment for banks, cooperatives, and savings and credit institutions lead to regulatory arbitrage.** Examples include the large cooperatives, which compete with banks for deposits and loans, but do not need to meet the same level of requirements as banks. In addition, a savings and credit institution was established after the owners had been sanctioned by the SdB for nonauthorized banking activities. Some consideration of greater harmonization is needed, including exploration of whether some of these activities could be brought under SdB supervision.

Information and methodology used for assessment

8. **The assessors were guided by the 1998 Basel Core Principles assessment methodology.** This work could not have been completed without the helpful assistance and excellent cooperation provided by the SdB staff, for which the assessors are grateful. Apart from the 2001 assessment, sources used to carry out the assessment included: (i) interviews with private sector managers and the bankers association; (ii) interviews with officials from the National Bank of Panama, which is a public banking institution that carries out commercial banking activities—even acting as the only clearing house in the country—and acting also as a governmental agency for development and financial support to certain economic sectors; (iii) meeting with a private auditing firm; (iv) intensive discussions with the SdB staff; and (v) reviews of laws, accords, and regulation issued by the SdB since 1998.

Institutional and macro prudential setting, market structure overview

9. **There are three types of banking licenses.** The differences among the license types and the number of banks within each type are as follows: (i) there are 39 general license banks (including two government-owned banks) that are able to conduct the full range of domestic and international banking activities; (ii) there are 29 international license banks that are able to carry out banking activities only with nonresidents; and (iii) there are 5 representative offices of foreign banks, whose activities in Panama are limited to liaison function with the head office, research, and marketing.

10. **The banking system is the largest in the Central America region, with consolidated assets representing more than three times Panama's GDP.** Banking system assets on a nonconsolidated basis were $39.6 billion, and on a consolidated basis (including local and foreign subsidiaries of Panamanian-headquartered banks) were $45.8 billion at end-March 2006. The substantial majority of banking activities are carried out through general license banks, representing about 83 percent of banking system assets and liabilities, with the remaining assets and liabilities in international license banks.

11. **By comparison, there are about 276 credit cooperatives (assets $860 million) and four small saving and credit institutions (assets $70 million).** These two sectors are small, and the level of supervision is substantially less than that provided by the SdB.

12. **The banks continue to report satisfactory earnings** due to increasing fee income and lower operating costs that combined have outpaced a moderate decline in net interest income. Through the first quarter 2006, the banking system reported 2.4 percent return on assets (annualized), which is up from 2.1 percent for all of 2005. Return on equity for the first quarter was 20.2 percent, up from 15.7 percent for all of 2005. **System nonperforming loans are low and provision coverage is adequate.** At end March 2006, past due loans totaled $373 million or 1.6 percent of system loans, which is unchanged from end 2005. Provisions for loan losses were 2 percent of the loans and provided a cover of 126 percent of past due loans.

13. **The banks and banking system have remained well-capitalized.** At end-March 2006, system regulatory capital (Basel I rule) was a strong 17.2 percent. The private Panamanian owned banks report 14.7 percent regulatory capital, which remains well above the 8 percent regulatory minimum requirement. Equity to assets as a measure of capital adequacy for the system was a strong 12.9 percent.

14. **Financial reporting by banks and banking groups must conform to international accounting standard (IAS) or U.S. Generally Accepted Accounting Principles (US GAAP).** The reporting conforms to international best practice, which promotes high transparency in the financial sector. The requirement for the use of high-quality financial reporting is further complemented by the 2005 fiscal reform law, which established IAS as the only accounting standard for commercial firms. Under current regulation, every bank must designate a compliance officer and establish a set of corporate governance rules.

General preconditions for effective banking supervision

15. **Real GDP expanded by 6.4 percent in 2005 following growth of 7.6 percent in 2004,** while unemployment fell substantially to 9.8 percent of the labor force, and the external position improved. Inflation has remained low but rose to 3.4 percent due to the pass-through of increases in oil prices. As a result of the strong economy and new legislation to enhance revenues and curtail outlays, the fiscal deficit is estimated to have fallen somewhat below the target of 2.6 percent of GDP in 2005.[3]

16. **Domestic payment system is located in the Banco Nacional de Panama that also acts as dollar provider to the banking industry.** In this field, a minor role is played by a private institution because of historical reasons. By law, the U.S. dollar is equivalent to the

[3] Economic background indicators are revised since the release of the Public Information Notice (PIN) No. 06/29, March 14, 2006, at http://www.imf.org/external/np/sec/pn/2006/pn0629.htm.

national currency (the Balboa) and is recognized as legal tender, which has helped to keep inflation low and has lowered exchange-rate risk in international commerce.

17. **The extent of a traditional safety net is limited as there is no depositor protection scheme nor a central bank to serve as the lender of last resort.** To compensate, banks are subject to strict liquidity requirements and close liquidity monitoring by the SdB. Limited deposit protection is provided in the event of a bank failure as depositors have priority in liquidation on the bank's assets for up to $5,000 per depositor.

18. **To deal with banking crisis, three broad processes exist for intervention**: (i) the appointment of an advisor; (ii) substitution of managers and intervention of the bank in difficulty; and (iii) liquidation of the entity. The experience with the use of the power to appoint an advisor has been generally effective. Since the creation of the SdB, there have been five instances when an advisor has been appointed and in only one of these instances did the bank subsequently fail. Currently, three banks are in the process of being liquidated.

B. Detailed Principle by Principle Assessment

Table 1.1 Detailed Assessment of the Observance of the Basel Core Principles

Principle 1.	**Objectives, Autonomy, Powers, and Resources** An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks. Each such agency should possess operational independence and adequate resources. A suitable legal framework for banking supervision is also necessary, including provisions relating to the authorization of banking establishments and their ongoing supervision; powers to address compliance with laws, as well as safety and soundness concerns; and legal protection for supervisors. Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.
Principle 1(1)	An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks.
Description	The SdB was created by the Decree-Law 9 1998 (the Banking Law), as an autonomous body to: • Promote public trust on the Panamanian banking sector; • Promote integrity of banking system; • Prevent unauthorized people to run banks; • Ensure the soundness and efficiency of banks; • Contribute to the development of the Panamanian International Financial Center; • Control the sufficiency of capital and liquidity banking ratios; • Control the adequacy of banking procedures in order to facilitate national and international coordination of supervisory bodies; and • Sanction banking activities carried out contravening legal provisions. The SdB has established clear objectives for the supervision of banks and fiduciary institutions. Other deposit-taking institutions include credit cooperatives supervised by the Instituto Panameño Autónomo Cooperativo (IPACOOP) and saving and credit institutions supervised by the Banco Hipotecario Nacional (BHN). Responsibilities and objectives are set out by law.

Table 1.1 Detailed Assessment of the Observance of the Basel Core Principles

Assessment	Largely compliant
Comments	While the cooperatives and savings and loans are not systemically important, the supervision by BHN and IPACOOP lacks comparability to the SdB. The mission team observed that the largest of the cooperatives are competitive in deposits and loans with banks, and, in the case of at least one savings and loan, the law did not allow the regulator to prevent its establishment, even though the owners were sanctioned by the SdB for nonauthorized banking activities. Some consideration for greater harmonization is needed, including exploration of whether some of these activities could be brought in under SdB supervision. Other regulated financial activities closely linked to banks include the insurance and securities firms, which are included within larger banking groups for which the SdB is already considering these risks on a consolidated basis. Although a framework for cooperation among the insurance and securities supervisors is in place, differences in terms of resources and supervisory approaches create inconsistent levels of supervision across the entire banking group. Weaknesses in supervision are particularly noted for insurance firms because the Superintendency of Insurance (SSRP) has severe resource constraints (as noted in the International Association of Insurance Supervisors (IAIS) assessment). In some instances, the SdB has carried out inspections of the more relevant bank-owned insurance firms. In May 2005, SdB, CNV, and SSRP signed a Memorandum of Understanding (MOU) for information exchange and collaboration.
Principle 1(2)	Each such agency should possess operational independence and adequate resources.
Description	The SdB autonomy is defined by the Article 14 of the Banking Law*"… Once appointed, neither the Directors nor the Superintendent can be removed with the only exceptions of the reasons included in this Decree-Law, according to the decision of the Supreme Court of Justice…."* To complete the former, Article 15 provides a closed list of six reasons for removing the Superintendent and Directors. Together, the mentioned articles provide a legal regime basically founded on independence, an important condition for limiting political pressure on supervisory tasks, basically technical in nature. The SdB manages its own budget, and the vast majority of its funding comes from supervised entities that must pay for the array of services they receive from the public agency. Quantitatively, on-site inspection is the most relevant service to collect funds. The SdB has two ruling organs (i) the Superintendent and (ii) the Board of Directors. The Superintendent has a five-year mandate renewable just on one occasion. The five Directors have an eight-year mandate, also renewable. The Superintendent is responsible for technical supervisory tasks and runs the SdB on a daily basis. The Board has two basic functions: developing a sound regulatory framework and counseling the Superintendent. The Board of Directors is comprised of representatives from the private sector and does not include representatives from banks.
Assessment	Compliant
Comments	There has been some turnover in senior positions (including at the director level) since the previous evaluation for different reasons. Taking into account the high costs for preparing high-level supervisors, some modification to legislation may be warranted to ensure professional career streams and achieve continuity in senior professional staff

Table 1.1 Detailed Assessment of the Observance of the Basel Core Principles

	through changes in governments. Currently, the SdB is designing a career plan aimed at improving the long-run perspectives of its employees. In this realm, a well-structured pension-benefit plan could be considered to retain staff.
Principle 1(3)	A suitable legal framework for banking supervision is also necessary, including provisions relating to authorization of banking establishments and their ongoing supervision.
Description	The Banking Law provides the SdB with broad power to issue or deny a banking license. According to Article 21, it is prohibited to carry out banking operations unless previously a license is obtained. There are three different licenses: (i) general license, which allows domestic and international banking activities; (ii) international license, which allows primarily nondomestic-banking activities; and (iii) representative office license, which restricts activities to representation. Foreign banks requesting authorization to the SdB must count with the previous approval from their home supervisor. The SdB is also empowered by law for full access to the supervised entities for inspections. The licensing decisions are taken by the SdB without interference of any other governmental body.
Assessment	Compliant
Comments	
Principle 1(4)	A suitable legal framework for banking supervision is also necessary, including powers to address compliance with laws, as well as safety and soundness concerns.
Description	The Banking Law provides the SdB with broad powers to sanction managers, directors, banking employees, and others involved in violations against its commands. Depending on the nature of the breach of laws or regulations, the SdB can impose different sanctions, i.e., private reprimand, public reprimand, and fines. Depending on the nature of the breach of law or regulation the SdB may suspend, remove, or disqualify managers from exercising his or her office, and/or may declare the intervention, reorganization, or liquidation of a bank (see BCP 22). The SdB has unfettered access to banks' files in order to review compliance with internal procedures as well as applicable laws and regulations.
Assessment	Compliant
Comments	Sanctions imposed by the Superintendent can be appealed to the SdB's Board of Directors; however, there is no indication that this has affected SdB independence.
Principle 1(5)	A suitable legal framework for banking supervision is also necessary, including legal protection for supervisors.
Description	Executive Decree 49 of 1998 establishes a veracity presumption in favor of the supervisory personnel as to their declarations. Although law does not provide statutory protections for SdB personnel, Decree 49 provides that the actions of SdB personnel are to be presumed to have been taken in the public interest unless it can be proven otherwise. Efforts are underway for the SdB to purchase an indemnity policy that would cover the expenses of SdB from litigation. To date, there has not been a meaningful record of legal demands against the SdB staff.
Assessment	Materially noncompliant
Comments	The acquisition of an insurance policy to cover expenses derived from lawsuits against officials of the SdB due to actions executed in good faith during the exercise of their public functions was included in the budget for 2005, which was approved by the National Assembly. The procedures for the acquisition have started; however, the SdB

Table 1.1 Detailed Assessment of the Observance of the Basel Core Principles

	has not received the necessary approval from the General Controller's office, apparently due to budgetary constraints.
Principle 1(6)	Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.
Description	Article 4 of Law 36 of 1995 authorizes the SdB to collaborate with the Financial Intelligence Unit (the FIU), which is the central unit that analyzes the currency transactions and suspicious transactions reports. In accordance with Article 264 of Decree Law 1 of 1999, the Securities Commission (CNV) may solicit assistance to the SdB in relation to securities issues of a bank. An institutional memorandum of understanding was signed in May 2005 with the Superintendency of Insurance and with the National Securities Commission to allow for greater cooperation for supervisory purposes, particularly for financial groups. Article 17 of the Banking Law authorizes the SdB to establish systems of cooperation with foreign supervisors to strengthen control mechanisms and share supervisory information. Article 31 of the Banking Law states that the SdB will enter into memoranda of understandings with foreign banking supervisors to allow consolidated supervision based on the principles of reciprocity and confidentiality.
Assessment	Compliant
Comments	Although a framework for cooperation among the existing supervisors is in place, differences in terms of resources and supervisory approaches may create difficulties for achieving a consistent regime. Supervision of insurance is weak as noted in the IAIS assessment. Prior to the May 2005 MOU, the SdB had participated in on-site inspection jointly with the Superintendency of Insurance in insurance firms owned by banks.
Principle 2	**Permissible Activities** The permissible activities of institutions that are licensed and subject to supervision as banks must be clearly defined, and the use of the word "bank" in names should be controlled as far as possible.
Description	Article 3.3 of the Banking Law defines the term "bank" as any person that engages in the business of banking. "Business of banking" is defined in Article 3.16 as the operation of capturing financial resources from the public or from financial institutions via time or demand deposits, or other mechanism authorized by the Banking Law; and the use of such funds by the bank for loans, investments, or other operations authorized by the Banking Law or by the SdB. The use of the word 'bank" is defined by the Article 24 of the Banking Law. Also, permissible activities are stipulated in the same law. Article 21 of the Banking Law states (with the exception of state banks) that only banks licensed by the SdB may engage in the business of banking. In the case of new licenses, banks receive a provisional authorization in order to formally incorporate the firm. That provisional authorization has a nonrenewable time period equal to 90 days. During such a period, the Public Register of firms allows interim incorporations using the word "bank," even without SdB's definitive approval. Within that period, the bank formally requests its definitive authorization and, if

Table 1.1 Detailed Assessment of the Observance of the Basel Core Principles

	authorization is not granted, the interim registration must be cancelled.
Assessment	Compliant
Comments	
Principle 3	**Licensing Criteria** The licensing authority must have the right to set criteria and reject applications for establishments that do not meet the standards set. The licensing process, at a minimum, should consist of an assessment of the banking organization's ownership structure, directors and senior management, its operating plan and internal controls, and its projected financial condition, including its capital base; where the proposed owner or parent organization is a foreign bank, the prior consent of its home country supervisor should be obtained.
Description	The Banking Law provides the SdB with broad powers to issue or deny a banking license. The Accord 3-2001 establishes basic criteria for bank applications and Resolution 1-2005 sets out formal internal procedures for evaluating new licenses. The applicants must present a preliminary project plan to be discussed with the SdB. After that, they must provide the correspondent documentation for detailed analysis. The SdB forms a staff committee, composed of representatives of on-site, off-site, and legal departments, which will analyze the consistency and feasibility of the business plan and the complementary information brought by the applicants, including those related to fit-and-proper tests. Once the committee concludes that requirements are met for the authorization, a provisional license is issued for formal constitution of the firm. The official license is issued after a preoperational examination that verifies that the structure prepared by the bank for internal controls, manuals, and technologic framework are in place.
Assessment	Largely compliant
Comments	The SdB regulation requires a reasonable set of documents and information in order to assess properly the background, capacity, fitness, and properness of shareholders and managers, and the business plan. The review is carried out by SdB officers; however, it appears more oriented to the formal compliance with the requests than to the quality and consistency of the information provided (e.g., personal financial statements that were not formally prepared or certified by an accountant have been accepted; and letters of support for shareholders and managers are accepted as valid; however, the letters are from third parties unknown to the SdB). In a case when the shareholder applicant owns a bank in another country, the SdB does not routinely require an opinion from that country's supervisors. This procedure could allow the establishment of a parallel bank, which would complicate consolidated supervision by the non-Panamanian supervisor. As recommended by the Basel Committee document, "Parallel-owned banking structures," (issued in January 2003), should, in principle, not be allowed because they conflict with the Core Principles. However, it is recognized that the supervisor agency may not have legal grounds, in practice to prevent the creation of a parallel bank. In these instances, the supervisor should limit the risk by imposing conditions or restrictions that strengthen oversight over parallel banks. In these cases, there should be close contact and coordination with the affiliated supervisors in order to mitigate supervisory risks. A lead supervisor should be identified as appropriate that would be knowledgeable with all elements of the banking group.
Principle 4	**Ownership** Banking supervisors must have the authority to review and reject any proposals to

Table 1.1 Detailed Assessment of the Observance of the Basel Core Principles

	transfer significant ownership or controlling interests in existing banks to other parties.
Description	The Accord 1-2004 establishes conditions for authorizing the acquisition or transfers of the shares of banks or economic groups that own banks. The conditions consider (i) qualitative factors that would allow an individual firm to control the bank or economic group; and (ii) quantitative factors that consider the percentage of ownership. Pursuant to the accord, SdB approval is required for a change in managerial control representing 25 percent or more of the capital. Considerations of the control stake include a single purchaser or combination of a single purchaser with other natural or legal persons linked to the purchaser (including legal group acting in concert). Banking mergers are also under the control of the SdB and involved entities must receive prior SdB approval before the takeover is carried out. Specifically, cross-border mergers and acquisitions need prior supervisory approval. Formal procedures have been largely developed to assess this kind of banking operations. Under Accord 1-2004, the SdB can deny applications for the following reasons: (i) the home country supervisor lacks the legal ability to supervise on a consolidated basis; (ii) that there is a concern as to whether the SdB will be able to obtain necessary information and cooperation from the home country supervisor; (iii) the transaction would not be in the public interest; (iv) there are doubts about the reputation, integrity, and experience of the applicants or the management team; or (v) that there are doubts about the source of funds.
Assessment	Largely compliant
Comments	The rules dealing with transfers of banking equity confer the SdB powers for impeding takeover operations deemed to be inappropriate from a prudential point of view. Special analysis of moral and funding resources of candidates is carried out. Under certain conditions, equity participations of less than 25 percent could provide a controlling position, particularly if such positions are the largest single controlling stake.
Principle 5	**Investment Criteria** Banking supervisors must have the authority to establish criteria for reviewing major acquisitions or investments by a bank and ensuring that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.
Description	Accord 7-2000 requires each bank to have a manual for investments in securities which must include: (i) policies and procedures; (ii) controls to administer the risk, recording, and classification of investment securities; (iii) methods and procedures for valuation; and (iv) internal controls to monitor and verify compliance with this requirement. Article 67 of the Banking Law establishes that a bank may not invest more than 25 percent of its consolidated capital in any business that is not related to the business of banking. Accord 2-2002 qualifies Article 67 of the Banking Law through the introduction of a cumulative investment limit in non-banking entities. Through Accord 2-2002, banks are not permitted to hold investments in non-banking activities larger than 25 percent of the bank's consolidated capital. Accord 2-2002 as amended lists those investments (e.g., leasing) closely related to banking, which are not subject to the 25 percent cumulative limit.

Table 1.1 Detailed Assessment of the Observance of the Basel Core Principles

	A provision in Accord 2-2002 deals with investments by a bank in a holding company that holds banking investments, whereby, the 25 percent cumulative limit is not applied. If a holding company owns shares in banks or in authorized banking activities, general IAS/GAAP treatment is applied to consolidate the investment activities with the bank financial statements. As a consequence, consolidation does not allow any kind of arbitrage in the realm of regulatory capital or credit provisioning policies. When computing the capital adequacy ratio, banks fully deduct any remaining investment on non-banking shares. Article 17 of the Banking Law establishes that the Superintendent must authorize the acquisition or transfer of shares of a bank or of an economic group that owns a bank, where the acquirer (or other natural or legal persons linked to the acquirer) becomes a sole or majority owner or otherwise obtains a controlling position of the bank. Pursuant to Accord 1-2004, the concept of controlling position is when an individual or individuals acting in concert acquire 25 percent or more of the shares. Article 71 of the Banking Law establishes that no bank in or from Panama may merge or consolidate or sell all or part of its assets whenever such actions may be equivalent to a merger or consolidation, without the prior authorization of the SdB. There are established credit concentration limits as to lending and investing in debt securities of a single issuer (including economic groups) and to related parties (directors, officers, affiliate and large shareholders). The risks associated with bank and financial group investment activities and compliance with law and regulation are reviewed during the on-site inspection.
Assessment	Compliant
Comments	These provisions adequately modify the previous regulation and clearly establish that the 25 percent limit is computed on a cumulative basis. The Accord 2-2002 improves the prudential framework. Until it was issued, there were doubts on the correct way to apply the 25 percent limit. Currently, no doubt remains on how to compute the investment limit. This addresses a concern identified in the 2002 BCP assessment.
Principle 6	**Capital Adequacy** Banking supervisors must set minimum capital adequacy requirements for banks that reflect the risks that the bank undertakes, and must define the components of capital, bearing in mind its ability to absorb losses. For internationally active banks, these requirements must not be less than those established in the Basel Capital Accord.
Description	The Accord 5-98 for general license banks and the Accord 6-98, for international license banks, create a capital adequacy algorithm consistent with Basel I rules. Both Accords take into account the existence of Tier 1 and Tier 2 capital items but do not consider Tier 3. Paid-in capital, retained net income, and certain reserves are included in Tier 1 computations. Subordinated debt, general loss loan provisions, latent reserves, revaluation reserves, and preference shares are included, with restrictions, under Tier 2 computations. Goodwill and other items are deducted when computing the capital adequacy ratio. Finally, international license banks that are subsidiaries of parent banks located in jurisdictions that accept Basel capital rules, can qualify for capital ratio compliance on a

Table 1.1 Detailed Assessment of the Observance of the Basel Core Principles

	consolidated basis, under certain conditions. Accord 5-2001 imposes a stringent (though largely qualitative) approach for market risks. Article 14 of Accord 5-2001 obliges regulated entities to allocate capital, if needed, to cover market risk under prudent rules and sound banking practices (see discussion under BCP 12). The capital charge requirement, however, is not specific.
Assessment	Largely compliant
Comments	On average, the banking system is well capitalized; however, risk weights and other elements in the capital algorithm are not fully consistent with the Basel capital accord. A revision to the SdB's rules for calculating the capital level in accordance with the Basel rules could lower the overall system ratio. Noted differences from the Basel rules include the following: The capital ratio includes/excludes inappropriately, among others, the following components: A weighting conversion factors should apply to credit lines included as off-balance sheet items as per Basel Accord. Counterparty risk is poorly defined and various types of forward and derivatives Contracts are not included in capital computations. Commercial mortgages are inadequately risk-weighted. Certain inter-banking assets are inadequately risk weighted. Certain residential mortgages are inadequately risk weighted. Equity balances corresponding to available for sale portfolios are considered as regulatory capital without any prudential reduction. Cash flow hedging equity balances are considered as regulatory capital. Certain liabilities matched with employees benefits granted are fully deducted from risk assets before capital computations. The capital adequacy framework should include a more routine process to measure and apply a capital charge for the few banks where this form of risk can be significant. The revision to the framework appropriately should reduce reporting burden for the majority of banks with minimal market risk exposures.
Principle 7	**Credit Policies** An essential part of any supervisory system is the independent evaluation of a bank's policies, practices, and procedures related to the granting of loans and making of investments and the ongoing management of the loan and investment portfolios.
Description	The Accord 6-2000 obliges supervised entities to have well-established policies on credit risk management process, i.e., granting, follow-up, and recuperating/litigation activities. Credit risk manuals must exist and the SdB has full access to those documents. Those policies and procedures are evaluated on an ongoing basis by the SdB and interaction with internal and external auditors allows the SdB to receive additional inputs. The SdB requires that a unit, independent from the loan origination functions, be responsible for the evaluation and classification of loans. Accord 6-2000 requires banks to classify their loan portfolio within five categories (Normal, Special Mention, Substandard, Doubtful, and Loss). Details of such classification are reported to the SdB on a quarterly basis. The Accord 7-2000 obliges supervised entities to have well-established policies on

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	securities investment. Manuals on the matter are mandatory and they must include policies and procedures, internal control rules, and methodology for measuring portfolios. The SdB has full access to those documents and evaluates them through the on-site inspection process. Notwithstanding, different rules in place allow the SdB to receive additional input from internal and external audit. The SdB carries out its own evaluations of credit. The approach was reviewed by the assessors and considered to be complete and satisfactory. The SdB has a good knowledge of banking policies in this realm. No major concerns arise from this area.
Assessment	Compliant
Comments	
Principle 8	**Loan Evaluation and Loan-Loss Provisioning** Banking supervisors must be satisfied that banks establish and adhere to adequate policies, practices, and procedures for evaluating the quality of assets and the adequacy of loan-loss provisions and reserves.
Description	Accord 6-2000 establishes clear guidance on credit classifications. Loans are to be classified into five classes: Normal, Special Mention, Subnormal, Doubtful, and Loss. The accord sets out clear requirements for achieving consistent credit classifications, including according to different banking portfolios, i.e., consumer, corporate, etc., and how to calculate specific and general loan loss provisions. At a minimum, banks at all times must maintain a level of provisions (combination of both general and specific provisions) equal to at least 1 percent of the loan portfolio. The implementation and the effectiveness of the Accord 6-2000 is verified by both off-site and on-site examinations, based on the credit risk information available in the credit risk registry and by assessments done on-site on the credit management process and through tests regarding the quality of the credit evaluation. An important part of both on-site and off-site supervisory activities is dedicated to verifying the correct implementation of credit rules and the results obtained are satisfactory. The requirements in the matter are comparable to high-level international practices.
Assessment	Compliant
Comments	Though not affecting the compliance with this principle, the Regulation Department should assess any potential impact of IAS provisioning accounting regime—IAS 39—and its effect on capital adequacy ratio. A similar assessment is needed for FAS 5 and FAS 114 when banking entities observe US-GAAP. Potential differences on provisioning rules between accounting and capital regimes may be contrary to the prudential framework.
Principle 9	**Large Exposure Limits** Banking supervisors must be satisfied that banks have management information systems that enable management to identify concentrations within the portfolio, and supervisors must set prudential limits to restrict bank exposures to single borrowers or groups of related borrowers.
Description	The Accord 1-1999 establishes a 25 percent limit of consolidated capital of banking groups for lending activities and obliges to compute the above-mentioned limit on a group basis. Every risk greater than $25,000 is to be included within the limit. Article 63 of the Banking Law establishes that the 25 percent limit must be computed taking into

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	account balance sheet assets, guarantees, and any other obligation. During the on-site inspection and through off-site monitoring, the SdB monitors compliance with the limits and reporting requirements.
Assessment	Compliant
Comments	This rule takes into account most of credit risk exposures but does not include equity shares. Even considering that those shares are fully deducted from capital requirements, a case could be made against a rule that in some cases allow a 50 percent combined limit, namely, 25 percent for credit risk plus 25 percent for non-banking equity. Additional refinement to compute this limit should also take into account off-balance sheet exposures from counterparty risk and not only those arising from credit risk, even if they are not currently material.
Principle 10	**Connected Lending** In order to prevent abuses arising from connected lending, banking supervisors must have in place requirements that banks lend to related companies and individuals on an arm's-length basis, that such extensions of credit are effectively monitored, and that other appropriate steps are taken to control or mitigate the risks.
Description	Article 64 of the Banking Law, and the Accords Nos. 2-1999 and 10-1999 prohibit lending to "related parties" more than 5 percent of consolidated capital, with a few minor exceptions. Moreover, the total amount of operations with different related parties must not surpass 25 percent of consolidated capital of the lender bank. The limits, established by the regulation, are in line with the international best practices and consider the profile of the banking ownership structures in Panama. Related parties are defined to include the bank's top managers and their relatives, as well as entities belonging to them and any other entities directly, indirectly or even presumptively related to the banking group.
Assessment	Compliant
Comments	Lent amounts to commercial and insurance subsidiaries are included in this ratio. Inter-group banking deposits are not included in the limit. Therefore, there is room for regulatory arbitrage.
Principle 11	**Country Risk** Banking supervisors must be satisfied that banks have adequate policies and procedures for identifying, monitoring, and controlling country risk and transfer risk in their international lending and investment activities, and for maintaining appropriate reserves against such risks.
Description	The Resolution 7-2000 as modified by the Resolution 1-2001, defines country risk and its different expressions, transfer risk, political risk, and sovereign risk. It obliges the supervised entities to establish policies for assessing country risk; sets a series of categories for qualifying cross-border risks; and ascertains criteria to quantify the level of provisions in this matter. Specifically, ratings issued by credit-rating agencies are the basic input for country-risk categorization. Credit and bond portfolios in countries, where government is rated as investment grade, are rated Normal.
Assessment	Largely compliant
Comments	The above-mentioned resolution creates an adequate framework for country risk managers. In order to keep pace with current market developments, it is needed to modify the

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	resolution because of the new relevance of cross-border banking subsidiaries. Currently, Panama is becoming an important regional financial center. Several banks have large amounts of assets in jurisdictions that could be deemed to present country risk for which a clear policy should be in place. There is room to improve the resolution, establishing clear policies to impede regulatory arbitrage and minimum charges for provisioning this risk.
Principle 12	**Market Risks** Banking supervisors must be satisfied that banks have in place systems that accurately measure, monitor, and adequately control market risks; supervisors should have powers to impose specific limits and/or a specific capital charge on market risk exposure, if warranted.
Description	The Resolution 2-2000, modified by the Resolutions 7-2000, and 1-2001, establish general rules for the measurement of interest rate risk as quantified with a standard maturity gap model. It obliges the supervised entities to have systems capable of quantifying the potential effect of net interest risk exposures and, additionally, to reduce the net exposure calculated on a quarterly basis if any temporary maturity gap impacts on profit and loss more than 10 percent. Moreover, liquidity risk is regulated through a series of rules, for instance, the Accord 2-2002. The Accord 7-2000, as modified by the Accord 1-2001, classifies bonds' and equities' portfolios according to International Accounting Standards (IAS) and/or United States Generally Accepted Accounting Principles (US-GAAP). So, the accounting measurement of those securities, including potential effects on profit and loss, depends on their categorization as trading, available for sale or held to maturity. Interest-rate risk, commodity risk, foreign exchange, and investments are included within the current market-risks definition and, as a consequence, Accord 5-2001 applies. The different prescriptions included in the accord are qualitative and are validated during the on-site inspection. Accord 5-2001 requires that banks establish policies for identification and management of risks, including setting of risk tolerances and that the policies are approved by the Bank's board of directors. The policy must stipulate: (i) organization, function, segregation of duties; (ii) qualification of staff; (iii) documentation and reporting requirements; (iv) process for identification, mitigation, measurement, analysis, and appraisal of market risks; (v) controls and limits by exposure; (vi) information systems; (vii) process for assignment of capital; and (viii) accounting and disclosure requirements consistent with IAS or US-GAAP treatment. The Accord 5-1998, for general license banks, and the Accord 6-1998, for international license banks, do not impose a specific capital charge for market risks for risk-based capital purposes. Neither the so-called building-block approach nor the VaR methodology is established as mandatory in the realm of market risks under current rules.
Assessment	Materially non-compliant
Comments	The Panamanian regulation falls short when reporting market risk given the potential for growth in market activities by some of the larger Panama-headquartered banks. As an important regional financial center, prudential reporting requirements for market risks would be appropriate. In addition, the amount of portfolios, i.e., bonds, obliges the SdB to reform the current processes for collecting market-risk information and for the

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	capital-adequacy framework. The need for a modification to the capital-adequacy framework is also noted in the discussion of BCP 6 above.
Principle 13	**Other Risks** Banking supervisors must be satisfied that banks have in place a comprehensive risk-management process (including appropriate board and senior management oversight) to identify, measure, monitor, and control all other material risks and, where appropriate, to hold capital against these risks.
Description	The SdB under article 17 of the Banking Law has the legal authority to establish operating standards for banks. The SdB requires that banks have in place comprehensive risk-management processes, including minimum internal control systems to adequately identify, monitor, and administer risks. For liquidity risk, the Banking Law and Accord 2-2000 establishes a minimum liquidity requirement. At all times, banks must maintain a minimum of 30 percent of qualifying liquid assets to deposits. Qualifying assets and deposits are defined in the rule. Compliance with this requirement is verified through weekly reporting to the SdB. As an additional prudential rule to mitigate liquidity risk, banks must maintain, as a maximum, an 85 percent ratio between domestic assets and domestic deposits. The general interest rate risk is regulated by Resolutions 2-2000 and 4-2000. According to both resolutions, assets and liabilities are categorized into nine different buckets, and it is mandatory to measure the bank's net interest income with a standard formula. If it is the case that the bank's net interest income drops more than 10 percent of the entity's capital, computed on a quarterly basis, corrective measures will be established by the SdB. To address operational-risk concerns, the SdB has issued Accord 4-2001 which creates specific obligations on banks in the realm of corporate governance. The accord establishes minimum requirements for board members, the role of the audit committee, minimum internal-control requirements, including those to prevent fraud. The Accord 10-2000 mandates every bank to designate a Compliance Officer (CO). As noted under BCP 12, Accord 5-2001 requires that banks establish policies for identification and management of risks, including the setting of risk tolerances, and that the policies are approved by the Bank's board of directors. The policy must stipulate (i) organization, function, segregation of duties; (ii) qualification of staff; (iii) documentation and reporting requirements; (iv) process for identification, mitigation, measurement, analysis, and appraisal of market risks; (v) controls and limits by exposure; (vi) information systems; (vii) process for assignment of capital; and (viii) accounting and disclosure requirements consistent with IAS or US-GAAP treatment. The Accord 5-2003 regulates banking operations carried out through electronic means. It establishes security measures and special auditing procedures. The risk-management process is verified systemically by on-site examinations carried out regularly. The only clearing system in the country is located in the Banco Nacional de Panamá. The implementation of risk-management requirements, including compliance with the

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	SdB's regulations, is reviewed during the on-site inspection process.
Assessment	Largely compliant
Comments	Corporate governance rules should allow maintaining an adequate general control of risks. Actuarial risk is not adequately measured in supervisory activities on fiduciaries.
Principle 14	**Internal Control and Audit** Banking supervisors must determine that banks have in place internal controls that are adequate for the nature and scale of their business. These should include clear arrangements for delegating authority and responsibility; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding its assets, and appropriate independent internal or external audit and compliance functions to test adherence to these controls, as well as applicable laws and regulations.
Description	Accord 4-2001 establishes corporate governance and internal control requirements that must be elaborated based on the best internationally recognized practices of supervision consistent with Basel guidance. Through this regulation, the SdB requires that the banks maintain internal controls and governance systems that are the explicit responsibility of the board of directors and the general administration of the bank. The internal control system should set out clearly the delegation of authority and responsibility, verification of compliance controls, separation of executive functions, prudential management of resources, and independence of internal and external auditing and the compliance function. The compliance with the SdB regulation is systemically checked through the on-site inspection process, which includes a comprehensive assessment of the internal audit and internal control structure following the inspection manuals.
Assessment	Compliant
Comments	
Principle 15	**Money Laundering** Banking supervisors must determine that banks have adequate policies, practices, and procedures in place, including strict "know-your-customer" rules that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.
Description	In Panama, Law 42 of 2000 (AML/CFT Law) establishes the measures for the prevention of money laundering (ML) and financing of terrorism (FT), the general framework for AML/CFT. Law 42 also delegates to the SdB the obligation to ensure that reporting institutions comply with the law. The implementing regulation for Law 42 with respect to institutions in the banking system is covered under Accord 9-2000. This accord requires reporting institutions to adopt, develop, and establish sound and effective policies, procedures, and practices, including internal control systems to prevent money laundering and the financing of terrorism activities from taking place within the banking system. In addition, Accord 8-2000 establishes the obligation for reporting institutions to appoint a compliance officer and sets the criteria for selecting the compliance officer. The compliance officer is delegated overall responsibility for implementing preventive measures and internal control mechanisms to ensure compliance with the requirements of the law and regulations. The legislation and implementing regulations in place ensure compliance with relevant AML/CFT international best practices and the Financial Action Task Force 40+9

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	Recommendations. Accord 9-2000 also requires banks to monitor customer business relationships and account activities on an ongoing basis and to report unusual or suspicious activity to the Financial Intelligence Unit (FIU). The existing AML/CFT legislation provides banks and employees with legal protection liability when reporting suspicious activities in good faith. There are also penal and administrative sanctions for failure to comply with the requirements of the law and regulations. The SdB is the competent supervisory authority of banks (both domestic and foreign) and trust companies (or fiduciaries). The SdB is responsible for ensuring that all institutions in the banking system comply with the requirements of the law and regulations, including customer identification and due diligence; "know-your-customer" policies and practices; reporting of currency transaction reports to the SdB; and timely reporting of suspicious transactions to the FIU. The scope of examinations conducted by the SdB with regard to AML/CFT is comprehensive. Supervisory activities in AML/CFT include evaluating the reporting entities overall compliance program; reviewing policies, procedures, and controls; validating the customer identification and verification processes; monitoring and reporting of suspicious transactions; and training scope and frequency. In the area of information exchange and sharing with foreign counterparts, the SdB has established numerous agreements with foreign competent authorities to provide for ongoing communication and coordination of activities in both, safety and soundness and AML/CFT matters. The SdB has implemented a formal inspections program and conducts AML/CFT on-site inspections in accordance with the program. For AML/CFT inspections, the supervisory approach focuses on the reporting institutions' internal controls systems in place and procedures established customer identification and due diligence for both natural persons and legal entities. The goal is to determine whether the reporting institutions have sound and effective measures in place to properly establish the identity of the beneficial owners. The Accord 9-2000 describes the specific requirements for customer information and identification; reporting of cash transactions in excess of $10,000; due diligence required when establishing a banking relationship; "know-your-customer" policies; record retention requirements; examples of suspicious transactions; reporting of suspicious transactions to the FIU; frequency of AML/CFT training; and sanctions and penalties for non compliance with the law and regulations. Most recently, the SdB has been requiring external auditors to include an assessment of the reporting institution's AML/CFT risk when evaluating the overall internal control system.
Assessment	Compliant
Comments	Current legislation in Panama does not provide for the Suspicious Transaction Report to be communicated to the Superintendency of Banks. However, other financial crimes are reported to the Superintendency as well as to the competent authority within the law-enforcement sector. Following the assessment mission, Accord 9-2000 was replaced with a further developed Accord 12-2005 that takes account of the 2003 revision of the FATF Recommendations for anti-money laundering and the 2004 FATF assessment methodology.
Principle 16	**On-Site and Off-Site Supervision**

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	An effective banking supervisory system should consist of some form of both on-site and off-site supervision.
Description	The SdB has structured the Supervision Department with on-site and off-site functions. Those structures absorb a group of around 70 people, including on-site examiners and off-site analysts. All banks are examined by the on-site team on a frequency of 18 months, on the average. Large banks are covered once a year. Duration of examinations varies according to the size of the inspected bank and can take from two weeks with a four examiner team for a small bank to more than two months with a 15–20 examiner team for a large bank. Financial information and credit portfolio details are collected monthly for overall financial analysis. For liquidity monitoring, the information is gathered on a weekly basis. The consolidated information of financial groups is collected quarterly. Off-site analyses are made on a monthly frequency, and concerns raised are submitted to on-site structure for verification. In determining the scope of the on-site inspections, the SdB conducts a pre-inspection analysis of the information provided by the off-site monitoring and based on previous inspections. An on-site supervision manual has been used to establish a greater routine to the scope and deepness of the exams. Outcome of on-site exams is fully shared with the examined institution. Follow-up of the relevant recommendations is done through specific new on-site exam; recommendations that are less relevant are checked in the next comprehensive inspection. Following the date of the assessment mission, the SdB implemented a classification system for banks and economic groups based on the structure of the CAMELS (Resolution 2-2005, August 2005).
Assessment	Compliant
Comments	The on-site exams are focused to the core-risk areas of the banks but include extensive review of a large amount of operations instead of emphasis on the internal controls, internal audit procedures, and risk management practices. Checks of a large amount of operations include visits to branches. On a large bank, a comprehensive examination can take up to as much as 5000 examiner hours. More emphasis on the evaluation of the policies and the procedures may make the supervision process less costly and more effective, leaving to the bank the burden of implementing internal controls and systems accordingly to its size, complexity, and risk profile. At the time of the assessment mission, reports prepared by the inspection teams were issued without stipulation of the confidentiality of the reports. An apparent pattern was that several banks used the SdB inspection reports to share the results with rating agencies and correspondent banks to show the standing of the bank with the SdB. The practice is problematic as there will be a continued expectation of access to SdB reports even when banking conditions are less than favorable. Moreover, in those cases where problems are identified in an inspection, additional stresses will be introduced into the

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	relationship that the bank has with the SdB, as the bank will seek to pressure the SdB to receive a clean inspection report. Beginning July 2005—following the BCP assessment visit—the SdB introduced a new procedure that stipulates that the inspection report is for the exclusive use of the SdB and the inspected bank and prohibits reproduction or dissemination of the report to third parties not authorized by the SdB.
Principle 17	**Bank Management Contact** Banking supervisors must have regular contact with bank management and a thorough understanding of the institution's operations.
Description	By the occasion of on-site examinations, a high-level meeting with bank management is provided in the beginning and at the closure of the assignment. A full report is delivered to the bank containing a comprehensive analysis of the profile, risk, and performance of the bank examined. The Superintendent maintains regular contacts with relevant banks' management on a yearly frequency in order to discuss the trends and strategies of the banks. Clarification of off-site reporting from one period to another and the concerns raised in the off-site analyses are usually dealt with through electronic messages with the liaison person of the bank. Depending on the severity of concerns regarding off-site monitoring, this may trigger an on-site inspection and follow-up discussions with management between normally set inspection visits.
Assessment	Compliant
Comments	
Principle 18	**Off-Site Supervision** Banking supervisors must have a means of collecting, reviewing, and analyzing prudential reports and statistical returns from banks on a solo and consolidated basis.
Description	The SdB has developed and implemented an efficient electronic framework for the collection of financial information from the banking system. The system is supporting a satisfactory off-site monitoring process, has improved the quality of information analyses, and is capable of alerting the SdB to major risks. Based on the information gathered by the SdB's information system, the off-site supervision team analyzes liquidity, limits, and overall financial condition of supervised banks. The information for liquidity analyses is collected weekly and includes details on maturities mismatches and the composition of securities investment portfolio. The liquidity return, beyond the mismatches gaps, allows the revision of bonds and securities pricing. Balance sheets of all banks are collected monthly, and they are examined for recognition of relevant recent changes. Also, a set of ratios is calculated for peer group analyses. Banks with general licenses are divided in two peer groups according to their size; foreign banks and branches compose a third peer group; and international license banks form the fourth group. Information regarding loans and permanent investments of related parties is collected and analyzed monthly. The capital adequacy return is collected and analyzed on a quarterly basis.

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	Bank-by-bank borrower information regarding credit quality is collected monthly and is available on aggregate basis to the banks for credit analyses purposes. Within the SdB, this information is verified by a specific team, which checks for inconsistencies of classification.
Assessment	Compliant
Comments	Although, the information regarding the credit portfolio is not available for the off-site monitoring team that makes the overall assessment of the supervised banks. The credit information is analyzed by a specialized team, which hands out the discrepancies for the on-site team to check by direct inspections. Therefore, the regular analysis made off-site does not consider the existent information regarding the quality, performance, and evolution of the credit to the main borrowers.
Principle 19	**Validation of Supervisory Information** Banking supervisors must have a means of independent validation of supervisory information, either through on-site examinations or through use of external auditors.
Description	The on-site examination program includes the verification of the information provided to the SdB's off-site financial analysis team in order to match the information in the accounting records of the bank. The SdB, during the on-site inspections and through off-site monitoring, exercises considerable diligence to verify that information provided by financial institutions (including that which is audited) is accurate. Article 54 of the Banking Law provides the SdB with broad authority to require that any bank or any economic group of which the bank is part, report on its financial and managerial activities. Under the authority provided by Article 55 of the Banking Law, the SdB requires that all banks file audited financial statements within three months of the close of the fiscal year. This reporting must be submitted in accordance with the technical specifications issued by the SdB. The SdB elaborates the technical specifications for reporting through accords and resolutions, e.g., Accord 6-2000 establishes that banks must elaborate their financial statements either under IAS or US-GAAP regimes. See further discussion of requirements imposed on auditors for the validation of accounting information under description of Principle 21. The SdB under Article 74 of the Banking Law may, if necessary, contract the services of outside specialized independent auditors who are professionally qualified for the purpose of inspecting the activities of Panamanian banks.
Assessment	Compliant
Comments	Extensive work is done in terms of quality certification of the information provided to the SdB. Consideration could be given to more risk focusing of the checking in order to increase the on-site inspections efficiency.
Principle 20	**Consolidated Supervision** An essential element of banking supervision is the ability of the supervisors to supervise the banking group on a consolidated basis.
Description	Article 17 of the Banking Law authorizes the SdB to supervise economic groups that own a bank through regular inspections, the requirement of audited financial statements, and other reports, as well as to obtain all other information on transactions and

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	relationships among the components of the economic group, both national and international, for supervisory purposes. As noted in BCP 1(6) and BCP 23, agreements are in place with both national and foreign regulatory agencies to facilitate consolidated supervision of economic groups. Before a Panamanian bank can establish a foreign office, the prior authorization of the SdB is required (Article 40, Banking Law). The SdB can use supervisory measures to control foreign activities of Panamanian banks, including requiring that banks maintain higher capital in cases of a higher perceived risk. Article 54 authorizes the SdB to request and obtain any information necessary from any bank or economic group that owns a bank. The on-site inspections include examinations that consider the economic group on a consolidated basis. The off-site team obtains consolidated data and analyzes the prudential factors on a consolidated basis. Article 67 of the Banking Law establishes that a bank may not invest more than 25 percent of its consolidated capital in any business that is not related to the business of banking. The on-site supervision teams conduct inspections of all entities controlled by banks, including non-banking activities in Panama and banking activity in foreign jurisdictions carried out through subsidiaries or branches of Panamanian banks. The on-site examinations program for comprehensive consolidated supervision is active and includes deep analysis of relevant risks of all components of the banking groups, including inspections of non-banking activities. Economic groups are subject to consolidated reporting requirements for balance sheet and income statement and a requirement that the year-end consolidated financial statement be audited.
Assessment	Compliant
Comments	The legal limit imposed to investments on business not related to banking avoids massive investments in other sectors business and misleads in the banking strategies.
Principle 21	**Accounting Standards** Banking supervisors must be satisfied that each bank maintains adequate records drawn up in accordance with consistent accounting policies and practices that enable the supervisor to obtain a true and fair view of the financial condition of the bank and the profitability of its business, and that the bank publishes on a regular basis financial statements that fairly reflect its condition.
Description	The Banking Law Articles 55 and 16 authorizes the SdB to determine the accounting standard applicable to banks and also to the information required about its operations. Through Accords 3-1998 and 4-1999, the SdB requires that banks elaborate their financial statements either under IAS or US-GAAP regimes. In accordance with Article 55 of the Banking Law, the financial statements must be audited, and presented to the SdB within three months of completion of the bank's fiscal year end. Accord 6-2000 further requires that banks disclose information about the credit risk profile that in addition to the IAS or US-GAAP requirement also includes (i) policies and practices to mitigate credit risk (e.g., analysis of credit, collateral and guarantee requirements); (ii) credit exposure according to types of loans, geographic distribution, and important concentrations; and, (iii) the quality of credit including reporting on problem and renegotiated loans.

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	The Banking Law at Articles 60 and 61 require that general and international license banks designate a qualified auditor acceptable to the SdB. The specific requirements for external audits are set out in Accord 1-2002 as amended, including a requirement for a specialized report on the adequacy of internal reporting systems, compliance with SdB reporting norms, and any evidence of improper conduct (including transactions with affiliates or violations of law). Accord 1-2002 (as amended) imposes specific requirements for the independence of audits, and the mandatory rotation of audit teams every three years. The recently approved Law 6-2005, establishes that every enterprise in the country, with just a few exceptions, must calculate its fiscal payments under IAS rules. An important debate is going on as to whether such an obligation creates a dual-book approach, IAS for accomplishing taxation rules, and local accounting regulation for general accounting purposes. In any case, financial entities always account for under international rules because of Accords 3-1998, 4-1999, and 6-2000 and their financial statements are audited on a yearly basis. Accounting requirements are highly comparable to those of high-income countries. Most of the audit firms are those associated with internationally known firms. The financial statements provide high quality information to markets and financial statement users. As noted in Principle 19, the SdB performs periodic on-site exams to, among other activities, verify the adequacy of accounting records.
Assessment	Compliant
Comments	Though not related to the compliance with this principle, some capacity deepening of the regulation department may be in order. Currently, it is underdeveloped in accounting, which is a very demanding area needing high level and qualified regulatory contributions (e.g., accounting balances for regulatory capital). From a hierarchical point of view, the regulation department may demand a more relevant position in the organizational structure of the SdB.
Principle 22	**Remedial Measures** Banking supervisors must have at their disposal adequate supervisory measures to bring about timely corrective action when banks fail to meet prudential requirements (such as minimum capital adequacy ratios), when there are regulatory violations, or where depositors are threatened in any other way. In extreme circumstances, this should include the ability to revoke the banking license or recommend its revocation.
Description	The SdB possesses adequate enforcement powers. After seven years of the existence of the Banking Law, there is generally successful experience with the use of remedial measures. Among the powers, Article 17 of the Banking Law authorizes the Superintendent to declare an intervention, reorganization, or liquidation of a bank. The article also establishes that the Superintendent may instruct that the board of directors remove either individual directors or executive personnel if merited. Article 137 of the Banking Law establishes the sanctions that the Superintendent may impose in the event of violations to the Banking Law. These range from oral reprimand (private or public) to civil penalties up to $50,000. Additional sanctions may be imposed for certain specific violations.

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	Article 76 establishes that the SdB may designate an advisor to the bank's board in order to implement corrective measures. Article 38 establishes the reasons whereby the Superintendent may cancel a banking license. Article 95 establishes that the SdB may intervene (take control) of a bank for various reasons including (i) lack of compliance with capital requirements, (ii) the continuance of operation of the bank endanger the interests of the depositors; and (iii) lack of compliance with liquidity requirements.
Assessment	Largely Compliant
Comments	While there is a full range of remedial measures, there are not clear guidelines for working with distressed entities or guidelines for transferring assets and liabilities of an insolvent bank. The SdB has specific legal and regulatory powers; however the SdB has not developed sufficient guidelines for how these powers should be applied to ensure prompt and consistent supervisory treatment. The SdB should develop guidelines in particular for requiring remedial action plans and contingency plans for when financial institutions are determined to be in violation with regulatory requirements.
Principle 23	**Globally Consolidated Supervision** Banking supervisors must practice global consolidated supervision over their internationally active banking organizations, adequately monitoring and applying appropriate prudential norms to all aspects of the business conducted by these banking organizations worldwide, primarily at their foreign branches, joint ventures, and subsidiaries.
Description	Article 30 of the Banking Law establishes that the SdB will supervise Panamanian banks on a consolidated basis. Article 31 of the Banking Law states that the SdB will enter into agreements with foreign banking supervisors in order to achieve consolidated supervision. To date, the SdB has signed agreements with Ecuador, Peru, El Salvador, Guatemala, Brazil, Colombia, Dominican Republic, Turks and Caicos Islands, Anguilla (Montserrat), Bolivia, Nicaragua, Venezuela, Antigua y Barbuda, Honduras, Costa Rica, Mexico, United States, Cayman Islands, the British Virgin Islands, the Bahamas, and Canada. The SdB is currently in the process of negotiating agreements with Spain, France, Argentina, Portugal, Germany, Korea, and Uruguay. Panama is increasingly becoming an important international financial center. Several regional banking groups have established their holding companies in its territory, and the SdB has become the home supervisor of those groups for consolidated supervision. On March 2, 2005, General Resolution 1-2005 established practical and legal criteria for the definition of home and host supervisor to be applied in the case of Panamanian holding companies.
Assessment	Largely compliant
Comments	There is a trend for regional financial groups to adopt a holding company model incorporated in Panama. The Article 17–14 of the Banking Law determines that the SdB supervises economic groups, even when their affiliations include banks and subsidiaries abroad. The legislation, however, does not have the same level of clarity for the supervision of

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	holding companies of financial institutions, as for banks, and for the direct subsidiaries of the SdB-regulated bank. The SdB have implemented a very active program of supervision of all banks owned by Panamanian financial holding companies, including banks abroad. The lack of clear legal jurisdiction over these activities could result in a double home supervision authority for consolidated supervision, in cases when the operations of a banking group is concentrated in another country, through a local financial holding company, or major banks that are below the Panamanian financial holding company. Modifications to legislation should be considered to limit the need for interpretive regulation, and clarify the SdB's consolidated supervision powers for Panamanian financial holding companies that have a Panama bank subsidiary. In addition, for the SdB to perform its duties, greater coordination with foreign supervisors is appropriate to ensure that foreign activities are covered.
Principle 24	**Host Country Supervision** A key component of consolidated supervision is establishing contact and information exchange with the various other supervisors involved, primarily host country supervisory authorities.
Description	As mentioned in the principle above, Article 31 of the Banking Law requires that the SdB enter into an agreement with host country supervisors for information sharing on the financial condition and performance of overseas operations of Panamanian banks. Under Article 17 of the Banking Law, the Superintendent is responsible for establishing cooperative relationships with the foreign supervisory agencies to strengthen control mechanisms, update preventive regulations, and exchange useful information for the supervisory function. Under Article 31 of the Banking Law, the Superintendency shall reach agreements or understandings with foreign supervisory agencies to allow for consolidated supervision. This article provides that there be reciprocity of treatment and the exchange of information and cooperation. Under Article 40 of the Banking Law, a Panamanian bank must receive prior approval to open an establishment outside of Panama.
Assessment	Compliant
Comments	
Principle 25	**Supervision Over Foreign Banks' Establishments** Banking supervisors must require the local operations of foreign banks to be conducted with the same high standards as are required of domestic institutions and must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision.
Description	In accordance with Article 29 of the Banking Law, the SdB may share information with the home country supervisor of a foreign bank. There is experience with home supervisors having carried out on-site inspections in Panama in accordance with this Article. As mentioned in Principle 23, the SdB has signed agreements with foreign supervisors whose banks operate in Panama. The supervision of local branches and subsidiaries of foreign bank establishments is carried out with the same existing prudential and inspection standards for domestically-

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	owned banks, as required by Articles 27 and 28 of the Banking Law. Banks with international license are obliged to have physical presence and to keep their books in the Panamanian territory, a feature that allows full access for proper supervision.
Assessment	Largely compliant
Comments	As mentioned in Principle 3, the regulation for bank licensing lacks clear requirements for prior consultation when licensing new banks that belongs to shareholders that have banking institutions in other countries. There should be arrangements in place to avoid the creation of parallel banks or hidden banking structures, which would limit the ability of home country supervisors to carry out consolidated supervision.

Table 1.2 Summary Table of Compliance with the Basel Core Principles

Core Principle	C[1]	LC[2]	MNC[3]	NC[4]	NA[5]
1. Objectives, Autonomy, Powers, and Resources					
1.1 Objectives		X			
1.2 Independence	X				
1.3 Legal framework	X				
1.4 Enforcement powers	X				
1.5 Legal protection			X		
1.6 Information sharing	X				
2. Permissible Activities	X				
3. Licensing Criteria		X			
4. Ownership		X			
5. Investment Criteria	X				
6. Capital Adequacy		X			
7. Credit Policies	X				
8. Loan Evaluation and Loan-Loss Provisioning	X				
9. Large Exposure Limits	X				
10. Connected Lending	X				
11. Country Risk		X			
12. Market Risks			X		
13. Other Risks		X			
14. Internal Control and Audit	X				
15. Money Laundering	X				
16. On-Site and Off-Site Supervision	X				
17. Bank Management Contact	X				
18. Off-Site Supervision	X				
19. Validation of Supervisory Information	X				
20. Consolidated Supervision	X				
21. Accounting Standards	X				
22. Remedial Measures		X			
23. Globally Consolidated Supervision		X			
24. Host Country Supervision	X				

Table 1.2 Summary Table of Compliance with the Basel Core Principles

Core Principle	C[1]	LC[2]	MNC[3]	NC[4]	NA[5]
25. Supervision Over Foreign Banks' Establishments		X			

[1] C: Compliant
[2] LC: Largely compliant
[3] MNC: Materially non-compliant
[4] NC: Non-compliant
[5] NA: Not applicable

C. Recommended Action Plan

19. Table 1.3 below identifies recommended actions to better achieve compliance with the BCP. Additional considerations for strengthening of the structure of the SdB would include the following:

- **Strengthen regulatory reporting information for cooperatives and savings and credit institutions.** The SdB has implemented an effective reporting and monitoring system to support the off-site supervision process and provide efficient mechanisms for improved disclosure of financial condition information to market participants. A clear weakness for cooperatives and savings and credit institutions is that there is not a process for off-site monitoring. Consideration could be given to outsourcing this activity on a full cost recovery basis to the SdB, which would take on the development of systems and subsequent processing of regulatory reporting information.

- **Require confidential treatment of SdB reports.** The supervision reports prepared by the inspection teams are issued to the bank without stipulation of the confidentiality of the reports. An apparent pattern is that banks are sharing the SdB reports with rating agencies and correspondent banks to show the standing that they have with the SdB. This practice is problematic as there will be a continued expectation of access to SdB reports when perhaps a bank's condition is not favorable.

- **Strengthen the regulatory department given that it is currently underdeveloped for its functions.** High-level and expert contributions are needed in the frequently difficult areas of regulatory capital, market and country risk, and investments activities by banks. In light of the looming implementation of Basel II capital rules, consideration to strengthen the Regulatory Department is warranted. From a hierarchical point of view the department demands an important position within the SdB's organizational structure.

- **Build capacity and retain experienced staff.** The SdB staff has invested considerable resources towards building its capabilities as a bank supervisor. Further development should be considered towards developing specific career streams for professional staff and strengthening retention of experienced staff. In addition, some thought could be given to putting in place a requirement in employment contracts that would provide for reimbursement of the SdB for some educational costs in the event that the employee is hired by the private sector.

Table 1.3 Recommended Action Plan in Relation to the Basel Core Principles

Basel Principle	Recommended Action
Objectives and powers (CP 1.1)	Harmonize the supervisory and regulatory arrangements for nonbank deposit taking institutions (cooperatives and savings and credit institutions).
Independence (CP 1.2)	Develop a career plan to reduce the risk of losing senior SdB officials.
Legal protection (CP 1.5)	Implement an insurance policy to provide legal protection for SdB staff acting in their official capacity.
Licensing and supervision over foreign banks (CPs 3 and 25)	Closer coordination with other country supervisors is warranted in the establishment of parallel banks as recommended by Basel Committee.
Capital adequacy (CP 6)	Adapt capital charges according to Basel Accord.
Country risk (CP 11)	Develop and revise as appropriate current supervisory policy for country risk, which is becoming increasingly significant.
Market risk (CP 12)	Develop policies for market risk that consider the evolution in the complexity in activities among larger financial institutions, including the adoption of VaR and/or building-block approaches.
Remedial measures (CP 22)	Develop clear guidelines for working with distressed entities, including use of remedial measures, and for insolvent banks, guidelines for winding up, and transferring assets and liabilities.
Global consolidated supervision (CP 23)	Amend the banking law to provide the same level of clarity for the consolidated supervision of financial activities by holding companies as is currently the case for SdB direct oversight of banks and their subsidiaries.

D. Authorities' Response to the Assessment

January 19, 2006, Response by the Superintendency of Banks of the Republic of Panama

The Superintendency of Banks of Panama (SdB) wishes to express its appreciation to the IMF Mission on the Assessment of compliance with the Basel Core Principles for an Effective Banking Supervision. The assessment recognizes that the banking supervisory regime is largely compliant with the Basel Core Principles for Effective Banking Supervision.

The discussion and consultations during the course of the Assessment permitted the SdB to update some of its regulations and procedures to better meet with the IMF recommendations. Regulations and Procedures updated after the Mission Visit in May 2005 are as follows.

- On July 2005, the SdB introduced a disclaimer rule expressing that the reports of inspections are for the exclusive use of the bank and de SdB.

- On August, 2005, a General Resolution No.2-2005 was issued and implemented a classification system for banks and economic groups based on the structure of the CAMELS.

- On December 2005, Accord No. 12-2005, Accord No. 12-2005 E, and Resolution of the Board of Directors No. 32-2005 were approved. These regulations upgrade the *Know-Your-Customer* rules and increase compliance with AML/CFT regulations for banks and trust companies administrators. At the same time, the regulation introduces obligations for correspondent banks and establishes the Know Your Employee Policy in line with the FATF Recommendations.

Response on Recommended Actions

CP 1.1 The supervision of these institutions is not within the faculty of the SdB.

CP 1.2 The SdB will develop a program for financial stability of professionals in order to reduce the risk of losing senior officials.

CP 1.5. The SdB will evaluate the administrative and legal instrument that needs to be amended to provide legal protection for SdB staff acting in their official capacity.

CPs 3 and 25. The SdB has already established a procedure of consultation with home country supervisors to prevent parallel banks.

CP 6. The SdB will complete the necessary technical studies to update the regulations concerning capital adequacy on certain aspects recommended by the IMF. Other recommendations will require evaluations about the impact on the banking and monetary system.

CP 11. The SdB will fulfill an integral review concerning the regulation about the asset quality to include, among others, an adequate measure regarding country risk.

CP-12. The SdB is hiring a technical advisor that will support the implementation on new regulations and practices including VaR and/or building-block approaches on market risk.

CP 22. The Regulatory Department (Departamento de Normas) is developing a guideline for working with distressed entities

CP 23. Our Legal Department will analyze the corresponding regulations in order to clarify the SdB's power to execute globally consolidated supervision.

The structure of the Regulatory Department (Departamento de Normas) will be analyzed and measures taken to strengthen its capacity.

II. Assessment of Observance of the IOSCO Principles

A. General

20. **This assessment of the observance of the IOSCO Objectives and Principles of Securities Regulation (the IOSCO Principles) was conducted as part of the evaluation of observance of regulatory standards for the financial sector.**[4] The IOSCO assessment considered the securities regulatory framework, the powers, capabilities, and responsibilities of the authorities, as well as issues related to the securities markets, market intermediaries, issuers of securities, and the management of collective investment schemes and private pension funds.

21. **The National Securities Commission (CNV) is responsible for the supervision and regulation of the securities markets.** In general terms, the legislative and regulatory regime is modeled after developed countries containing many modern features. The decree law of securities markets (DLMV) provides for independence of the commissioners, such as the procedures for appointment by the president, a five-year term in office and the removal criteria requiring a decision of the Supreme Court.

Information and methodology used for assessment

22. **The assessment used the 2003 version of the IOSCO objectives and principles of securities regulation**, the IOSCO assessment methodology, and other relevant IOSCO documentation. Reference also is made to the IOSCO and Committee on Payment and Settlement Systems (CPSS) Recommendations on Securities Settlement Systems. The assessment considered the DLMV law and associated regulations, the CNV's policies and procedures, including those relating to the enforcement process, and the self-assessment report prepared by the CNV.

23. **The assessment included discussions with CNV commissioners and former commissioners**, directors, and senior staff responsible for each of the functional areas as well as senior officials of the Bolsa de Valores de Panama (the Bolsa) and Central Latinoamericana de Valores, S.A. (LatinClear). The assessor also met with selected brokerage firms, corporate issuers, securitization companies, and mutual fund managers, auditors, and other organizations representing different financial services activities.

Institutional and macro prudential setting, market structure

24. **The CNV licenses both securities houses (Casas de Valores) and investment advisors.** There are 33 securities houses registered with a total transaction volume of about

[4] The assessment was conducted by Ms. Paloma Portela, Deputy Director, Spanish Securities Commission (CNMV).

$7.3 billion in 2004. About 55 percent of transaction volume was concentrated in five securities houses.

25. **Interest in Panama's capital markets is expanding.** The CNV licensed three securities houses in 2004. In 2005, five firms applied to obtain licenses to operate as securities houses, and one firm applied to obtain an investment advisor license. The interest in the securities industry has increased consistently among individuals. At end-May 2005, there were 265 licensed stockbrokers. The CNV licensed 50 stockbrokers in 2003, 38 in 2004, and 42 until end-May 2005.

26. **For 2004, the total market capitalization was $3.9 billion, which represents an increase of 28 percent over 2003.** The proportion of market capitalization represented by that of the three largest companies averaged 58 percent. There were 81 issuers of listed securities in the capital markets at end 2004, representing a decline of 15 during the year due to mergers, or withdrawals of issues because they were cancelled before maturity. In 2005, the number of issuers increased only slightly to 83.

27. **Primary issues are the largest component of the market activity by volume at about 68 percent**, while the secondary market represents about 25 percent and the repurchases about 6 percent. The total amount of securities issued in 2004 was $518 million with an additional $460 million issued through end-May 2005. For the first five months of 2005, the pace of issuance is substantially ahead of 2004. There are 17 mutual funds (domestic) and 3 international collective investment schemes with total assets of $422 million and $20 million, respectively.

28. **Securities markets are small and illiquid.** Activity is concentrated mostly in the primary market for government debt and corporate bonds. The investment culture remains underdeveloped, with users of financial services generally preferring to use banks for the safekeeping of savings. Historically, investors have preferred investment options provided by foreign capital markets, usually the United States. These factors, combined with a limited amount of promotion of the securities markets, weigh on the size and volume of the Panamanian stock market. An additional factor is that the corporate structures are frequently heavily influenced by significant family ownership, which has affected the development of the local markets.

29. **The CNV licenses credit rating agencies.** Presently, there are four credit rating agencies registered with the CNV. The CNV also licenses private pension fund managers and investment managers, stockbrokers, principal executives, and market analysts.

Description of regulatory structures and practices

30. **Passage of the DLMV in 1999 reconstituted the CNV as an autonomous government agency to regulate the securities markets.** The DLMV removed the CNV from the Ministry of Commerce and Industry (MICI) with the aim of modernizing the securities market regulatory framework. The CNV became operational in early 2000, and through mid-2005 has produced 66 regulations (Accords) and established administrative positions through the issuance of 70 opinion letters. In 2003 and 2005, the CNV reached agreement with its counterparts in El Salvador and Costa Rica, respectively, for expedited registration in Panama of securities also registered in those countries.

Box 2.1—CNV Regulations to Implement AML/CFT Laws

Document No./Date	Highlights
Agreement 4/2001	Establishes the codes of conduct for reporting entities with respect to the requirements of the Law 42-2000.
Agreement 8/2002	Establishes the obligation for reporting institutions to provide training to personnel in AML/CFT matters.
Opinion 1/2003	Describes the position of the CNV with respect to the scope and content of the know-your-customer policies.
Agreement 1/2004	Modifies the requirements of Agreement 4/2001 with respect to the codes of conduct for reporting entities. Also establishes the functions of the Compliance Officer in accordance with the requirements of the DLMV.
Agreement 1/2005	Modifies Agreement 4/2001 and establishes the codes of conduct that self-regulated organizations (SROs) should comply with Law 42-2000. Agreement 1/2005 also modifies Agreement 4/2001 to CFT requirements.

31. **The CNV supervises the Bolsa de Valores and LatinClear; both are self-regulatory organizations (SROs).** The Bolsa is a demutualized corporation organized under Panama Law. Its shareholders include the main local banks, commercial firms, insurance companies, and stockbrokers. The Bolsa has authorized capital of $1 million, divided into 180,000 shares. No individual shareholder owns more than 2.5 percent of the capital. LatinClear began operations in 1997 as the central securities depository for performing custody, clearing, and settlement operations for equity instruments, government bonds, corporate bonds, commercial paper, and treasury certificates. All of the securities held at the depository are immobilized. At end-2004, LatinClear held 43 percent of the total capitalization of securities in Panama.

32. **The pension funds law number 10 of April 1993 regulates pension funds.** The DLMV gave the CNV specific authority to supervise and inspect the private pension plans. The pensions system falls into two types, one administered by the public sector (of an obligatory nature) and the other administered by the private sector (of a voluntary nature). By end-2004, there were two fund and pension administrators with 17,000 members and combined assets under management of $55 million. The CNV has a technical department working on developing a regulatory framework, updating the 1993 law, a new pensions law, and some manuals and guidelines on supervision and inspection for internal use.

The CNV has issued several regulations (Accords) based on the anti-money laundering law **(Law 42-2000). (See Box 2.1—CNV regulations to implement AML/CFT laws). The regulations require reporting entities to establish adequate internal control systems and procedures for: (i) identifying customers; (ii) reporting currency and suspicious transactions; (iii) providing training to personnel; and (iv) retaining customer information and transaction records.**

General Preconditions for Effective Securities Supervision

33. **Accord 2-2000 requires that issuers and intermediaries provide periodic financial information in accordance with either International Accounting Standard (IAS) or the Generally Accepted Accounting Principles of the United States (US GAAP).** Accord 7-2002 set a mandatory declaration on the part of the president, treasurer, and/or CFO of the company, regarding the reasonability of the financial statements file with the CNV. Though the requirements are sound, there are some doubts as to the capacity of the accounting profession to fully implement requirements. Moreover, the framework for regulating the accounting profession is limited.

Principle-by-principle assessment

Regulator: power, resources, independence, enforcement (Principles 1–5 and 8–10)

34. **The securities market legislative framework is basically sound.** The DLMV authorizes the CNV to regulate the market by establishing procedures and issuing regulations, accords, and opinions. The CNV staff are committed to their assigned duties of enforcing their oversight responsibilities, improving efficiency, putting in place policies that promote the market and investor education, including implementation of IOSCO principles, and cooperating at a local level.

35. **The CNV employs a combination of investigatory and administrative powers to enforce DLMV requirements.** The CNV has authorized 16 formal investigations from 2001 to mid-2005. Some of these cases began after a preliminary investigation had been carried out by the CNV to determine whether there was sufficient merit to authorize a formal investigation. When a formal investigation uncovers evidence that makes it appear to the

CNV that a person is violating or about to violate any provision of DLMV or its regulations, appropriate legal sanctions are imposed. For instance, during 2001, the CNV imposed several sanctions against individuals and corporations for providing false or misleading information to investors. In one particular case, the issuer and its CEO and CFO were fined $300,000 each.

36. **The CNV also imposed administrative penalties for the violation of the rules concerning periodical disclosure of information**. The CNV imposed 153 penalties in 2000, 119 in 2001, 67 in 2002, 25 in 2003, 21 in 2004, and 18 in 2005. However, some weaknesses relating to legal provisions and the CNV's independence have been identified, and these need to be addressed. The assessment detected some gaps in legal provisions, which do not provide the regulator with powers to fully perform its duties. The decisions taken by the CNV are subject to both administrative and judicial review. If an affected person does not agree with some decision, he/she is entitled to file a complaint at the *Sala de lo Contencioso Administrativo* of the Supreme Court of Justice. This judicial body has the final word concerning the legal validity of the proceedings or decisions taken by the CNV. So far, the *Sala de lo Contencioso Administrativo* has decided on only 5 of the 19 complaints since 2001; although, some of these cases refer to crucial issues.

37. **The CNV is building the capacity of its staff (albeit with limited resources) and formulating policies to promote the development of broader capital markets and improve investor education.** The CNV also needs to improve its technical competence and abilities. This can be achieved through a medium-term training program in areas such as supervision procedures for intermediaries, investment firms, collective investment schemes, and SROs. They should also improve their techniques on risk management, internal control, and capital-adequacy methods.

Self-regulatory organizations and secondary market (Principles 6–7 and 25–30)

38. **The CNV oversees the SROs to ensure that they implement the CNV's regulations and rules**; however, clarification of responsibilities and coordination between the respective roles of the CNV and the Bolsa in enforcement operations is needed in order to reduce duplication or inconsistency in the exercise of supervisory powers by the various authorities.

39. **The scarcity of resources at the CNV is also a factor that has an impact on the ongoing oversight program of the SROs**, including the ability of the CNV to exercise prudential supervision over the operations of LatinClear which provides the clearance and settlements system.

Cooperation (Principles 11–13)

40. **The CNV may share information that is publicly available in its files or other public records with local and foreign authorities.** However, information obtained during the course of inspections or investigations is deemed confidential and may only be shared with the judicial powers in class action cases or with the attorney general's office in cases where there are reasonable grounds to believe that a criminal violation of law has occurred.

41. **Article 22 of the DLMV provides that the CNV may enter into arrangements with local or foreign, public or private entities to fulfill its oversight functions.** At the domestic level, there are in force some agreements with other authorities. At the international level, the CNV has signed memoranda of understanding with regulators in Latin America, including El Salvador, Dominican Republic, Honduras, Chile, Mexico, Argentina, and Costa Rica, and in Europe (Spain).

42. **The CNV is a party to the IOSCO Multilateral MOU (Annex B only) that promotes cross-border cooperation and information exchange to prevent securities market crime.** However, the CNV is not able to comply with all the provisions of the IOSCO multilateral MOU. For example, the CNV is not permitted to share nonpublic information held on its files with its overseas counterparts (as noted above regarding bank account information). The CNV cannot initiate an investigation or inspection solely on behalf of a foreign authority but only for the purposes of its own investigations. Nonetheless, the CNV has assisted foreign regulatory authorities within these restrictions of Panamanian law. Discussions with other regulators confirm this assistance.

Issuers (Principles 14–16)

43. CNV regulations as noted earlier require registrants to use either IAS or US GAAP accounting standards and the president, treasurer, and/or CFO must declare that the financial statements filed are correct. Although this requirement represents a high standard, the capacity and skill of the accountancy profession and its representative body are underdeveloped. **The *Accounting Technical Board,* as the key representative body of the accounting profession, needs to reinforce its rules and powers to permit it to enforce its code of professional ethics and to establish an effective oversight system.** A draft law was introduced to the National Assembly in April 2005 to modify the existing statutes that regulate the accounting profession and the *Accounting Technical Board.*

Collective investment schemes (Principles 17–20)

1. **The DLMV requires that the CNV regulate investment companies, both Panamanian and foreign.** The law further establishes categories of investment funds according to whether they are open- or close-ended and according to the redemption offer. The law grants the CNV authority to establish procedures and to issue detailed regulations.

44. **The new regulatory framework sets out authority and responsibility for regulation of collective investment schemes**, including clear power to establish and enforce entry criteria for open-ended funds. Because the law is recent, the CNV has not yet introduced a program for the ongoing monitoring of the conduct of collective investment schemes or their administrators, including enforcement of compliance with eligibility, licensing, registration, or authorization requirements.

Market intermediaries (Principles 21–24)

45. **The CNV exercises supervision and oversight of compliance over market intermediaries through Article 263 and 264 of the DLMV.** Securities houses are licensed intermediaries, both in the primary and secondary markets, with most owned by banking groups. Banking entities are allowed to deal in securities under Article 23 of DLMV, once they obtain a securities house license from the CNV.

46. **The CNV has a full range of supervision and enforcement manuals and technical resources; however, reporting and inspection programs are not in place to ensure that prudential and risk-management requirements are observed.** Consequently, monitoring of compliance with prudential requirements and internal control and risk-management standards are weak. With an increase in current enforcement staff, it should be able to improve its supervision efforts. Further improvement will come when regulations raising standards for internal control systems, capital adequacy requirements, and asset valuation are passed. The CNV is able to compel financial intermediaries to reconstruct any securities transaction and during the course of an ordinary inspection is duly authorized to request and obtain records from intermediaries in accordance with Article 264 of the DLMV.

B. Detailed Principle-by-Principle Assessment

47. IOSCO recognizes that the means of implementation may vary depending on the domestic context, structure, and stage of development of the country's capital market and acknowledges that regulatory authorities may implement the IOSCO Principles in many different ways. The assessment of the implementation of each principle on a qualitative basis is based on a five-fold assessment categorization: implemented, broadly implemented, partly implemented, non-implemented, and not applicable.[5]

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[5] A Principle will be considered ***implemented*** whenever all assessment criteria are generally met without any material deficiencies. A principle will be considered to be ***broadly implemented*** whenever only minor shortcomings are found, which do not raise major concerns, and when corrective actions to achieve full implementation with the principle are scheduled and realistically achievable within a short period of time. A principle will be considered ***partly implemented*** whenever significant shortcomings are found, and the authorities have not implemented one or more assessment criteria. A principle will be considered ***non-implemented*** whenever major and material shortcomings are found in adhering to the assessment criteria. A

(continued)

Table 2.1. Detailed Assessment of the Observance of the IOSCO Principles

Principles Relating to the Regulator	
Principle 1.	The responsibilities of the regulator should be clear and objectively stated.
Description	The regulator's responsibilities and powers derive from the DLMV law. Article 8 refers to the powers of the CNV, which alone is the government agency authorized to regulate and administer securities laws and related statutory agreements. Agreements are the formal regulations of the CNV. Title XV of DLMV sets out the administrative procedure for adoption of agreements which establish that in the event that the CNV adopts, amends, or revokes an agreement, or makes a recommendation to the Executive Branch to adopt, amend, or repeal a Law Decree, it must publish a notice for public consultation in two newspapers of national circulation not less than fifteen days before the date on which it is proposed to adopt the said agreement. The CNV can issue interpretation letters to applicants. Opinion 17-2000 sets out the form and content in the presentation of applications to the CNV, by individuals seeking a specific disposition of the DLMV or the Regulations. The interpretation process appears transparent and free of abuse. There are agreements of cooperation and transmission of information among the different authorities through adequate channels. Article 22 of the DLMV, refers to the intergovernmental relations and indicates that the commission has the ability to enter into agreements with public or private companies, national or foreign, for the development of its functions. In its relations with the executive branch, the commission acts through the Minister of Economy and Finances (MEF). The CNV has signed a Memorandum of Understanding with the Attorney's office of the Administration in which they establish relations of cooperation and exchange of information between the two institutions. Likewise, a Memorandum of Inter-institutional Understanding in Supervision Affairs was signed by the Panama SdB, the CNV, and the Panama Insurances and Reinsurances Superintendence. Its objective was the commitment of the parties to be collaborative in matters pertaining to supervision, including the duty to exchange and to be provided reciprocally with the necessary information to facilitate supervision. The work of supervision will be shared reasonably by the parties in confidence, despite the applicable legal constraints, including those that restrict disclosure. Equally, the CNV has held discussions with the Financial Analysis Unit (UAF) in order to sign in the future an agreement of cooperation between the two institutions. Finally, the CNV has also approached the MEF regarding a "contribution agreement" under which the Ministry will collaborate with the commission in order to collect the fines imposed by the CNV. The CNV, either on its own initiative or at the request of the Financial Analysis Unit,

principle will be considered ***not applicable*** whenever it does not apply given the structural and institutional conditions.

Table 2.1. Detailed Assessment of the Observance of the IOSCO Principles

	provides information and any necessary assistance to prevent money laundering. Act 42 of October 2, 2000, sets forth rules for anti-money laundering. In its Article 2, it indicates that the SdB and the other supervisory agencies are authorized to collaborate with the Financial Analysis Unit in the exercise of its powers and to provide, at its request or on their own initiative, any information they possess, and which could help to prevent the money laundering felony, so that the Financial Analysis Unit can examine and analyze the information given.
Assessment	Broadly implemented
Comments	Principle 1 requires effective cooperation among responsible authorities, through appropriate channels. It is evident that there are formal arrangements for cooperation and communication of information between the responsible authorities, but such cooperation and communication are currently suffering from significant limitations.
Principle 2.	The regulator should be operationally independent and accountable in the exercise of its functions and powers.
Description	The regulatory framework grants the CNV sufficient powers to fulfill its duties. It also has clear and consistent internal working processes. The CNV has jurisdictional authority over all participants in the securities markets. But some concerns arise regarding operational independence on a day-to-day basis as described below. Through the DLMV, there are mechanisms designed to provide independence for the commissioners, such as procedures for appointment, the length of their terms in office and the removal criteria. Commissioners are appointed by the president (Article 3 from the DLMV) and can only be removed by a decision of the Supreme Court after pursuing a judicial process (DLMV Article 7). The term of their office is five years as set forth in Article 6. Routine and regulating decisions are taken by the commissioners with a favorable vote of two of them (DLMV Article 9). The CNV is required to be transparent in its operations and use of resources, and to make public its actions that affect users of the market and regulated entities, excluding confidential or commercially sensitive information. The CNV must submit its financial statements to the legislative branch or another public office on an ongoing basis. With regard to administrative matters, the commission must submit accounts to the General Controller of the Republic, to the MEF, and to the Legislative Assembly. The General Controller has the duty to ensure that the transactions carried out by state entities comply with the law and is authorized to perform necessary audits. In addition, every document presented before the commission is of a public nature excluding confidential information or industrial secrets. The commission has also signed an agreement with the ombudsman to submit information regarding its schedule, expenses, and the sworn statements of the financial position of the commissioners. This supports transparency within the institution's management. The CNV does not possess a specific investigation procedure that could apply at start of an investigation that involves issuers, intermediaries, auditor companies or others; however, it is a responsibility of the CNV to guarantee that investigations comply with the minimum requirements and principles granted in the Administrative Procedures Act 38 of July 31, 2000. In general, investigations must be impartial, uniform, economic, speedy and efficient, while also guaranteeing the adequate accomplishment of the administrative labor, without harming the due legal process.

Table 2.1. Detailed Assessment of the Observance of the IOSCO Principles

	Factors affecting operational independence of the CNV: Even though the DLMV was written to ensure reasonable autonomy for the CNV, there are indirect controls that constrain its activities. (i) According to DLMV Article 22, the CNV must act through the MEF in dealings with the executive branch of the government. In this regard, the CNV must coordinate with and receive the approval of the MEF regarding selection and appointment of technical and administrative personnel. This requirement is described in Law 54 of 2004, which regulates the Nation's Annual Budget for the fiscal year ending 2005. (ii) The MEF must also approve the CNV's code of conduct pursuant to DLMV Article 13. The CNV sent the first draft of the Code of Conduct to the MEF in 2002, and is still awaiting approval. The CNV has also submitted a proposal to modify the existing securities laws and a couple of proposed regulations involving proxies and specialized investigation proceedings applicable in case of violations of the securities legal and regulatory framework. (iii) The CNV is dependent on a subsidy from the central government that must be agreed by the Budget Secretariat of the MEF, because the fees charged by the CNV on the industry are not sufficient to cover its costs. This constraint is at odds with the budgetary autonomy intended in the DLMV law (Article 2), which establishes that the CNV should have funds separate and independent from the central government and the right to administer them. Equally the DLMV establishes that the CNV will approve its own budget of revenues and expenses and that it will be incorporated into the state's general budget once discussed with the corresponding authorities of the Executive Branch. The consequence is that the limited funding has impeded the CNV's ability to effectively carry out its responsibilities. (iv) One of the commissioner positions has been vacant since the term of the previous commissioner holding the position ended at the end of 2004. Since then, the executive branch has not appointed a replacement. The law expresses that in the permanent loss of one commissioner, an acting commissioner should be appointed to perform the duties. A director has assumed the position of acting commissioner; however, this situation has placed a substantial additional responsibility on the person while he/she is in an acting capacity. (v) Recent court challenges have called into question the decisions of the CNV in enforcement proceedings. If an affected person does not agree with a CNV decision, he can contest the decision to the Supreme Court of Justice, which has the final say. So far, the court has decided on only 3 of the 20 complaints since 2001, which has created uncertainties as to the CNV's authority to regulate the securities markets. While one recognizes that procedural protections are necessary, the delays in the judicial decisions are exceptional. (vi) The CNV staff and commissioners do not possess sufficient legal protection when acting in the bona fide performance of their functions and powers. As a consequence, the staff and commissioners are potentially vulnerable to private legal actions.
Assessment	Partially implemented
Comments	The CNV is not sufficiently independent in fulfilling its regulatory mandate. The CNV's regulatory independence is subject to legal delays due to challenges through the courts,

Table 2.1. Detailed Assessment of the Observance of the IOSCO Principles

	and affected by limited independence from the administration, as evidenced by the reliance on MEF/Executive Branch for resources, decisions on hiring, agreement on a code of ethics (outstanding since 2002), and the appointment of a new commissioner (outstanding since end-2004). The CNV cannot rely on a stable source of funding and is unable to properly control its budget. It should have greater budgetary control and greater administrative control over operations, including the right to independently hire and fire staff. Legislation should be amended to reverse and prevent further adverse judicial decisions. Legislation should also be amended to grant staff legislative protection from liability for acts carried out in good faith in the course of duty. The CNV intends to hire an independent accounting firm to audit its annual financial statements. The selection process will comply with fairness and transparency requirements, as provided by Law 56 of 1995.
Principle 3	The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.
Description	The legislative and regulatory framework is broad, which allows the CNV to comply with most of the IOSCO Principles; however judicial and extrajudicial aspects can compromise its role and independence. Financial resources are constrained, as revenues from taxes and fees do not cover the costs of regulation. As a consequence, the CNV is dependent on a subsidy from the central government. Article 12 of the DLMV sets out that the CNV is able to nominate and hire its staff, including accountants, lawyers, and other external consultants as needed to perform its functions and duties and could also fix their remuneration and terms of agreement. Such nominations and hiring may be temporary or permanent. However, this provision conflicts with Article 267 of the Constitution of the Republic, which states that the CNV's budget is part of the General State Budget as submitted by the executive branch for approval of the legislative branch. Although there have been some advances, the lack of availability of resources manifests in the difficulty of attracting and retaining experienced staff. At inception of the reconstituted CNV, there were 12 positions, which were later increased to 24 positions in 2000. The CNV is reliant on significant number of temporary professional staff that was hired for up to 12 months with the possibility to renew. The CNV is looking to convert these positions into permanent positions, with the goal of having 50 positions. The current salary levels make it hard to compete with the securities market. Key personnel have migrated to the private sector looking for better salary options, stability, and benefits. In addition to inadequate resources, the CNV suffers from a lack of authority in the following areas: the authority to investigate (inspect and compel testimony from) issuers, and the authority to set rules in corporate governance.
Assessment	Partially implemented
Comments	The CNV does not currently have proper resources, adequate funding, and the capacity to attract and retain experienced staff, which affects the regulator independence. The CNV is undertaking a review of its needs to achieve effective supervision of securities market. Among the areas where further resources are needed is that the CNV needs more auditors; more authorized public accountants, and finance staff in order to make a deeper oversight. The staff should also be properly remunerated as they must

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	compete with the private sector over these qualified resources. Consideration should also be given to amending the DLMV to grant the CNV greater authority over corporate governance, liability of auditing firms, and members of the board of issuers. Key elements should consider the CNV ability to (i) establish mandatory rules on corporate governance; and (ii) to investigate external auditors and members of the board of companies registered with the CNV for violations to the securities laws and regulations.
Principle 4	The regulator should adopt clear and consistent regulatory processes.
	The DLMV authorizes the CNV to issue regulations, agreements, and opinions. Key structures are in place, and the CNV has issued regulatory guidance. The CNV observes internal procedures for the review of licensing requests that could include a public consultation depending on the magnitude of the interest that the public audience may have. The CNV publishes and explains its policies, except those regarding questions of inspection and vigilance, in several periodicals according to the Act 38 of July 31, 2000, the General Administrative Procedure Act, and the Act 6 of 2002, law of transparency that requires all companies of the state, including the autonomous companies, to comply the principles of transparency. Article 267 of the Act requires that documents provided to the CNV be available for public examination, unless they contain industrial or commercial secrets, or were obtained by the CNV under its investigative/inspection authority. The CNV can furnish nonpublic information and documents to the courts of justice in a collective Class Action or to the Public Department. The CNV reveals to the public all the changes in the norms or politics as well as the reasons on which they are based. The CNV needs to allow for public consultation in the issuance of regulations (i.e., agreements) under the DLMV law. Title XV establishes the administrative procedure. The CNV as a regulator must also take account of the cost of compliance in order to not impose excessive burden. The CNV informs the public about proposed and final rules and agreements through various media channels. Through the CNV's web page (www.conaval.gob.pa), the proposed and final regulation is published and also the Securities Law, their regulation agreements, and the opinions emitted by the commission. On the same web page, the CNV publishes the related laws, the resolutions, and all internal regulation. Final agreements issued by the CNV are published in the Official Gazette. Equally, in every case, the decisions of the commission, their agreements, and opinions, can be object of an action of unconstitutionality before the Supreme Court of Justice. The general criteria to grant, to deny, or to revoke a license based on the DLMV. In the cases in which the CNV will deny or revoke a license, it does so through a resolution signed by the three commissioners which must notify the interested party that action is being taken and that any reconsideration of the action should be interposed within five work days following notification.

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	When the CNV emits a final resolution in a case of investigation that finishes with a sanction, only the names of the people who have been caught on a proven violation against the Securities Act are mentioned. This final resolution should not include the names of the people that participated, collaborated, or were involved in the investigation and at the end were not sanctioned. Within the CNV, the Educational Unit was established to provide the general public with information on investor protection and for development of the stock market. This program is carried out in order to let the investor know the role of the CNV, and the faculties which concern topics important to the investors, including the laws and norms against fraud.
Assessment	Fully implemented
Comments	The CNV should explore whether additional arrangements could enhance the timeliness and certainty that information important to oversight of conduct of business is shared as needed.
Principle 5	The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.
Description	The CNV staff is obliged to observe laws, regulations, codes of conduct/ethics, and other written guidance to avoid conflicts of interests. Law 9 of June 1994, Article 137, No 18, obliges each public servant to inform his or her superior of any administrative procedure that may involve a relative of the public servant to the fourth degree of consanguinity or second of affinity. The CNV has transcribed the law requirement into the internal regulation. Article 138 of the same law, prohibits public servants from giving privileged treatment to relatives. Other prohibitions against conflicts of interest can be found in Title VIII Chapter II, of the General Administrative Procedures Act (Act 38 of July 2000). Article 30 of the CNV's code of conduct defines conflict of interest broadly as the activities, relations, and associations that can interfere or appear to interfere with the independent exercise of good judgment of the CNV in favor of the regulated and the investors. Article 31 requires that the public servant declare impediments where a conflict of interest may be present. The DLMV at Article 13 required that the CNV establish a code of conduct that sets out guidelines to assure that CNV staff do not have conflicts direct or indirect in securities registered through the CNV. The code of conduct was presented to MEF/Executive Branch in 2002, however to date it has not been approved. Therefore, there is no formal or specific regulation for the staff related to restrictions on the possession or negotiation of securities within the jurisdiction of the regulator. The DLMV restricts the use of information by CNV staff (Title XVI, Article 268) This article establishes that: "no agent, official or external consultant, or director, dignitary or employee of an SRO will be able to use for its own benefit the information presented before the Commission or the SRO. Also, they will not be able to negotiate registered securities, making use of information presented to the Commission or to the SRO, or obtained by these, even when said information is of public nature." This article is completely transcribed in the Internal Regulation, Chapter 4, Article 31 on Confidentiality, Request of Data and Services.

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	The DLMV Title XVI Article 267 determines the access to information and establishes the requirements for confidential treatment, which have been incorporated into the internal regulations of the CNV. The internal regulations require that the reports that rest in the archives, the results of activities and other similar documents, be kept confidential/protected until its disclosure is authorized. The topic of confidentiality in the commission has been executed in a diligent way; especially in the cases of investigations where this information is extremely delicate. The files are maintained at all times under a strict reserve by the staff of the National Direction of Enforcement and Audit in the course of the investigation. Article 209 imposes confidentiality requirements on the broker dealer, investment advisor, investment administrator, the SRO or the director, dignitary, or employee of any of these, as well as the stock broker and the analyst. Breaches of the confidentiality requirements can result in fines ranging from $1,000 to $100,000. Article 268 further establishes the application of sanctions to the CNV staff and temporary staff ranging from $1,000 to $100,000. In the case that the investigation concludes that the dismissal of a Commissioner is necessary, this dismissal would have to be requested at the Supreme Court of Justice, just as Article 7 of the DLMV states. Law 9 of June 1994, Article 152 allows for the immediate dismissal of public employees for failure to maintain confidentiality of information. In the commission, the confidentiality matter has been executed in a diligent way, especially in the case of investigations, where this information is extremely delicate. The files are maintained under strict reserve by the CNV staff of the enforcement and audit department. In the case of other public servants, they follow what is established in the Articles 53 and 154 of the Law 9 of June 20, 1994 of Administrative Career that develops the dismissal procedure.
Assessment	Broadly implemented
Comments	The code of conduct is an important document to assure high professional standards including appropriate standards of confidentiality. Those actions necessary for formal approval should be undertaken.
Principle 6	The regulatory regime should make appropriate use of self-regulatory organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence and to the extent appropriate to the size and complexity of the markets.
Description	The CNV oversees two SROs—the Bolsa de Valores de Panama (the Bolsa) and Central Latinoamericana de Valores, S.A. (LatinClear). Both SROs are supervised by the CNV, which has to review compliance with securities laws and regulations. The Bolsa is a publicly held corporation whose shares are traded on the Bolsa itself. In its character as an issuer, the Bolsa is subject to the same rules and regulations regarding disclosure, dissemination, and the updating of relevant financial and corporate information to investors and shareholders as required by the CNV and the Bolsa itself. The Bolsa members, who each hold a stock exchange seat, are corporations engaged in stock market operations as brokerage houses. Each is duly authorized by the CNV, and hence subject to its regulation and oversight. In addition, the members that operate a

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	Bolsa seat have to be duly authorized by the Bolsa and agree to observe its rules as a self regulatory organization. At end-2004, the Bolsa had 60 registered shareholders, who in turn held 43 percent of the shares of the Bolsa. The Bolsa created LatinClear in 1997 to provide clearing and settlement services for stock exchange operations through its electronic systems. The Bolsa and LatinClear as SROs establish the requirements for its members. The Bolsa is an organization that establishes fairness rules that must be satisfied by the companies in order to participate in any securities activity. The Bolsa internal regulation defines a member as a legal entity that has purchased, in accordance with the Bolsa proceedings, the rights to an exchange seat. To operate as a Bolsa seat holder, an applicant must fulfill conditions including: (i) have a securities broker dealer license granted by the CNV; (ii) have qualified and properly authorized staff by the CNV; (iii) have the infrastructure and necessary technical team to receive and carry out exchange transactions; and (iv) be the owner of at least 2,500 equity shares in the Bolsa. Article 52 of the DLMV stipulates that the SROs adopt internal rules. In that sense, Article 54 establishes that all internal rules from the SROs should fulfill several standards. Among the standards applied to SROs, the internal rules for the Bolsa established by the DLMV are to (i) prevent deceptive and manipulative acts; (ii) promote proper conduct in the sale of securities; and (iii) stimulate the development of an efficient market. Regarding LatinClear, its rules are required to ensure the (i) operation of an accurate, safe and efficient custody, clearing and settlement securities system; and (ii) the adoption and use of procedures and international standards for safekeeping, compensation and liquidation of securities, as well as integration with national and international clearing houses. Article 5.1 of Agreement 5-2003 establishes that no person subject to these rules should participate on an issue deliberation when he possesses any direct or indirect interest. Direct or indirect interest include the following: (i) being part of the transaction or business; (ii) due to family relationship; (iii) due to a work relationship; (iv) having control of the legal entity; or (v) friendship or enmity with the person responsible of the decision**.** Articles 61 to 63 of the DLMV set out the requirements and procedures regarding the oversight and imposition of disciplinary actions by the two SROs over their members. The sanctions by the SROs would be in addition to those sanctions that the CNV might impose. The exchange is an organization, which establishes rules or disciplinary procedures with the ability to impose sanctions and other penalties, or to forbid or suspend the participation of legal or natural persons in activities related to securities or professional related activities.
Assessment	Fully implemented
Comments	No comments
Principle 7	SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
Description	As a necessary condition for authorization, the legislation or the regulator requires the SRO to prove that it can assume its delegated responsibilities by ensuring that its

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	members observe the necessary standards. **The SROs must fulfill the following conditions in order to obtain permission to operate (Article 52, DLMV):** (i) *Technical, administrative, and financial capacity*. Technical capacity is measured by a two-year business plan. On the basis of the business plan, it is determined whether the personnel have the appropriate skills and experience to provide the proposed services (Article 7, Act 7-2003). The SRO's administrative capacity is determined by the document indicated in Act 7-2003. The financial capacity is checked by the presentation of financial statements for the last two tax periods by an authorized independent public accountant, (Article 7, Act 7-2003). (ii) *Internal rules.* The SRO's internal rules should meet the securities regulations standards. Amongst the internal rules to be developed by the SRO should be a code of conduct for directors, principals, employees, and representatives (Article 7, Act 7-2003). The draft internal rules of the SRO should be presented for review and monitoring by the CNV (Article 7, Act 7-2003). (iii) *Senior personnel.* Their principal executives, stockbrokers, or analysts must have had no convictions in the last 10 years nor have had their license to act as a SRO member revoked in the last 5 years. In order to check both situations, each dignitary, director and principal executive of the SRO is required present a sworn statement stating that they fulfill the requirements of item No. 5 of Article 7, Act 7-2003. (iv) *Disciplinary rules and sanctions*. The Bolsa has established disciplinary rules and procedures, as has LatinClear, the clearing and settlement system. Under the SRO internal rules, sanctions should be established corresponding to the non-fulfillment of those rules, regardless of the CNV's administrative sanctions. Item No.6 of the Bolsa Conduct Code establishes that the non-fulfillment of its rules could lead to the corresponding administrative sanctions. **The Bolsa Stock Exchange Supervision Manual establishes:** Chapter III (compliance officer) the compliance officer will watch that the Bolsa directors, staff, and members of the Bolsa comply with the established procedures on the stock exchange internal rules and with the legal obligations on anti-money laundering. Chapter IV, the procedure for the investigation of violations against the securities legislation and Bolsa internal rules. Chapter V (disciplinary procedure) the disciplinary procedure adopted by the Bolsa. It is also indicated when it will not be initiated. This matter is also mentioned in 8.4 of the Internal Rule of the Bolsa. Chapter VII (procedure on noncompliance of transactions) which fines could be imposed for noncompliance by an intermediary with regard to its obligation of delivering securities or money for a clearance transaction made on the Bolsa. Chapter IX (preventive measures) in order to guarantee the performance and the market transparency, the Committee on Supervision of Exchange Transactions can order the

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	immediate suspension of an intermediary or its personnel while investigating facts that could entail a sanction. Article 54, DLMV, establishes that the SRO's internal rules have to ensure a fair and representative participation from its members on the administrative boards, establish that the charges and costs that their members have to pay are reasonable and shared equally between them, and must not allow unfair discrimination amongst their members or users in the admission of new members, nor impose admission requirements that are unreasonable. Article 52, DLMV, stipulates that the SROs have to adopt internal rules. In that sense, the Article 54, DLMV, stipulates that the SRO's internal rules must fulfill certain standards such as protection of the investors public interests; confidentiality regarding transactions; avoiding unfair discriminatory measures to members, users, or in the admission of new members; also the members could not impose rates, commissions, or charges on their users or clients. Additionally, the Bolsa should design rules that serve to: (i) prevent practices and fraudulent acts, or that in any way affect the market transparency; (ii) promote fair practices on the securities negotiation; and (iii) stimulate stock efficient market development. Regarding LatinClear, its rules must be designed in order to: (i) operate a precise, secure, and efficient custody, clearing and settlement system; (ii) apply international custody, clearing and settlement securities procedures and rules; and (iii) integrate with foreign and local central securities depositories. The two SROs must remit to the CNV any modifications and additions to or abolition of internal rules with an explanation of the changes (Article 57, DLMV). Once received, the CNV will proceed with the corresponding verification in order to approve them. If the changes are not deemed to be acceptable under the stipulations of the DLMV, the SROs will be advised of the necessary corrections that will need to be made. Nonetheless, the CNV could deny the proposed modifications if they consider that they do not meet the standards established in the Articles 54, 55, and 56 from the DLMV, or that the SRO does not have the technical, administrative, or financial capacities necessary to carry out the proposed changes (Article 57, DLMV). The SRO should promote cooperation and coordination amongst the people responsible for securities information, negotiation, custody, settlement, and clearing (Article 54, DLMV). The SROs will notify the CNV about the sanctions imposed on their members and their directors, dignitaries, and employees (Article 61, DLMV). The SROs, according to Article 61, DLMV, and depending on the seriousness of each case, can: (i) expel, suspend, or limit the rights of a member, director, dignitary or employee; (ii) prohibit a person from being associated with any SRO; and (iii) sanction a member, director or dignitary.

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	Furthermore, the SRO can impose any other sanction established in their internal rules if it is determined that any of their members (i) presents false or misleading information, (ii) does not comply with any of the requirements of being an SRO member, or (iii) commits any dishonest practice or act against the ethics of the exchange industry. Chapter VII from the exchange transactions supervision manual, and point 8.5 from the Bolsa internal rules indicate the possible sanctions that the Bolsa could impose due to violations of the internal or stock exchange rules. The SROs' internal rules should foster the fair and representative participation of the members on the administrative board (Article 54, DLMV). Point 3.5 from the Bolsa internal rule establishes that all the members should enjoy the same rights of access and services regarding use of the exchange. The CNV does not operate an efficient supervisory program for SROs that may include inspections. Nevertheless, in 2004 the first inspection was made at the Bolsa, which consisted of the latest four years of operations and also there is a plan for future inspections. At the inspection of the Bolsa the following areas were inspected: Organization and human resources Legal aspects (conduct rules, arbitration proceedings, discipline proceedings) Information Systems Financial/profitability analysis Accounting aspects Supervision about money laundering contingency plans Supervision about privileged information use and price manipulation. Until now, there has been no on-site inspection of LatinClear. Nevertheless, there is a periodic review program where the SROs present to the CNV their audit and draft financial statements, (Article 66, DLMV) daily operations reports (Article 18, Act 7-2003), global monthly summaries from the operations group (Article 18, Act 7-2003) Furthermore, the SROs should enclose the reports that the CNV requires on the basis of the market situation or supervisory needs, with the purpose of enforcing on the SROs and their members observance of the Stock Exchange Laws. According to Article 64, DLMV, the regulator can suspend or revoke the license given to an SRO or to any principal executive from an SRO, including the revision and revocation of government instruments and SRO's rules. Independent of actions taken by the SRO, the CNV can also take enforcement action, including sanctions against entities that are also subject to regulation by the SRO (Article 65 of the DLMV). Also, Article 263 from the DLMV establishes that when the commission has well-founded reasons to believe that a violation of the DLMV or its rules has occurred, the CNV can obtain from any registered person all the information, in the form of documents or declarations that is considered necessary for investigation. According to Article 65 of the DLMV, the CNV can assume control of the

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	responsibilities of an SRO, when the SRO's powers are inappropriate to investigate cases of misconduct or conflicts of interest. The SRO cannot disclose information about its clients, the investor's accounts, nor securities transactions that they manage, unless they do it with the client's consent. It is forbidden that any person who knows about material events which are not public and that have been obtained by means of a privileged relationship use that information for their own benefit (Article 196, DLMV). The DLMV, does not provide specifically for regulation of conflicts of interest that can take place in an SRO. The mentioned act establishes that the commission should enact conduct rules that should be observed by the intermediaries and their stockbrokers, in order to avoid conflicts of interest situations (Article 39, DLMV). Broker dealers, investment consultants, and intermediaries should observe the rules contained in the code of conduct in order to allow fair and equitable treatment of all their clients, avoiding conflict of interest situations, and ensuring transparency in securities market operations (Article 2, Agreement 5-2003). Item No. 3 from the Bolsa Code of Conduct established that the necessary measures may be adopted to avoid conflicts of interest due to professional, family, economic, or any other kind of relations involving stock exchange members.
Assessment	Partly implemented
Comments	Even though the regulatory framework is adequate and the body of self-regulation norms is appropriate, several deficiencies have been detected regarding the real capacity of the regulator to efficiently supervise both SROs, and to ensure oversight compliance with the respective norms and negotiation systems. In fact, no on-site supervision took place at the Bolsa de Valores until 2004 and, until now, at the Latin Registry Office of the CNV. The roots of the above-mentioned deficiencies are attributed, not to a lack of interest or responsibility on the part of the CNV, but to a serious lack of technical staff that can perform such duties with the necessary rigor. The regulator is well aware of those weaknesses and seeks that the relevant administrative authorities deal with the obstacles as soon as possible. It is also important that the ongoing cooperation between the CNV and the SROs is enhanced with the particular aim of strengthening policies that lead to promotion of the market and investor education.
Principle 8	The regulator should have comprehensive inspection, investigation, and surveillance powers.
Description	The CNV has comprehensive enforcement powers, including inspection, investigation, and criminal referral powers. The regulator has the power to require the provision of information in the ordinary course of business, in response to an inquiry or as part of a reporting cycle, or to carry out inspections of regulated market participants' business operations whenever it believes it necessary to ensure compliance with relevant standards. The CNV has the powers to conduct surveillance, undertake investigations, and supervise regulated entities (Art. 8, No 6, DLMV), without judicial action or even in the absence of suspected misconduct. Information can be obtained related to administrative aspects,

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	security, and ordinary business operations, including the areas related to clients, portfolio management, accounting, internal controls, including the file revision, registers, electronic transaction system, and accounting books. Also the CNV has the capacity to conduct surveillance, undertake investigations, and supervise the activities of SROs, like the stock exchange in Panama. They count as well on the system and access codes to observe in real time the transactions made within the exchange. The daily report of transactions is received on a daily basis. Client identification is provided for in Agreement 5-2003 (Code of Conduct), Article 11. It is mentioned that intermediaries and investment advisers must obtain client identification, following the parameters set forth in Agreement No. 4-2001, modified by Agreement 1-2004, where rules of conduct are established which have to be complied with by the securities exchanges, central depository, intermediaries, and investment managers for anti-money laundering purposes (Act 42, 2 October, 2000). An amendment to the Agreement 2-2001 is being elaborated for 2005 in order to add the "anti- money laundering and countering of terrorist financing" by means of Law 41 and 42 of October 2, 2000, Act 22 of May 9, 2002, and Act 50 of July 2, 2003" (As of the date of this report, the said Agreement 1-2005 was published and provides for the aforementioned). On the other hand, entities should keep, from the moment they establish relations with the client, until five years after they are finalized, records of the documents required for their identification. On inspections to regulated entities, customer files will be checked in order to verify that documentation required for identification has been submitted. According to the Agreement 5-2003 (Code of Conduct) further to Title II- Mandatory Registrations and Relations with clients, specifically in operation of execution orders, the intermediary must require its clients to give clear and precise orders. Also, the entity that receives the order must include it in their record of orders chronologically, recording it with a corresponding number, and listing in the appropriate file all related orders that follow. Entities will include in the record of orders the orders of transfer of securities, represented by notes in the accounts or titles, which they may receive. This record must be kept by electronic means, assigning to the information contained in it the adequate codes in order to identify unmistakably its content. At the request of the CNV, a paper print will be done signed by the entity's executive officer. The anti-money laundering legislation is also applied (which requires retaining documents for five years). Within the powers established in Article 8 and 264 of DLMV, daily inspections for anti-money laundering and countering terrorist financing were included recently. By means of Act 41 of October 2, 2000, the money laundering felony was added to the Title XII, named Crimes against the National Economy. The money laundering felony is stated in Article 389 and in the following Articles 390, 391, 392, and 393, the sanctions are established.

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<table>
<tr><td></td><td>By means of the Law 41 and 42, 2000, measures to prevent money laundering were established. Within the AML areas, the CNV issued Agreement 4, 2001, which developed the regulation that impose legal obligations that must be applied to address AML in the securities market.

Since 2002, a supervision program has been implemented on-site, which involves many inspections of the regulated entities:

<table>
<tr><th>Regulated Entity</th><th>2002</th><th>2003</th><th>2004</th></tr>
<tr><td>Securities broker-dealers</td><td>25</td><td>29</td><td>18</td></tr>
<tr><td>Investment Administers</td><td>6</td><td>12</td><td>5</td></tr>
<tr><td>SROs</td><td>1</td><td>0</td><td>1</td></tr>
<tr><td>Total</td><td>32</td><td>41</td><td>24</td></tr>
</table>
</td></tr>
<tr><td>Assessment</td><td>Broadly implemented</td></tr>
<tr><td>Comments</td><td>The CNV should have its own administrative proceedings to pursue investigations for violations of securities laws and regulations. The CNV believes this document must be adopted as an Executive Decree, with the approval of the Executive Branch (MEF). The CNV submitted a proposed draft containing administrative proceedings for investigations in the securities market. Recently, the CNV adopted an internal proceeding but only for purposes of dealing with preliminary matters and complaints.</td></tr>
<tr><td>Principle 9</td><td>The regulator should have comprehensive enforcement powers.</td></tr>
<tr><td>Description</td><td>The CNV has investigative powers as set forth in Article 263 of DLMV (modified by Act 45, 2003).

As a public entity, the CNV not only has competence to submit cases for penal investigation, but this is also a duty established in the Penal Code of the Republic of Panama, Article 234.

This constitutes the general rule for every public servant. In addition, according to the Article 267 of DLMV, the CNV has the right to submit cases to the penal authority.

In its original text, Article 263 of DLMV established the right to call for an investigation when there were well founded reasons to believe that a violation of the law decree had occurred or may happen. However, its scope was limited to regulated entities or registered persons.

The CNV therefore had the authority to require any person within the jurisdiction of the CNV to submit to an investigation, and in the event that this person refused to cooperate, the case could be forwarded to the justice courts so that they could oblige the person to cooperate.

The original text was amended and improved by means of Act 45, 2003 and basically it broadened the scope and clarified the powers of the regulator in an investigation, as explained below:

It makes a distinction between individuals and registered individuals, who are subject to the supervision of the CNV. This distinction is fundamental since the original text used to say “the people subject to this Act,” and this often generated confusion since, for instance, external auditors who audit the financial information of issuers or licensed</td></tr>
</table>

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	individuals were not included. The CNV is allowed to suspend activities and/or operations and undertake an investigation in a way that minimizes damage to the market and aims to determine the seriousness of the violation and those responsible for it. The CNV's powers are broad enough to enable it to ascertain the veracity of the information obtained from various sources, including documents and statements. The CNV can demand to see accounting books, records, and correspondence relating to every account, as well as examine the records and other documents which contain decisions made by the company. The authority to undertake such an examination is also extended to subsidiaries or branches over which the regulated entity or registered person has control. Regarding the enforcement powers, the legal rules to supervise, oversee, and investigate issuers and intermediaries, are clearly stated in DLMV (Article 8, Title III, (Intermediaries), Title IV (SROs), Title V (Securities Register and Reports), Title VI (Public Offering), Title IX (collective investment schemes), and Title XII (Forbidden Activities)). In the regulatory framework of the CNV, administrative courts are not separated from the authority which orders the investigations. The commissioners play an important decision-making role. The National Direction for Supervision and Audit is in charge of opening the file once the investigation has been ordered and determining the existence or not of reasonable proof to believe that a violation to the current law has happened or is occurring. After this, a preliminary report is prepared indicating whether a violation has been committed. When this stage is completed, the case enters into the decisive stage, in which it is passed to the commissioners with the support of the Legal Affairs Department. Currently, the CNV does not have the power to approve a procedure for development of investigations through an agreement, and therefore the CNV has drafted a project of law decree containing the procedure for development of investigations. This was submitted to the Ministry of Economy and Finance (MEF), on September 9, 2004, and it is still pending approval. The MEF is the official link between the CNV and the executive branch. The CNV has no direct presence in the cabinet councils, where the ministers of centralized and decentralized entities meet. According to the law, the CNV is a financial intermediary and is represented by the MEF before the executive branch. The CNV has the power to refer matters to judicial or civil processes in order to ensure compliance with its regulatory powers. In light of Article 267, numeral 2, the CNV has the authority to submit documents obtained from an investigation or inspection to the courts of justice or public ministry if it is suspected that the violation has broken the penal law. Following approval of Act 45 2003 (regarding financial crimes), the CNV has played an active role, and given support in the legislative assembly as well as in drafting the proposed text of the various articles as stated in the final version of Act 45 2003. Some of the topics which are part of Act 45 2003 are: categorization of financial crimes, price manipulation, undue use of privileged information, destruction, false accounting, and the withdrawal of funds without authorization.

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	It is relevant to point out that in Act 45, 2003 the following requirements were stated: In order to proceed with action against a financial crime it is necessary that the offended party brings a lawsuit as evidence. In this case, the Public Ministry will request the CNV to prepare a technical report, which must be presented within the following two months. Nonetheless, if while exercising its functions the CNV realizes that a crime will take place, it will accelerate its investigations and take adequate protective measures (such as public warnings, notes to regulators) and will send the file to the public ministry. Further, the CNV has the authority by means of Article 266 of DLMV to examine books, accounts and other documents if there is reason to believe that a legal person is operating as an intermediary without the license granted by the CNV. Article 263 has been improved by widening the scope of the investigation and the powers of the CNV so that all documents, books, and records may be examined. The new powers have not been used to date since no new investigations have been initiated. The CNV has the powers to impose administrative sanctions per Article 208 of DLMV 1/99 as amended by Act 45, 2003, which establishes a maximum penalty amount of $300,000, and allows the CNV to apply different criteria with respect to administrative violations. In spite of the legal powers of the CNV to impose administrative sanctions on every person who violates the DLMV 1/99, it has been subject to lawsuits which are currently being held in the Supreme Court of Justice. The CNV has been sued by an issuer's external auditors claiming that the CNV has no legal powers to investigate them or to impose administrative sanctions. The case is before the Supreme Court of Justice and the final judgment has been outstanding since April 2004. In conclusion, we can state that the powers of the regulator are clear in regard to their administrative scope and they have been executed. However, they have to depend on due process in the legal system. Therefore, the CNV's administrative decisions are subject to revision by the Third Room of the Administrative Contentious Court. In practice, once a sanction has been imposed by the CNV, if the individual brings a lawsuit he does not pay the fine until the court decides. The CNV is also empowered to demand information from the regulated entity or issuer, or even in regard to Article 266, meaning entities without authorization to operate in the securities market. Individuals can take their case directly to the civil or penal courts. It is not essential to go firstly through administrative channels, where it is determined if a violation to the securities law has been committed, although it can be done this way. We have a precedent where the client as a first step preferred to go through the administrative channel, and the CNV informed him about the lack of competence, and in spite of this fact he waited until the investigation process was finished (one year) in order to get a resolution that indicated in this case the violation of the securities act, and after this he went to the courts. Article 204, DLMV, attributes civil responsibilities to anyone who commits violations against the law. It establishes equal amounts up to three times the profit obtained or loss avoided and does not permit contract cancellation. Article 204 also allows that the

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	affected request the contract cancellation instead of legal damages actions. Article 210 deals with collective class action. When a violation to this law decree occurs, people who suffer damages cannot be identified easily, being so numerous, and, if treated individually, the amount of damages actually paid may not be correct. The commission is empowered to recover those damages, with the entire amount being transferred to a trust and then distributed in an equitable and fair way amongst the people with the corresponding rights. Since 2002, the CNV has strengthened its enforcement powers. The CNV has carried out 97 inspections in the last 3 years (securities houses, collective investment schemes administrators, and SROs). Since 2001, the CNV has launched 16 formal investigations of individuals and corporations for concerns regarding false/misleading disclosures. In addition, the CNV has assessed administrative penalties for lesser disclosure violations. The CNV imposed 153 penalties in 2000, 119 in 2001, 67 in 2002, 25 in 2003, 21 in 2004, and 18 through May 2005.
Assessment	Broadly implemented
Comments	
Principle 10	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers, and implementation of an effective compliance program.
Description	According to Art. 264 (Ordinary Inspections) of DLMV, the CNV has the power to enforce compliance with the laws and regulations relating to securities activities. The CNV has the right to start investigations due to noncompliance with legal rules expressed in the basic regulation, The DLMV, as well as noncompliance with rules established by agreements. General rights in this field are considered in item Nos. 6, 7 and 8, Article 8, The DLMV, which is in total accord with Article 263, Of the DLMV. These have been largely commented upon when dealing with Principle 9. Thus, all noncompliance brought about by not fulfilling what is established in Intermediaries Rules of Conduct (Articles 37, 39, 40, 41, and 42 from Law Decree 1, l999, developed in Agreement 5, 2003); with rules of capital and liquidity (Article 28 from Law Decree 1, l999, developed in Agreement 2, 2004, Articles 4, 5, and 6) are liable to an investigation and/or sanction after fulfilling all the administrative procedures explained in Principle 9. So, it is clear that the CNV has an intrinsic right to proceed (Rule 201, Law Decree 1, l999) and the public ministry can also start the investigation of a possible price manipulation crime. However, even this being the case, the public ministry must request a technical report from the CNV. The CNV conducts inspections of the regulated entities -Rule 264 (Ordinary Inspections), Law Decree 1, l999. These can be either special inspections (resulting from information received by the commission) or ordinary inspections (to state that a particular entity issuer, SRO, or intermediary fulfills the rules of Law Decree 1, l999 and its regulations). Ordinary or routine inspections–periodic–do not require complaints to be presented before the commission. Special inspections are carried out without any prior notice to the

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	regulated entity when risk situations are detected, such as non-liquidity and unusual transactions, using the inspection manual. The financial statements and reports presented by the entities are periodically checked. In the course of 2004, some cases were presented where the regulated entities did not comply with the minimum capital requirements. In these cases, a notice was sent granting a specified term (15 days) so that the paid capital could be appropriate to, at least, $150,000.00, the minimum demanded amount. In the cases considered, the regulated entities fulfilled the requirement of adjusting their capital within the granted term. Likewise, inspections have been carried out on-site, following the financial interim and annual statements. The commission carries out three types of supervisory inspections: (i) general; (ii) based on potential risks; and (iii) based on a complaint. The resource allocation is made considering the criteria previously described. The commission can establish mechanisms and procedures aimed at detecting and investigating the manipulation of prices. The authority to do this is derived directly from rule 201, Law Decree 1, l999 (Title XII), which states that market manipulation is prohibited. Up to now, the CNV has not begun—in a formal way—an investigation about price manipulation, i.e., by means of a commissioners resolution ordering the process to start. However, the CNV has followed share transactions on the Panama Stock Exchange, when they have been considered unusual or having a significant variation in amount or in frequency. At present, the agreement on own resources and prudential supervision has not been approved. Concerning the suspension or revocation of licenses, etc., it is necessary to distinguish between the two kinds of processes that can take place, as specified in Rule 5 of Agreement 5, 2003, which regulates the conduct codes, in reference to Rule 25 of The DLMV. The above-mentioned rule establishes the authority of the CNV to act in an expeditious way to suspend or revoke the granted license, restrict securities transactions, admonish a stock brokerage firm, stockbroker, analyst, investment advisor, principal executive. However, the affected party must be given notice as well as the opportunity to express their point of view, except when it is necessary to act quickly to avoid further damage. The causes may be derived from an incomplete, false presentation to the CNV together with the application for license, lack of compliance regarding a necessary requirement to obtain a license, presentation of false or deceptive information or, in a general way, noncompliance with the provisions of the law decree, its regulations or the internal rules of the self-regulated organization (SRO). Obviously, if this proceeding is applied—which, according to Rule 263 is more of a summary proceeding than an investigation—the CNV cannot use the latter, say, for a deeper and more detailed investigation. At the same time, if a suspension and/or cancellation of license is carried out, it is not legal to apply monetary sanctions.

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	The CNV has an internal procedure for handling reports of misconduct and complaints presented before the commission either for alleged violations to the rules of Law Decree 1, l999 or to its regulations. Besides, the CNV includes on its web page a section called "Center for Reporting of Misconduct," where the basic requirements to formulate reports of misconduct or complaints before the commission are stated. The previous statements are based on the rules regulating the procedures for preparing reports of misconduct and complaints formulated before administrative authorities, included in Law 38, July 31, 2000, specifically in Article 77. As an example, we can mention that in the year 2004–2005, three concrete cases of formal accusations submitted to the CNV were taken care of. The cases were investigated, and the results were written in reports sent to the commissioners. The CNV has recently adopted an internal procedure to organize the consideration of complaints submitted to the commission, according to their nature. Previously, the general framework for the conduct of these investigations was based on the provisions of Law 38, 2000 (Law of Administrative Procedures). Cases have been considered where the commission has carried out investigations about anomalous situations in the financial sector. Another way of considering these cases is the active participation of the CNV in the Financial Coordination Council (which acts as a body of coordination and consultation about the different financial services and activities developed in the Republic of Panama). The council is composed of (i) Minister of Economy and Finance; (ii) Minister of Trade and Industry; and (iii) the Banking Superintendent; and (iv) President of the CNV. One of the council functions is to evaluate the convenience of proposing and promoting first drafts in laws, law decrees, and executive and administrative actions to harmonize the regulation of financial activities and other dispositions. Also, if found necessary, to ask and gather information and technical advice from any public or private entity and to receive the consultations or proposals formulated by any of the FCC members. According to Agreement 5-2003, the intermediaries must adopt and carry out a code of conduct, which must be followed by those organizations, together with the periodical presentation of information, which they are compelled to remit to the CNV. Likewise, clear rules have been established related to the contractual relationship intermediary-customer and the information that must be given the customers and/or the investment public in general. Once rules have been adopted, it is the responsibility of the regulated entities to comply with them. It is the duty of the compliance officer to see that every one of the intermediary's obligations be complied with in the manner meant by the regulation and the law [the Agreement 9-2001, August 6, 2001 (modified by Agreements 13-2001, December 4, 2001; 6-2002, October 7, 2002; and 1-2004, February 9, 2004) adopts the regulations by means of which the role and functions of the compliance officers is

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	established, according to the resolutions of The DLMV]. The commission at the time of ordinary or special inspections verifies this. Nevertheless, there is no direct control of the proper application of the code text. The CNV does not have a rule allowing an audit of execution and negotiation of all transactions taking place in an authorized market, but the SROs do have rules for the supervision of their members. Agreement 5-2003 refers to rules for the regulated entities concerning this item. The application either internal or external of the procedures is supervised through the inspections to the regulated entities, applying the Manual of Supervision and Inspection. Such a manual foresees the verification on-site of the administrative, operative, accounting and technological aspects of the regulated entities. Inspections carried out up to the present can be called satisfactory because they have allowed the verification of compliance with the rules and the identification of deficiencies that have to be corrected by the regulated entities later; however, that inspection process has often taken longer than anticipated owing to delays in order to carry out other tasks.
Assessment	Partially implemented
Comments	Evidence of credible application of CNV powers is observed; however, the shortage of staff, resources, skills, and technology impede the CNV's impact. As noted in Principle 2, several cases are pending before the Supreme Court of Justice, which has delayed decisions on key CNV issues. Since 2001, the court has ruled on only 3 of the 20 complaints although some of these cases refer to crucial issues. Though the CNV has a program and manual of supervision, these cannot be labeled as effective, because staff resources are necessary in order to carry out the inspections, according to the program and in a continuous way.
Principle 11	The regulator should have the authority to share both public and nonpublic information with domestic and foreign counterparts.
Description	CNV has the legal capacity to cooperate domestically. Article 264 of DLMV provides that the CNV may request assistance to the SdB during the course of an inspection made to a banking entity, which also holds a license issued by the CNV. On May 13, 2005, CNV, SdB, and SSRP have signed an agreement on cooperation and exchange of information (MOU) in light of exchange information limited to related parts of supervised entities not including information concerning the clients. The regulatory framework establishes, as a general rule, that all the information obtained by the CNV is public, except the information mentioned in Article 267, Law Decree 1, l999. The information relative to the granting of permits, licenses, or records before the CNV is public information, so it can be provided to any other counterpart in the same jurisdiction. The relevant market conditions and facts constitute public information, necessary to preserve the principle of informative transparency ruling the stock market; so such conditions and facts can be provided by the CNV to any other counterpart entity in the same jurisdiction.

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	The CNV, however, is limited in its ability to share nonpublic information under Article 267 of the DLMV if (i) it is about industrial or commercial secrets; (ii) the commission in the course of an investigation has obtained them through an inspection or a procedure related to a violation of this law decree or its regulations; (iii) the commission, at the request of interested parties, has agreed not to disclose it due to valid reasons; and (iv) it is about documents or information that the commission, by agreement, considers should not be disclosed. It may be noted that the CNV has never used this discretional power. Likewise, this rule states that the CNV must take the necessary steps to preserve confidentiality in all information and documents that should not be disclosed according to this article. If the information obtained in the course of exercising off-site and on-site supervision is confidential or, in other words, included in Article 267, the CNV could only provide such information to the judiciary, public ministry, SdB (in the case of an inspection to a regulated subject with a license granted by the CNV and the SdB) and the UAF (regarding money laundering prevention and financing of terrorism). The regulator is entitled to share with other regulators and officers in the same jurisdiction any information on investigation and enforcement matters, depending on the type of regulator or applying authority petitioner as follows: The possibility of sharing confidential information with the SdB regarding inspections of regulated entities and holders of a banking license. The regulatory framework (more specifically Article 267, Law Decree 1, l999) allows the CNV to share information on investigation and enforcement matters with specific authorities, such as: (1) the Public Ministry, in case of having fundamental reasons to believe that a violation of criminal law has been committed and (2) the judiciary. Such regulation states that the institutions receiving such information or documentation will be obliged not to disclose them. Likewise, Article 264, Law Decree 1, l999 grants to the CNV the power to request assistance from the SdB during an inspection of people that have been granted an intermediary license and, because of having a banking license, are also subject to inspection and control by the SdB. In these cases, the commission will be able to exchange confidential information with the SdB on those people, and the superintendence and its staff will be compelled not to disclose such information according to securities law. As mentioned previously, on May 13, 2005 a Memorandum of Inter-institutional Understanding for the cooperation and interchange of information in the matter of supervision was signed among the SdB, the CNV and the SSRP, with the purpose of enforcing the supervision of economic groups or conglomerates carrying out business activities or intermediation services in various areas of the financial sector and for the interchange of information about financial groups, related parties, information obtained during procedures concerning granting of authorizations and licenses, investments, mergers, splits, dissolutions and liquidations, sanctions, cancellation of licenses, capacity, integrity and experience in administrators and directors of entities subject to their supervision.

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	In the area of prevention of money laundering and countering the financing of terrorism, Article 2, Law 42, 2000 grants express authorization to the CNV–in its role of supervision and control organ–to collaborate with the Financial Analysis Unit (UAF) and to provide it–whether asked for or on their own initiative–with any information available to prevent the commitment of a money laundering crime, so that the Financial Analysis Unit can examine and analyze the information. Despite the fact that the CNV has the authority to provide the UAF with any kind of information required for the analysis of operations possibly related to the schemes of money laundering and financing of terrorism, as a general rule, the applications for provision of information received by the CNV are referred to public information (i.e., if a physical or legal person owns an intermediary license granted by the CNV, etc.). Though the CNV does not require any previous authorization or external approval on the part of any minister or any other government authority in order to provide public information to other authorities in its jurisdiction, the CNV is not authorized to provide all the confidential information it has. For those cases with private information, according to Article 267, Law Decree 1, l999, such information can only be provided by the CNV before competent authorities, such as Courts of Justice and public ministry. About the identification of customers, the CNV is only authorized to provide information relative to the intermediary's customers to the above-mentioned authorities. The National CNV is not authorized to provide or share information about matters of investigation and inspection with foreign counterparts, according to Number 2, Article 267, Law Decree 1, l999. This legal provision indicates clearly that the information and documents obtained by the CNV during an investigation or inspection concerning a violation of the law decree or its regulations will be considered confidential and of restricted access; nevertheless, the commission will be able to produce such information and documents before courts of law in a collective class action or to the public ministry, in case it has well founded reasons to believe that a violation of the criminal law has been committed, but the institutions receiving such information or documents are compelled not to disclose them. In an inter-institutional cooperation framework, the national CNV could provide foreign authorities with available public information in other public entities, such as the archives in the public records of the Republic of Panama. All information concerning the granting of authorizations, licenses, or records before the CNV is public information, so it can be provided to any other foreign counterpart. The same applies to any financial reports provided to the commission by a registered securities issuer or an intermediary with a license granted by the National CNV or the act of assessing if a certain person, natural or legal, is the issuer of registered securities in the commission or has any license granted by the commission. However, the National CNV is not authorized to provide or share with foreign counterparts any information on matters of investigation and inspection, according to item No. 2, Article 267, Law Decree 1, l999. The Code of Commerce states at the end of Article 89: "No authority is entitled to force a businessman to provide copies or reproductions of his books, correspondence or any other document in his possession. The businessman who provides copies or reproductions of the contents of his books, correspondence or any other documents to be used in

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	litigations abroad, following orders emanated from authorities other than the Republic of Panama, will be punished with a fine not greater than 100 balboa ($1000.00)."
Assessment	Not implemented
Comments	The Code of Commerce at Article 89 identifies an obstacle to the CNV's ability to provide information or documents necessary for foreign authorities to investigate improper capital markets activity. The previous considerations presuppose that the CNV cannot provide any kind of confidential information to their foreign counterparts, except as a result of requests made through the corresponding legal and diplomatic channels, i.e., through Mutual Legal Assistance Treaties signed by the Republic of Panama. In these cases, the request for information is not made directly to the commission, but through the justice ministry and the public ministry, entities in charge of these applications. Domestic cooperation is not enough to ensure the usefulness of the information exchange. Furthermore, the CNV does not have the power to obtain information and records pertaining to bank accounts, which would enable it to reconstruct all securities transactions. The CNV does not have the independent ability to obtain information concerning bank account movements on securities if a foreign securities regulator requests the information. It is relevant to stress that the memorandum of inter-institutional understanding for the cooperation and interchange of information in the matter of supervision recognizes that there may be restrictions against the provision of reports protected by a legal limitation forbidding their disclosure. The fact is that up to the present assessment, this mechanism of information interchange between the SdB and the CNV has not been put into practice. Nonetheless, it is important to point out that the CNV is building political support for the legislative reforms needed to empower its cooperation duties.
Principle 12	Regulators should establish information sharing mechanisms that set out when and how they will share both public and nonpublic information with their domestic and foreign counterparts.
Description	Under the DLMV, the CNV is responsible for establishing mechanisms for information sharing arrangements with foreign counterparts. Article 264 of DLMV allows the CNV to share information at the local level but it is limited to public information. Article 22, entitled "Intergovernmental Relations" of DLMV gives the CNV the authority to "reach agreements with public or private entities, foreign or domestic, for the duration of its functions." With regard to the aforementioned law, the CNV has adopted bilateral Memoranda of Understanding (MOU) with the following jurisdictions: El Salvador, Dominican Republic, Honduras, Chile, Costa Rica, Argentina, Spain, and México. Currently, advanced negotiations with the regulators of Puerto Rico and Ukraine are being established for a bilateral MOU.[6]

[6] On that matter, the following laws would be relevant:
- Law 20, July 22, l991, by which "the Treaty between the Republic of Panama and the United States of America on Mutual Legal Assistance on Criminal Issues is passed, signed in Panama, on April 11, l991."
- Law 11, July 7, l994, by which the Treaty on Mutual Legal Assistance between Panama and the United Kingdom of Great Britain and Northern Ireland, related to drug dealing, is passed.

(continued)

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	When the CNV receives informal inquiries from other jurisdictions regarding public information that is posted in its files or in the public archives of another public authority in the Republic of Panama, the CNV is able to provide an immediate response to this kind of inquiry. Also, the CNV has signed an MOU with the Administrative Procurement for the establishment of cooperation and information exchange between the two institutions, which will redound to their mutual benefit. The CNV has also requested in 2004 that the MEF's General Department of Revenues sign an inter-institutional agreement that would allow for the coercive collection of administrative sanctions imposed by the CNV for violations of the DLMV and corresponding rules. This agreement has not been signed yet. The CNV on behalf of Panama has presented a formal petition for inclusion in the list of IOSCO member countries seeking to become signatories of the IOSCO multilateral memorandum of understanding, but it must first deal with the limitations on its ability to share information (as outlined above) before it is able to become a full signatory. Under current legislation, the CNV is only authorized to sign agreements with foreign securities authorities for the sharing of public information. To share confidential or restricted information with foreign entities, an inquiry within the judicial scope must be made, starting from the hypothesis that the request for assistance is coming from a foreign authority or court. The CNV facilitates the detection and dissuasion of cross border misconduct, since it has a section on its website where they post warnings to the general public about natural or legal persons who do not have any kind of license, registration, or authorization from the CNV to conduct business activities in the securities market in the Republic of Panama. On several occasions, the presentation of such information on the website suggests that a foreign counterpart has informed the CNV. In all these cases, the CNV has taken into account the request made by the foreign counterparts, respectful of all the confidentiality levels required by such. The regulator takes measures to ensure that safeguards to protect the confidentiality of information exist, and are coherent with the uses that may be made of such information. According to Article 267, the commission is responsible for taking the necessary

- Law 39, July 13, l995, by which the Mutual Assistance Treaty on Criminal Affairs among Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama is passed.
- Law 42, July 14, l995, by which the Agreement on Legal Assistance and Mutual Judicial Cooperation between Panama and Colombia is passed.
- Law 40, June 30, l998, by which the Treaty on Mutual legal Assistance between Panama and Mexico (in criminal matters) is passed. G.O. 23,581, July 8, l998.
- Law 7, May 3, 1999, by which "the agreement between the Republic of Panama and the Kingdom of Spain on Legal Assistance and Judicial Cooperation on Criminal Matters is passed in all its parts.
- Law 14, March 13, 2001, by which the Rome Regulations International Criminal Court are passed.
-Law 22, May 9, 2002, by which the International Agreement of the United Nations for the Repression of Terrorism Financing is passed, in all its parts.

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	measures in order to preserve the confidentiality of any information and any document, which must be kept secret. This secret or confidential information may only be disclosed when it is required by a competent authority of the Republic of Panama. The CNV keeps under strict control all files related to inspections and investigations, as well as all those which contain any document or information referred to in Article 267, and can be revised only by the officers authorized to do so.
Assessment	Partially implemented
Comments	The regulator has the authority to share information with foreign counterparts, but the legal system does not allow the regulator to assist foreign regulators when bank account information is needed. In spite of the legal restriction, the experience of several foreign regulators in obtaining assistance in securities matters from the CNV is very positive. The CNV has provided cross-border assistance consistent with its capabilities under legal constraints. It always has made positive efforts to help foreign counterparts against securities fraud. Memoranda of Understanding or other documented arrangements can help to add certainty, and in some cases, expedition, to the process of information exchange. Nonetheless, the mere formality of an arrangement is no substitute for a close and cooperative arrangement. However, given the existence of appropriate safeguards, if a domestic or foreign authority requires information, the regulator is restricted in the information that it can share. The CNV can only share the information which is posted in the public archives, since it must keep the due confidentiality of the documents referred as "confidential" in Article 267 of the Securities Act.
Principle 13.	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.
Description	This principle addresses whether a *domestic* regulator should be able to provide effective assistance to *foreign* regulators who need to make inquiries under their competence, with respect to securities and derivatives matters, including bank and brokerage records and client identification information, regardless of whether the *domestic* regulator has an independent interest in the matter. Unfortunately, the CNV is not able to provide efficient and timely assistance to foreign regulators. The Securities Act does not give the CNV authority to supply or to share information with foreign entities on updated records that turn out to be sufficient for reconstructing all the transactions on securities and derivatives products, including the registration of all the funds and assets placed or withdrawn in a credit company or in a company or broker dealer related to said transactions. According to Article 267 of the DLMV, the information that has been obtained by the commission in an investigation related to a violation of the law decree or its regulations is of a confidential nature. Consequently, all information thus obtained, related to the holder of the account, the quantity bought or sold, the hour of the transaction, the price of the transaction and the natural person, credit company or intermediary that participated in the transaction, cannot be supplied to a foreign authority.

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	Regarding final holders of the shares of a corporation constituted in the Republic of Panama (Law 32 of February 26, 1927, of corporations), there is no general record of the effective owners or of the people that exercise control over the legal persons involved in the transactions. Although corporations must maintain a shareholders registration book, in the public registry, only the information on directors of the company is kept updated, all of whom may or may not have the status of partners or shareholders of the company. Regarding businesses subject to special regulations (banking, insurances, securities), special laws set out the obligation of identifying the share composition of the people involved in these activities. Within the domestic environment and according to item No. 2, Article 267 of the DLMV, the information and documents that have been obtained by the commission in an investigation or in an inspection related to a violation of the law decree or their regulations will be confidential and of restricted access; nevertheless, the commission will be able to present the said information and documents to courts of justice in a collective class action or to the public ministry in the event that there is good reason to believe that a violation of the penal law has occurred, however the institutions that receive such information or documents will be obliged to maintain their confidentiality. The CNV must take the necessary measures to preserve the confidentiality of each item of information and each document that should be kept confidential according to the said article, but according to the law, it should disclose the information required by any competent authority of the Republic of Panama. The CNV cannot offer timely and efficient help to foreign regulators. In the DLMV, there is no explicit rule that authorizes the commission to provide information and documents relating to the use of privileged information, market manipulation, false information, and other fraudulent or manipulative practices related to securities and derivative instruments, including the clients' collecting practices, the management of investment funds, and the clients' orders in response to a specific request. On the contrary, it has already quoted the provisions that explicitly regard the information and documentation obtained during investigations or inspections to be classified as "confidential" and with "restricted access." Therefore, the CNV will only be able to provide or share with other foreign authorities, the information that is not of a confidential nature and that exists in its public files. In a penal investigation context, dealing with cases of criminal conduct covered in the Mutual Legal Assistance Treaty (TALM) or the Convention of Vienna of 1988 (ratified by means of Law 20 of 1993), the public ministry has the authority to carry out exchanges of information at the request of foreign authorities for international assistance. Through these mechanisms, the foreign regulating authorities can channel their requests for information that cannot be provided by the CNV due to its confidential nature. It is important to point out that according to the Article 22 of the quoted Law Decree, the commission can make agreements with public or private entities, domestic or foreign, for the development of its functions. As we mentioned, this rule has worked as a legal base for the making of inter-institutional agreements and memoranda of understanding (MOUs) with foreign regulating authorities (such as the MOUs signed with the Republic of El Salvador and the Dominican Republic, on September 20, 2002 and August 6, 2003, respectively). Nevertheless, the CNV cannot be set apart from the literal sense and the spirit contained in the rules of the DLMV, when signing this type of legal instrument.

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	All the documentation related to the registration of a security or derivative product its issuance and sale, is accessible information for the public in the issuer's public files and the commission would be able to share it with foreign authorities, as well as the daily reports that the issuers must present to the commission. Likewise, if the information on intermediaries, advisors and collective investment schemes is not information obtained during the course of inspections or investigations, or described in the Article 267 of the DLMV, it can be shared with foreign authorities. For instance, all the information and documents brought during the license application procedure could be shared, unless some particular information or document would be considered of restricted access. Likewise, in an inter-institutional cooperation framework, the CNV would be able to provide to foreign authorities public information available in other public entities, such as the Republic of Panama's Public Registry files. The CNV can provide help to foreign regulating authorities in the preparation of documents that can be used by them within regulatory, supervision, or sanction processes. Also, the CNV can guide the foreign regulating authorities in those cases in which they require documents and information that cannot be supplied because they are described in Article 267 of the DLMV. In such cases, requests for documents should be submitted through the competent authorities, or based on the Mutual Legal Assistance Treaties, or Information Exchange Agreements signed by the Republic of Panama. The CNV is authorized by means of Article 263 of the DLMV, modified by the Law 45 of June 4, 2003 (better known as "Law of Financial Crimes"), to compel any person, when deemed necessary within the context of an administrative investigation, to make sworn statements before it. Nonetheless, the CNV does not have the powers to collaborate with foreign regulating authorities in the taking of evidence, since it can only take statements during an investigation, and the information obtained during an investigation is confidential, according to what is established in the Article 267 of the DLMV. The DLMV does not make provision for the CNV to obtain judicial orders in the context of requests from foreign regulators, not even in the case of urgent requests. Such requests should be formalized through the judicial sphere, according to arrangements, or bilateral or multilateral information exchange agreements signed by the Republic of Panama; such is the case of the Agreements of Mutual Legal Assistance for the investigation of criminal activities. Finally, the CNV is able to offer timely and efficient assistance to the foreign regulators in relation to information on financial conglomerates under its supervision, and more concretely, assistance in relation to the structure of the financial conglomerates, disclosed during registration of the issuer's securities or in the Public Offerings of Acquisition (OPAs) or from the perspective of the accounting rules applicable to the securities issuers.
Assessment	Not implemented
Comments	In spite of its lack of authority to obtain and share bank account information and to provide assurance of the confidential treatment of information received from foreign regulators, the CNV shows strong cooperation to help combat financial frauds. The CNV is an active participant in the international struggle against money laundering. There is an increased tendency to reach agreements and embark on projects on regional integration that should be subject to deep analysis in order to have harmonization, similar

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	transparency rules, and procedures. The CNV has signed several Memoranda of Understanding with other regulators in Latin America and Europe, but these have not been applied in a fully efficient manner. Recently, the CNV has been listed in Annex B to the IOSCO Multilateral MOU that allows for cross-border cooperation and information exchange, which has proven very effective to combat cross-border crime affecting securities markets. Legal changes are needed to align the CNV with the international regulatory community and to sign the multilateral MOU before 2010. While the methodology does not require membership in the multilateral MOU, completion of the work necessary to sign the multilateral MOU as well as membership in it would greatly benefit the CNV.
Principle 14.	There should be full, accurate, and timely disclosure of financial results and other information that is material to investors' decisions.
Description	The regulatory framework establishes full, timely, and accurate disclosure requirements in relation to public offerings, on the conditions applicable to an offering of securities for public sale, the content and distribution of prospectuses, listing particular documents, or other offering documents and other supplementary documents prepared for the offering. The requirements and procedures regarding securities registers are set forth in Agreement 6-2000, modified by Agreements 15-2000, 12-2003, and 8-2004. The content and distribution of the prospectus, considered as a disclosure medium, is provided for in Article 9 of Agreement 6-2000. Other documents which are required to accompany the application to register an offering of securities for public sale which provide information about the issuer are the following: Certificate of existence and representation of the company, where the name, date and data of the constitution and registration of company, duration, effect, subscriptions, Directors, Dignitaries, Legal Representatives, share capital, registered powers and agent of the applicant, submitted by the public registry within the previous 30 days of the day of presentation of the application; Copy of the public deed, which contains the social contract of the applicant, amendments, and proof of the registration of the said documents; Audited financial statements for the last fiscal year, submitted by an independent and authorized public accountant; Provisional financial statements for the previous trimester prior to the date of the presentation of the application; and, if applicable, The chart which presents the response to fixed questions in order to inform the public if they follow, partly or not, the principles on corporate governance that the CNV recommends and that were adopted by means of Agreement 18-2000. The public has access to all the aforementioned documentation, as well as any supplementary documentation which must accompany the application. The CNV, through the National Department of Securities Registry, enters the application into the electronic system and makes a careful revision to the Prospectus. Agreements 18-2000, modified by 12-2003, and 8-2004 deal with update reports, which

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	must be delivered to the CNV. In the Annual Update Report, issuers must make a detailed description of their activities, and those of subsidiaries. Basically, it is the further development of the section in the prospectus on company information; a financial summary of the operational outcomes and annual balance account of the three previous fiscal years; the issuer's annual financial statements, audited by an independent public accountant; identification of the communication media by which the report has been published or will be published, as well as the name of the media. The Annual Update Report must be available within three months of the close of the fiscal year. The CNV, with the purpose of providing more information to the public, has added requirements that must be disclosed, such as the development of a section to indicate if an issuer has adopted, or partly adopted, the guidelines and principles recommended by the CNV; audited annual financial statements of the people who have served as collateral or guarantors of the securities registered in the CNV, if applicable. Disclosure to the public must be made through the following media: (i) publication in a national newspaper; (ii) publication in a specialized magazine or newspaper; (iii) posting on the issuer's portal or website, always with public access; or (iv) the issuer or its representative may send a copy of the report to the shareholders or to the registered investors, as well as to every interested person who may ask for it. Issuers must present a quarterly update report that provides a summary of the most important aspects of the trimester; a financial summary of the operational outcomes and annual balance account of the current trimester and the previous three trimesters; the provisional financial statements for the current trimester; identification of the communication media by which the report has been published or will be published, as well as the name of the media. Issuers should present this report four times a year within the two months following the end of the trimester. Voting procedures for shareholders are stated in Title VII of The DLMV "Proxy voting requests." The CNV adopted Agreement 5-2000 as the procedure of distribution and use of voting proxies, authorization, and consent, as well as the preparation and content of such. However, the agreement was declared unconstitutional by the Supreme Court of Justice, through a verdict of the Court in May 2002, due to the form, not the content. The CNV has prepared the Project of the Law Decree "through which is adopted the procedure for distribution and use of requests of proxy voting, authorization, and consent, as well as the preparation and content of such, in light of what is stated in the DLMV." This has been submitted to the executive branch, through the MEF, but it has not yet been approved. The regulatory framework has clearly set specific and comprehensive requirements related to the timely disclosure of material information to the price, or value of a listed security. Section 77 of The DLMV indicates that disclosure of material events should be made at the moment that they occur. The issuer must report any event or changes of relevance, which have occurred, as a note when the event occurs and on the Update Report corresponding to the period in which the event occurred. Every relevant event

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	communicated to the CNV is disclosed on a weekly basis by the CNV on the weekly bulletin that the CNV publishes. When the issuer does not fulfill the obligation to disclose the material event and the CNV has knowledge of this, a note is submitted to the issuer asking for explanations for the non-fulfillment of Article 77 previously mentioned. The afore-mentioned decree leaves to the discretion of the issuer, the decision to disclose the event if there are reasonable grounds to believe that disclosure of the event would go against the issuer's interests in a significant way and the people who have knowledge of the event, which is not yet public, have not negotiated nor will negotiate securities of the said issuer. Also, the concept "immediately" has not been defined in the law. The project is revising the criteria for the fulfillment of the obligation of making public knowledge of material events by registered issuers. The IOSCO document published by the Emerging Markets Committee in September 1996 is used as a guide to determine when the issuer should make public the material event. Regarding publicity for public offerings besides the prospectus, under agreement No 14-00, of August 16, 2000 publicity criteria are adopted as applicable rules to advertising materials or information which the entities registered within the CNV may distribute. The objective of the adoption of the said agreement is that the information that is disclosed in the advertising material for the public offering of securities must be clear, certain and not misleading or fraudulent. The CNV is not obliged to supervise the advertising or information materials; however, it is permitted to order the suspension of the use of advertising materials which go against the rules stated in Art. 80 of The DLMV or in the advertising criteria that were adopted. In the event of the failure to disclose all relevant information, the regulation allows for temporary suspension of negotiations. Agreement No. 10-2000 of June 23, 2000 was modified by the agreement No. 10-2003 of August 18, 2003 and states the following: that the CNV must revise the financial statements within 20 working days after receiving them and inform the interested party of their observations. The observations must be taken into account within the next ten (10) working days, counted from the submission of such. Every registered person whose financial statements and reports are found to be incomplete by the CNV, is required to respond within a term of 10 working days starting from the date of submission of the observations; otherwise, they are not in strict observance of what is stated in Agreement 2-2000 and No. 8-2000 as was modified by Agreement No. 7-2002, and the license for public offering and negotiation of listed securities will be removed. Adequate measures may be taken (for instance, the presentation of financial information which has not been subject to a recent audit) when the financial statements included in an issuing prospectus for a public offering are outdated. It is important to highlight that the audited financial statements should also be submitted to the CNV for the public in general. When the application is proceeding and a fiscal term has passed, the CNV requires an update of the numbers. On the other hand, the presentation of provisional financial statements is required for the trimester immediately previous to the date of presentation of the application. If the CNV determines that, given the date when the securities will go to market, the financial information corresponds to an earlier trimester,

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	it may require the update of such information and, if necessary, it could require special reports. There are measures at the regulator's disposal (for instance, revisions, certifications, auxiliary documentation, sanctions) that contribute to guaranteeing that the required disclosure is full, timely, and accurate. Administrative sanctions are imposed for delays in the presentation of financial statements and reports to the CNV and the license of public offering and negotiation of registered securities may be suspended. Each working day that presentation of the financial statements and special reports is delayed will result in a sanction on an accumulative basis. When the delay reaches 60 working days, the license is suspended. The suspension is ordered by means of a commissioner's resolution and will be void automatically once the delayed issuer presents the financial statements/reports. Nonetheless, issuers have to sign a sworn statement, which has to accompany the Annual Update Report. Such statement must be signed by the president, treasurer, general manager and financial director of the issuer, based on Agreement No.8-2000 of May 22, 2000, amended by Agreements 10-2001 and 7-2002. Circumstances under which disclosure can be omitted or postponed are limited to commercial secrets, or other information subject to intellectual property rights or other commercial objectives, as incomplete negotiation processes. Agreement No. 6-00 in Article 12 indicates that the requesting entity may request the CNV in writing to maintain as confidential information or documents that must be submitted to the CNV, but should be omitted from the prospectus. The request must provide justification for confidentiality and explain why such information is not essential to protect the interest of public investors. The CNV must determine whether to accept such requests. Every foreign issuer must observe the requirements of the regulations adopted by the CNV, which follows the structure of the international regulations of the CNV. Foreign issuers have an additional section to fill in the prospectus; among others, they must nominate a representative with offices located in Panama with enough capacity to represent it before the CNV and to receive administrative and judicial notifications. The fact that Panama has declared certain countries as a recognized jurisdiction and accepted the license or register of their securities without additional requests, is due to the fact that the CNV has made a thorough study of the regulations of the country and has considered that they are similar to the commission's. These countries/states include France, Spain, UK, Japan, Switzerland, Germany, Sweden, Québec and Ontario, Hong Kong, Netherlands, Mexico, Australia, Italy, all those whose commissions belong to the IOSCO Technical Committee, and El Salvador and Costa Rica, after a revision of their legislation.
Assessment	Fully implemented
Comments	Disclosure of financial results and other information material to investors' decisions appears to meet these requirements. The CNV has substantial authority to regulate the information provided in connection with the operation of public companies. Prospectuses of public companies must be registered in the National Securities Registry. Such prospectuses and related continuing information are readily available at the CNV. The effective regulatory framework contains a precise description of the information requirements that must be provided by the issuers, establishing clearly the opportunity for which this information must be disclosed. The Plan of Action adopted by the CNV in 2004 to be implemented in the following

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	years intends to provide special training to its staff on CRA matters. It is important to hire qualified personnel to supervise CRAs registered with the CNV. Some remarks about international accounting and auditing standards: The CNV's ability to demand compliance with the international standards for accounting and auditing is under consideration before the courts. The favorable outcome from the case will be a critical determinant to the ability of the CNV to demonstrate that accounting and auditing requirements in Panama are credible. The CNV requires more accountants to be credible as a securities regulator. In addition, it will be important that the CNV's accounting staff be appropriately trained on international accounting and auditing requirements.
Principle 15	Holders of securities in a company should be treated in a fair and equitable manner.
Description	The DMLV considers neither the rights and equitable treatment of shareholders related to voting decisions for the election of directors, nor corporate changes which may affect the conditions of their shares, nor other corporate changes. Act 32, 1927 on corporation deals with this matter and it is included in the companies by laws. In Law Decree No. 247 of June 16, 1970, that has stayed in force, and was not repealed by the DMLV, Title V deals with the Protection of Minority Shareholders. Regarding transactions which may involve mergers or absorptions, Agreement No 5-2005 of May 9 has recently been adopted, but is pending publication of the official Gazette before coming into force. This agreement sets forth the rules on communication and disclosure of material events, which consist of agreement mergers that the issuers of registered securities in the CNV are part of and registration procedures that are established for each case. It seems that shareholders are not given a reasonable time in which to consider the proposal since the usual thing is that in the shareholders meeting the information, which will allow them to take the decision, is presented and they vote there. The minority shareholders just fit into the majority's decision, which is often what the executive board has already approved. The regulatory framework and the legal infrastructure address the rights and equitable treatment of shareholders in connection with takeover bids (OPA). The CNV adopted the Agreement 7, 2001, which adopts the procedure of notification for takeover bids. Previously two agreements (No. 4-00 of May 16, 2000 and No. 9-00 of May 26, 2000) were in force related to these matters, but they were repealed. The total disclosure of the material information to make an investment or voting decision is required in the case of takeover bids. Agreement 7, 2001, sets forth that the term for accepting can be not less than 30 days counted from the following day in which the announcement is published in a national newspaper. This allows the interested parties to revise the information in order to decide if they will accept the offer. Likewise, they count on a prospectus, which must reflect the information on the one who is offering as well as the offer itself. Directors and senior management are accountable for their involvement or oversight resulting in violations of the law. Although Article 444 of the Commercial Code sets forth that directors will not be accountable in a personal way for the company's obligations, they will respond personally to the company and third parties regarding the

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	efficiency of the payments made by the partners, the real existence of the agreed dividends, good account management and the poor performance of their duties or violations of laws, social contracts, by-laws or general assembly agreements. With respect to substantial holdings of voting securities, information about the identity and holdings of persons who hold a substantial (well below controlling) beneficial ownership interest in a company is not required to be timely disclosed, since the identity of the shareholders in the issuing of debt, only in the share issuing the identity of the controlling shareholder is required, in the case of the owner of 20 percent or more. The legal infrastructure is not adequate to guarantee the application and enforcement of the disclosure requirements, since the Supreme Court of Justice has declared the agreement adopted on this matter to be unconstitutional on the basis of form not content. The CNV has submitted to the Ministry of Economy and Finance the decree project dealing with this issue, but this has not been approved yet. Every foreign issuer must adhere to the law requirements that the CNV has adopted which follows the parameters of the international regulations of the CNV. Foreign issuers have an additional section to complete within the prospectus, among others, and must nominate a representative with offices established in Panama with enough powers to represent it before the CNV and to receive judicial and administrative notices.
Assessment	Broadly implemented
Comments	Issues arise concerning: (i) an insufficient level of disclosure in practice; (ii) the capacity to identify beneficial owners and their exact stakes in the annual report; (iii) simplifying shareholder redress, so as to enable shareholders to challenge corporate decisions; (iv) regulation of proxy solicitation, requiring the provision of sufficient information for shareholders to make informed voting decisions; (v) mandatory audit committees for listed companies; and (vi) clearer fiduciary duties and liabilities of directors. Some gaps remain in the regulatory system but it is important to note some issues related to the basic rights of shareholders. The CNV adopted two recommendations from the *report on the observance of standards and codes* on corporate governance prepared by the World Bank and published in 2004. The CNV created the Investors Education Unit in 2004. This is an important advance. This unit carries out academic activities and communicates important information regarding the securities market in Panama. The CNV intends to build a training facility inside its main offices to take care of examinations of future licensees and public investor education.
Principle 16	Accounting and auditing standards should be of a high and internationally acceptable quality.
Description	The CNV has adopted a group of international standards since 2000, which are the following: the International Financial Standards previously named NIC and the General Accepted Accounting Principles in the United States (U.S. GAAP). These standards have been adopted by means of the Agreement No. 8-2000, modified by the Agreement 7-2002 of October 14, 2002, which states that "the format and content of the financial statements presented by issuers whose securities are registered before the CNV, as well as the intermediaries which must comply with the dispositions that on the matter dictates the CNV, and must be prepared by choice of the issuer, in observance (i) of the international accounting standards; or (ii) with the general accepted accounting principles

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	in the US, applied in a consistent way." The Agreement No. 2-00, 2000, demands the aforementioned as well. Generally speaking, accounting and auditing standards are of a high and internationally acceptable quality. Comprehensiveness, consistency, relevance, reliability, and comparability of financial information are crucial to informed decision making. In this sense the accounting and auditing standards applied in Panama could be considered generally appropriate as the CNV adopted since 2000 the IAS and U.S. GAAP for all registered entities (Agreement 2-2000 modified by Agreement 7-2002). IAS have recently modified disclosure requirements and added extra strictness beginning in 2005. Through Agreement 2000, the auditors of regulated entities must observe international audit standards. However, the external auditors, who allege that the CNV does not have sufficient authority to investigate and enforce requirements, have questioned such decision. The Supreme Court of Justice has admitted such complaints and to date, no ruling has been made concerning the public accounting firms. It must be noted that such complaints have in some cases resulted in the halting of investigative processes set in motion by the CNV. Recently, the 2005 fiscal law provided extra powers to the Accounting Technical Board (created by the Law 57 1978) to watch over compliance with the international standards for accounting and auditing. This power will come into force beginning in 2006. Prior to the latest reform, accountants were subject to requirements imposed by a commission (NOCOFIN), constituted by accounting professional bodies. Even though there are recommendations and good corporate governance guidelines for the companies registered with the CNV (Articles 4-18 of Agreement 12-2003), it is not required to have a governance body independent in both fact and appearance of the management of the company that oversees the process of selection and appointment of the external auditor. According to the DLMV, it is required for listed entities to include the financial statements in the essential documents for public offering or for submitting application for listing. The issuer must also provide this information to the investors. The presentation of audited financial statements must be done in comparative format, corresponding to the latest three fiscal terms. Also, the Agreement 6-00, in its Article 10, requires that registered companies provide an annual report, within the term established by the CNV that could not exceed 120 days of the closing of the fiscal year of the issuer. Said report must contain the audited financial statements of the issuer The audited financial statements must include the opinion of the authorized public accountant, the general balance, outcome results, the changes in patrimony, the cash flow, the accounting policies, the explanatory notes, and when talking about consolidated financial statements must accompany an annex of consolidation where all the controller's financial statements should appear and of all the subsidiaries, a column of removal, and the consolidated financial statements (DLMV Article 8, No 5). The CNV, by means of Agreement 8-2000 as modified by Agreement 7-2002, requires that notes to financial statements provide sufficient information to clarify or facilitate the analysis and evaluation of the financial statements. As necessary, the clarification must refer to the balance sheet, income statement, and contingencies, commitments, and events

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	subsequent to the date of the financial statements. The CNV has considered that it would be necessary to submit agreements in order to control the information required by the accounting standards to ensure that information, which is provided to the investor, would be more transparent and reliable. Other key articles of Agreement 8-2000, modified by Agreement 7-2002 require that regulated entities (i) consolidate the accounts of subsidiaries (Article 7); (ii) that there be disclosure of related parties information including independent of related party transactions; and (iii) that financial statement provide an opinion of the authorized and independent public accountant conducting the audit and explain reasons in the event of adverse opinion or an abstention of opinion. The CNV has adopted the Update Report, which must be submitted to issuers, jointly with the trimester and annual financial statements. In this report, information on the issuer is disclosed if it is considered to be of significant importance for the investor. In addition, for the annual financial statements, a sworn statement must be made before a public notary in which it is certified that all information which appears in the financial statements is a faithful representation of the operations of the company, both financially and administratively. (Agreement 18-00 and Agreement 7-02) The CNV has considered it necessary to control the content of the auditor's report for a better understanding of the information that this report presents. Below are the relevant articles: Article 9 (opinion): financial statements of registered people or subject to supervision must include an express opinion of the authorized and independent public accountant, which held an audit of such, or an indication of the reasons by which an adverse opinion was submitted or an abstention. Article 10 (content of the opinion): the opinion that the independent auditors express regarding the financial statements of registered people subject to report must include the following: (i) date of the opinion; (ii) name of the financial statements; (iii) accounting term; (iv) the verification took place; (v) the report itself; and (vi) the financial statements that were made. The CNV has considered it necessary that the issuers submit material information of significance to the investor in taking investment decisions, as well as being up to date on events and outcomes of their financial and administrative operations (Agreement 18-00 and Agreement 6-00). The CNV, by means of Agreement No 2-00, has required that the audits of the regulated and registered entities be made under accepted auditing standards. We describe below Article 3 of Agreement No. 2-00 adopted by this commission: Article 3: Accepted auditing standards "Issuers financial statements whose securities are registered in the CNV, as well as from intermediaries, must be audited in observance of (A) American audit standards in case of being prepared according to the U.S. generally accepted accounting standards, (B) international audit standards in case of being prepared according to the international audit standards or (C) the general accepted audit standards

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	in the foreign jurisdiction referred in Second Article of this agreement." Regarding the auditor's independence, Article 8 of Agreement 8-00 modified by Article 11 of Agreement 7-2002 states that the independence is a relevant requirement so that an authorized public accountant can express an opinion on the financial statement required to registered entities or subject to report before the CNV, in addition to the strict compliance of the code of ethics professional of public accountants approved by means of Law Decree 26 of May 17, 1984. With respect to accounting standards, the regulatory framework does not provide for an organization responsible for the establishment and timely interpretation of accounting standards. Recently, however, with the approval of the fiscal reforms in the country, the Accounting Technical Board, which was created by means of Act 57 of September 1, 1978, and is under the Ministry of Commerce and Industry, was given the task of overseeing compliance with the International Financial Reporting Standards and International Auditing Standards (Article 74- fiscal reforms). It will come into force in 2006. Prior to the fiscal reforms, the Accounting Technical Board created a Commission of Financial Accounting Standards in Panama, NOCOFIN, constituted by professional associations of accounting (Article 85 of Law Decree 26, 1984, Code of Ethics for Panamanian public accountants). In 1998, the Accounting Technical Board passed Resolution No. 4-1998, officially adopting the International Accounting Standards and ordered that they must be applied to accounting activities. Likewise, the Accounting Technical Board adopted international standards and guides for auditing in Panama, but this was opposed through various law suits brought by accounting professionals and private companies, where it was claimed that the Accounting Technical Board does not possess this authority within its powers. The Third Room of the Administrative Contentious of the Supreme Court of Justice pronounced in 1999 and 2000, declaring Resolution No 4, 1998 illegal on the grounds that the Accounting Technical Board does not have those powers and that in this case the resolution should have been submitted to the ministry of commerce and industry, so that it would come to the knowledge of the executive power. As with accounting standards, similarly in the area of auditing, the Accounting Technical Board has been given the task of overseeing compliance with the International Financial Reporting Standards and International Auditing Standards, ensuring that the procedures are open and transparent. Regarding the external auditor, in the case of listed companies: Agreement 7-2002 states that the independence of the authorized public accountant is a necessary requirement. The company's managing board will supervise the process of the selection and nomination of the auditor. However, this is not compulsory; they are only recommendations, guides, and standards of good corporate governance for listed companies in the CNV. There are adequate mechanisms for enforcing compliance with accounting standards and with auditor independence, such as requiring restatements of financial statements that deviate from accepted standards, or of opinions that indicate a lack of independence. The mechanisms are set in several laws: Act 45 of 2003 "which adds to Chapter VII, named Financial Felonies, to the Title XII of Second Book of Penal Code, which modifies

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	Articles of the Penal and Judicial Code and of the DLMV and such other laws" and Article 263 of the DLMV. Nonetheless, the CNV is currently facing several lawsuits still to be decided by the Supreme Court of Justice, where the party who presses charges (External Auditors Company) states that the commission has no powers to investigate external auditors or sanction them.
Assessment	Broadly implemented
Comments	The regulatory framework does not provide for an organization responsible for the establishment and timely interpretation of accounting standards**.** The Accounting Technical Board has to improve its processes so that they are open and transparent and ensure that the interpretation process is undertaken in cooperation with, or subject to oversight by, the CNV. The CNV considered it necessary to establish rules regarding the auditor's ruling so as to achieve a better understanding of the information covered by such ruling (Agreement 7-2002). Agreement 8-00 has been subject to lawsuits by the External Auditors who state that the commission has no powers to investigate external auditors or sanction them. These suits have been admitted by the Supreme Court of Justice (Third Room of the Contentious Administrative), yet as of today there has been no decision concerning authorized public accountants companies. (Suit on April 15, 2004). On the other hand, these suits have temporarily suspended in some cases the due process that the CNV must follow. The Enforcement and Auditing Direction has indicated that issuers and intermediaries do not comply with the full disclosure of related parties. There are a great number of issuers, which are banks; some state that related parties are not able to disclose information due to the condition of their clients and only disclose what is required by the Superintendence of Banking in its public financial statements. Other issuers just do not disclose enough because they believe that it is not necessary. It is relevant to point out that during the first months of 2005, the CNV conducted a major study on compliance with the recommendations and guidelines on good corporate governance by the companies registered with the CNV (Agreement 12-2003 of November 11, 2003). The results of this study will be available soon at the CNV.
Principles for Collective Investment Schemes	
Principle 17	The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.
Description	The DLMV provides that investment companies, both Panamanian or foreign, will be under the regulation and supervision of the CNV, establishing categories of investment funds according to their open or closed version, according to the redemption offer. Proper regulation of collective investment schemes has been launched in 2004 and 2005 (Agreements 5-2004 and 2-2005). The new regulatory framework provides for the regulatory authority to be given responsibilities and clear powers with respect to the entry criteria of the open-ended funds. The regulatory framework establishes standards to determine the suitability and the regulation of those who wish to commercialize a collective investment scheme, through

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	the Agreement 5/2004 dated July 23, 2004, amended by the Agreement 2/2005 dated March 9, 2005. The investment companies previously registered in the CNV, where registered under regulations which were afterwards repealed by the DLMV, and before the execution of Agreement 5/2004. Under the new regulation, no investment company has been registered, and to date, no investment manager has been authorized under the new provision (Second Title, First Chapter sets the conditions and requirements that investment managers must meet). The Agreement has been recently amended, specifically in Chapter VIII, related to the securities purchase of funds or investment companies incorporated and managed abroad. The results of the workshops conducted with representatives of stockbroker houses licensed by the commission indicated the possibility of allowing, exclusively, the stockbroker houses to perform such business, and considering that the above-mentioned securities would not be securities registered in the commission, the requirement of filing the documentation with the commission was replaced with the requirement of having such documentation at the disposal of the commission and the customers of the relevant stockbroker house. The standards of suitability for the collective investment schemes include the honesty and the integrity of the agent, when the investment companies are self-managed, according to Section 14 of the Agreement 5/2004. Regarding the investment managers, those standards are included in Agreement 5/2003 as amended by the Agreement 4/2004, in the provisions referring to the conduct of market intermediaries. Investment managers have been requested to file their conduct codes with the CNV. Due to the fact that no self-managed investment company has been registered, no appraisal of the sufficiency of such standards has been possible. The competitiveness (human and technical resources) to perform the proper functions and duties of any agent, in the case of the self-managed investment companies, is regulated by Section 14 of the Agreement 5/2004. Nevertheless, and for the same reasons pointed out in the foregoing paragraph, the sufficiency of such standards has not been evaluated yet. Sections 66.4, 66.5 and 66.6 of the Agreement 5-2004 refer to the investment managers, stating, among others, the obligation of having the number of managers that the trading volume of the company requires. Furthermore, according to such rules, the appointment of at least one main executive shall be compulsory, who shall be the holder of the *"Licencia de Ejecutivo Principal de Administrador de Inversiones"* ("Principal Executive Licenses"), and who must meet the conditions set in Section 75 of the abovementioned agreement. Moreover, investment managers shall have a compliance officer, an administrative and accounting structure and the technical and human resources necessaries to give the proper services of the license. As of the execution of the aforementioned agreement on September 1, 2004, the investment companies and investment managers were granted a six (6) month period (which deadline was February 2005) so as to adapt themselves to the new regulation. Some managers are going through this process.

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	In order to request a new license, form DMI-4 shall be filed properly completed, detailing general information and professional experience of the directors, dignitaries, and of the applicants for the license of the principal executive (educational background, working experience, position, extracurricular information, and specific experience in the securities market). To date, no request for an investment manager license has been filed under Agreement 5/2004, but on the other hand, four licenses of Principal Executive Licenses have been granted since the execution of the above-mentioned agreement. Form DMI-4 shall also be filed for requesting the Principal Executive License. Section 14 of the Agreement 5-2004 regulates the financial capacity of the self-managed investment companies. As mentioned before, due to the fact that no self-managed investment company has been registered, no appraisal of the sufficiency of such rule is possible. According to Section 66.14 of said agreement, investment managers shall have a minimum net worth of $150,000.00, including capital share and shareholder reserves. The agreement also mentions that this net worth will be adjusted once the commission issues the Agreement on Proper Resources and Prudential Supervision. In case the investment manager is already provided with a license of Value House, it shall have a minimum paid-in capital of $300,000.00. In general, the rest of the standards required to demonstrate the suitability of a collective investment scheme are awaiting a major development of the sector so as to be better evaluated. Effective, proportional, and dissuasive sanctions exist for the one who manages a collective investment scheme without authorization or breaks the obligations of every agent of a collective investment scheme. Section 208 of DLMV, as amended by Law 45 dated June 4, 2003, authorizes the commission to impose administrative fines amounting to a million Balboa to any person who violates the Decree-Law or its regulations by performing any of the prohibited activities indicated in such Decree Law, or fines up to three hundred thousand Balboa for violating any other provision of the Decree Law. As of today, there has been no need to apply sanctions against any investment company. The regulatory framework initially grants to the regulator responsibilities and clear powers on the registration or authorization of a collective investment scheme (Agreement 5/2004 as amended by Agreement 2/2005). Every investment company making a public offering of its units in Panama Republic, or being managed in or from such country, shall be registered in the CNV. The regulation allows the investment companies to be self-managed as long as they fulfill the requirements established in Section 14 of the Agreement 572004. According to the CNV, self-managed investment companies do not exist. DLMV enables the commission to examine, investigate, and execute all the proceedings envisaged in Sections 8.8 and 110 of the Decree-Law. To date, no examinations of either investment companies or investment managers have been conducted. Nevertheless, an examination instructions manual/handbook has been issued and an examination according to such manual is planned for the year 2005. It is necessary to point out that the regulatory law (Agreement 5/2004) is recent, being applied since September 1, 2004.

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	A financial statements review is executed according to the schedule established in the Agreement 8/2000, as amended by Agreements 10/2001 and 7/2002. Section 66 of the Agreement 5/2004 indicates expressly the requirements that must be fulfilled always and at all times so that the investment manager keeps the license. However, to date, no follow-up has been made of these intermediaries, not even regarding the continuous fulfillment of the standards of suitability, authorizations, or registrations, with the exception of the submission of the financial statements. Collective investment scheme agents are subject to a general and continuous obligation of reporting to the regulator, *a priori* or *a posteriori*, every important organizational or statutory change that takes place during their management. *A priori* the investment companies must file with the commission for its authorization, any amendment to their prospectus or to their articles of incorporation, as well as any, direct or indirect, change of control of every registered investment company. The documentation to be included in each filing is detailed in the Agreement 5/2004. Section 77 of the DLMV, regulated by Section 48 of Agreement 5/2004, applicable for investment companies, requires the publishing of any relevant fact relating to the situation or development of such company, by means of an immediate communication to the CNV in writing. Relevant facts are those which affect or may significantly affect the people's consideration of market value of the shares or units, and specifically, any reduction in the assets or the capital share of the company representing a variation greater than 20 percent; any retirement of debts or a group of debts carried out in a three-month period representing a reduction greater than 40 percent of its assets; any indebtedness transaction involving, as of the moment of its execution, an obligation to any third party for more than 10 percent of the assets, or the capital share of the investment company. The obligation for the investment managers to keep updated "all the information referred to the investment manager filed with the commission" is contained in Section 66 and 72 of Agreement 5/2004. Specifically, Sections 72.1; 72.2, and 72.13, mention that any changes in the conditions under which the authorization was granted shall be communicated to the commission. The details of the managed funds shall be communicated honestly and in sufficient detail.(Section 72.12). Section 46 of the Agreement 5/2004, determines the responsibility of the investment manager to keep and update not only the accounting of the company, but an investments registry, an investors registry, and a promoters, bank entities, and intermediaries agents registry. The investment manager shall keep a registry of persons who directly or indirectly work with the company, a transactions registry, and a complaints registry. There are some measures in order to forbid, restrict, or promote certain conduct which could cause a conflict of interest between a collective investment scheme and its agents, the agent's assistants, and any other related party. Sections 6,7,8, and 9 of Agreement 5-2004 determines a number of conditions and limitations that may resolve the existence of a conflict of interests between the investment company and its manager, as well as with any other related party. Such conditions are also included in the conduct codes sent by the investments managers to the CNV for their approval. But no examination has been done so as to evaluate if they are being accomplished. The collective investment schemes are subject to the regulations relating to customer interests. Section 66.8 of Agreement 5/2004 establishes that every company wishing to

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	obtain a license shall adopt and maintain an internal regulation of conduct, according to Agreement 5/2004. The agreement includes a General Conduct Code of Securities Markets ("GCCSM") which includes, among others, the following rules: Better Execution, Appropriate and On Time Execution of Transactions, Unjustified Increase of Number of Transactions with Customers Accounts so as to Obtain More Fees, Transactions with Related Parties or Companies. Moreover, the entities shall act with diligence and care in their transactions (Rule 3 of the GCCSM). The information to the customers shall be clear, correct, precise, and sufficient and delivered on time, so as to avoid any misinterpretation, and shall include a statement on the risks that every transaction involves. As regards information related to transactions with related parties, customers shall be informed about the economic and any other kind of relationships existing between the company and the entities that may act as counterparts. Every entity shall collect information, and keep it updated, about possible conflict of interest situations of its employees due to family relationships, personal assets, or any other reason. In addition, every entity shall establish the obligation for its dignitaries, directors, main executives, employees, and representatives, of not using in their own benefits, the information obtained by the entity, whether by the direct or indirect use, or by giving the information to selected customers or third parties without the consent of the entity. (Section 3 of the Agreement 5/2004). As regards the delegation of functions, Section 70 of the Agreement 5/2004 states that investment managers may appoint sub-managers or sub-contract administration services with another investment manager, according to the agreement ruling the relationship between the investment company and the investment manager, or according to the articles of incorporation of the investment company. The sub-contract shall be partial and the investment manager shall not be released from its management responsibility. Section 70 of Agreement 5/2004 points out that the investment manager shall not be released from such responsibility but shall expressly indicate in the "prospectus" of the investment company, the conditions under which such administration will be carried out. Management sub-contracts shall only be entered into with intermediaries authorized by their origin legislation to manage collective portfolios and who meet the following conditions: 1. Shall be authorized to operate, and shall be supervised by the regulator of the securities market. 2. Shall have at least five (5) years of experience in the management of collective portfolios. 3. Shall not be previously convicted of crimes against property or public trust, for money laundering violation of confidentiality, or for the preparation of untruthful financial statements. In order to ensure that information about cases of sub-managing is divulged, Section 70 of the Agreement 5/2004 states the obligation for the investment managers to truly, sufficiently, and opportunely inform the fund parties and the general public about the details of the managed funds as well as any other event or essential information about the

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	investment manager itself or the funds managed by it. Furthermore, Section 70 points out that in the event that a management company decides to hire a foreign entity to provide sub-management services, it shall state this in its "prospectus," including general information about that entity, the conditions of the sub-contract, and the mechanisms of control to be used by the management company. In the event of sub-management, the investment manager shall immediately notify the commission about this circumstance and shall file a copy of the relevant contract. (Section 70 of the Agreement 5/2004). When a fund is authorized to invest in foreign securities, the management company may hire the services of a foreign entity to sub-manage a part of or all the funds of the portfolio. This sub-management shall not release the management company of its administrative responsibilities, and consequently it will be obliged to establish the mechanisms of control that will allow the supervision of the activities performed.
Assessment	Broadly implemented
Comments	Since the new regulation has been approved fairly recently, there is not yet in place any ongoing monitoring of the conduct of collective investment schemes and collective investment scheme administrators throughout the life of the funds, including continued compliance with eligibility, licensing, registration, or authorization requirements. The CNV is currently in the process of enhancing its collective investment scheme supervisory program and plans to review redemption practices and on-site inspection capabilities in the process.
Principle 18	The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.
Description	The regulatory framework provides for requirements as to the legal form and structure of collective investment schemes that delineate the interests of participants and their related rights. Article 1, Law 1, l999 and Article 1, Agreement 5-2004, when defining the collective investment scheme allows its constitution with the legal form and structure of a legal person, a trust or another contractual form. All collective investment scheme registered in the commission are legal persons. It also provides that the legal form and structure of a collective investment scheme, as well as the implications thereof for the nature of risks associated with the scheme, be disclosed to investors in such a way that they are not dependent upon the discretion of the collective investment scheme operator. The Agreement 5-2004 provides for rules on the different categories of collective investment scheme, according to the risk factor (Art. 3). Likewise, it states percentage limits for the investment. Article 48, Agreement 5-2004, states the obligation of information for the collective investment scheme or, collective investment scheme operator; in Section "a," it is stated that a copy of the prospectus, the last annual statement and the last published semester report must be provided to each investor, prior to the unit's subscription. The regulatory framework provides that where changes are made to investor rights that do not require prior approval from investors, notice is to be given to them before a change takes effect. Under Article 126 of the DLMV, a registered collective investment scheme with nonvoting investors cannot change the following elements without first providing prior notification to those investors: (i) significant changes in the objectives or in investment policies; (ii) change of investment manager, investment assessor or custodian; (iii) creation of a new type or series of units; (iv) significant changes in the

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	indebtedness limits; (v) significant changes in the profit policy; (vi) significant changes in the redemption policy of units; (vii) increase in the commissions and charges paid by the investors; and (viii) significant increases in the commission and the charges paid by the collective investment scheme to the manager, to the investment assessor, to the custodian, to the issuer, or to any other people providing services to the collective investment scheme. Likewise, the regulatory framework provides that where changes are made to investor rights, notice is given to the relevant regulatory authority. Article 24, Agreement 5-2004, provides that the modifications to the prospectus or to the rules governing the collective investment scheme should be presented to the CNV for authorization, the rules being effective from the moment they are registered before the CNV. Nevertheless, the regulatory framework does not require the segregation of collective investment scheme assets from the assets of the collective investment scheme operator and its managers. The DLMV also states requirements governing the safekeeping of collective investment scheme assets, such as the obligation to entrust the assets to an independent third party (custodian) that is required to separate the manager's assets from those of the collective investment scheme. About safekeeping of assets, each collective investment scheme should appoint a custodian whose functions are included in Article 5-2004, and will be the entity where securities, financial assets, and cash belonging to the collective investment scheme will be deposited. Each collective investment scheme should appoint only one custodian, leaving apart the fact that it can keep several deposits and sub-custodians. Banks, brokerage firms that–according to their business plans–can carry out those services, central securities depositories, and fiduciary trustees properly authorized by the SdB can be custodians. In any case, the cash must be deposited in a bank, either as custodian or sub-custodian. Only legal persons can be appointed as custodians. The custodians for registered collective investment scheme should be subject to audits, cash counts, and inspections of their external auditors annually, with the purpose of verifying the existence and status of assets under their custody (Article 83, Agreement 5-2004). In Article 45 and following Agreement 5-2004, the regulatory framework has provided some requirements about bookkeeping and documentation in relation to the transactions with assets of the collective investment scheme and all the transactions in scheme shares or other units or interests. Likewise, Article 50, Agreement 5-2004 states safe auditing requirements (internal or external) in relation to the scheme assets. Article 62, Agreement 5-2004, states measures for the halting of transactions, liquidation, and dissolution of a collective investment scheme and refers to the application of rules included in Title XIV of Intervention and Liquidation, the DLMV, as well as what is stated in Article 80 and following, Agreement 5-2004, which deals with the halting of transactions, the suspension of an investment manager's license, and liquidation of a collective investment scheme. Up to the present, there has been no need to apply this rule for the liquidation of an investment company.
Assessment	Broadly implemented
Comments	The separation/segregation of assets under management in a collective investment

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	scheme from the assets of the collective investment scheme operator and its managers is not required by regulation. This issue should be considered for a future modification of Agreement 5-2004.
Principle 19	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.
Description	The regulatory framework requires complete disclosure, which allows an assessment of the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme. There is a complete regulation on the disclosure of the material information for the valuation, around the documents (Contract of Subscription and Prospectus) necessary for offering a collective portfolio. Disclosure should assist investors in understanding the nature of the investment vehicle and the relationship between risk and return. The regulatory framework requires that all matters material to an evaluation of the scheme and the value of an investor's interest should be disclosed to investors and potential investors. Information should be provided in an easy to understand format. Also, it establishes the information obligations of the collective investment scheme, or of the investment manager, to the investors before the unit subscriptions, of an example of the prospectus (with information about the investment manager, in charge of managing the collective investment scheme and the custody). If it is a collective investment scheme which is self-managed it must describe the management board, structure, and present the organization chart of the company, the latest annual report and the latest published semester report, and on a monthly basis a statement of account which reflects, as a minimum, details of the investments which have been made, changes in the value of the net asset, the number of participation quotes issued and in circulation as of the date of the statement of account. Collective investment schemes and investment managers are required to have an internal code of conduct, according to Agreement No 5-2003, in which it is established that this applies to dignitaries, directors, principals, staff, and representatives, as well as the internal procedures and mechanisms which might be necessary and relevant. The following information is to be disclosed in the prospectus. 1. The date of issuance of the offering document 2. Information concerning the legal constitution of the collective investment scheme 3. The right of investors in the collective investment scheme 4. Information on the operator and its principals 5. Information on the methodology of asset valuation 6. Procedures for purchase, redemption, and pricing of units 7. Relevant, audited financial information concerning the collective investment scheme 8. Information of the custodian, if any 9. The investment policy of the collective investment scheme 10. The appointment of any external administrator or investment managers or advisors who have a significant and independent role in relation to the collective investment scheme (including delegates) 11. Fees and charges in relation to the collective investment scheme The regulator has the power to hold back, or intervene in an offering, in the event that the information is inaccurate, misleading or false, or does not satisfy the filing or approval

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	requirements. The powers conferred on the CNV (Art. 8, DLMV) include the suspension of operations and negotiations of securities in the event of violation of any of the laws contained in the DLMV and the following rulings. The regulatory framework, in Section 25 of Agreement 5-2004, sets forth that it is not possible to use, in the prospectus or in advertising materials outside of the offerings, words which may be confusing, misleading or not describe adequately the risks assumed by the investor and the public in general. Likewise, Section 26 of Agreement 5-2004 states that the content of the advertising material follow criteria for the preparation of such material. In addition, before the publication of advertising material in any media, it must be submitted to the CNV, which could prohibit or suspend the use of any advertising material that goes against the criteria established by the CNV. The regulatory framework requires that the offering documents be kept up to date to take account of any material changes affecting the collective investment scheme. Section 24 of Agreement 5-2005 sets forth that the amendments to the prospectus or the rules establishing the collective investment scheme must be presented for authorization to the CNV, which will be in force starting from the date of registration in the CNV. The collective investment scheme is obliged to disclose any material event affecting its situation or performance by means of an immediate communication in writing to the CNV. Material events are those which affect or may affect significantly the public's consideration of the market value of the securities or units, in particular: (i) any asset or capital reduction of the collective investment scheme which results in a variation greater than 20 percent; (ii) any redemption or group of redemptions in the previous quarter resulting in a reduction of 40 percent in the collective investment scheme's assets; and (iii) any debt operation that creates an obligation to a third party of more than 10 percent of the asset or capital of the collective investment scheme. The regulatory framework requires a report to be prepared in respect of a collective investment scheme's activity either on an annual, semi-annual or other periodic basis. Article 48 of Agreement 5-2004 indicates the information requirements of a collective investment scheme, which consist of the submission to investors, on a monthly basis, of a statement of account which reflects, as a minimum, details of the investments which have been made, changes in the value of the net asset, number of units issued and in circulation as of the date of the statement of account. Within three months from the end of the fiscal year, an annual report must be submitted containing details of the companies whose securities are admitted to negotiation in the exchange. Two months after the conclusion of every semester, an indicator report has to be presented as an update to the annual report. Article 49 of the said agreement requires the presentation of provisional financial statements, semi-annual and annually audited. The regulatory framework requires that the account of a collective investment scheme be prepared in accordance with high quality, internationally acceptable accounting standards. It is required to be presented in accordance with Agreement 8-2000, modified by Agreement 10-2001 and Agreement 7-2002 of the CNV. By means of these agreements, the CNV has adopted the format and content of financial statements and other financial information, as well as the frequency of their submission. Financial statements and other financial information that registered people are obliged to present,

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	must be prepared in accordance with International Accounting Standards or US General Accepted Accounting Principles.
Assessment	Fully implemented
Comments	The CNV is unable to gather information about the number of participants in the licensed investment funds. Some weaknesses may be detected in the regulatory system, as it does not address the issue of delegation of responsibilities, which may give rise to a conflict of interest between the delegate and the investors.
Principle 20	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.
Description	The regulation sets up a suitable valuation of collective investment scheme assets considering that this tool is critical to ensure investor confidence (Agreement 5-2004, Arts. 36-39). The regulation ensures that there is a proper and disclosed basis for asset valuation and pricing and the redemption of units in a collective investment scheme. There are specific requirements related to the asset valuation that investment companies must observe in the recognition and knowledge of financial instruments. Those rules are established in Article 36 and following of Agreement 5-2004, from July 23, 2004 and modified by Agreement 2-2005. Although the regulation ensures that the net asset value of the scheme is calculated following specific requirements and in observance of high quality and accepted accounting standards, applied in a consistent way (Article 36 and following, Agreement 5-2004), the CNV has not yet had any experience in the application of the rules. Furthermore, its staff requires technical training in this area. Specific regulatory requirements exist regarding fair asset valuation for illiquid securities (in cases where there is no readily available market price). The self administered investment company or the investment administrator should fix the price which they consider is fair following bona fide prescriptions taking into account the one that reasonably would apply to buyer and a seller in a transaction on such values. Again, the CNV has not yet had any experience in analyzing the application of the rule, which makes it difficult to evaluate how the rule will fare in practice. It appears that at the moment, most of the domestic investment companies have very conservative policies on the asset valuation and usually put it below market price. All the investment companies, as well as their administrator should hire external auditors who will express their opinion about the transaction results. Although it is not stipulated in the regulation, in practice external auditors must verify by means of a list that the asset valuation of investment companies is correct. On the other hand, Article 21, Agreement 5-2004, establishes the procedure that must be followed regarding the redemption of units. The regulation demands that the IIC price is published or regularly communicated to the investors or potential investors. For purposes of disclosure, information that appears in the reports must be communicated to investors or potential investors. The selling price of units listed at the Bolsa can be seen in the newspaper the following day. The rules do not consider possible mistakes in the pricing. Article 21, Agreement 5-2004 develops the deferral (item No. 4) and suspension (item No. 7) related to the redemption of units. On the deferral, it stipulates that the open investment companies registered at the CNV must pay their redeemed units no longer

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	than 15 working days after the redemption, except in those cases where, through a specific request from an investment company, the CNV allows the deadline to be extended, provided this possibility has previously been noted in the prospectus. Investment companies can temporarily suspend redemption of units or defer the date of payment following redemption in the following cases: • During periods when the exchange is closed, when there is a significant amount of securities, when the assets of the collective investment scheme are invested, or when the negotiation of those securities is suspended. • During periods when an emergency occurs that results in it no longer being practical or convenient to dispose of the assets of a collective investment scheme or to determine fairly and adequately the net value of each unit. • In case of the dissolution of a collective investment scheme. • When amendments to the prospectus are taking place that may affect the interests, charges or commissions of the company. • During any other period that the commission establishes on this or other agreements.
Assessment	Partly implemented
Comments	It appears that appropriate rules for valuation are in place and that the CNV has the regulatory powers to ensure that those rules are applied to the valuation of assets and pricing. However, at this time there has been little experience with the rules and there are serious concerns regarding the staff resources and expertise needed to properly supervise and interpret these rules. Staff resources and training are urgently needed in this area.
Principles for Market Intermediaries	
Principle 21	Regulation should provide for minimum entry standards for market intermediaries.
Description	Intermediaries are overseen by the CNV and require previous authorization for their operations. The DLMV (Arts. 24, 49 and 50) establishes clear standards of entry needed for authorization and standards that should be met on an ongoing basis. Stockbrokers, managing executives, and securities analysts also must be registered in the National Registry of Securities (Registro Nacional de Valores). The criteria to be met by all applicants for licenses include a comprehensive assessment that addresses "ethical attitude," including past conduct, and appropriate proficiency requirements, such as industry knowledge, skill, and experience. Investment houses are requested to hire people with a current license. As a condition for operating a securities business, market intermediaries must be licensed. Article 23, The DLMV establishes that individuals may practice independently as a stockbroker or investment advisor only if they have obtained the appropriate license. Article 47 indicates that only people who have obtained the corresponding license issued by the commission are permitted to hold a position of responsibility as an executive , analyst, or stockbroker. The same law decree establishes fair and clear rules for providing or refusing the mentioned license (Article 24, 49, and 50). Since the DLMV came into force, 43 operational licenses have been granted to brokerage firms and 4 to investment advisors. The average time taken to obtain the license is from three to six months. Article 28 of the DLMV states that brokerage firms will maintain the necessary minimum capital requirement to comply with their assumed obligations with their clients and creditors, based on a capital adequacy test. The minimum capital requirement and also

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	the liquidity requirement will be determined by the CNV. There is currently no legal requirement regarding a brokerage firm's own resources; once agreement about this has been reached, the total minimum capital will be adjusted accordingly. The Agreement 2-2004 stipulates that members of a brokerage firm's Board of Directors (Article 8, No. 3) and from investment advisors (Article 26, No. 3) should have professional and business integrity, knowledge, and appropriate experience. Companies requiring a license to operate as a stockbroker or investment advisor must complete Form DMI-1for each member of the Board of Directors. In this form, general information is to be provided as well as the professional experience of all those who control or have influence on business decisions. Agreement 5-2003 establishes the requirement to provide a code of conduct and business plan when a stockbroker or investment advisor submits an application for a license. The code of conduct and business plan must include risk controls and supervision systems. Verification of compliance with those requirements is carried out through an inspection that is undertaken in accordance with the supervision manual on risk controls and administration. As of today, all stockbrokers and investment advisors have a code of conduct, that has been checked and approved by the commission. Article 25 of the DLMV gives the CNV the power to refuse a license, subject only to administrative or judicial review, if authorization requirements have not been met. That power has been applied on several occasions, with either operations being restricted or suspended, or the license being canceled, depending on the case. Individuals working in the securities market should have the appropriate license depending on their area of expertise. In that respect, there are licenses for stockbrokers, executives, and securities analysts, and securities intermediaries must hire staff with the appropriate license. Failure to fulfill this requirement could lead to administrative sanctions in accordance with Article 208 of the DLMV, which establishes the minimum and maximum amounts of any penalties, as well as the criteria for the imposition of sanctions for the violation of the decree. The compliance officer is responsible for ensuring that all staff of brokerage firms, investment advisors, investment administrators, and SROs possess, if required, the license issued by the CNV to carry out their activities (Act 9-2001, No. 1). The intermediaries have to update and report to the National CNV: • Any relevant information or significant changes that could affect the conditions in effect at the time when the license was issued. • General details and professional experience of the directors and board members of brokerage firms and investment advisors, as well as applicants for stockbroker, analyst, and principal executive licenses. • Information about the share component and controlling shareholders. Through the CNV's Directorate of Securities and Intermediaries carries out prudential supervision (observance of requirements of capital adequacy, solvency, and administrative and technical capacity) as well as off-site surveillance in accordance with the DLMV. As of December 2004, the Market Directorate had completed 11 brokerage

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	firm inspections (3 ordinary, 4 specific, 2 for license cancellations, and 2 for investigations), and the Enforcement Division had undertaken 22 money laundering inspections (16 brokerage firms, 5 investment administrators, and 1 SRO). From January to April 2005, the Markets Directorate made three inspections (one ordinary, one specific, and one for license cancellation), while no money laundering inspection has been made. Investment advisors cannot act as a broker, making purchases or selling securities directly for their clients, nor can they offer investment accounts to clients. Only stockbrokers and the central depository are authorized to hold securities or assets.
Assessment	Fully implemented
Comments	No comments
Principle 22.	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
Description	Article 28 of the DLMV indicates that securities houses are required to comply with the minimum initial capital necessary to fulfill the obligations assumed with their customers and creditors, calculated according to net worth standards. Under Art. 5 of Agreement 2-2004, the minimum net worth corresponds to the company's capital and reserves. Article 28 of the DLMV also indicates that the net worth requirements will be established by the commission on the basis of the securities house contracts, the securities transactions, and the level of risk. A distinction is made between dealing for their own account and dealing for the client account. For intermediaries that offer investment services, the minimum capital requirement cannot be lower than 1/1000 of the total volume of the managed investment portfolios (Second Paragraph of Art. 5 in Agreement 2-2004). When fulfilling these capital adequacy requirements, the securities house should be covered, if not 100 percent of the full range of risks to which market intermediaries are subject, at least to a large extent. At the present time, the CNV does not have any rules on the determination and control of minimum resources applicable to the securities house. Ongoing capital requirements are simply ongoing compliance with initial capital calculations. The full range of risks to which market intermediaries are subject are not taken into account, and capital adequacy requirements sensitive to liquidity are not sufficient to allow an intermediary to absorb some losses and to wind down its business over a relatively short period without loss to its customers or without disrupting the orderly functioning of the markets. Intermediaries must supply the CNV with quarterly and annual reports regarding capital adequacy. The CNV reviews the suitability of market intermediaries' capital levels through these periodic reports and detects any breaches of the capital requirements. The annual financial report has to be provided to the CNV with the financial statements audited by external, independent auditors. Also, it must fulfill the NIFF and NIA's and has to be registered in the CNV within the three months of the end of the fiscal year. Auditing companies submit opinions on the "Casas de Valores" annual accounts reports. But they are required neither to provide additional assurance that the financial position reflects the risk that the intermediary undertakes nor to review their internal control system, including the organizational structure and internal control function.

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	Although the intermediaries have to submit annual financial statements audited by an independent auditor, these financial statements only need to fulfill the requirements laid down in Agreement 7-2002 regarding the form and content of the financial statements; they do not necessarily reflect the risks that the intermediary assumes. Article 28 of the DLMV states that the securities houses must report to the CNV their fulfillment of the requirements of net worth and liquidity in the form and frequency requested by the CNV. In addition, Article 6 of Agreement 2-2004 points out that the financial information of the "Casas de Valores" has to contain detailed information of the investments made to cover the liquidity ratio. The CNV analyzes the financial statements to ensure that the intermediaries fulfill the requirements regarding the minimum net worth and the liquidity ratio. Also, the CNV supervises entities to ensure that they supply the necessary data and information and transmit documents and records in the required manner and within the specified time limits; supervision is also carried out through specific on-site inspections. The CNV has specific authority to impose either restrictions on an intermediary's regulated business activities or more stringent capital monitoring and/or reporting requirements. Article 25 of the DLMV states that on withdrawal and suspension of a license and other measures is to be applied if an intermediary's capital deteriorates to the extent that its capacity to fulfill its obligations is endangered or when it falls below minimum requirements. Articles 229 and 266 also confirm the powers of the commission to restrict the activities of the intermediaries.
Assessment	Not implemented
Comments	The CNV does not have in place a meaningful compliance program for capital adequacy standards—there is no reporting or other enforcement mechanism in place. Further, the CNV needs to establish capital adequacy requirements structured to consider the full range of risks to which market intermediaries are subject: market, credit, liquidity, operational, and legal, including reputational risks. The CNV should, and would like to, improve its skills and resources dedicated to prudential supervision. Currently, a draft capital adequacy rule is under discussion. If approved, along with additional resources and training for the CNV, it will resolve the deficiencies relating to the capital adequacy requirements and the risks undertaken by intermediaries. To date, the required periodic information has allowed the commission to detect breaches of the capital requirements. When a material deficiency is detected, they can adopt supervisory and enforcement measures in accordance with the laws and regulations. Nevertheless, the current quarterly periodicity is not sufficient to ensure that a breach of the required capital level is detected at the appropriate time. In addition, the technological infrastructure of the CNV should be improved to guarantee a system of supervision adapted to the evaluation of the levels of risk of the intermediaries.
Principle 23	Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.
Description	Intermediaries must have an adequate operational and organizational structure, as well as

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	internal mechanisms of control. Section 8.7 of the Agreement 2/2004, states that "Casas de Valores" shall have a proper administrative and accounting organizational structure, and the appropriate technical and human resources to provide the services included in their business plans, and to ensure that their directors, board members, and employees fulfill the provisions of the DLMV and the complementary regulations. Furthermore, "Casas de Valores" shall have internal control procedures and electronic security that will ensure sound management of the entity. This will ensure that client confidentiality is maintained and there is no undue use of privileged information. However, the legislation does not establish the requirement for the chief executive or the members of the Board of Directors, to be the ones responsible for ensuring the company's compliance with the regulations. On the other hand, the legal system establishes the civil responsibility of the legal representative of the entity for any violation of the regulation, and sets out the sanctions to be applied according to the DLMV. Section 44 of the DLMV establishes that the CNV may require that securities houses appoint a compliance officer, who will be in charge of monitoring the entity and its directors, board members, brokers, and employees to ensure compliance with the rules of conduct and due procedures. The compliance officer will undertake the periodic evaluation of the internal control mechanisms and risk management processes. As part of its supervision and control function, the CNV (through the National Direction of Markets and Intermediaries) also carries out examinations of the efficiency and functioning of the procedures and internal control mechanisms adopted by the entities for the development of intermediation activities. The intermediary is not required to put in place a mechanism *per se* in order to resolve the claims of investors; however the conduct code established in Agreement 5/2003 includes clear regulations about impartiality and *bona fide* due care and diligence, resources and capacities, client information, information to clients, and conflict of interests. The protection of the assets of a client under the control of an intermediary is regulated in Section 14.2.f of the Agreement 5/2003, which indicates that "The entities shall at all times maintain a record of the securities, cash, and ongoing transactions of each client, and shall keep such information separate from the records of other clients and of their own managers. The securities account and cash related to the management must be clearly identified in the contract clauses or in its exhibits. The General Conduct Code of Securities Markets establishes in its Rule 5 "Information about the Customers," that entities shall request their clients to provide the necessary information for their correct identification, as well as information about their financial situation, investment experience, and investment purposes when such information may be relevant for the services to be provided. A form shall be completed, including the necessary information to identify the relevant data for the investment and for the recommendation to the client, according to the requirements of the CNV. Moreover, the intermediaries are obliged to "know" their customers before giving them specific advice, as stated in Section 5 of the Agreement 1/2005, which regulates about the identification of the investor profile.

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	The intermediaries are obliged to sign a General Conditions Agreement with their clients. In this regard, Section 13 of Agreement 5/2003 establishes that it is necessary to use a standard contract, which shall be previously filed by the intermediary with the CNV for its review. Furthermore, under Section 19, they are obliged to give general and specific information to their clients; this establishes, among others, the obligation to submit at least quarterly, clear, and concrete information about the value of their investment account and any cash deposited. In addition, they shall send to clients by the next business day following the execution of a transaction, a document stating the amount of the transaction, the interest rate, the charges or fees applied, detailing the due amount *(*"*concepto de devengo*"), and any other cost or specification relating to the financial terms of the transaction. Moreover, they will have to inform the client of any change in fees or charges that may be applicable to the contract, as well as of any matter concerning any transaction, unless expressly forbidden by Law 42 dated October 2, 2000. Finally, intermediaries shall, at the request of the client, provide all the information related to the transactions purchased by them. The CNV may request the amendment of the forms used by the entities to inform the clients, when those forms are not clear enough. Section 33 of the DLMV states that securities houses and securities agents shall maintain their books, registries, and other documents related to the transactions. This obligation has been developed through the Agreement 8/2000 dated May 2, 200, about the Format and Content of the Financial Statements. The "Casas de Valores" shall establish and maintain adequate systems for client protection, risk management, internal control, and operational and policy matters related to all aspects of their business. Section 19 of Chapter 3 of the Agreement 5/2003 "Information to the Customers," sets out the requirement for the intermediary to maintain effective communication with its clients. Section 39 of the DLMV, establishes that they must deal with all their customers in a due and fair way. Moreover, the General Conduct Code of Securities Markets adopted by Agreement 5/2003, shall be used as a guideline for the intermediaries authorized by the CNV. The protection of assets must be verified by the compliance officer, and at the same time supervised by the CNV through on-site inspections. Sections 6, 7, 8, and 9 of Agreement 5/2003, set out the compulsory registration and transaction execution orders. The segregation of the duties and functions of the different areas of activity is regulated in the General Conduct Code of Securities Markets adopted by Agreement 5/2003. Its Rule 4 states: "Information obtained from the respective activities in the different areas should not be, directly or indirectly, accessible to the other areas, so that each area of activity will operate autonomously. In addition to the establishment of appropriate barriers, necessary measures shall be adopted to ensure that in the decision process, no conflict of interest will arise inside the entity itself or between the different entities of the same group." Regarding the potential conflict of interests, Section 14 of the Agreement 5/2003, which establishes the Conduct Regulations applicable to the Value Intermediaries, states that in the activity of managing investments accounts, the stockbroker firms, and if applicable, the investment advisors "shall avoid any conflict of interests between the manager-and its group- and the customer, or between different customers. In case of a conflict, the

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	priority shall always be the client's interests over their own interest." In practice, this is verified during the CNV's inspections at the time of examining the sample files. Section 20 of Agreement 5/2004 named "Information to clients about conflicts of interest" requires the entities to warn clients about the conflict of interest that may appear during their business activities.
Assessment	Partly implemented
Comments	Some weakness appears in the mechanism to ensure proper management of risk. Market intermediaries are required to comply with standards for internal organization and operational conduct but they are not forced to implement risk management procedures. So no rules or procedures are currently in place to reduce risk exposures. It is significant to stress that any exposure of a market intermediary to significant risk arising from the activities of other entities in its group(s) should be addressed. The CNV has drafted an Agreement on capital requirement that will soon be presented for public consultation.
Principle 24	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.
Description	Title XVI "About Intervention and Settlement," Chapter III "About Intervention," grants the CNV the ability to manage the insolvency or failure of a securities market intermediary. The CNV is empowered to appoint a controller and to transfer customer assets held by the intermediary. (See Sections 218-221). Furthermore, Chapter IV "About the Organization," empowers the CNV to undertake a reorganization plan (Section 228 ff.). Section 229 expressly establishes the power of the commission to order the reorganization of the intermediary without the necessity of any previous intervention. The CNV does not have a formal action plan to deal with these situations. However, once a case is identified, it is examined, evaluated, and a decision made together with the commissioners. The current reporting system is inadequate. There is no early warning system or mechanism other than quarterly reports to inform the regulator about a possible situation of insolvency, and consequently, to give the entity enough time to face the problem and adopt the right measures. The revision and examination of the provisional and annual financial statements that intermediaries file (Agreement 7/2000) only enable the regulator to know about the past, and this makes it very difficult for any timely action to be taken. Title XIV "About Intervention and Liquidation" of the DLMV, Sections 215, 241, 244, 245, 249, and 251, include measures that the CNV may take to prevent the loss of the investors' money and securities which are in the custody of an intermediary facing insolvency. In addition, there are powers granted by this law decree to the CNV under Section 25 "Suspension and Revoking of Licenses and Other Measures," Section 229 "Reorganization Without Previous Intervention" and Section 266 "Suspension." <u>Appointment and Powers of the Controller</u> In the resolution ordering an intermediary's liquidation, the CNV shall appoint a controller to exclusively carry out the legal representation, administration, and financial control of the intervened registered institution, and such controller must keep the commission continuously informed of the progress in the intermediary's liquidation. With reference to disseminating information about the failure of the entity, Section 237

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	of the DLMV, establishes that the commission shall require that a copy of the resolution ordering the compulsory liquidation of the registered institution be shown in a public and visible place in the main office and its branches. Furthermore, the CNV shall order the publication of the resolution for five (5) business days in a national journal. The legislation does not include insurance plans or security funds. However, Chapter II, Title XIV of the DLMV considers the "Dissolution and Voluntary Liquidation" of the "Casas de Valores," which includes the protection of investors' rights. Communication and cooperation with other national and foreign regulators is not regulated, and therefore there is no documentation to be consulted regarding contact procedures or any other matter pertaining to such cooperation.
Assessment	Not implemented
Comments	The CNV has sufficient authority to take all appropriate action in the case of a financial failure. However, the current frequency of reporting and monitoring is insufficient to ensure that a firm experiencing financial difficulties would be identified prior to more serious financial exposures being incurred. Furthermore, a formal plan for dealing with an insolvency would assist the authorities in being properly prepared to put its authority into action. This plan should include formal agreements with relevant domestic authorities on cooperation.
Principles for the Secondary Market	
Principle 25	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	The establishment of exchanges and trading systems in Panama requires previous authorization. The prescribed law and agreements are ample regarding the form and size of markets that can be authorized. Article 51 of the DLMV points out the mandatory nature of the authorization. Agreement No-2003 regulates the self-regulated organizations (SROs) and assesses the initial and ongoing propriety and competence of the operator of an exchange or trading system as a secondary market. Only legal entities, which have been authorized by the CNV, are able to operate in Panama as a stock market or clearing and settlement institution. In addition, Agreement No.7-2003 of July 4, 2003 regulates the SROs. As "self-regulated organizations," they are obliged to protect the interests of investors, promote the cooperation of market agents, report on any violations against the securities law, not to unreasonably limit or discriminate regarding membership, nor affect free competition, to avoid deceitful and manipulating actions that may affect the market's transparency and investors. The interested party must obtain the respective license from the CNV, which shall be granted, provided that the technical, administrative, and financial capacity to provide the service is proven. Article 52 of the DLMV specifically states that in order to be authorized, an interested party must a) provide evidence that they have the technical, administrative, and financial competences and the necessary staff to deal in the market's products; b) fulfill the initial capital requirements established by the commission.; c) fulfill the requirements established for the granting of the corresponding license and the operation of the business; and d) adopt internal rules, which must fulfill the requirements established in the DLMV and in Article 15 of Agreement 7-2003, that state the internal rules with which the SROs must comply. Article 16 talks about the modifications of the internal rules of the SROs.

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	The Bolsa de Valores de Panama is currently authorized to operate in this jurisdiction as an exchange. It was the first market organized for the public trade of securities in the Republic of Panama, with a license granted by the CNV by means of Resolution No.349-90 of March 30, 1990, under Decree 247 of July 16, 1970, modified by Cabinet Decree No.30 of February 24, 1972, and the Bolsa continues to operate under the present regime. The rights of access to the Bolsa are limited to its members. However, the legislation imposed through the CNV prevents any discrimination among participants and establishes procedures to enforce the fair treatment of all members. Specifically, Article 54 of the law establishes that the internal rules adopted by the exchange must be approved by the commission, and will not contain dispositions which either arbitrarily limit the number of members, or imposes unfair requirements for admission to membership. Article 7 of Agreement No.7-2003 sets out the detailed requirements for applying for an exchange license, and indicates the documentation to be registered in the CNV. Among the criteria to be evaluated for the granting of an exchange license are technical capacity, financial and administrative resources, and appropriate staff to conduct operations. Likewise, the exchange shall monitor their members' compliance with the internal rules and the securities law. The regulated trading system operates through an electronic system linked to Casas de Valores' members with trading terminals. All members of the Bolsa enjoy identical rights for access to the trading system. The General Code of Conduct applicable to the SROs and whose content is established by Agreement No.5-2003 of June 25, 2003, points out that the "Casas de Valores" must apply fair and not inconsistent order execution procedures, with respect to the front running or trading ahead of clients. The CNV has established by means of agreements clear rules that regulate and establish the procedures for the registration of securities, such as equities, bonds, commercial papers, and quotas of participation. All the securities that are the subject of a public offering are previously subject to the approval of the CNV, with the exception of the points mentioned in items a) and b) of Article 83 of the DLMV, that are: (a) bonds issued or guaranteed by the state, and (b) bonds issued by international organizations where the state participates. Article 39 of Agreement No. 7-2003 indicates among other functions of the exchange, the obligation to establish rules, policies, and procedures to ensure the correct conduct and transparency of trading processes through strict observance of trading rules, as well as fairness, efficiency, transparency, and compliance with securities legislation. Similarly, Article 40 indicates that the internal rules adopted by the exchange will have to be designed to (i) prevent any breaches of the rules and any other fraudulent acts that may affect market transparency; (ii) promote right practices in trading; and (iii) stimulate the development of an efficient market. As regards its capacity and competence to carry out all the requirements, the Bolsa has developed several manuals: Internal Rules, Manual for the Committee for the Supervision of Exchange Operations, Good Governance Code, By-Laws, Operating Manuals, and other internal manuals. In order to prevent fraudulent activities, the internal procedures of the Bolsa prohibit the following: (i) to negotiate values on the basis of confidential and/or privileged information; (ii) to act with the objective of artificially adjusting; and (iii) to make false declarations to either the exchange or investors. As regards the systems and procedures related to operational failure, the Bolsa makes a backup of the SITREL programs (System of Electronic Transactions) and its databases

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	daily, weekly, and annually. Furthermore, they have contingency plans. The CNV undertakes inspections to evaluate the Bolsa's compliance with its internal rules and securities legislation. Through these inspections, the CNV evaluates the reliability of the systems and procedures adopted by the Bolsa to monitor, oversee, and supervise its trading system and members or participants, in order to ensure fairness, efficiency, transparency, and investor protection, as well as compliance with the legislation. With respect to trading information, no participants have an unfair advantage as they all have identical access to trading operations, and trading information, which is available on the Bolsa webpage, is updated throughout the trading session. In addition, the Bolsa sends by e-mail to all members information regarding market rules, trading operations, and any modifications thereto. The Operating Manuals specify the type of information that has to be disseminated and made available to participants, and clarifies the safeguards in place to protect the confidentiality of other information, the disclosure of which is not intended. All the securities are subject to registration with the commission and their issuers are obliged to file at the CNV interim reports and audited financial statements. Additionally, the "Casas de Valores" are required to report daily those securities transactions that are made outside the stock market, and monthly all the buying and selling transactions that their brokers carry out. The Bolsa's Manual of Compliance establishes that the compliance officer will be responsible for supervising the directors, staff, and members of the market to ensure that they are complying with the procedures laid down in the Bolsa Internal Rules, with the Securities Legislation and the legal dispositions in force regarding the prevention of money laundering. In the event of a presumed infraction of the legislation or internal rules, the Manual of Compliance establishes that the compliance officer will have to prepare a report for the Board that includes the main findings and conclusions of an investigation into the possible violation together with a discussion of other relevant issues. If the National Commission of Values requests information on the matter, the officer will have to prepare a report and enclose the requested documents. The Bolsa has created the Supervision Committee of Exchange Operations for the exercise of its disciplinary authority, with the purpose of investigating violations against internal procedures and the Securities Law and imposing sanctions. This committee, whose members are named by the Board of Directors of the Bolsa, comprise three ex-chairmen and two directors of the Bolsa. Their responsibilities include reviewing disciplinary cases of members submitted for their consideration, making appropriate decisions, and determining the corresponding sanctions. There is no legislation to detect and deal with unusual or disorderly trading conditions. The CNV acts in a reactive way on the basis of the powers granted to it by the DLMV. All rules of operation are communicated to the regulator and market participants, and they are applied to all the participants consistently. The Bolsa's Manual of Sessions, which contains the detailed rules applicable to the electronic system, has been sent to the CNV and all participants. On the other hand, the CNV has adopted an internal procedure for the review of requests for amendments or adoption of new rules on the part of the SROs.

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	The Bolsa maintains a complete registry of all historical transactions. The registry contains the name of the issuer, the title or trade security, the amount of the operation or amount of the securities, the price, the bid position, the offer position, the stockbrokers, the sequential number of the transaction, the date of the transaction, the date of liquidation, and the commissions. Also, the Bolsa maintains filed in sequential form all the transactions that have been carried out through each one of the stock market positions, with the documentation of related liquidation. As regards the existence of registries or recordings (telephone or of another type), which would allow retrieval of trading activities within a reasonable timeframe, Agreement No. 5 of 2003 indicates in Article 6 that the "Casas de Valores" will request their clients to ensure that their orders are clear and precise, so that both the client and the broker know the exact details of the order. Orders could be recorded provided prior authorization of the client has been obtained. On the other hand, Article 8 indicates the rules regarding the registry of orders. Even though the agreement does not force the "Casas de Valores" to record clients' orders, it demands that each document confirming receipt of an order be filed. Article 10 indicates that the file of orders and the registry of operations will be available for the CNV at any moment. The CNV's first inspection of the Bolsa was made in July 2004. One of its conclusions was to recommend the adoption of a specific regulation for an arbitration system for dispute resolution, as indicated in the internal procedures. The Bolsa welcomed the recommendation and took appropriate action for its implementation.
Assessment	Broadly implemented
Comments	
Principle 26	There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.
Description	The CNV requires the SROs to submit periodic reports, particularly about trade volumes and related information. But the Regulator has not yet put in place specific programs or procedures for monitoring day-to day trading activity in order to verify whether the system maintains and complies with the conditions necessary for its operations. According to Agreement 2-2004, the regulated entities must provide daily reports of transactions made off the Bolsa (Panamanian instruments) and a full report of transactions within the first 15 days of the end of each month. This means that until the monthly report is registered by the CNV, it is possible to review the information and make partial revisions; however they only can verify the part corresponding to the local market or what is traded through the Bolsa. Some advances have been achieved, like the fact that the CNV obtained in the first trimester of 2005 the interconnection and the required technology to monitor day-to-day trading activities on the exchange. It is necessary to note that to date it is not being used. Agreement 7-2003 of July 4, 2003 regulates the establishment of SROs. The CNV assesses the Bolsa's internal procedures, rules of conduct, order execution rules, trade guidelines, and any other procedures. The CNV has the power to supervise compliance with regulations through ongoing and special inspections. Nevertheless, the CNV currently does not have a market surveillance program based on an electronic system to

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	monitor the activities and risks to which the Bolsa may be exposed, or to verify that the Bolsa and the trading system fulfill the regulations and administrative responsibilities. The regulatory framework requires that amendments to the Bolsa rules and/or trading system be approved by the CNV. The DLMV establishes in Article 57, (modification of internal rules of SROs), that additions, modifications or abrogation of the internal rules of a SRO should be provided to the CNV with an explanation of any important changes and the reasons behind such changes, before they come into effect. Also, it authorizes the CNV to request for revisions, and to approve or deny additions, modifications or abrogation if in the opinion of the commission, the dispositions of the DLMV are not being carried out. By means of a resolution of commissioners, the CNV will be able to re-examine an SRO if it is determined that, due to changes in the circumstances or to legal or prescribed changes, the SRO is unable to comply with its internal rules or does not fulfill the legal or prescribed requirements, or if it determines that the changes would improve the levels of efficiency, transparency and fairness of the market. If the trading system or the stock market is unable to comply with the conditions of its authorization or with the regulation, there is a mechanism that allows the CNV to revise both of them, and to impose restrictions or conditions on the market operator if the dispositions established in the market law and agreements are violated. Thus, Article 64 of the DLMV establishes the power of the commission a) to suspend or withdraw the authorization granted to an SRO or to revoke the license granted to its chief executive; and b) to restrict the transactions that the SRO or its chief executive can make. Besides the CNV is empowered to suspend or to withdraw the authorization if the SRO incurs any of the sanctions established in Article 64 on "Sanctions imposed by the Commission on SROs."
Assessment	Not implemented
Comments	The CNV has sufficient authority and licensing requirements and a basic program of supervision in place. However, it does not have sufficient resources to carry out a meaningful oversight program The current program gives no assurance that the exchange is in compliance with current requirements and, further, current requirements are inadequate to ensure the exchange meets operational and technical standards. The CNV should develop a stronger oversight program through additional human resources and training. Stronger oversight could include more day-to-day involvement in market monitoring, for example.
Principle 27	Regulation should promote transparency of trading.
Description	The regulatory framework includes requirements or agreements to provide pre-trade information (disclosing bid and offers) and post-trade (last prices and volumes of all transactions concluded) to market participants on a timely basis. It is defined in the "Manual of Sessions," point III–Electronic System of Negotiation–that requires that all the transactions have to be registered with their volumes and prices and that they have to be disclosed daily by the Bolsa. The Bolsa electronic trading system makes available to the market information on bids and offers and in the same way the volumes and prices of completed trades. The users of the electronic trading system can access the platform at any time and find there complete and comprehensive trading information, as well as information on relevant events after the transactions. The "Casas de Bolsa" and their brokers have full access to that information in real time. Information on the Bolsa website appears with some delay from

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	real time; however, this does not appear to affect the level of transparency in relation to the size of the market and the trade volume. The system also includes statistical information which the members can consult to analyze all historical transactions.
Assessment	Fully implemented
Comments	A special issue is a lack of arrangements in place in the CNV for the continuous collection and analysis of information concerning trading activities. Until now, the CNV has not had access to complete information in real time or been able to assess the transparency of trading.
Principle 28	Regulation should be designed to detect and prevent manipulation and other unfair trading practices.
Description	The DLMV, Title XII–Prohibited Activities–Articles 195 to 202, prohibits the manipulation of prices of any registered security, the use of misleading information, negotiation with insider trading and other fraudulent and deceptive conduct. It is prohibited for all persons to make public offers of listed securities, as well as to buy or sell these securities, contravening the agreements that the CNV has adopted to prevent any manipulation of the market. Specifically, the articles set out rules concerning insider trading, false declarations, omissions of issuers, and other fraudulent conduct or market abuses. The Bolsa also has in place arrangements for the continuous monitoring of trading, through a Supervisory Committee of Trading Activities–"Comité de Supervisión de Operaciones Bursátiles"–monitors the day to day trading activities and has powers to sanction potential violations of the internal rules of the Bolsa or securities laws. The Bolsa's internal rules require that the members establish administrative, technical, and physical controls to prevent insider trading and fraud. Specifically, the Bolsa's internal rules prohibit members from: 1. Trading on the basis of confidential and/or privileged information. 2. Acting with the objective of varying artificially the quotation of a registered equity. 3. Filing simulated operations. 4. Conducting nominal operations without real transference of securities or money at the time of settlement. 5. Disclosing deceptive information to the stock market and investors. 6. Adopting behavior that creates a false impression on the market or on the price. 7. Disclosing confidential information on the transactions that are made, with the 8. exception of the information that must be communicated to the stock exchange or 9. the authorities, in accordance with the current national legislation. 10. Conducting transactions with an excessive volume or frequency in relation to the amount and nature of the portfolios they handle. 11. Committing with a client to share the gains or losses of the client or of committing itself to compensate the client for any losses suffered. The Code of Conduct (Agreement 5-2003) establishes in Rule No.1, Point 2, imposes obligations to prevent *front running* whereby intermediaries may use information to trade in a security in advance of client based on information obtained from the client. Other relevant issues are:

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	• To date, the supervision of the intermediaries registered by the CNV is undertaken through periodic or special inspections to determine fulfillment of the effective rules and requirements for the filing of periodic financial information. • There are no requirements about position limits, and the procedures do not indicate any requisites on the matter. • There are adequate rules regarding price disclosure: a real time screen in the Bolsa website, a daily bulletin of the Bolsa and the requirement to provide information about off-market transactions. As regards effective sanctions resulting from violations of the DLMV including the associated rules to deal with fraudulent or deceptive acts, illegal use of privileged information and price manipulation. Article 208 of the DLMV establishes the power of the CNV to impose administrative fines any person who violates the DLMV or its regulations. In addition, Article 204 deals with violations of Article 196 (Insider Trading) Also the Internal Rules of the Bolsa, in their Chapter VIII, Control and Sanctions, details the investigative powers, disciplinary process and prescribed sanctions.
Assessment	Partly implemented
Comments	The CNV has the authority to deal with market abuses, insider trading, market manipulation, dissemination of false information, and fraud. Also, the CNV may impose effective and reasonable sanctions for violations of securities laws, regulations, and market rules. Another issue arising is the fact that there is no a specific procedure for the continuous monitoring of trading on an ongoing basis. It has been indicated previously that the CNV receives daily and monthly information that is analyzed once it has been filed, but there are no arrangements in place for the continuous collection and analysis of that information. Consequently, the results from such analyses are not provided to the regulatory officials to allow them to take any necessary remedial action. Nor do any systems exist for monitoring the conduct of market intermediaries participating in the market. In these cases, regulation is not sufficient, as an effective market oversight program should have an effective and appropriate combination of direct supervision, inspection, and enforcement power to detect and dissuade illicit conduct. In fact, the CNV does not have a specific procedure for supervision, i.e., there is no specific system in places. The CNV just acts when there is any suspicion of an irregularity with regard to a transaction In relation to foreign links with other jurisdictions, there are formal cooperation arrangements for cross listings with Costa Rica and El Salvador (Memoranda of Understanding). In the event of fraudulent practices, the CNV can share information with foreign regulators, but subject to the legal limits established in the Panamanian legislation, thereby imposing difficulties on the information sharing mechanism due to concern over manipulation and other corrupt trading practices.
Principle 29	Regulation should aim to ensure the proper management of large exposures, default risk, and market disruption.
Description	Section IX of the DLMV forces the operator of an exchange or trading system to assume principal, settlement, guarantee, or performance risk to comply with requirements designed to reduce the risk of non-completion of transactions. Also, Agreement No.9-2003 extends the applicable requirements to clearing and settlements systems.

Table 2.1. Detailed Assessment of the Observance of the IOSCO Principles

	The Bolsa has manuals and rules that detail the procedures in case of default: "Internal Rules," and "Rules for the Committee of Supervision of Stock-exchange Operations and the Compliance Officer." The Committee of Supervision of Stock-exchange Operations is the body in charge to take appropriate measures in case of default. The "Internal procedures" of the Bolsa impose measures for breach of administrative obligations: the exchange will be able to limit the rights of a Bolsa seat or to suspend its operations, with no need for disciplinary process, when: (i) the intermediary cannot fulfill all the requirements established by the exchange; or (ii) the intermediary fails to meet the capital investment and liquidity rules established by the exchange. The Bolsa's Code of Good Governance specifies the responsibilities of the Board of Directors of a Bolsa seat, requiring a guarantee of the integrity of the entity's accounting systems and financial statements, including an independent audit, and the establishment of the appropriate control systems, in particular control of risk, financial control, and fulfillment of the law. As precautionary measures to guarantee the good operation and transparency of the market, management or the Committee of Supervision of Exchange Operations will be able to order the immediate suspension of the activities of a "Puesto de Bolsa" or its personnel, while it investigates a matter that could give rise to a sanction or could affect the activities of the exchange. In addition, the Manuals of the Committee of Supervision of Exchange Operations and the compliance officer indicate that the violation of the Internal Rules of the Exchange or a breach of the requirements stated therein, will give rise to one or more of the following sanctions: • A breach on the part of an intermediary of its obligation to deliver assets or cash as a result of the liquidation of a transaction conducted through the exchange will give rise, depending on the degree of the breach, a) to daily fines; b) the immediate suspension of the concerned "Puesto de Bolsa;" and c) the beginning of a disciplinary process. • If the breach originated on the part of the seller, the process of purchase through another "Puesto de Bolsa" will begin at the then-prevailing market cost. If the breach is on the part of the purchaser, a process of sale of the assets at the market cost will begin then and any difference generated in the price will be paid by the guilty party, or in its favor if that were to be the case. In Agreement 9-2003, modified by Agreement 11-2003, the CNV has set out the general rules for LatinClear to carry out custody, clearing, settlement, and electronic administration of securities. LatinClear is a private enterprise whose principal stockholders are the "Casas de Valores" and banks. Art. 1 of the Agreement compels LatinClear to fulfill the applicable capital requirements in order to ensure the system's viability and to minimize the risks of the possible breach of member commitments, assuring, in such cases, that the liquidation of positions will conclude in the prescribed predicted terms. Furthermore, LatinClear must establish controls and supervision programs of its members, as well as solvency rules and guarantees that the members must render to the system.

Table 2.1. Detailed Assessment of the Observance of the IOSCO Principles

	Article 6 provides that LatinClear shall establish suitable financial mechanisms to ensure the appropriate liquidation of positions, by means of the adoption of a guarantee system that may diminish the risks of a potential failure to pay or to transfer securities; such as to require of its members the prior custody of securities, certification of having sufficient financial resources, as well as any other guarantee of fulfillment that the CNV may consider necessary. Finally, the third chapter, "Market Guarantees," in Article 16 establishes the characteristics, the amounts and the guarantees for the members of the LatinClear. LatinClear has a committee, the Management and Risk Administration Committee (Art. 12 of By-law), which assists directly in specific operational areas. The committee is tasked with setting criteria to mitigate the inherent risk in the operation of custody, administration, clearing and settlement of securities, and to recommend the implementation of international best practices on managing and administering the risks associated with CSDs. LatinClear internal procedures, Section 14.10, establish that from time to time it will acquire insurance or guarantees if it considers it necessary or advisable in order to protect (i) against the financial incapacity of one of its participants to fulfill its obligations with LatinClear; (ii) against robbery, theft, embezzlement, loss or destruction of the assets that were in physical safekeeping, or cash handled by LatinClear; or (iii) any other shock that it considers could affect LatinClear, its participants or their operations. Agreement No. 11-2003 states in Article 2 certain rules regarding the delivery against payment: the members of LatinClear are to provide assets or cash corresponding to their liquidation. The C&S System will have the mechanisms that allow it to assure their members the availability of such assets or cash on the corresponding date, proceeding, if the need arises, to borrow or purchase the assets. To this end, the members of a C&S System will maintain, in addition, an insurance policy, which will cover a possible lack of cash or assets on the date of liquidation. Article 6 indicates that the C&S System will establish the suitable financial mechanisms to assure the appropriate exchange liquidation, by means of the adoption of safeguards that diminish the risks of a possible lack of delivery or payment; such as to require of its participants the prior delivery of assets, accreditation of sufficient funds, guarantee of fulfillment, sale of assets, as well as any other safeguards that from time to time may be considered necessary to adapt the liquidation system to the necessities of the market. The CNV retains administrative responsibility for taking actions against LatinClear in the event of breaches of legal requirements. In accordance with Agreement No. 9-2003, SROs must have a clear set of internal rules which govern their procedures. Such rules will include rules relative to the certainty of the transactions, protection of the securities of the clients–in particular, with respect to the insolvency risk, rules of compensation, application of the principle of delivery against payment, securities loan, and regime of the guarantees. Article 218 of DLMV, Section 14,02 of the Internal Procedures of Operations of LatinClear indicates the following sanctions: to expel a participant, to suspend or to limit the rights of a participant or a director, representative or employee of a participant, to prohibit the participation of a person who has some association with LatinClear, directly or indirectly through a participant, to admonish a participant or a director, representative or employee, to fine a participant or a director, representative or employee up to the sum

Table 2.1. Detailed Assessment of the Observance of the IOSCO Principles

	of one hundred thousand Balboa and/or impose any other penalty, if: (viii) the person has entered, or is about to enter into a process or state of bankruptcy, intervention, reorganization, liquidation, or dissolution or it does not have, or is about not to have, the financial standing necessary to pay its debts or obligations, including its debts and obligations towards LatinClear and the other participants. the members of the C&S System will be able to claim damages caused through insolvency. Furthermore, according to Article 266 of the DLMV, the CNV has the power to order the suspension of any act, practice, or transaction, including the negotiation of values, when it has well-founded reasons to think that such act or practice or transaction violates this DLMV or its regulations. If the person whom the commission orders to suspend an act, a practice or a transaction does not suspend it, the commission will be able to ask the law courts to order this person to accept the order of suspension dictated by the commission. The refusal to comply with the court's dictates will be duly punished. Although the management of large exposures and default risk is a matter that extends beyond securities law to the insolvency provisions of a jurisdiction in Panama, there is no insolvency law that supports the isolation of default risk. But Article 62 of Agreement 5-2004 states certain measures, including the suspension of transactions, liquidation, and dissolution of an intermediary and refers to the application of rules included in Title XIV of Intervention and Liquidation, DLMV, as well as what is stated in Article 80 and following, Agreement 5-2004, which deals with the suspension of transactions of an intermediary. Article 179 of DLMV notes that all the positions held on behalf of customers cannot be confiscated, burdened, or embargoed, nor otherwise be subjected to claims or actions on the part of the creditors of an intermediary in a bankruptcy process, liquidation, reorganization, or similar proceedings. The only exception could be the issue considered by Article 192 that indicates that the creditor of a market intermediary that has a claim on the financial assets of the intermediary, will have preference over indirect creditors. In relation to potential default procedures allowing markets and/or the clearing and settlement systems to isolate the problem of a failing firm by addressing its open proprietary positions and positions that it holds on behalf of customers, it is relevant to point out that the market operator would have powers only for the suspension of the assets. Both the CNV and the Bolsa can have access to information, if needed, on the size and the beneficial ownership of the positions held by direct clients of market intermediaries. Furthermore, market authority makes available its default procedures to participants. The Bolsa has manuals and regulations that detail all relevant procedures in case of breaches, and these are known to all market participants. Intermediaries or "Casas de Bolsa" have all the information on their clients, but the operator of the market (Bolsa) does not have an automatic monitoring tool to consult with the aim of diminishing the adverse effects of market failures. This makes it difficult to access information on the number and profits of the owners of positions held by direct clients of the market members. Although the regulatory framework in Panama accords authorized intermediaries, clearing houses, and market operator under the CNV ultimate responsibility to ensure the management of default risk and other disruptions in secondary markets, it is not sufficient that the various authorities have, to date, mechanisms in place to monitor open positions or credit exposures on unsettled trades that are sufficiently large to pose a risk to the

Table 2.1. Detailed Assessment of the Observance of the IOSCO Principles

	market or the compensating entity. For instance, the CNV has no information about the activities and procedures of LatinClear's management and Risk Administration Committee that could ensure that they are really monitoring risks. Therefore, the CNV cannot establish appropriate levels that trigger intervention in the market, nor does it have the capacity to promote mechanisms that facilitate the exchange of information on major risks through suitable channels. Nor does it have qualitative and quantitative mechanisms that provide adequate signals to the market, in order to properly identify positions by means of the monitoring and continuous evaluation of the process. Formal or informal procedures do not exist that allow both the markets and regulators to share information on major risk exposures by common participants or on products related to the regulators and the markets.
Assessment	Partly implemented
Comments	Neither the regulator nor the operators of the Bolsa de Valores and LatinClear have the resources to enforce the effective management of risk and to ensure that capital and other prudential requirements are sufficient to address appropriate risk taking, allow the absorption of some losses, and check excessive risk taking.
Principle 30	Systems for clearing and settlement of securities transactions should be subject to regulatory oversight and designed to ensure that they are fair, effective, and efficient and that they reduce systemic risk.
Description	The CNV oversees LatinClear; however resource constraints limit effectiveness.
Assessment	Not assessed
Comments	Although not assessed, an efficient and properly structured clearing and settlement process has to be supervised using effective risk management tools. It is not demonstrated that the CNV has the resources in terms of technical expertise and technological tools to assume these responsibilities.

Table 2.2 Summary Table of Compliance with IOSCO Principles

Assessment Grade	**Principles Grouped by Assessment Grade**	
	Count	List
Implemented	6	4, 6, 14, 19, 21, 27
Broadly Implemented	9	1, 5, 8, 9, 15, 16, 17, 18, 25
Partly Implemented	10	2, 3, 7, 10, 12, 20, 23, 28, 29
Not Implemented	5	11, 13, 22, 24, 26
Not applicable		

C. Recommended Action Plan

48. **There has been substantive progress regarding the regulation of the securities market in Panama, but further strengthening is recommended** in order to meet the IOSCO standards. The CNV's regulatory framework has been built up to (i) ensure protection for investors; (ii) ensure fair, efficient, and transparent markets; and (iii) reduce systemic risk, in accordance with international standards.

49. **The following are some recommendations that will enhance the implementation of international standards in the securities market**. If these recommendations are implemented, they will substantially improve the legal infrastructure for capital market development and regulation in Panama.

Table 2.3 Recommended Action Plan in Relation to the IOSCO Principles

IOSCO Principle	Recommended Action
Principles Relating to the Regulator (P 1–5)	Operational independence is severely constrained by resources and by the failure to appoint a third commissioner. The commissioner's position has remained vacant since the term of the prior commissioner ended in December 2004. This has required that the work of the CNV be directed by the two named commissioners, with the third seat temporarily filled through the rotation of directors who serve in an acting capacity. A new commissioner should be appointed as provided for under the current law. The CNV should be able to direct administrative matters, including the right to hire and fire its staff. Additional resources should be granted to the CNV on an urgent basis, particularly for the recruitment of skilled staff. The authority of the CNV should be strengthened with regard to corporate governance, liability of auditors, and code of conduct. Training programs should be put in place in a variety of areas, including risk management and prudential supervision, supervision of collective investment schemes, and intermediaries and supervision of SROs. Legislation should be put in place to address recent adverse judicial decisions. Legislative protection should be extended to staff against liability for good faith acts carried out in the course of duty.
Principles of Self-Regulation (P 6–7)	The CNV's monitoring of the Bolsa needs to be strengthened. Accordingly, the CNV should work with the Bolsa to develop a comprehensive oversight program for market intermediaries and to put in place SRO staff examination, inspection, and enforcement programs. These programs should be augmented with additional training and assistance. CNV staff needs to have technical training specifically on trading systems, monitoring risks, detection of deceptive conduct, and market abuses. We also suggest setting up a special training program on clearing and settlements systems.
Principles for the Enforcement of Securities Regulation (P 8–10)	Although the CNV has strengthened its enforcement powers in the last few years, it does not have the necessary human and technological resources to provide effective prudential oversight for inspections, investigations, and sanctions other than when a breach of relevant securities laws has been identified. 1. Improvements in the implementation of an effective system of inspections should be put in place whereby the CNV would carry out inspections, not just based upon complaints, but on a routine periodic basis or based upon a risk assessment. Technology tools have to be improved to allow a more efficient use of information gathered in the National Securities Registry.

Table 2.3 Recommended Action Plan in Relation to the IOSCO Principles

IOSCO Principle	Recommended Action
Principles for Cooperation in Regulation (P 11–13)	The law limits the sharing of information with foreign securities counterparts when investigating market abuse. This limitation significantly constrains Panama's ability to cooperate internationally. CNV has signed a Memorandum with Superintendency of Banks and Superintendency of Insurance. Practical rules and procedures are needed to implement those formal accords. The importance of receiving feedback in the collaboration with the UAF must also be stressed. Accordingly, legislative changes and modifications to procedures to improve information exchange at the domestic and international levels are needed. In particular, legislative changes should be undertaken in order that Panama meet commitments to the IOSCO multilateral MOU before 2010.
Principles for Issuers (P 14–16)	A new framework for the governance of the accounting profession should be formulated. The Accounting Technical Board needs to be in a position to enforce its rules including compliance with the code of professional ethics and for establishing an effective oversight system. The authorities are encouraged to implement the recommendations of the *report on the observance of standards and codes* (ROSC) on Corporate Governance prepared by the World Bank and published in 2004.
Principles for Collective Investment Schemes (P 17–20)	Ongoing monitoring of the administrators of Collective Investment Schemes should be strengthened without delay. The regulatory framework has in place appropriate rules regarding the valuation of assets of collective investment schemes and mutual fund (Accord 5-2004, arts. 36–39). However, because of the scarcity of resources, the CNV has not yet applied the tool; nor has the CNV provided its staff with the corresponding technical skills training that would enable the CNV to ensure compliance with the relevant rules. It is important that action be taken without delay to address this problem of lack of expertise and resources. In addition, introducing minimum conduct standards for administrators of collective investment schemes and better reporting mechanisms would enhance the ability of trustees and private supervisors to monitor their activity.
Principles for Market Intermediaries (P 21–24)	Staffing resources should be reviewed with a view to improving the quality and breadth of the supervisory work being undertaken. In the same way, several draft regulations should be prepared without delay to raise standards in (i) internal control systems; (ii) capital adequacy requirements; and (iii) asset valuation. The CNV should pass as soon as possible the agreement on ongoing capital, based on a capital adequacy test that addresses the risks to intermediaries. An early warning system or other mechanism should be developed to give the CNV notice of a potential default. Risk-based inspection programs could also be developed. It is necessary to put in place criteria that are related to the integral systems of internal control of the organizations supervised by the CNV. The current frequency of reporting and monitoring may not be sufficient to ensure that an institution experiencing difficulties with these transactions would be identified prior to

Table 2.3 Recommended Action Plan in Relation to the IOSCO Principles

IOSCO Principle	Recommended Action
	experiencing more serious financial exposures.
Principles for the Secondary Market (P 25–30)	The Bolsa should be required and empowered to assume direct regulatory oversight and surveillance responsibility for all participants who use its trading platforms. It has to develop more robust and effective and self-regulatory organizational capabilities, including broker-dealer examination and risk management capabilities. The CNV should also reinforce its resources to provide it with the capability of determining the operational or other competence of the operator of an exchange or trading system as a secondary market. Also, it has to put in place mechanisms to identify and address disorderly trading conditions. The CNV must put in place arrangements for the continuous collection and analysis of information concerning trading activities. They currently have no mechanism that provides the results of such analysis to inspection officials in a position to take remedial action if necessary. There are currently no other systems monitoring the conduct of market intermediaries participating in the market. An industry-wide guarantee fund could be considered to facilitate an orderly settlement of transactions and limit the ripple effects of a failure. The exposure to systemic risk for intermediaries should be consistent with the risk analysis included under those principles and with any completed assessment of the CPSS/IOSCO Recommendations for Securities Settlement Systems. Although Principle 30 was not assessed, it is noted that resource constraints at the CNV limit its capacity in this highly specialized technical area. Corrective action is recommended to rectify this limitation.

D. Authorities Response to the Assessment

The CNV gratefully appreciates the effort made by the members of the IMF Mission and, in particular, by Ms. Paloma Portela, during the assessment of the observance of the IOSCO Objectives and Principles of Securities Regulation (the IOSCO Principles) by the Panamanian securities sector, which includes the regulator, market participants, and public investors.

The CNV considers that this assessment accurately reflects the current situation of the securities market regulation and oversight in Panama.

Key developments since the on-site evaluation

To update key elements since the on-site work of the assessment team through December 2005, the number of regulated entities has increased. There now are 34 securities

houses (including 3 that are undergoing voluntary liquidation), 294 brokers, 5 investment advisors/corporations, 2 natural persons, 13 investment administrators, 2 self-regulated organizations, and 4 risk rating agencies.

The increase in the number of regulated entities and participants is positive as it shows the growing interest in Panama's capital markets. However, this growth brings further challenges for the CNV (the enforcement) because of ongoing limitations regarding its autonomy, human resources, and training. The situation has been further aggravated in the last quarter of 2005, in which four staff members in the National Directorate of Markets and Enforcement have resigned, with most taking up positions in the private sector. In addition, with relation to Principle 9, the CNV notes that the only auditor that had been in place at the time of the assessment has now resigned to take up a position in the private sector.

The lack of adequate independent authority and budgetary resources removes the self-determination of the commissioners over the formal functions of the CNV. The lack of resources and autonomy results in a consignment of the CNV's oversight to appointees of the Presidency of the Republic.

The commissioner's position has remained vacant since the term of the prior commissioner ended in December 2004. This has required that the work of the CNV be directed by the two named commissioners, with the third seat temporarily filled through the rotation of directors who serve in an acting capacity.

At the end of 2005, seven judicial cases were solved, compared to four in 2004. Most important among these judgments, which was decided on November 11, 2005, was the clarification that the CNV has the expressed power to prescribe the form and content of the financial statements of entities regulated by the CNV.

In a second set of cases pending since June 2001, there has been mixed results. A $300,000 fine imposed against the chairman and manager of an economic group due to the false presentation of financial and account information is still pending before the courts. However, on April 26, 2006, the courts confirmed the CNV's $100,000 fine against an internal accountant involving the same group for the same failure.

On July 31, 2005 the international consultancy with Novaster Grupo Empresarial, S.L. came to an end, consequent on the approval of Accord 11-2005 (August 5, 2005) (published in Official Gazette No. 25,370, on August 24, 2005) that developed the regulation for Law 10 of April 16, 1993, on pension funds, retirement funds, and other benefits and the activities of the investment administrators. In addition, the consultancy helped to elaborate the manuals for the authorization, control, and supervision of the administrators of pension plans and retirement funds.

On December 15, 2005, GC de Panama, S.A. (Infosgroup) concluded their consultancy work for the development and implementation of the supervision system and control for retirement and pensions funds regulated by Law 10 of 1993.

III. Assessment of Observance of the Insurance Core Principles

A. General

50. **The assessment of insurance supervision was carried out by analyzing compliance with the Insurance Core Principles of the International Association of Insurance Supervisors (IAIS).**[7] For this purpose, the existing laws on insurance, reinsurance, and captive insurance operations as well as specific regulation and anew draft insurance law were analyzed. In addition, several interviews were held with officials at the supervisory authority and with other market participants.

51. **The Superintendency of Insurance and Reinsurance (SSRP) supervises the insurance and reinsurance sectors.** Compliance with the IAIS core principles is weak due to the outmoded legal regime, and underdeveloped supervisory and regulatory framework. The SSRP lacks independence from the industry and the executive branch of government. To strengthen the capacity of the SSRP to carry out supervision—both on-site and off-site—more staff and resources will be needed and compensation will need to be sufficient to attract and retain skilled staff, including filling the actuary's position. The industry pays a fee for regulation; however, it is not substantially available to the SSRP for regulation purposes.

52. **Insurance is regulated by Law No. 59, reinsurance by Law No. 63, and captive insurance operations by Law No. 60**,[8] all issued in 1996. A draft law is under preparation to address some of the weaknesses identified in the evaluation; however, shortcomings remain in the draft law, including (i) the SSRP would remain dependent on MICI; (ii) market conduct requirements would continue to favor the industry and brokers; and (iii) accounting and disclosure practices for insurance firms do not meet international standards. The draft law seeks to incorporate reinsurance and captive insurance operations.

Institutional and macro prudential setting

2. **The insurance sector in Panama is small compared with the banking sector**.[9] There are 18 authorized insurance companies (see Figure 3.1).[10] Of these, four specialize in

[7] This assessment was carried out by Ms. Cristina Rohde (Consultant to the Fund and formerly of the Mexican Insurance Commission).

[8] Captive insurers are defined in Law No. 60 as those corporations "exclusively devoted to insure or reinsure, from an office located in Panama, private risks located abroad or those that may be specifically authorized by means of a license granted by the Superintendency…."

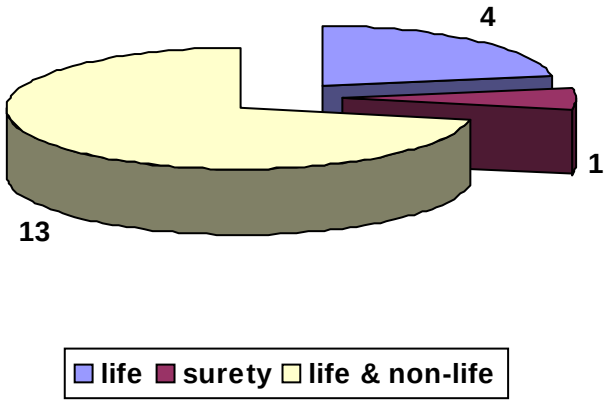
[9] Data on insurance was provided through 2005. However, figures were not available for reinsurance or for captives.

[10] The SSRP does not supervise the government-owned Instituto del Seguro Agrícola, which provides crop and livestock insurance. It is not supervised by the SSRP.

the life business, one in surety business and 13 operate both life and nonlife insurance. Of these 13, nine have in addition a license to operate reinsurance. Of the 18 insurance companies, five are subsidiaries of foreign firms and four are subsidiaries of local banks.

3. **There are five companies authorized to operate exclusively in reinsurance**. In 2003, premiums issued by reinsurers represented 11 percent of the premiums issued by insurers, but since there is no information available for 2004, the analysis that follows considers only the insurance sector. The captive insurance sector is insignificant, and no data are available.[11]

Figure 3.1 Composition of Panama's Insurance Sector



4. **Insurance penetration in the economy measured as premiums subscribed to GDP is around three percent.** The total premiums subscribed in 2005 were $430 million, up 1.9 percent from 2004. Total assets for 2004 were $765 million, which is about six percent of GDP, with investments representing 69 percent of total assets. Life insurance business represented 35 percent of the total market. Within the nonlife insurance business, automobile insurance and health insurance are the two largest categories, representing respectively 16 and 17 percent of total premium subscriptions. The Panamanian insurance market is highly concentrated with the five largest companies accounting for around 74 percent of total business.

General preconditions for effective insurance supervision

53. **A legal system that incorporates transparency and disclosure requirements is necessary** to have a strong and growing insurance market that is efficient and integrated in

[11] There are two captive insurers.

the financial sector. Human resources and other resources used to carry out effective supervision are required. Moreover, strong governance mechanisms and a more competitive environment should be enforced to develop confidence in the industry, which will translate into better conditions for the policyholder.

Main findings

54. **The insurance sector is small compared with the banking sector**. **The legislative framework for insurance supervision is weak**. The industry pays a fee and taxes levied on net premiums from local risks are paid to the central government; however, the tax is not substantially available for the SSRP. The tax is two percent of net premiums issued for risks located in the country, and 5 percent for fire insurance.

55. **The stated objective of insurance supervision is to enhance and strengthen the insurance industry**, and therefore, the SSRP has the responsibility to ensure that insurers comply with the technical reserves and solvency requirements stated in the law. The overall budget of the SSRP is strained and dependent on MICI, therefore it is difficult to implement changes in the structure of the SSRP that would allow for higher wages to hire and retain skilled staff and develop infrastructure needed for supervision.

56. **Although accounting rules are in place for insurers, the SSRP does not require companies to use International Accounting Standards (IAS) for regulatory purposes.** However, IAS, for publicly traded companies and for fiscal purposes, is required by the securities law. The use of two different approaches for accounting could create confusion.

57. **The SSRP has not issued rules regarding corporate governance, internal controls, or the responsibilities of board members and senior managers.** Disclosure to policyholders is weak. Commissions paid to brokers are not disclosed, and companies are prevented from employing their own agents.

58. **The SSRP has little or no autonomy from the industry or MICI.** The SSRP is part of the MICI and does not have a separate budget.[12] The Technical Council is composed of nine board members, and is responsible for setting the SSRP's policies, issuing licenses for new insurance companies, and solving controversies arising from decisions taken by the superintendent. The members of the Technical Council include the superintendent, the Minister of MICI, its legal director, the actuary of the SSRP, a director of the National

[12] Part of the SSRP´s budget comes from a fixed rate charged to supervised companies and brokers, and part of it comes from MICI.

Securities Commission, and four representatives from the insurance sector (two from insurance companies and two from the brokers).[13]

59. **Staff salaries at the SSRP are significantly below industry levels and below the salaries of other financial supervisory agencies (e.g., Superintendency of Banks)**, which affects the ability of the SSRP to retain qualified staff.[14] There is no legal protection for actions taken against them while discharging their duties.

60. **Other resources at the SSRP are limited as well**, making it hard to gather and analyze financial reporting information or to effectively address issues such as reinsurance activities, valuation of assets and technical provisions, risk management and risk assessment and consolidated supervision of insurers belonging to financial groups.

61. **The draft insurance law (dated April 2005) strengthens some areas.** The SSRP financial autonomy from MICI would be strengthened, though a representative of MICI would remain on the board. The draft law set out qualifications for the superintendent, the period he/she will stay in office (seven years), and the explicit procedure for his/her dismissal. This project also eliminates the Technical Council of Insurance and National Reinsurance Commission and instead proposes a board of directors composed of the minister of MICI, the insurance superintendent and three independent members of the society with experience in the insurance sector, but no other links to the government or to any insurance, reinsurance, captive insurance company or broker. There is a fixed term for the independent board members so that they are staggered. Alternative considerations to the makeup of the board could include a representative from the Superintendency of Banks given the substantial participation of bank owned insurance firms in the sector.

Licensing and Changes in Control

62. **A license is required to carry out any insurance business in Panama.** Foreign investment is allowed in the insurance industry, so long as the investment is through a local subsidiary as opposed to a branch. Licenses to sell life, nonlife, and surety products are issued separately in the sense that a company needs authorization to operate each line of business to which it plans to subscribe, but not in the sense that companies need to specialize

[13] There is a similar body for the reinsurance market. The National Reinsurance Commission is a five member board composed of the superintendent, the minister of MICI, the minister of MEF and two representatives from the reinsurance sector.

[14] There are currently no actuaries working for the SSRP, although one was contracted to train two staff members.

in only one type of products, i.e., there are composite licenses to operate every line of business (including reinsurance).[15]

63. **To receive an insurance license, applicants must provide information on shareholders and members of the board of directors** along with documentation describing the products to be sold, reinsurance programs, and feasibility of business plan in the medium and long term. Once the required information is complete, the Technical Council or National Reinsurance Commission has 90 days to grant the license.

64. **The law states that a license for insurance should not be granted if a shareholder, director, or senior manager has been convicted for crimes** related to drug dealing, fraud, or other related crimes during the previous ten years. This requirement applies to both insurance and reinsurance companies.

65. **The SSRP undertakes a limited fit-and-proper review of shareholders, board members, management, auditors, and actuaries.** The law only requires that company board members submit their curriculum vitae and "recommendation letters" along with the other documents for getting a license, and requires information on who the shareholders are. The SSRP checks the information on shareholders and board members with the Financial Analysis Unit (UAF) prior to granting any license.

66. **The term "control" over an insurer is not defined in legislation, and changes in shareholders or board members** must be reported to the SSRP within 30 days after these changes take place, i.e., the law does not require a previous authorization for changes in control over an insurer. Insurers by law are required to receive prior approval of the Technical Council or National Reinsurance Commission before they transfer all or any part of their business, and the requirements to another insurer.

67. **The draft law includes in its definition of "control" over an insurer a description of persons who may not be shareholders, directors or senior managers**, and requires that any transfer that implies more than 10 percent of the total outstanding shares, must be reported to the SSRP in advance of taking place.

Corporate Governance and Internal Controls

68. **The insurance law does not impose any measurable requirements for corporate governance** and, therefore, the SSRP does not verify compliance with corporate governance principles. The law does not set out responsibilities for the board of directors or for senior

[15] Licenses are granted by the Technical Council of Insurance or National Reinsurance Commission. Prior analysis is made by the SSRP.

management. The internal organization of companies is an area where the supervisor does not play a role.

69. **An external financial audit is required once a year, and an actuary is required to certify the proper constitution of mathematical reserves in the life insurance business.** The SSRP has no power to oversee or verify internal controls within companies and, therefore, does not require that companies have them in place. Some firms (at least the big ones that belong to financial or economic groups) have in place internal controls and corporate governance rules.

70. **The draft insurance law could be modified to require that insurance and reinsurance firms have in place a framework for corporate governance and internal controls.** The law should include provision that the SSRP have sanctioning authority if there is noncompliance.

Prudential Rules

71. **The SSRP verifies that the design of insurance products relies on a technical basis for their feasibility.** However, the SSRP neither requires nor verifies that insurers have in place comprehensive risk-management systems able to control, monitor, and report risks. Regarding reinsurance contracts and policies, there are no provisions on minimum ratings for reinsurers or for exposing limits towards single reinsurers.

72. **Actuarial standards are not issued by the SSRP, but general international standards are applied.** Technical reserves for nonlife business are calculated as a proportion of net retained premiums, and for life business, according to the actuarial value of expected losses according to accepted actuarial principles. Mathematical reserves must be calculated and presented to the SSRP by an independent and certified actuary,[16] and these calculations must be certified by another independent actuary once a year.

73. **The law specifies that 75 percent of all investments that cover technical reserves must be within the country, and it lists the type of instruments allowed.**[17] The other 25 percent is allowed to be invested abroad but in the same type of instruments listed and with a rating of at least "investment grade." There are no diversification or liquidity requirements and no asset valuation rules. Although there is currently no regulated market for derivatives, restrictions on the use of these instruments should be addressed and discussed in the context of the insurance industry.

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[16] A certified actuary refers to someone with an actuarial degree.

[17] At least 50 percent of the capital exceeding the minimum required capital has to be invested in the country as well.

74. **There is a solvency regime specified in the law and detailed through specific regulation.** Capital requirement must be calculated according to procedures dictated by the SSRP and it is verified by the supervisor and published every trimester. Solvency control levels are established, and publicly disclosed actions are taken by the authority in case companies fail to comply with these.

75. **The draft law does not change the way in which technical reserves are calculated**, but it introduces some comment on the liquidity of assets aiming to improve matching of assets and liabilities which is appropriate.

Market Conduct

76. **The supervisory authority requires insurance brokers to be licensed; to have adequate knowledge; and to have passed a licensing examination.** The insurance law lists the requisites, obligations, and prohibitions for insurance brokers and gives the SSRP the power to cancel the broker's license when appropriate.

77. **The law sets minimum requirements for insurance policy models such that these are easy for consumers to read and understand and have all the necessary information** (benefits, limitations, exclusions, etc.). Policy models need authorization from the SSRP prior to their use. In addition, the SSRP has a legal department that receives claim-related complaints from consumers. The draft law could usefully provide the requirement that a regulation be issued for the disclosure of fees/commissions paid to brokers or agents.

78. **With respect to financial disclosure, insurers are required to publish audited statements annually and in accordance with regulatory accounting principles**, and the SSRP publishes the solvency margins quarterly. Statistical information is gathered by the SSRP and available for consultation by interested parties.

Monitoring, Inspection, and Sanctions

79. **Market analysis performed by the authority includes monitoring the amount of premiums, number of policies issued, and claims on a monthly basis.** It does not include a qualitative analysis or off-site monitoring of trends in prudential indicators. Insurance companies are required by law to submit audited financial statements during the first four months of every year. In addition, statistical information must be submitted to the SSRP on a monthly basis, and information on the solvency margin must be submitted quarterly. There is no requirement to report outsourced functions. The supervisory authority has the power to carry out on-site inspections to examine companies' compliance with legislation and supervisory requirements. However, there are currently four auditors working for the SSRP, making it hard to cover all insurance companies, and the inspections focus only on financial aspects rather than on wider managerial factors.

80. **Reinsurance companies have one year to submit their audited financial statements and are not subject to the solvency regime**. Although the SSRP has authority to conduct on-site inspections of reinsurance companies, staffing resources do not allow this to be done on a consistent basis.

81. **The supervisory authority takes preventive and corrective measures in order to achieve its objectives**. As specified in the law, these measures are mainly triggered when insurance companies fail to achieve the minimum solvency margin, and they range from a plan proposed to reorganize the company, including an increase in capital levels, to intervention or revoking the license to operate. The law also establishes the reasons and amounts of the fines that can be imposed by the SSRP against different market participants.

82. **The legal framework defines a range of options for the exit of insurers and reinsurers from the marketplace, giving priority to the protection of policyholders**.

83. **The draft insurance law introduces a new regularization process that allows the SSRP to impose conditions** on insurance firms when it determines that any of the following specific weaknesses poses a risk for policyholders: (i) when there are problems in the constitution and/or coverage of technical reserves; (ii) when the solvency margin or minimum required capital is not maintained; (iii) when the financial auditors or the independent actuary refrain from giving an opinion; and, (iv) when liquidity conditions are not met. In the event of a weakness being identified, the regularization plan must be submitted by the board of directors of the company. This measure not only outlines the responsibility for board members but will improve prospective supervision.

Cross-Border Operations, Supervisory Coordination and Cooperation, and Confidentiality.

84. **Cross-border insurance operations are prohibited**. According to insurance law, in those cases where the insurance product needed is not offered in the local market, the interested party may obtain an authorization from the SSRP to get the product abroad. These authorizations need to be registered at the SSRP.

85. **The SSRP does not have any powers of supervise any financial entity other than the regulated insurance company that forms part of a group.** The responsibilities of each supervisory authority are well defined. The SSRP recently signed a memorandum of understanding with the Superintendency of Banks and the National Securities Commission to share information and coordinate supervision efforts of financial groups.

86. **The insurance law does not allow for supervision by a home supervisor**. On confidentiality, the law specifies a sanction for public officials who improperly provide information on companies or brokers under the SSRP's supervision.

B. Detailed Principle by Principle Assessment

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

Principle 1	**Conditions for effective insurance supervision** Insurance supervision relies upon: • a policy, institutional and legal framework for financial sector supervision; • a well developed and effective financial market infrastructure; • efficient financial markets.
Description	The insurance sector in Panama is supervised by the Superintendencia of Insurance and Reinsurance, (SSRP) which is part of the Ministry of Commerce and Industry (MICI). Insurance is regulated by Law No. 59, reinsurance by Law No. 63, and captive insurance operations by Law No. 60, all issued in 1996. The legislative framework for insurance supervision is weak. Insurance accounting standards for regulatory purposes and the existing set of accounts follow from resolution No. 327 dated June 1996. Reporting according to International Financial Reporting Standards (IFRS) is required for publicly owned companies and for fiscal purposes. There are few actuaries in Panama and a professional body that sets actuarial standards and promotes technical and ethical standards has not been formed. There is a small securities market and therefore scarce investment opportunities. The insurance sector is small and represents around 3.2 percent of GDP. Some of the larger insurance companies are owned by banks.
Assessment	Partly Observed
Comments	The SSRP is developing a draft insurance law which incorporates reinsurance and captive insurance operations. This reform seeks to have an independent supervisory entity with its own budget and more power to conduct its operations. The cost of creating a more efficient insurance supervision, with high skilled staff and more resources should be analyzed in light of the size of the insurance market
Principle 2	**Supervisory objectives** The principal objectives of insurance supervision are clearly defined.
Description	The main objectives of insurance supervision are clearly defined in the insurance, reinsurance and captive insurance laws, and as stated, the superintendent must promote and enhance conditions for a sound development of the insurance industry. The SSRP may propose changes to laws or regulations.
Assessment	Observed
Comments	
Principle 3	**Supervisory authority** The supervisory authority: • has adequate powers, legal protection and financial resources to exercise its functions and powers; • is operationally independent and accountable in the exercise of its functions and powers; • hires, trains and maintains sufficient staff with high professional standards; • treats confidential information appropriately.
Description	Insurance, reinsurance and captive insurance laws identify the SSRP as the authority responsible for the supervision of these operations, giving the SSRP the power to issue and enforce rules. As a part of the MICI, the SSRP does not have a separate budget. There is a supervision fee charged directly by the SSRP and paid annually according to the following: insurance companies pay $2,500, reinsurance companies $1,000, captive insurance companies

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

	$2,000, insurance brokers (natural person) $50, insurance brokers (legal entity $250, and reinsurance brokers $300. These fees are not sufficient to cover supervision costs, and therefore the SSRP's budget depends on MICI. There is a Technical Council of Insurance which is a board that has the power of setting the supervisor's policies, issuing licenses for new insurance companies and solving controversies posed against decisions taken by the superintendent. The superintendent is appointed by the President and is a member of the Technical Council of Insurance. According to the law, the other members of this board are the minister of MICI and its legal director, the actuary of the SSRP, a director of the National Securities Commission and four representatives from the insurance sector (two from insurance companies, and two from the brokers). In a similar way, the National Reinsurance Commission is a body for the reinsurance market with the same role as the Technical Council of Insurance, It is a five member board composed of the superintendent, the minister of MICI, the minister of MEF and two representatives from the reinsurance sector. Procedures regarding the appointment and dismissal of the superintendent and other staff from the SSRP are not explicitly stated. Some information is provided publicly about problem insurers, since each trimester the SSRP publishes solvency margins for each company. Staff salaries at the SSRP are significantly lower than in the private sector and lower than in other financial sector supervisory bodies, which affects the ability to retain highly qualified staff. There is no legal protection for actions taken against staff members while discharging their duties. Other resources at the SSRP are limited as well, making it hard for the authority to gather and analyze enough information as to effectively supervise issues such as reinsurance activities, valuation of assets and technical provisions, risk management and risk assessment and consolidated supervision of insurers belonging to financial groups. The SSRP does not publish audited financial statements
Assessment	Partly observed
Comments	The draft insurance law that was made available by the SSRP seeks to give the SSRP financial autonomy separating it from the MICI, though a representative of MICI would remain on the board. The SSRP is intended to prepare, administrate and execute its own budget. The funds are to be separated and independent from the Central Government. It pretends to annually charge insurance companies with 0.75 percent of the previous year net premiums (up to a maximum of $300,000), reinsurance companies with 0.50 percent up to the same limit, captive insurance companies with $2,500, brokers (natural persons) 0.25 percent of total income perceived the previous year within a range that goes from $100 to $1,000, and brokers (legal entities) with 0.50 percent of the same variable within a range that goes from $500 to $10,000. Reinsurance brokers will be charged with $300. Fees will also be charged to insurance and reinsurance appraisers. The draft sets forth the requirements to become superintendent, the period he/she will stay in office (seven years) and the explicit procedure for his/her dismissal. This project also eliminates the Technical Council of Insurance and National Reinsurance Commission and

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

	in its place proposes a board of directors composed of the minister of MICI, the insurance superintendent and three independent members of the society with experience in the insurance sector, but no links to neither the government (except university teachers) nor to any insurance, reinsurance, captive insurance company or broker. There is a fixed term for the independent board members so that they are staggered. Alternative considerations to the makeup of the board could include a representative from the SdB given the substantial participation of bank owned insurance firms in the sector.
Principle 4	**Supervisory process** The supervisory authority conducts its functions in a transparent and accountable manner.
Description	The SSRP has elaborated a manual which contains supervisory procedures with respect to: on-site inspections, verification of solvency margins, balance of reserves and investments both for insurance and reinsurance, calculation of financial indexes and anti-money laundering (AML) verification. Any administrative decisions taken by the SSRP can be subject to revision by the Supreme Court of Justice according to the Judicial Code. In addition, appeals of decisions taken by the superintendent may be brought before the Technical Council of Insurance or National Reinsurance Commission as corresponds; however, given the fact that there are members of MICI and the industry in these boards, there may be independence issues and conflict of interest. The SSRP provides information on the solvency margins of insurers every trimester by publishing it in newspapers, and also has available a statistical bulletin although it is not published. There is a magazine published by the SSRP which contains some available data on the insurance sector, and some information on the agenda and its role.
Assessment	Partly observed
Comments	The on-site inspection procedure should be revised in order to include a wider scope of supervision, and a more detailed description of what auditors should focus on. AML procedures should be discussed with UAF. An ongoing training process would be very helpful in order to assure all procedures are being followed in a consistent manner. Additional procedures should be incorporated in the manual, such as revision of reinsurance contracts, verification of technical reserves, claims-related complaints, operations of reinsurance companies amongst others, in order to make sure all of the SSRP functions are covered.
Principle 5	**Supervisory cooperation and information sharing** The supervisory authority cooperates and shares information with other relevant supervisors subject to confidentiality requirements.
Description	In May 2005 an MOU was concluded by the CNV, the SdB and the SSRP. The main objective of this agreement is to foster and promote cooperation amongst supervisors of financial sector enterprises to share relevant information which allows for a better supervision of financial or economic groups. This agreement requires confidentiality in the treatment of the information. With respect to cooperation between the SSRP and insurance supervisors abroad, no memoranda of understanding (MOU) have been subscribed, and there is nothing ruling this in the law.
Assessment	Partly observed
Comments	The new law should define if there is to be cooperation or information sharing between the SSRP and home supervisors of foreign firms operating in Panama, and if so, the terms or

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

	conditions under which this could be done.
Principle 6	**Licensing** An insurer must be licensed before it can operate within a jurisdiction. The requirements for licensing are clear, objective and public.
Description	The insurance, reinsurance and captive insurance legislation, require companies to have a license in order to operate in Panama, defines the permissible legal forms for these participants, and allocates the responsibility for issuing licenses. In the case of insurance and reinsurance companies, the SSRP reviews the application and turns it to either the Technical Council of Insurance in case of an insurer or to the National Reinsurance Commission in case of a reinsurer since these boards are responsible for issuing the respective licenses. In the case of captives, it is the SSRP the authority responsible for issuing the license. The requirements to constitute an insurance company are stated on Articles 15 through 17 of the insurance law (No. 59), in the case of reinsurers on Articles 18 and 19 of the reinsurance law (No. 63), and Articles 3 through 6 of the captive insurance law (No. 60). In all cases, the requirements are clear and public. Applicants are required to hold the required capital, and must submit, in the case of insurance and reinsurance companies, projected development according to their business plan, information on reinsurance or retrocession policies, lines of business they plan to operate, and a detailed and wide description of the products they intend to sell including actuarial technical notes used to set prices. With respect to shareholders and members of the board, in the case of insurance companies a list of them should be submitted accompanied with curriculum vitae and reference letters. In the case of reinsurance companies, a reference letter from a bank should be incorporated for shareholders, board members and senior managers. Both for insurance and reinsurance companies, the law states that a license will not be granted whenever it is proven that any shareholder, director or senior manager was convicted for crimes related to drug dealing, fraud or other related crimes during the previous ten years. According to SSRP internal procedures, information on shareholders and board members is sent to the UAF prior to granting any license. In the case of foreign entities, these must provide a confirmation from their home supervisory authority that they are authorized to carry on the type of insurance business proposed, financial statements and other information of the foreign company, and a certification that they have authorization to do business in Panama Although foreign investment is allowed, in the case of insurance and reinsurance sectors it should be done under the figure of a local subsidiary as opposed to a branch. Licenses to sell life, non-life, surety and reinsurance products are given separately for insurance companies in the sense that a company needs authorization to operate each line of business it plans to subscribe, but not in the sense that companies need to specialize in only one type of products, i.e., there are composite licenses to operate every line of business, including reinsurance.
Assessment	Partly observed
Comments	The new law should, where applicable, homogenize the requirements posed on shareholders, board members and managers from insurance and reinsurance companies.

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

	Minimum requirements and information on risk management systems, internal control systems, information technology systems as well as on the suitability of senior managers, auditors and actuaries should be asked for to applicants before issuing a license.
Principle 7	**Suitability of persons** The significant owners, board members, senior management, auditors and actuaries of an insurer are fit and proper to fulfill their roles. This requires that they possess the appropriate integrity, competency, experience and qualifications.
Description	Legislation does not require that any key functionaries meet fit and proper tests, and therefore the SSRP has no authority to disqualify the appointment of any functionary, nor to require from shareholders the dismissal of any employee. Except for the situations when requiring a license to operate as commented on principle 6, there are no additional requirements so as to make sure senior managers, and board members have the appropriate integrity, competency, experience and knowledge. Independent actuaries who certify mathematical reserves must hold an actuarial degree, and financial auditors must be authorized and registered in order to be so.
Assessment	Partly observed
Comments	The new law should incorporate the minimum qualifications that at least senior managers and board members should comply with in order to be considered fit and proper. The authority should be granted with the power to verify these qualifications are met, and that companies have the means to verify this as well.
Principle 8	**Changes in control and portfolio transfers** The supervisory authority approves or rejects proposals to acquire significant ownership or any other interest in an insurer that results in that person, directly or indirectly, alone or with an associate, exercising control over the insurer. The supervisory authority approves the portfolio transfer or merger of insurance business.
Description	The term “control” over an insurer is not defined in legislation, and changes in shareholders or board members in the case of an insurance company must be informed to the SSRP within 30 days after these changes take place, according to article 22 of the insurance law, i.e., the law does not require a previous authorization for changes in control over an insurer. Regarding portfolio transfers, both within insurance and reinsurance companies, the applicable laws require a prior approval from the Technical Council of Insurance or the National Reinsurance Commission as the case may be, before a transfer of all or any part of the business takes place. For portfolio transfers to be authorized, the receiving company must be a licensed company, and its financial, economic and administrative condition must indicate that the rights of policyholders are guaranteed, and that the company complies with solvency requirements. The portfolio transfer contract must be provided to the SSRP.
Assessment	Partly observed
Comments	Although portfolio transfers are supervised, it is not the case with changes in control. However, the draft law defines the term “control” over an insurer or reinsurer and requires that any transfer that implies more than 10 percent of the total outstanding shares, must be informed to the SSRP prior to taking place. It should be clearly stated if a formal authorization process to transfer the control of a company is required, the conditions to be met by new shareholders and the time frame for this process, since the draft suggests the SSRP will verify the moral and financial solvency of the proposed new owners and is allowed to make comments or objections whenever the

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

	proposed changes might affect the company or the policyholders.
Principle 9	**Corporate governance** The corporate governance framework recognizes and protects rights of all interested parties. The supervisory authority requires compliance with all applicable corporate governance standards.
Description	The insurance law does not require measures on corporate governance be implemented, and therefore the SSRP does not verify compliance with corporate governance principles. The law does not set out responsibilities for the board of directors nor for senior management.
Assessment	Not observed
Comments	The new insurance law should incorporate corporate governance rules to be met by insurance, reinsurance and captive insurance companies and the SSRP should have sanctioning authority if there is non-compliance. Article 67 of the insurance draft law dated June 2005 mentions that the SSRP will set forth some general rules for corporate governance.
Principle 10	**Internal control** The supervisory authority requires insurers to have in place internal controls that are adequate for the nature and scale of the business. The oversight and reporting systems allow the board and management to monitor and control the operations.
Description	Neither the law nor the SSRP require companies to have in place internal controls and therefore this is not supervised by the authority.
Assessment	Not observed
Comments	The new insurance law should incorporate the requirement of internal controls to be set by insurance, reinsurance and captive insurance companies and the SSRP should have sanctioning authority if there is non-compliance. Article 67 of the insurance draft law dated June 2005 mentions that the SSRP will set forth some general rules for internal controls.
Principle 11	**Market analysis** Making use of all available sources, the supervisory authority monitors and analyses all factors that may have an impact on insurers and insurance markets. It draws conclusions and takes actions as appropriate.
Description	The SSRP monitors solvency margins and technical reserves and investments on a regular basis. The analysis is done each trimester and the SSRP takes action if there is non-compliance. Some statistical information on the whole market is published by the SSRP and by APADEA (Asociación Panameña de Aseguradores).
Assessment	Partly observed
Comments	Human resources at the SSRP are scarce and therefore staff concentrates on the analysis of quantitative key financial solvency indicators. The analysis concentrates on present situations and no prospective supervision takes place.
Principle 12	**Reporting to supervisors and off-site monitoring** The supervisory authority receives necessary information to conduct effective off-site monitoring and to evaluate the condition of each insurer as well as the insurance market.
Description	Insurance companies are required by law to submit audited financial statements during the first four months of every year, and reinsurance companies are required to do so within the following year. In addition, insurance companies are required to submit statistical information (amount of premiums, number of policies issued and claims) on a monthly basis, and information on the solvency margin every trimester. Insurers are not required to report outsourced functions, nor any information on financial performance of related companies.

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

	There are no rules on asset valuation.
Assessment	Partly observed
Comments	It is desirable that audited financial statements both for insurance and reinsurance companies be submitted promptly, and that rules for asset valuation are in place. Strengthening systems for receiving, processing and analyzing information could be very helpful.
Principle 13	**On-site inspection** The supervisory authority carries out on-site inspections of an insurer and its compliance with legislation and supervisory requirements.
Description	The law gives the SSRP authority to conduct on-site inspections. Article 42 of the insurance law specifies that the superintendent and auditors may conduct a full scale inspection and companies should give full access to all information required. There are currently four auditors working for the SSRP, which represents a significant capacity constraint for supervising all insurance companies; as a consequence inspections focus only on financial aspects rather than on wider managerial factors.
Assessment	Largely observed
Comments	The SSRP should widen the scope of inspections to include review of technical reserves, internal controls, and risk management systems.
Principle 14	**Preventive and corrective measures** The supervisory authority takes preventive and corrective measures that are timely, suitable and necessary to achieve the objectives of insurance supervision.
Description	Corrective measures are available and used by the SSRP. In addition to the fines established in the law, which the SSRP has the power to impose whenever a supervised entity fails to comply with what is established in the laws or other related regulations, a set of escalated actions is available for the authority to achieve its objectives. These actions are triggered when an insurer fails to comply with the solvency levels and range from the requirement of a reorganization plan which includes an increase in capital, to intervention and license revoking.
Assessment	Partly observed
Comments	The project of the law incorporates other situations that may trigger the actions described, and includes preventive measures such as a regularization plan that has to be approved and subscribed by the board of directors. The law also provides for a time frame for the completion of the regularization process.
Principle 15	**Enforcement of sanctions** The supervisory authority enforces corrective action and, where needed, imposes sanctions based on clear and objective criteria that are publicly disclosed
Description	The SSRP has the authority to issue formal directions to companies to take specific actions, and has the power to prevent the insurer from issuing new policies, and order a portfolio transfer when the insurer fails to comply with solvency levels. In this case, the SSRP has the power to require a capitalization, and the law prevents dividend payments to shareholders whenever this could jeopardize solvency margins. Insurance and reinsurance laws include a chapter on fines that can be imposed by the SSRP to all supervised entities, including staff at the SSRP who improperly disclose confidential information on the supervised entities. The amount of the fines are disclosed as well as the actions that trigger them. The fines imposed are regardless of the corrective measures and enforcement. Fines may be imposed to individuals or entities that operate insurance, and reinsurance

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

	without a license, and also to persons who intermediate these products and are not authorized as brokers. In addition, the SSRP has the power to revoke a license to operate as an insurance or reinsurance company, or to temporarily cancel or revoke a license granted to a broker.
Assessment	Partly observed
Comments	The SSRP has no means to address management problems since the law does not give the SSRP the authority to have directors or managers replaced. It would be useful to include the sanctioning process within the manual of procedures in order to ensure consistency in the way insurers are sanctioned, especially since the law allows for imposing fines that are amounts within an interval.
Principle 16:	**Winding-up and exit from the market** The legal and regulatory framework defines a range of options for the orderly exit of insurers from the marketplace. It defines insolvency and establishes the criteria and procedure for dealing with insolvency. In the event of winding-up proceedings, the legal framework gives priority to the protection of policyholders.
Description	The law provides a framework that describes the process for exiting the market, either because the company wishes to do so, or because solvency margins are not complied with. A company that wishes to exit the market requires authorization from the SSRP. To be authorized to do so, companies are required to have enough assets to meet their obligations. When the authorization is granted, the company must publish the resolution from the SSRP and send each policyholder a note on the company's winding up. Payments to policyholders must be met before any distribution of assets is made amongst shareholders. The SSRP has the power to intervene a company that fails to comply with solvency margins, minimum paid capital and constitution of technical reserves, and if it is the case that presumably there are illegal operations and fraud. Companies that fail to comply with solvency margins and are not capable of reorganizing their business or increase capital levels, must exit the market, and the process is described in the law as well.
Assessment	Observed
Comments	
Principle 17	**Group-wide supervision** The supervisory authority supervises its insurers on a solo and a group-wide basis.
Description	The SSRP has the authority to supervise only insurance, reinsurance, captive insurance companies and insurance and reinsurance brokers. There is no definition of what constitutes an insurance group or financial conglomerate, and no group-wide supervision takes place.
Assessment	Not observed
Comments	Efforts on group wide supervision should be enhanced, improving coordination amongst supervisors and setting the rules for consolidation, management structure within a group and intra group transactions.
Principle 18	**Risk assessment and management** The supervisory authority requires insurers to recognize the range of risks that they face and to assess and manage them effectively.
Description	Insurance and reinsurance laws do not require companies to have comprehensive risk management policies and systems.
Assessment	Not observed
Comments	Although not required, large insurance companies have risk management systems in place.

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

	The project of the law could include minimum risk management policies to be considered by insurers.
Principle 19	**Insurance activity** Since insurance is a risk taking activity, the supervisory authority requires insurers to evaluate and manage the risks that they underwrite, in particular through reinsurance, and to have the tools to establish an adequate level of premiums.
Description	Insurance companies are required to submit to the SSRP policies and insurance plans, together with the technical notes that back up the premiums to be charged. The SSRP reviews the methodology used to set these premiums, and the law requires that these are established under reasonable assumptions to enable the insurer to meet its commitments. Reinsurance contracts and programs must be sent to the SSRP.
Assessment	Partly observed
Comments	Although the law does not require that companies have in place underwriting and pricing policies reviewed and monitored by the board of directors, large insurers usually have these. Limits on the amount of risk retained, risk transfers to reinsurers and measures aimed at promoting diversification of risks would be useful.
Principle 20	**Liabilities** The supervisory authority requires insurers to comply with standards for establishing adequate technical provisions and other liabilities, and making allowance for reinsurance recoverables. The supervisory authority has both the authority and the ability to assess the adequacy of technical provisions and to require that these provisions be increased, if necessary.
Description	Insurance companies are required, by article 27 of the insurance law, to constitute the following technical reserves: • mathematical reserves for life insurance products, which are calculated according to actuarial valuation of expected losses following international actuarial standards; • Technical reserves for non life risks, which are calculated as a fixed proportion of total retained premiums during the previous 12 months; • Prevision reserve for statistical deviations that should be no less than 1 percent and no more than 2.5 percent of net retained premiums; • Catastrophic reserve that should be no less than 1 percent and no more than 2.5 percent of net retained premiums. A certified independent actuary must valuate mathematical reserves once a year.
Assessment	Partly observed
Comments	Except for mathematical reserves, the other technical reserves are not calculated according to actuarial principles. Since they are calculated as a fixed proportion of retained premiums, they do not necessarily reflect the present value of future obligations to be met by insurers. The project of the law does not include any changes to the technical reserves. It would be useful to promote the actuarial profession in Panama in order to participate in the development of actuarial standards and principles on which the determination and valuation of technical reserves should rest.
Principle 21	**Investments** The supervisory authority requires insurers to comply with standards on investment activities. These standards include requirements on investment policy, asset mix,

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

	valuation, diversification, asset-liability matching, and risk management.
Description	Insurance and reinsurance laws specify that 75 percent of all investments that cover technical reserves must take place within the country, and it lists the type of instruments allowed. In addition, at least 50 percent of the capital exceeding the minimum required capital has to be invested in the country as well. The allowed investments are the following: • Bonds, obligations and other securities issued by the State or by national autonomous entities guaranteed by the State; • Bonds and mortgage securities registered at the CNV and local bankers acceptances; • Bonds, and asset backed obligations registered at the CNV; • Equity of local companies with profits over the last three years; • Guaranteed loans on life insurance products; • Urban real either producing rental income or used by the company (they have to be insured), and land for construction of property with these characteristics; • Loans guaranteed with bonds or securities issued by the State, titles, bond or mortgage promissory notes, or equity in local companies with profits over the last three years, up to 70 percent of its quoted value as of the date of the transaction; • Loans on real estate guaranteed by first mortgage up to 80 percent of its value according to an appraisal; • Deposits on local banks; • Any other investment authorized by the SSRP. The other 25 percent is allowed to be invested abroad, but in the same type of instruments listed, and with a rating of at least "investment grade." There are no diversification or liquidity requirements, no asset valuation rules, and no asset- liability matching requirements. Since board functions are not specified, the SSRP does not require that companies have in place an overall strategic investment policy approved and reviewed by the board of directors, nor requires companies to have appropriate risk management systems in place.
Assessment	Partly observed
Comments	The project of the law incorporates a comment on the liquidity of assets aiming to improve matching of assets and liabilities which is appropriate. However, it would also be useful to incorporate the responsibility of the board of directors in the design of an investment policy, and the implementation of internal controls that ensure assets are managed in accordance with this policy. It would also be useful to clarify if the proportion of investments that must take place within the country includes securities issued by foreign entities in Panama, or is it restricted to local issuers.
Principle 22	**Derivatives and similar commitments** The supervisory authority requires compliance with standards on the use of derivatives and similar commitments. These standards address restrictions in their use and disclosure requirements, as well as internal controls and monitoring of the related positions.
Description	Although there is not a regulated market for derivatives in Panama, and no mention is

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

	made on insurance and reinsurance laws, the SSRP has the discretion to authorize any other investment not specified in the law. This authorization follows from a technical analysis performed by the SSRP.
Assessment	Not applicable
Comments	A specific mention on the use of derivatives would be useful.
Principle 23	**Capital adequacy and solvency** The supervisory authority requires insurers to comply with the prescribed solvency regime. This regime includes capital adequacy requirements and requires suitable forms of capital that enable the insurer to absorb significant unforeseen losses.
Description	For insurance companies, there is a solvency regime specified in the law and in a resolution: "Resolución No. 576-A" dated November 1996. The resolution dictates the detailed procedure to calculate the minimum capital requirement. It takes into consideration the size and different risk profiles of insurers, and a control level is established. **Minimum Required Solvency Margin : MRSM** A. For all insurance types except individual life policies, whatever amount is larger: **1.** As a function of premiums the following calculation is made: **a.** 18 percent of the first 7 million of the total subscribed premiums of the last 12 months + 15 percent of the amount that exceeds 7 million up to the total premiums subscribed in the last 12 months. **b.** The retention factor is calculated as the claims retained divided by total claims, considering 50 percent as a minimum. **c.** Multiply the result of a. by the result of b. **2.** As a function of claims the following calculation is made: **a.** Calculate total claims of the last 36 months, and find an annual average. **b.** Calculate 29 percent of a. up to the first 4 million of claims + 25 percent of the amount that exceeds the first 4 million up to the average claims calculated in a. **c.** Multiply the result of b. by the retention factor calculated in 1.b. B. For individual life policies the MRSM is determined as 5 percent of the mathematical reserve (including additional benefits) for the same period of time. Whichever amount (1 or 2) results larger from A, must be added to the amount in B in order to get the MRSM. Companies are required to file every trimester (20 days after the trimester is over) their solvency margin which is verified by the supervisor and published When the solvency position falls below the control level, companies are not allowed to increase their operations nor offer new products. Fines are imposed and the SSRP has the authority to require an immediate capitalization of the company or re-organization that allows the company to comply with required solvency levels, and failing to do so gives the SSRP the power to intervene the company and ultimately, revoke the license to operate.
Assessment	Largely observed

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

Comments	The project of the law incorporates reinsurance companies to the solvency regime. Using fixed figures (in local currency) to calculate capital requirements might require periodical revisions and changes to the regulation. The last resolution dates from 1996, and could be revised.
Principle 24	**Intermediaries** The supervisory authority sets requirements, directly or through the supervision of insurers, for the conduct of intermediaries.
Description	The supervisory authority requires insurance brokers to be licensed, to have adequate knowledge, a good reputation and to have passed a licensing examination. Articles 86 through 109 of the insurance law lists the requisites, obligations and prohibitions for insurance brokers, both natural and legal person. A surety bond of $10,000 must be granted to the government. A license is not granted for persons who are employees of insurance or reinsurance companies, banks, fiduciaries, financieras, and to reinsurance brokers or claims appraiser. Fees are to be determined between the broker and the insurance company, and should be included in the premium charged. No disclosure of commissions is required. The SSRP may cancel a license for a period of time that goes between one and six months, or when appropriate, revoked. Reinsurance brokers must also be licensed, and are not allowed to intermediate insurance, or be shareholders of neither insurance nor reinsurance companies. Reinsurance brokers must be constituted as legal persons, have a minimum paid capital of at least $100,000 and place a deposit guarantee of $150,000.
Assessment	Largely observed
Comments	The new law allows for insurance brokers (both natural and legal persons), and insurance agents. Insurance agents are brokers selling products of only one insurance company. It also includes the requirement for brokers to have accounting books available for the SSRP to review, and gives the SSRP the authority to conduct inspections. The project could usefully provide the requirement for disclosure of fees paid to brokers.
Principle 25	**Consumer protection** The supervisory authority sets minimum requirements for insurers and intermediaries in dealing with consumers in its jurisdiction, including foreign insurers selling products on a cross-border basis. The requirements include provision of timely, complete and relevant information to consumers both before a contract is entered into, through to the point at which all obligations under a contract have been satisfied.
Description	The requirements for insurers in dealing with customers focuses on the design and information disclosed on insurance policies. Insurance policy models should be easy to read and understand and have all the necessary information (benefits, limitations, exclusions, etc). These policy models need authorization from the SSRP previous to their commercialization. In case the policyholder fails to pay the insurance premium, the company must send the costumer a notice previous to cancellation of the contract, otherwise, the insurance contract remains in effect.
Assessment	Largely observed
Comments	Insurers and brokers are not required to have policies on how to treat consumers fairly and

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

	provide training to their employees and collaborators. However, larger insurance companies have training centers both for employees and brokers.
Principle 26	**Information, disclosure & transparency towards the market** The supervisory authority requires insurers to disclose relevant information on a timely basis in order to give stakeholders a clear view of their business activities and financial position and to facilitate the understanding of the risks to which they are exposed.
Description	Insurers and reinsurers are required to publish their audited financial statements once a year. The SSRP publishes the solvency margins for insurance companies every trimester, and information on premiums, claims and number of policies is gathered by the SSRP and available for consultation by interested parties.
Assessment	Partly observed
Comments	The project of the law incorporates the requirement that companies publish audited financial statements with the corresponding notes if there were so. However, disclosure should include all financial statements and other relevant information such as financial position and performance, corporate governance structures and statistics.
Principle 27	**Fraud** The supervisory authority requires that insurers and intermediaries take the necessary measures to prevent, detect and remedy insurance fraud.
Description	Insurance and reinsurance laws mention fraudulent activities, when dealing with the reasons that allow for the intervention of an insurance company by the SSRP. The penal code (Código Penal de la República de Panamá), in article 191 establishes that whoever destroys, damages or disappears an insured object in order to claim insurance payment could be put into prison from one to three years and with a fine. The same applies to a policyholder who on purpose injures him/herself in order to claim insurance payment.
Assessment	Largely observed
Comments	Although not required by law, it is on a company's best interest and actually at least larger companies do so, to include within their internal procedures and controls, the necessary mechanisms to detect and control fraud by policyholders.
Principle 28	**Anti-money laundering and countering and financing of terrorism (AML/CFT)** The supervisory authority requires insurers and intermediaries to take effective measures to deter, detect and report money laundering (ML) and the financing of terrorism (FT).
Description	The Panamanian AML and countering the financing of terrorism (CFT) legislation is contained in Law No. 42 of October 2, 2000 (AML law), which establishes the legal requirements for all financial institutions, including insurance companies, re-insurance companies and re-insurance agents/brokers to properly identify clients (both natural persons and legal entities) and conduct effective due diligence. The law also requires companies in this industry to report to the UAF, Panama's financial intelligence unit (FIU) all currency transactions in the amount of $10,000 or above, and multiple transactions that when aggregated add up to $10,000 or exceed this amount. The SSRP is the competent authority responsible for ensuring compliance with the requirements of the law, as mandated by Law 42. SSRP's auditors focus on ensuring that entities comply with the requirements of reporting cash and cash-equivalent transactions. The limited scope of inspections within the AML/CFT area is due to the fact that the SSRP does not have a supervision manual in place to properly address the risks and activities that could be taking place in the insurance industry, lacks understanding of money laundering and the financing of terrorism trends and typologies in the sector, needs training in all areas of money laundering and the

Table 3.1 Detailed Assessment of the Observance of the Insurance Core Principles

	financing of terrorism prevention, and needs to develop and establish a risk-based supervisory approach to efficiently utilize available resources.
Assessment	Partly observed
Comments	Although the overall supervision function of the SSRP, with respect to AML/CFT matters is considered weak, the regulated entities, especially large insurance companies and those with foreign ownership have developed measures and established internal control systems to ensure compliance with the requirements of the law. The internal control systems in place include: "know-your-customer" policies; procedures for customer identification and due diligence; reporting mechanism for currency (and currency-equivalent) and suspicious transactions; independent internal audit functions; and the appointment of an AML/CFT compliance officer (CO) responsible for the day-to-day activities of the institution. It is anticipated that the completion of the IDB technical assistance program, together with the implementation of recommendations resulting from this assistance will provide the SSRP with enhanced supervisory capacity to effectively monitor all institutions in the sector, as well as maintaining supervisory staff adequately trained.

Table 3.2 Summary Table of Compliance with the Insurance Core Principles

Core Principle	O[1]	LO[2]	PO[3]	NO[4]	NA[5]
1. Conditions for effective insurance supervision			**X**		
2. Supervisory objectives	**X**				
3. Supervisory authority			**X**		
4. Supervisory process			**X**		
5. Supervisory cooperation and information sharing			**X**		
6. Licensing			**X**		
7. Suitability of persons			**X**		
8. Changes in control and portfolio transfers			**X**		
9. Corporate governance				**X**	
10. Internal control				**X**	
11. Market analysis			**X**		
12. Reporting to supervisors and off-site monitoring			**X**		
13. On-site inspection		**X**			
14. Preventive and corrective measures			**X**		
15. Enforcement or sanctions			**X**		
16. Winding-up and exit from the market	**X**				
17. Group-wide supervision				**X**	
18. Risk assessment and management				**X**	
19. Insurance activity			**X**		
20. Liabilities			**X**		
21. Investments			**X**		
22. Derivatives and similar commitments					**X**
23. Capital adequacy and solvency		**X**			
24. Intermediaries		**X**			
25. Consumer protection		**X**			

Table 3.2 Summary Table of Compliance with the Insurance Core Principles

Core Principle	O[1]	LO[2]	PO[3]	NO[4]	NA[5]
26. Information, disclosure, and transparency towards the market			**X**		
27. Fraud		**X**			
28. Anti-money laundering and countering the financing of terrorism			**X**		

[1] C: Observed.
[2] LO: Largely observed.
[3] PO: Partly observed.
[4] NC: Not observed.
[5] NA: Not applicable.

C. Recommended Action Plan

Table 3.3. Recommended Action Plan in Relation to the Insurance Core Principles

IAIS Principle	Recommended Action
Organization of an Insurance Supervisor	Strengthen independence of the SSRP from the industry and from the executive—participation on the Board of the SSRP by industry representatives should be discontinued; also the Board should be independent from the MICI. More staff and resources should be provided to the SSRP. Compensation needs to be sufficient to attract and retain skilled staff. An actuary should be hired, and protection against legal action for staff members should be provided. Publish the SSRP's audited financial statements. The manual of internal procedures should be revised in order to incorporate other relevant supervision processes that take place. Where applicable, reinsurance and insurance laws should be equivalent.
Licensing and Changes in Control	Prior to issuing a license, prospective companies should be required to have in place internal control, information technology, and risk management systems. Shareholders, senior managers, board members, actuaries, and auditors should be required to meet fit-and-proper tests. The process for changes in control over an insurer or reinsurer should be disclosed and clearly stated in the law or regulation.
Corporate Governance and Internal Controls	A regulatory framework for corporate governance structure and internal controls should be developed. The law should incorporate corporate governance rules and minimum internal controls that should be in place and reviewed. Board members responsibilities should be clearly stated.

Table 3.3. Recommended Action Plan in Relation to the Insurance Core Principles

IAIS Principle	Recommended Action
	Consideration should be given to the specifying the composition of the board such as requiring the inclusion of independent members, appointing a compliance officer, or creation of committees.
Prudential Rules	The regulation of the constitution of technical reserves could be revised in order to implement actuarial standards for calculation methods. Audited financial statements should be turned in promptly. Asset-liability matching requirements should be introduced. Reinsurance companies should be included in the solvency regime.
Market Conduct	Insurance brokers or agents should be able to be employed by a specific company. Brokers' fees and commissions should be disclosed. Institutions should be required to disclose information on their financial performance.
Monitoring, Inspection, and Sanctions	Objectives of on-site supervision should be widened and not focus only on financial aspects. Information technology systems should be improved in the SSRP so as to be able to receive and analyze information.
Cross-Border Operations, Supervisory Coordination and Cooperation, and Confidentiality	Supervisory coordination should be enforced, and the legislative framework should define if there is to be cooperation and information sharing with home supervisors of foreign firms operating in Panama, and if so, the terms or conditions under which this could be done.

D. Authorities Response to the Assessment

Authorities' Response

Our Institution (the SSRP) is grateful for the interest that International Monetary Funds has shown in order to guide us throughout the assessment performed to our financial sector more specifically the Superintendence of Insurance and Reinsurance of Panama.

The recommendations are being reviewed and many of them have been amended and we are still making progress in others, mainly based on the Observance of the IAIS Insurance Core Principles.

The Superintendence of Insurance and Reinsurance is making considerable efforts working in the appropriate regulation for the insurance service sector. Thanks to your support and advice, we have been working real hard to enforce the new insurance law that we hope would be accepted by the Executive in order to be independent from the Ministry as you recommended it. But in this process we need support within the financial and political scope which is taking us time but we are confident that our effort will bring amazing results which is to pass the new insurance law.

We will appreciate that the IMF would be willing to cooperate in the case we need some assessor opinion to review the financial framework of the new law.

IV. Assessment of Observance of the FATF Recommendations

A. General

87. This assessment of observance of the Financial Action Task Force (FATF) Recommendations for *anti-money laundering and countering the financing of terrorism* (AML/CFT) has been completed as part of an evaluation of Panama's observance of regulatory standards for the financial sector.[18]

General

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

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

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

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

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

92. **Lawyers and accountants are not required to belong to a professional association in order to practice**, and the associations' codes of ethics are not legally enforceable. There are ethical rules for lawyers established by law and subject to investigation and sanction by the Supreme Court, although there have been very few sanctions in practice.

General situation of money laundering and financing of terrorism

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

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

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

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

Overview of the Financial Sector and DNFBP

97. **Panama's major financial activity is banking**. The most significant Panamanian local banks are Primer Banco del Istmo, Banco General, Banco Continental, and Global

Bank. The largest foreign banks are: HSBC Bank, Banco Bilbao Viscaya Argentaria BBVA, Banco Atlantico, BNP Paribas, Dresdner Bank A.G., and Banco Latinoamericano de Exportaciones.

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

Box 4.1 Regulation of AML/CFT by Activity

Type of Financial Institution	Licensees	Activities included in FATF recommendations	Regulator/ Supervisor	Subject to AML/CFT Law[19]
Banks	73 total By license type: 37 General 34 International 2 State owned	Deposit-taking; lending; funds transfers; payment services; guarantees; securities; managing of currency and/or securities for third parties; currency exchange	SdB	Yes
Savings and Loans Associations	4	Deposit-taking and lending, including mortgage lending	BHN	NO
Financial Cooperatives	276	Deposit taking cooperatives (i) savings and credit cooperatives, and (ii) multiple services cooperatives	IPACOOP	Yes
Brokerage Houses	30	Deposit taking; funds transfers; securities; investments management; assets administration	CNV	Yes
Investment Societies	11	Participation in securities, and provider of related financial services; loan collections, investments	CNV	Yes
Finance Companies	137	Consumer lending (not deposit-taking)	MICI	Yes
Leasing Companies	105	Asset-backed lending	MICI	NO
Remittances and Exchange Houses	7	Money transfer services	MICI	Yes
Insurers, Reinsurers	27	Guarantees and commitments; subscriptions and placement of life and other insurance related-investments	SSRP	Only CTR
Insurance Brokers	400	Subscriptions and placement of life and other insurance related-investments	SSRP	NO
Insurance Agents	1,550	Subscriptions and placement of life	SSRP	NO

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

Box 4.1 Regulation of AML/CFT by Activity

Type of Financial Institution	Licensees	Activities included in FATF recommendations	Regulator/ Supervisor	Subject to AML/CFT Law[19]
		and other insurance related-investments		
Fiduciaries (Trust Service Providers)	52	Creation and administration of trusts (fiduciarias)	SdB	Yes
Full Casinos	12 locations	Casino services	Gaming Board	Only CTR
Internet Casinos	1	Not yet functioning	Gaming Board	Only CTR
Slot Machine Businesses	40 locations	Slot machines	Gaming Board	Only CTR
Hippodrome, Bingos and Others	23 locations	Horse racing, bingos, betting agencies, and all other gaming services.	Gaming Board	Only CTR
National Lottery	1	State-owned monopoly of lotteries	(self-regulated)	Only CTR
Companies in the Colon Free Zone	1,900 (aprox.)	Warehousing, distributorship, importing and exporting, etc.	Administration of the Free Zone	Only CTR
Companies in Processing Free Zones	84	Manufacturing of goods for exportation	MICI	Only CTR
Lawyers and company service providers	9,000 (aprox.)	Formation of companies, foundations and of any legal persons, company representation, nominee directorship, registered officer, etc.	(none)	NO
Accountants	11,888	Occasional operation, management, and selling of legal persons	MICI	NO
Notaries	23	Not applicable (N/A)	(none)	NO
Real Estate Agents & Promoters	284 (only legal persons need license)	Development, promotion, buying and selling of real estate	MICI	Only CTR
Nonprofit Organizations	Unknown	Receive and disburse donations	Ministry of Government & Justice	NO
Pawn Shops	134	Lending	MICI	Only CTR

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

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

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

Overview of commercial laws and mechanisms governing legal persons and arrangements

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

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

Overview of strategy to prevent money laundering and terrorist financing

AML/CFT strategies and priorities

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

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

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

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

The institutional framework

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

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

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

- Financial Analysis Unit (UAF), within the National Public Security and National Defense Council of the Ministry of the Presidency;
- Superintendency of Banks (SdB);
- National Securities Commission (CNV);
- Autonomous Panamanian Cooperatives Institute (IPACOOP);
- Ministry of Commerce and Industry (MICI), which includes:
  - Superintendency of Insurance and Reinsurance (SSRP);
  - National Directorate of Finance Companies (responsible for finance companies, leasing companies, money remitters and pawn brokers);
  - Office of Export Processing Zones;

  - Real Estate Technical Board;
  - Accounting Board (it has no AML/CFT responsibilities at the moment).
- Gaming Control Board of the Ministry of Economy and Finance;
- ZLC Administration;
- Attorney General (Ministerio Público and the judicial technical police within);
- Judicial Branch (no specific courts specialized in money laundering or the financing of terrorism; and
- National Directorate of Immigration.

Approach concerning risk

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

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

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

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

Progress since the last assessment or mutual evaluation

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

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

B. Detailed Assessment of the Observance of the FATF Recommendations

Table 4.1 Detailed Assessment of the Observance of the FATF Recommendations

Legal System and Related Institutional Measures

Criminalization of Money Laundering (R.1 & 2)
Description and analysis
Panama has criminalized money laundering through Articles 389 to 393 of the Penal Code, as adopted through Law 41 of October 2, 2000 and Law 1 of January 5, 2004. This Law 41 amended the previously existing AML law, stating in Article 389 of the Penal Code that, "Whoever receives, deposits, trades, converts, or transfers monies, titles, securities, goods, or other financial resources knowing that the origin of the activities is related with drug trafficking, qualified embezzlement, illegal weapons trafficking, human trafficking, kidnapping, extortion, embezzlement, public corruption, terrorism, robbery, or internal vehicle contraband established in the Panamanian Law, with the purpose of hiding or covering their illicit origin to assist evasion of juridical consequences of such punishable acts shall be sanctioned with prison from 5 to 12 years and 100 to 200 days of fine." Law 1 of 2004 added intellectual property violations as a predicate within Article 389 of the Penal Code. Panama's law takes the predicate list approach to the crime of money laundering. Panama has ratified both the Vienna Convention and the Palermo Convention, The Vienna Convention, Article 3(1)(b)(i) is satisfied by the language of Penal Code Articles 389 and 390. However, Article 6(2)(b) of

Legal System and Related Institutional Measures

the Palermo Convention is not fully satisfied, in that the list of predicate offenses does not include a fully comprehensive range of offenses associated with organized criminal groups. Penal Code Article 389 does cover 11 felony predicate offenses, but does not include all of the FATF Recommendations noted in the Glossary of Definitions. In order to comply with this list, there should be predicate offense of terrorist financing, participation in an organized criminal group and racketeering, sexual exploitation including of children, trafficking in stolen goods (as opposed to only vehicles), counterfeit currency, environmental crime, murder, the general act of smuggling, piracy, fraud, and insider trading/market manipulation.

ML is considered to be an autonomous offense. It is not subordinated to the predicate offense, and can be independently charged. The crime of money laundering applies to an individual who has committed a predicate offense, provided that the person carries out one or more of the terms governing the legal provisions in Articles 389–393.

Penal Code Article 389 applies to the listed predicates established in Panamanian law. The authorities advised that the crime of money laundering extends to conduct of predicate offenses which occur in other countries, as well as in Panama, and that Panamanian law would apply in either circumstance. Articles 8 and 9 of the Penal Code provide legal support for this position. Article 8 provides that Panamanian law will apply to punishable acts committed outside the borders of Panama, where those laws relate to acts against the government of Panama, crimes against public health [such as drug offenses], crimes against the national economy and public administration, and the falsification of official documents or money destined for Panama. Article 9 also applies Panamanian law to acts committed outside the country where the results of the crime are produced in Panama, or there are other various listed effects on Panama.

Appropriate ancillary offenses do apply to the offense of money laundering. Articles 389–391 of the Penal Code sanction behavior relating to aiding and abetting, facilitating, and counseling the commission of criminal offenses, including money laundering pursuant to Law 41, Article 6. Penal Code article 61 punishes these other forms of criminal participation: "The authors, primary accomplices, and instigators shall be liable to the penalty indicated in the law for the punishable act. Secondary accomplices [assistance after the fact] shall be punishable by no less than half the minimum and no more than half the maximum penalty established for the punishable offense."

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

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

Circumstantial evidence may be used as proof in criminal cases, including money laundering cases. Article 2046 of the Penal Procedure Code provides that proof is of equal value whether it is direct testimony, documents, confessions, expert reports, or other rational methods which do not violate human rights or are not

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prohibited by law. The offense of money laundering extends to all kinds of property, independent of its value, since it may be applied to money, securities, assets, or other financial resources. Further, the anti-money laundering law refers to "financial resources derived from any of the illicit activities." (Articles 389–391 of the Penal Code). The offense of money laundering extends to all kinds of property, independent of its value, since it may be applied to money, securities, assets, or other financial resources. Further, the money laundering law refers to "financial resources derived from any of the illicit activities." (Articles 389–391 of the Penal Code). In support of this, Article 1 of Law 42 also permits the Executive Branch to examine with special attention any operation, without regard to the amount involved, that may be particularly linked to laundering of capital arising from illicit activities. Articles 389–393 apply only to natural persons and not to legal persons.

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

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

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

Recommendations and comments

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

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

In connection with the money laundering predicate offense of corruption, the mission notes that Panama's

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National Assembly has approved the United Nations Convention against Corruption on May 10, 2005. Under the legal system of Panama, these conventions are superior law. This mission recommends that Panama takes specific actions to fully implement the Convention against Corruption.		
Compliance with FATF Recommendations		
R.1	Largely compliant	ML predicates not fully consistent with Palermo convention. Article 1 of the Penal Code defines conspiracy differently with regard to money laundering and applies a lesser penalty which is problematic for consistent enforcement.
R.2	Compliant	Although no criminal penalty applies for legal persons, civil and administrative penalties do apply to legal persons, based on the conduct of its directors, officers and employees based on the Penal Code Article 125. Penal Code Article 393-A, as amended by Law 50 (Chapter VII Financial Crimes) covers this for banks, securities and insurance companies.
Criminalization of terrorist financing (SR.II)		
Description and analysis		
In Panama, the Penal Code (CC) contains in Book I, Title VII: Chapter VI, Terrorism, which sets forth sanctions in Articles 264 (a) to 264 (e). These legal provisions were introduced in Law 50 of July 2, 2003. The law classifies terrorism and the financing thereof as independent crimes. The FT is covered in Article 264 (b): "Anyone who intentionally finances, subsidizes, hides or transfers money or assets to be used to commit any of the acts described in 264 (a) of this Code, even though that person is not involved in its implementation or the implementation is not carried out, shall be sanctioned with 15 to 20 years in prison." The team was advised that this language covers the act of collection of funds. Further, the acts listed in Article 264 (b) refer to both individual and group terrorist activities. See reference to Article 264 (a), which defines terrorism to include both factual situations. The team notes that no cases have been brought under Article 264 (a) and no judicial interpretation of this section exists at this time. Article 264(a) criminalizes and defines terrorism itself: "Anyone who individually or as a member acts in the service of or collaborates with armed bands, organizations or groups whose purpose is to subvert the constitutional order or cause a serious breach of the peace, carries out acts against the persons, assets, public services or communications media or public transport, who generates alarm, fear or terror in the population or in a group or sector thereof, using explosives, toxic substances, arms, fire, flood or any other violent means or means of mass destruction, shall be sanctioned with a penalty of 15 to 20 years in prison." This statute has not been tested to determine whether acts of individual terrorists, unrelated to organizations, are covered. Thus, Article 264(b) does cover the funding of (i) the carrying out of a terrorist act, (ii) by a terrorist organization; or (iii) by an individual terrorist. The Panamanian authorities pointed out specifically that the Republic of Panama has no experience with cases of FT. Article 264(b) refers to terrorism financing through "money or assets," and does not limit the form of assets in any way, consistent with the Terrorism Financing Convention which defines "funds" as "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers checks, bank checks, money orders, securities, bonds, drafts, letters of credit." Article 264(b) criminalizes intent to commit the crime of FT. Article 264 (a) goes beyond specific acts of terrorism by including "any other violent crime or mass destruction." The words "collect" as in collecting funds and "indirectly," as in indirect participation are not mentioned in Law 50. However, in Article 264(b), "collecting" is covered by the broader phrase: "intentionally promotes or aids in the commission of activities"		

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and "indirectly" facilitating is covered by the phrase: "whether or not he/she intervenes in their execution" in the Articles 264(b) and 264(c).

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

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

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

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

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

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

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

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

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

- The Declaration of Lima to Prevent, Combat and Eliminate Terrorism;
- The Plan of Action on Hemispheric Cooperation to Prevent, Combat, and Eliminate Terrorism;
- The Framework Treaty on Democratic Security in Central America, signed by Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, which constitute examples of sub regional coordination to prevent acts of terrorism.

Panama also approved the Inter-American Convention against Terrorism by Law 75 on December 3, 2003, which was ratified on January 21, 2004.

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

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

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

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

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

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

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

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

Recommendations and comments
Place FT specifically on the predicate act list of the AML Law. Panama should ensure that all UN conventions and resolutions relating to terrorism have been ratified.

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

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Confiscation, freezing and seizing of proceeds of crime (R.3)
Description and analysis
In general, forfeiture of assets is listed in Penal Code Article 46 as one of the penalties which may be imposed in criminal cases. Because this definition of the penalties available in criminal cases is in Chapter 1 of the Penal Code on general matters, it applies to all criminal offenses, under the Panama legal system, and therefore forfeiture is available to the court as a penalty in any type of criminal case, including money laundering, terrorism, and FT. Penal Code Article 55 defines forfeiture as the adjudication to the government of the instruments used in the commission of the crime and which are the proceeds of crime, with an exception for innocent third parties. Article 55 further states that in general, forfeited illicit assets will be sold, and where appropriate, applied to cover the civil and criminal sanctions. Good-faith third parties are further protected in Judicial Code Articles 2028, 2029, and 2030, as well as through the adoption of the Palermo Convention by Panama. Drug and money laundering forfeitures are treated differently. The Unified Text of Drug Laws, Article 55, provides the general authority to the prosecutor to pursue criminal action in all crimes within his or her competence. Law 41, Article 6, authorizes the prosecutor in charge of the investigation to order a preliminary seizure of instruments, money, securities and other assets used to commit crimes related to drugs and the direct and indirect proceeds of said crimes, consistent with the same broad authority possessed by prosecutors in drug-related cases. Further, Articles 29–31 of the Unified Text of Drug Laws apply. Under Article 29, the act of freezing of assets by the prosecutor will then be recorded in the Public Register. Preliminary seizure of inmovables must always be recorded in the Public Registrar. A party has the right under Article 31 to a hearing before the judge to seek release of the provisional seizure. Additionally, the Penal Code as amended by Law 41 of October 2, 2000 a bank or credit agency may request judicial action regarding assets in their control which have been ordered forfeited, in order to compensate the obligation. These funds can be provisionally seized and submitted to the competent judge for final determination of forfeiture. (Articles 30 and 31 of the Unified Text on Drug Laws.) Ultimately, in money laundering cases, the laws and procedures which apply to drug-related money laundering cases will permit preliminary seizure of assets, while the rules applying to non-dug-related money laundering cases do not permit such actions without court order. Specifically, the final decision on forfeiture is a criminal punishment imposed by the competent judge. This authority is found in Articles 55, 101, 102, and 263 of the Penal Code. Article 55 provides that assets which were used to commit the crime, and those which are the result of the commission of the crime, may be forfeited by the judge. Articles 101 and 102 provide that neither the conclusion of the criminal case nor the suspension of the criminal penalty will affect the judge's power to forfeit the related assets, nor from any civil responsibility derived from the same acts. According to the authorities, the Panamanian criminal system focuses only on the person, not the asset as in other countries' in rem proceedings. There is no civil forfeiture to take assets; forfeiture occurs only through a related criminal case. The authorities informed that the asset forfeiture process is applied to cases involving the property of organizations which are criminal in nature, consistent with the adoption by Panama of the Palermo Convention. This occurs through the criminal case against the individual, through which the prosecutor must prove a connection between the defendant and the asset. If assets are connected with drug trafficking activities (as a predicate offense), the accused is required to demonstrate that the assets subject to precautionary seizure have been acquired legally. This reversal of the burden of proof does not apply to other predicate offenses. Assets which are seized by the prosecutor are under the control of the Ministerio Público. Funds are left in accounts in financial institutions under seizure order. Authorities advised that it is the practice of the Ministry to permit prosecutors and police officials to use seized vehicles for their related work. Other non-cash assets

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are placed into a depository facility owned by the Ministerio Público; there is no process in place to maintain the assets pending the final order of forfeiture or return to the owner, as ordered by the court.

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

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

Recommendations and comments

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

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

Establish/improve the system to hold and maintain seized assets pending forfeiture orders. This also applies to the provisionally seized assets while waiting for the judge to determine their final destination. The potential for impropriety or the appearance of impropriety exists regarding maintenance of assets which have not been determined to belong to the government, and which could be ordered to be returned to a defendant or good faith third party.

Compliance with FATF Recommendations

R.3	Largely compliant	Steps should be taken to ensure that seized assets are held under proper conditions pending the final forfeiture in order to preserve human rights. Freezing and seizure authority of prosecuting authority should extend to other predicate offenses mandated under Palermo Convention.

Freezing of funds used for terrorist financing (SR.III)

Description and analysis

The prior section's description of the forfeiture process applies to money laundering cases involving terrorist acts. In such a case, the prosecutor would have access to the full authorities provided under the Unified Text on Drug Laws to freeze and seize assets, and to seek judicial forfeiture as part of the criminal case against a defendant. However, since the financing of terrorism is not a predicate offense to money laundering,, the AML law would not apply to this act. The same forfeiture process discussed in the prior section relates to laundered funds, proceeds of the crime, and instrumentalities used for the financing of terrorism. These laws provide for

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provisional measures (freezing and seizure), and for initial seizure to be made ex parte and without prior notice. Further, law enforcement officials have full authority to identify and trace property for seizure. Prosecutors have authority to seek court orders to void actions knowingly taken to prevent seizure by authorities, although they note that this has not occurred in Panama.

In direct cases of terrorism financing which do not involve money laundering, the general provisions of the Penal Code would apply to permit forfeiture of assets connected to that crime. There is no administrative system for the freezing of assets related to terrorist finance, since Panama's constitution reserves such functions to the judicial system, as the freezing and forfeiture of assets are already covered in the Penal Code. However, Panama has a system in place to respond to the UN Resolutions 1263 and 1373 on terrorism and terrorist finance. The UAF is the authority responsible for publishing the terrorist lists to financial authorities, and they have created a process to carry out this responsibility. Banks are required to immediately report any information on terrorists on the UN lists to the UAF. The UAF then will immediately report this information to the appropriate prosecutor's office, which will then seek a court order forthwith to freeze the funds. In the single instance in which a Panamanian bank found that an account was connected to a terrorist on the UN list, this procedure was implemented in approximately 45 minutes. Affected persons have the legal right to petition the court for return of the property.

Authorities have advised that there have been no cases of terrorism or terrorist finance since Law 50 was passed in 2003. This is a substantially lesser issue in Panama according to authorities, as compared to the very large problem of drug-related money laundering.

Panama does have experience in dealing with requests by other countries to freeze assets. The procedure followed is virtually identical to that listed in Paragraph 53 above, except that formal requests are channeled through the Ministry of Foreign Affairs. Additionally, there is strong informal cooperation between Panamanian and foreign law enforcement authorities, such that once the necessary information is provided, the appropriate prosecutor proceeds immediately to court to seek an order freezing assets. Although the team was unable to assess whether a process exists to permit release of seized funds for use by a defendant, Panama has an effective and publicly-known method of unfreezing assets. Once an asset is preliminarily seized, notice is placed in the Public Registrar. Only thereafter will a court enter the formal seizure order. A prompt court hearing will be held at the request of an owner or innocent third party. There are additional guarantees in the law, as described above, which permit financial institutions to request a hearing regarding seized assets which are within the institution's control.

Recommendations and comments

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

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

Compliance with FATF Recommendations

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

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

Description and analysis

The UAF was created by Executive Decree No. 136 of June 9, 1995 for the prevention of money laundering

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

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

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

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

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

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

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

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

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

Based on Law 42, Article 7, the Executive Branch determines by regulations, the cash transactions reporting and cash equivalent (defined in the Executive Decree 234 of October 17, 1996, Article 3, paragraph 3) referred to in paragraph 2 of Article 1, for amounts exceeding ten thousand Balboas ($10,000), for nonfinancial entities

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like the enterprises established in the ZLC and processing zones, national lottery of beneficence, casinos and other establishments for gambling and games of chance, promoter enterprises or enterprises for real estate brokerage, insurance and reinsurance companies, and reinsurance brokerage companies. These two lists of reporting entities are sufficiently broad under law.

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

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

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

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

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

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

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

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

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

Although the information handled by the UAF is treated with a high level of confidentiality at the UAF, the information furnished by the UAF to domestic authorities is sent by (un-armed) messenger, who also collects the reports from the reporters on behalf of the UAF. This constitutes an unnecessary risk for the UAF.

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Currently, the UAF is contemplating projects to digitalize receipt of information by reporting entities and eliminate physical delivery of dissemination data to the Office of the Public Prosecutor. The information exchanged with FIUs in other countries is sent through the adequately secured web of the Egmont Group.

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

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

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

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

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

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

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

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

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

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

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significant problem for the UAF is lack of sufficient technical resources.

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

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

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

Recommendations and comments

The UAF should have an independent budget in order to allow the UAF to make its own administrative decisions and to better comply with the FATF requirement of independency.

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

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

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

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

Release the annual report of the UAF publicly, including statistics, typologies, and trends as well as information regarding its activities. Introduce a program for UAF outreach and awareness raising in government agencies, reporting entities, and the public in general. A government public relations officer could present the information prepared by the UAF to the general public in order to protect the identity of UAF personnel, when necessary[20].

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

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

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

Description and analysis

Recommendation 27

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

Office of the Attorney General (PGN): Established under Article 219 of the Political Constitution, this office applies the Judicial Code and the Penal Code in Panama. It receives information from the UAF and other investigation sources and initiates formal investigation. The Penal Code as by Law 41 of 2000, governing the crime of ML, establishes that investigations into ML may be launched by the special prosecutor's offices created by resolution of the Panamanian Attorney General's Office No. 8 of 2000. If the investigation is triggered by a request for international assistance, depending on the predicate offense in question, it may be appropriate to transfer the investigation to the competent special prosecutor's office. If the investigation is triggered by a suspicious transaction report issued by the UAF, the mechanism to launch the pertinent proceedings would be that of a preliminary investigation launched in coordination with the Financial Investigation Unit of the Judicial Technical Police (PTJ).

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

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

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

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

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Office of the Prosecutors

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

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

Further, if the National Tax Commission receives complaints of acts related to financial crimes found in Penal Code sections 393-A through 393-G (securities offenses), it must provide the information to the Public Ministry no later than two months after the completion of its investigation. For example, if the crime is "insider trading," the CNV, based on section 393-G of the Penal Code must provide the information to the Public Ministry. If the Public Ministry requests more technical information from the CNV or the SdB, the period can exceed two months. On the other hand, if the CNV already has incriminating information at hand, this period can be less than two months. The Superintendency of Banks, the National Tax Commission and the Panamanian Securities Commission are required by laws and regulations to investigate any evidence of financial crimes and to provide that data to the prosecution. The UAF also is tasked to collect this information and to provide it to the competent authorities, under strict ethical standards.

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

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

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

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and safeguarding the financial system.

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

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

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

Judicial Technical Police

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

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

Courts

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

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

The courts recognize the need to carefully handle ML and terrorist finance cases. However, there have been

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

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

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

Other Offices

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

Statistics

All the agencies responsible for implementing the AML/CFT regime keep their own statistics on the work they performed. However, there is no centralizing of the overall data on this subject, nor is the data maintained in a consistent format, so that certain important conclusions can be drawn from the data to measure the effectiveness of the AML/CFT efforts.

Recommendations and Comments

An in-depth budget analysis should be made of all the enforcement needs, indicating those most urgent, so that the low numbers of ML cases and convictions can be addressed. Review the dependence on a general budget allotment, to ensure proper distribution of funds for enforcement purposes.

Develop a government coordination group on AML/CFT, which would meet regularly for all relevant government enforcement agencies to enhance their efforts, exchange ideas, and report policy recommendations to the High Level Commission against money laundering and the financing of terrorism.

Develop a system through which all the law enforcement investigative agencies are connected to a central database on money laundering and the financing of terrorism and other financial crimes. The existing database of the courts on financial crime convictions could be also linked with this new database with different security levels and access to information for different levels of authority.

Develop training for prosecutors and financial police, including protection of informants and investigative techniques.

Increase personnel for the SIF since, according to the SIF, the current work load would require additional investigators/analysts.

Develop systematic training for the courts with emphasis on financial crimes, ML, anti terrorism, and FT for judges and magistrates working in criminal law.

Enhance training for all the government agencies involved in money laundering and the financing of terrorism investigations by the UAF and the judicial police (SIF within PTJ), including typologies.

Develop a process for the courts to independently obtain expert forensic and accounting assistance on

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complicated financial matters related to financial crimes and ML.

Consider whether special courts should be created for financial crimes and ML which would allow training efforts to be focused on the judges who would use it most.

Extend database system at the courts so that records of all financial crime cases, including money laundering and the financing of terrorism and their results are accessible for the benefit of analysis and statistical review. Consider linking it to other databases in the other agencies, maintaining security of the information by permitting different levels of access for the different levels of authority.

Develop training for the national police on corruption, ML, and FT, so that they can better carry out their responsibilities.

Develop process of coordination of government statistics so that AML/CFT data can be interpreted across agency divisions concerned.

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

Train employees responsible for performing financial crimes investigations.

Compliance with FATF Recommendations

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

Cash couriers (SR.IX)

Description and analysis

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

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

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

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

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shipments passing through the free zone.

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

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

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

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

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

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

Recommendations and comments
Modify the travelers' declaration obligation to comply with FATF Special Recommendation IX to include

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currency and bearer negotiable instruments that are taken out of ("exported" from) the country.

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

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

Make better use of the available information and of the current investigative powers of customs, in cooperation with the UAF, to identify the possible trends and vulnerabilities of the Panamanian system for detecting the physical cross-border transportation of currency, and to take appropriate actions. Priority should be given to speeding up the plans to enhance the intelligence capabilities and to create the Risk Analysis Office of Customs that is being devised within the framework of the National Project for Transparency supported by the Inter-American Development Bank. Customs will require active cooperation from other governmental agencies to obtain relevant information for its new risk-based system.

The SdB should promote, through its risk-based inspection practices, that banks dealing with ZLC customers maintain a closer monitoring of those accounts to detect cases where their deposits are inconsistent with their sales.

Compliance with FATF Recommendations

SR.IX	Partially Compliant	The declaration obligation does not apply to outgoing transportation of cash; it does not apply to cash transported in non-accompanied freight; it is enforced only at the Airport of Tocumen; and there is little control of cash smuggled in freight containers.

Preventive Measures–Financial Institutions

Risk of money laundering or terrorist financing

Description and analysis

The risks of money laundering and financing of terrorism were described earlier in this report. Based on the interviews with the authorities and other information gathered by the mission, the Government of Panama seems committed to implementing the necessary measures to deter criminals from using the financial system, which is considered one of the most sophisticated in Latin America, for their illegal activities. Since 2001, the Government of Panama has demonstrated their ability to effect change in those areas where strengthening was needed in order to have Panama's name removed from the NCCT list. In doing so, the competent authorities in Panama have enacted and implemented AML/CFT laws and regulations, executive orders, regulatory agreements with other supervisors and counterparts abroad. All these initiatives were taken with the intent of establishing a sound and effective AML/CFT program that complies with most of the international standards.

The FATF methodology requires that certain elements of the AML/CFT regime be comprised in laws or regulations being primary and secondary legislation, such as laws, decrees, implementing regulations or other similar requirements, issued or authorized by a legislative body, and which impose mandatory requirements with sanctions for non-compliance. The assessors were able to determine that the Agreements issued by the SdB were "regulations" based on their understanding of the legal and constitutional arrangements that exist in Panama.

The AML/CFT legal and regulatory framework in Panama for financial institutions consists of four tiers: (i) laws that set the enabling provisions and basis requirements; (ii) agreements (regulations issued by the SdB by the powers granted under the Banking Law) that define the legal requirements and implementation aspects of the laws;

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(iii) executive decrees (issued by the president and a sector specific ministry) and cabinet decrees (issued by the president and all the ministers) that further define the legal requirements and implementation aspects of laws and agreements; and (iv) resolutions and circulars (issued by the SdB) that serve as supervisory letters/instructions/administrative decisions which provide further guidance with respect to specific legal and regulatory requirements. All issued under the powers vested on the SdB by the Banking Law. While laws and decrees are issued and approved by the legislative and executive bodies, respectively, the agreements, resolutions, and circulars are issued by resolution on the Board of the SdB. Under the Banking Law, the SdB is empowered to enforce and sanction financial institutions for non-compliance with the applicable laws and decrees, as well as with the agreements and resolutions and circulars it issues.

The AML Law 42-2000 provides the general framework for customer identification, including the necessary steps to be taken for identification of beneficial owners of accounts and customer due diligence, cash and suspicious transaction reporting, record retention requirements, supervision responsibilities, and sanctions. However, coverage of the law does not extend to insurance brokers and agents, leasing, and factoring companies. This lack of coverage represents deficiencies within the overall Panamanian AML/CFT regime and exposes the country to potential money laundering and the financing of terrorism risk. Of equal importance and due to limited resources and capacity, some supervisory authorities including the SSRP and the Banco Hipotecario Nacional (BHN) are not conducting AML/CFT supervision of the institutions under their responsibility.

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

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

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

Description and analysis

R.5

Article 1 of Law No. 42 - 2000 establishes the legal reporting requirements for all financial institutions, including banks, trust companies, money exchanges (bureaus de change) and money remitters, (covering natural and legal persons that are involved in these activities, whether as a main activity or not), finance companies, savings and loans cooperatives, stock exchanges, stock centers, stock houses, stock brokers, and investment administrators. All of these entities are required to maintain and perform adequate due diligence procedures to prevent illegal transactions/operations from being conducted with funds coming from or activities linked to ML. The obligation to identify the true owner or beneficial owner in contained in Article 1(1) of Law 42-2000, where financial institutions are required to obtain from their clients i) adequate references or recommendations; ii) certifications evidencing the incorporation and existence of the trust or legal person, including bearer share corporations; and iii) identification of its directors, officers, attorneys-in-fact appointed with broad powers and legal representatives of

Preventive Measures–Financial Institutions

such juridical persons to adequately establish and document the true owner or beneficial owner of the account, direct or indirect. Within Panama, it is legally understood that financial institutions are obligated (under Article 1(1) above) to identify the true owner and beneficial owner, which is understood to require the identification of the natural person. The SdB verifies this during its on-site inspections. Failure to maintain adequate identification has resulted in supervisory sanctions. Officials of financial institutions visited confirmed that the common understanding is that there is an obligation to identify a person that is the owner of a company. Also, for trusts or legal persons to carry out transactions, the entity must be a bank customer. In addition, Article 7 of the same law establishes the reporting obligation for insurance, re-insurance and re-insurance agents (among others), but only with respect to reporting currency and cash-like transactions.

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

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

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

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

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conducted on-site inspections to ensure compliance. In addition, under Articles 4 and 5 of the new Agreement 12-2005, financial institutions are required to perform customer due diligence measures when there is a suspicion of money laundering or terrorist financing, as well as when the institution has doubts about the veracity or adequacy of the customer's identification information.

Article 6 establishes the obligation for customer due diligence regarding the establishment of a regular banking relationship. In this regard, customer due diligence is required for all clients before a business relationship is initiated or established. The banks are required to include in their files the client profile, in order to determine the purpose, the type, number, volume and frequency of the banking operations, products or services that will later be reflected in the client's account. The procedures adopted by each bank should permit to gather sufficient information to adequately complete the profile of each client, when needed, and to monitor their operations. Article 7 establishes the obligation for all banks to develop a "know-your-customer" manual to develop the implementation of the know your customer policy of the bank, which should be periodically updated. This manual should be established taking into consideration the level of complexity of the bank's activities and may contemplate different categories of clients established on the basis of the potential risk of illicit activity associated with the accounts and transactions of the clients. The know your customer manual, including policies, procedures, and customer due diligence measures are reviewed by the supervision staff of the SdB during on-site inspections. Because there is no exemption or threshold established for occasional transactions, customer due diligence measures are always performed before establishing the relationship.

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

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

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

- customer's full name;
- civil status;
- profession or occupation;
- identity documentation;
- nationality;
- residence address or domicile;
- references;
- passport information, in the case of persons residing outside Panama;

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- certification that the person is the beneficial owner of the account or is conducting the transaction/operation on behalf of another beneficiary. If there is another beneficial owner, proper identification is required; and
- articles of incorporation and/or any other certification to establish the true account owner or beneficial owner when establishing accounts for legal entities, including trusts, companies, and societies. It is also required to provide identification on the trustees, officials, directors, owners, and representatives of these legal entities.

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

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

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

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

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

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

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

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

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

R.6

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

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

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

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

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

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

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

R. 7

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

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

NOTE: The SdB revised Agreement 9-2000 to reflect the new obligations. Article 3 of the new Agreement 12-2005, establishes the obligation on financial institutions when establishing correspondent banking relationships. It also prohibits the establishment of such accounts with shell banks. Resolution 032-2005 addresses the due diligence measures needed for establishing correspondent banking relationships, including the essential elements of Recommendation 7. This Resolution provides specific guidance on what financial institutions need to follow when establishing correspondent banking relationships. Taking into consideration that the banks are already conducting

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the necessary due diligence with respect to correspondent banking relationships, additional time is required to ensure that all financial institutions are complying with the requirements of the new Agreement and related Resolution, when the new Agreement becomes effective on February 27, 2006. Similar obligations are contained in Article 31 of Decree 1-1999, which authorizes Panamanian investment/brokerage houses to maintain correspondent banking relationships with foreign investment/brokerage houses authorized to operate in jurisdictions recognized by the CNV, with the goal of conducting transactions outside Panama through these foreign entities. Institutions in the securities sector maintain similar policies and procedures in line with the essential elements of Recommendation 7. **R. 8** Financial institutions, mostly banks, have measures in place to manage technological risk, including procedures in place to prevent the misuse of their institutions via internet or any other electronic means. For example, the SdB under Agreement 5-2003, establishes the requirements for those institutions that provide electronic banking services, via phone or e-banking, to their clients. Article 3 requires the SdB to authorize all electronic banking services to be provided by the institutions. Article 7 lists the electronic banking services that are allowed by the SdB. However, opening an account via internet is not permitted. As mentioned earlier, it is a requirement in Panama for the potential account holder to be present before opening a bank account. In addition, the authorities indicated, and the financial institutions visited validated that it is a requirement for the person opening the account to be present. Agreement 5-2003 establishes the obligation for financial institutions providing electronic banking services to have in place the following: operations manual, policies, procedures, and internal controls necessary to support these activities; designation of an unit responsible for identifying, evaluating, and controlling risks associated to electronic banking activities; registry of transactions conducted by the customers; information to the client with respect to usage of electronic banking services, security controls for safeguarding the transaction and privacy of customer information, relations with providers of electronic banking services, measures to prevent the electronic banking from being used for illegal activities, including customer identification and customer due diligence, reporting of suspicious transactions, and other activities as required by Agreement 9-2000. Agreement 7-2003 sets the requirements for the measures, policies, and controls that need to be in place within the financial institutions with respect to credit card transactions, including those where accounts for internet casinos are involved. Within the securities sector, clients interested in opening an account can download , via internet, the necessary forms and documentation needed; however, the client is required to be present to sign the necessary forms to establish the account. Thus, similar to banking, it is not possible to open a securities account via internet. In this case, the customer needs to provide all documentation as required by the agreement, including signing a statement with respect to the origin/source of funds. Although there are no policies or measures in place within the insurance sector, the technological risk is mitigated given that the insurance companies (through their agents) conduct face-to-face transactions when selling their products. Management of insurance companies visited indicated that transactions are conducted after proper customer identification and due diligence procedures are performed. This risk is not applicable to other institutions like savings and loans, insurance, finance companies, leasing and factoring because they do not offer this type of service/product to their customers.
Recommendations and comments
R. 5 The SdB should introduce further guidance to trust companies for performing due diligence procedures. Currently,

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trust companies apply the requirements of Agreement 9-2000.

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

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

R. 6

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

R. 7

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

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

R. 8

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

Compliance with FATF Recommendations		
R.5	Largely Compliant	Lack of AML/CFT coverage and customer due diligence obligations, within the existing legal framework, for insurance brokers and agents, savings and loans institutions, leasing and factoring companies.
R.6	Largely Compliant	Lack of specific requirement or guidelines in place for institutions under the responsibility of the SSRP, BHN, and the MICI for establishing business relationships with politically exposed persons. Lack of AML/CFT coverage within the existing legal framework for insurance brokers and agents, saving and loans institutions; and leasing and factoring companies to address the requirements for PEPs.
R.7	Largely Compliant	In practice, banks are complying with the essential elements of this recommendation and conducting adequate due diligence when establishing correspondent banking relationships. However, the specific obligation on Agreement 9-2000 was too general. In response, the SdB recently established the

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		obligation in line with the essential elements of Rec. 7 and additional time is needed to ensure that the banks are fully complying with the revised Agreement and related Resolution requirements, when the revised Agreement becomes effective on February 27, 2006.
R.8	Largely Compliant	Lack of measures and guidelines in place at the SSRP for handling of non-face-to-face and other activities that clients could conduct via internet.

Third parties and introduced business (R.9)

Description and analysis

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

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

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

Recommendations and comments

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

Compliance with FATF Recommendations

R.9	Partially Compliant	The existing law and regulation do not specifically address third parties or introducers nor prohibit the application of the use of third parties or introducers.

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		Lawyers are common introducers and are not covered by the existing AML Law nor required to perform customer identification and due diligence procedures in line with the essential elements of Rec. 5.
Financial institution secrecy or confidentiality (R.4)		
Description and analysis		
Several legal provisions establish civil, administrative and criminal sanctions for the breach of secrecy duties, both for public officials and private persons. In particular, the "banking law" (Decree-Law 9-1998) provides the following: (i) "the information about individual customers of a bank, obtained by the Superintendency in the exercise of its functions, can only be revealed to the competent authorities in accordance with the law and in the context of a criminal procedure;" (ii) "the banks can only disclose information about their customers (...) with the express authorization of their customers, except when there is a formal request from a competent authority in accordance with the law" (Article 85); and (iii) the violation of these provisions are subject to fines of up to $100,000, "without prejudice of the applicable civil or criminal penalties." Article 170 of the Penal Code, on the other hand, prescribes criminal sanctions of up to two years, fines equivalent to 150 days of salary and prohibition to exercise the trade or profession for two years, to the person who "because of his occupation, employment, profession or art, knows of secrets that could be harmful if revealed, and it reveals them without the agreement of the interested party or without the need to protect a higher interest." There are also special and aggravated provisions for public servants. An enhanced duty of secrecy with respect to trusts, which was established by Articles 20 and 21 of Decree 16-1984 (the securities supervisor could only disclose information in the context of criminal investigations initiated in Panamanian territory) was modified by Decree 213-2000 which allows the Superintendency to furnish such information to the competent administrative and judicial authorities. Also, an apparent limitation for banking supervisors to obtain information about numbered accounts contained in Article 5 of Law 18-1959 (which states that banks can only give that information to criminal judges) has been overridden by the provisions of Law 42-2000 ("the AML/CFT Law"), as described next. The professional or financial institution's secrecy described above does not, however, inhibit the implementation of the FATF Recommendations in Panama, neither domestically nor internationally. In the context of criminal investigations, competent authorities have unrestricted access to confidential information from any natural or legal person, and information can be shared with foreign countries through the normal mutual legal assistance procedures (please refer to the section on International Cooperation at the end of this report). For supervisory purposes, Law 42-2000 explicitly authorizes the competent supervisory and control agencies to "inspect the procedures and mechanisms of internal control of each of the legal persons and professionals that are subject to their supervision, in order to verify their compliance with the provisions of this Law" (Article 5). Access by the supervisors to the necessary information from reporting institutions was perceived, in practice, as unrestricted by all the authorities and the financial institutions met during the visit. The administrative authorities responsible for supervising compliance with AML/CFT requirements, as well as the UAF, have unrestricted access to any information kept by reporting institutions. Besides the general powers of inspection assigned to the competent supervisory and control agencies in their respective laws, Law 42-2000		

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contains provisions that override the confidentiality obligations imposed on reporting institutions (as described above), in the following situations:

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

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

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

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

Recommendations and comments
Not applicable

Compliance with FATF Recommendations		
R.4	Compliant	

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

Description and analysis

R.10:

Law 42-2000, Article 1, paragraph 9 establishes the main requirement for financial institutions to maintain for a period of at least five (5) years all customer transaction information and also documentation used to identify and validate the customer and account relationship, including information obtained from the customer when conducting transactions/operations on his/her own or on behalf of someone else. Article 7 of Agreement 12-2005 further requires that financial institutions maintain, for the same period of time, all documentation obtained through the due diligence process, documentation evidencing verification of source of funds, and any other documentation that allows for the reconstruction of an individual transaction, if necessary, covering the essential elements of Recommendation 10. All the documentation, as required by law and agreement should be available for inspection to SdB personnel.

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

However, because the supervisory authorities for insurance and savings and loans institutions, the SSRP and the BHN respectively, are not conducting AML/CFT supervision, compliance with record keeping requirements in

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these sectors may be lacking. It is important to note that in those instances where the insurance company is a subsidiary of a bank, the SdB, through its consolidated supervision approach provides limited oversight with respect to AML/CFT matters minimizing the risk.

SR VII:

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

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

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

Recommendations and comments

R. 10

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

Compliance with FATF Recommendations

R.10	Largely Compliant	Lack of supervision within the insurance and savings and loans sectors, does not provide for compliance with customer identification and record retention requirements. Limited oversight is provided by the SdB when insurance companies are subsidiaries of a bank, which mitigates some of the risk in the insurance sector.
SR.VII	Compliant	

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

Description and analysis

R.11

Article 1, paragraph 3 of Law No. 42, 2000 sets out the general obligation for financial institutions to pay special

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attention to any transaction/operation, regardless of amount. This obligation is further detailed in Article 10 of Agreement 9-2000 by way of a list of examples that includes transactions that are not consistent with the customers' profile, unusual transactions, and transactions reflecting a change in the usual pattern of activity. In Panama, this obligation is implemented by financial institutions by monitoring all unusual transactions, being the functional equivalent of large, or complex, regardless of the amount. Article 18 (1)(b)(iii) of Legislative Decree 5-2002 also establishes the obligation for financial institutions to report any transaction, including complex, large, or unusual without an apparent economic or lawful purpose. This Article also requires financial institutions to further examine the transactions and to maintain the related documentation for at least five years. All this information should be available to the supervisory/competent authorities.

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

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

In addition, officials from financial institutions visited confirmed that their management information systems generate reports for branch managers that identify customer cash transactions in/out over a period of time, wire transfers in/out, cashiers checks purchase, as well as withdrawals of cash from automated teller machines in foreign countries. There is no threshold requirement for the monitoring system. Training of staff on transactions that may be large, complex, or unusual is part of the overall internal control system and mandatory. In addition, their policy manuals include a list of examples of transactions to be alert to.

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

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

Although Article 1 of Law 42-2000 does not extend to insurance companies, brokers and agents, and savings and loans associations with respect to monitoring complex, unusual large transactions or unusual patterns of

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transactions the authorities indicated that the risk of complex and unusual transactions taking place within these sectors was minimal and although the insurance companies were not included in the Law, those insurance companies that were subsidiaries of a bank receive limited oversight by the SdB.

R.21

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

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

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

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

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

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AML/CFT regimes are prohibited. The application of Recommendation 21 to insurance firms and savings and loans associations is not applicable because insurance firms are prohibited by law from carrying out cross-border operations, and activities of savings and loans are domestic only.
Recommendations and comments
R.11 The SdB should provide further clarification to banks with respect to: • the obligation for ongoing monitoring for large, complex, and unusual transactions, not just those above a threshold; and • record retention requirements when monitoring complex, large, or unusual transactions. NOTE: Further clarification is now provided under Agreements 12-2005 and Agreement 12-2005 E (revising Agreement 9-2000, where appropriate). Law 42-2000 should be amended to extend its coverage to insurance companies, brokers and agents, and savings and loans associations to require them to: • pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose; • examine as far as possible the background and purpose of such transactions and to set forth their findings in writing; and • keep such findings available for competent authorities and auditors for at least five years.

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

Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)
Description and analysis
R.13 Article 1, numeral 5 of Law 42-2000 establishes the general obligation for financial institutions to report to the UAF any act (which includes attempted transactions), transactions or operations suspected of or linked to money laundering activities. In the context of money laundering activities, financial institutions are required to report suspicious transactions including trafficking or firearms, trafficking of humans, kidnapping, corruption, extortion, terrorism, theft, international trafficking of vehicles, or any crime against intellectual property in general. Although there is no reference to tax matters in Agreement 9-2000, banks are obligated to report suspicious transactions to the UAF, regardless. If a transaction gives rise to suspicion for what ever reason, there is the obligation to report to the UAF. There is no exemption from this requirement if also the transaction is otherwise considered to involve tax matters. Article 18(iii) of Legislative Decree 5-2002, which implements the international convention for the repression of the financing of terrorism, establishes the obligation on financial institutions to report promptly all transactions that are complex, large, unusual, or that have no apparent legal economic purpose, including those potential linked or related to terrorism or terrorist acts. The new Agreement 12-2005 of the SdB includes now the

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obligation to report suspicious transaction related to terrorism financing or any other illegal activity.

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

Numeral 5 also establishes the obligation for financial institutions to communicate to the UAF any transactions/operations considered suspicious of ML or linked to ML. The SdB under Agreement 9-2000, article 9, and the CNV under Agreement 4-2001 (modified by Agreement 1-2005), have established the implementing enforceable regulation and provided additional guidance as well as the obligations requiring their regulated entities to report to the UAF through their compliance officers transactions that appear suspicious. Article 10 of Agreement 9-2000 provides a list of examples of types of transactions that could be considered large, complex, unusual, or suspicious, including attempted transactions. Reporting of suspicious transactions should be performed within 60 days of identifying the suspicion. In addition, both the SdB and the CNV in their agreements provide examples of transactions that deserve additional attention as they could be linked or associated to transactions suspected of ML. Also, Article 11 of Agreement 9-2000 requires the SdB to report to the UAF suspicious transactions identified during the course of an inspection.

To comply with Legislative Decree 5-2002, institutions have established internal controls and developed/purchased IT systems and software to monitor unusual activities based on the pre-determined profile of the customer. As a secondary control, the systems in place are capable of matching (on real-time) against the list of persons or groups linked to terrorist activities provided by the UN counter terrorism committee . Interviews with senior management of the institutions visited validated that their systems are programmed to access the UN-counter terrorism committee list on line and conduct searches through their customer database to identify potential names, if any. If a name on the list is identified as a possible customer, then the institutions are required to prepare and forward a suspicious transaction report to the UAF with the supporting documentation. During 2005, the UAF has received a few STRs related to accounts of persons with names similar to those listed on the UN-counter terrorism committee and OFAC lists. With respect to these STRs, the UAF is currently verifying the information, as part of the analytical process.

In accordance with Law 42-2000, the reporting institutions are only authorized to send STRs directly to the UAF and not to the supervision and control authorities.

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

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

STRs for the Period 2001–2004

	2001	2002	2003	2004
Banks	708	341	315	581
Cooperatives	1		4	
Authorities	1			6
Exchange			2	126
Securities	1	2	8	2
Insurance	1			

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Casinos				4
Total	712	343	329	719
Total STR 2001-2004				2103

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

R.14

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

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

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

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

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

R.19

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

R.25

Agreement 9-2000 of the SdB establishes measures for the prevention of ML from taking place within the financial institutions (banks and trust companies). This agreement also provides typologies of transactions/operations that could require additional oversight and/or attention to determine whether they are suspicious or not. For example, the SdB periodically provides this type of information to financial institutions via Banking Circulars of persons, jurisdictions, activities that represent a primary concern with respect to money laundering and the financing of terrorism. Through these Banking Circulars, the SdB also communicates to financial institutions new trends and typologies as identified by FATF, providing direct link to the sites. In addition both the SdB and the CNV require their reporting entities to inform on a monthly basis, of any revisions to these lists or potential matches. Articles 10 and 11 of Agreement 12-2005 complements these measures by providing guidance with respect to transactions that

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have no apparent economic or lawful purpose, as well as the obligation to document in writing the findings and making this information available to the supervisory authorities. The CNV under Agreement 1-2005 has established similar preventive measures to prevent their entities from being used by criminals. However, some supervisory authorities (i.e., insurance and savings and loans associations) have not yet established implementing regulation to ensure that regulated entities report, not only currency transactions, but also unusual or suspicious transactions to the UAF.

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

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

SR.IV

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

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

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

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

Recommendations and comments

R. 13

Currently financial institutions are required to report transactions related to terrorism under a legislative decree, hence, the Agreement 9-2000 should be revised to specifically include the reporting of suspicious transactions related to terrorist financing, terrorist acts, or terrorist organizations, which is currently an obligation under Article

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18(1)(b)(iii) of Legislative Decree 5-2002.

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

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

R. 25

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

SR.IV

Supervisory authorities should take measures to establish the obligation on their financial institutions to report all transactions, including those suspected to be linked to terrorism, terrorist acts, or terrorist organizations.

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

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

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		FT, where the focus has been on complying with the cash reporting requirements.
Internal controls, compliance, audit and foreign branches (R.15 & 22)		
Description and analysis		
R.15 Articles 1(1), 1(7), and 1(8) of Law 42-2000 cover the requirements for reporting institutions to have in place the necessary policies, procedures, internal controls, and communication mechanisms to prevent ML; employee training for the customer due diligence, detection/identification of suspicious transactions and reporting obligations. In addition, Articles 5 and 6 set the obligation for the supervisory authorities to inspect the procedures and internal control mechanisms in place within the financial institutions to comply with the requirement of the Law. Supervisory authorities, under the power delegated by the Law, have developed implementing regulations to ensure regulated entities comply with the requirements of the law with respect to establishing effective control systems, measures, and practices. In the banking sector, Agreement 9-2000, Articles 4, 5, 6, 7, 8, 9, 10, and 13 establish the implementation requirements to comply with the Law. Agreement 8-2000, establishes the obligations on financial institutions to appoint a compliance officer at the senior management level with complete authority and independence for reporting and conducting day-to-day activities, as well as the functions and responsibilities for this individual, including training, reporting of STR, compliance with internal controls, and development of internal policies. In the securities sector, Law Decree 1-1999 sets the obligation for the securities reporting entities to designate a compliance office, at management level to ensure that brokerage houses, directors, officials, broker agents, and employees comply with the requirements of the law and regulations. Furthermore, the CNV, under Agreement 9-2001, establishes the requisites, responsibilities, and functions of the compliance officer. The Agreements also set the obligation for financial institutions to establish the structure that will adequately support the activities of the Compliance Officer, taking into account the nature and volume of the activities of the institution. Agreement 9-2000 stipulates that the banks shall have in place a handbook/manual covering and explaining the "know-your-customer" policies of the bank and this manual shall be updated periodically. The manual shall be customized taking into account the level of complexity of the activities of the banks and shall include different types of customers. The manuals shall also take into account the probability of risk for an illegal transaction to be linked to the accounts and transactions of their customers. Article 5 of Agreement 1-2005 of the CNV establishes similar obligations to reporting institutions with respect to "know-your-customer" policies. It is also a requirement for Banks to deliver, at least once a year, training to all bank staff on the procedures related to the requirements for ensuring compliance with the Agreement. Article 13 of Agreement 1-2005 establishes the obligation on reporting institutions to provide training to their staff in AML/CFT matters. At a minimum, the staff should receive training annually and the compliance officer should receive at least training twice a year through courses, workshops, seminars, or conferences. The training should be deliver with the following objectives: i) communicate, revise, and update staff on AML/CFT policies, procedures and norms; and ii) ensure compliance with and implementation of the requirements of the AML/CFT law and related agreements. Agreement 10-2000 (which modifies Agreement 8-2000) establishes the obligation of the Compliance Officer for banks and the obligation to have a compliance training program customized to the organization, structure, resources, and complexity of the operations of the institution. Article 2 highlights that the CO should have the authority and independence to implement and administer the compliance program within the institution., as well as the authority to implement corrective actions. Article 7 highlights the functions of the CO within the bank, including: a) providing guidance to the bank in the development and implementation of internal policies designed to prevent risks, including ML; b) organizing training for bank staff and reporting of suspicious transactions to the FIU in matters linked to ML; c) Communicating at all levels throughout the bank the requirements of the law and implementing regulations established by the Panamanian authorities as well as the internal bank procedures related		

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to the compliance program of the bank.

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

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

Agreement 4-2001 covering corporate governance establishes the auditing requirements. Article 7 covers the surveillance of the internal control system, delegating responsibility to the internal audit function of the bank for the assessment and ongoing monitoring of the internal control system. It requires the internal audit function to be independent from the board of directors, through an internal audit committee, which should meet frequently. With respect to operational aspects, the internal audit function shall be granted the authority to assess bank's level of compliance with risk management policies/practices as established, individually and on a consolidated basis, that could impact the bank. Agreement 4-2001, Article 20 sets the obligation for financial institutions (banks and trust companies), through their Board of Directors to consider the selection (which includes screening, recruiting and hiring measures) and promotion of staff, based on aptitude and professional merits, as well as on the professional improvement of the staff and the implementation of measures ensuring the mitigation of risks derived from professional inadequacy or dishonesty. Interviews with institutions visited revealed that the internal procedures in place for screening, recruiting, and hiring procedures appear adequate and provide for effective measures and controls with respect to selecting their employees. In addition, some of these financial institutions stated that they also conduct background checks on individuals seeking employment (both permanent and temporary), including requesting from the individuals their police records (expediente policivo) and conducting independent investigations, if needed. The adequacy of those procedures, systems and mechanisms is validated by the competent authorities, which in some cases have proposed corrective action(s), in accordance with the feasibility of operations of the institutions. The policy and implementation is reviewed by the SdB through the on-site inspection process.

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

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

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

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

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

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

R.22

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

In addition, through the licensing process (under Article 12 of Agreement 3-2001), the SdB requires and ensures that financial institutions satisfy all the licensing requirements to operate in Panama including, having policies, procedures, and internal control systems in place to address potential risk of money laundering and the financing of terrorism before the banking license is granted. These requirements apply to foreign branches and subsidiaries. Also as part of the licensing process, the SdB requires financial institutions to comply with the higher standards, including AML/CFT and allows the SdB to contact the supervisory/competent authorities abroad when deficiencies in the system/regime are of concern to the SdB. In practice and prior to granting the license, the SdB verifies that foreign branches and subsidiaries have appropriate measures for AML/CFT, as well as for safety and soundness, consistent with the Panamanian requirements. The implementation of these requirements is validated by the SdB during its on-site consolidated supervision process, which complements its licensing process that policies, procedures, and practices remain consistent. As an additional measure, the SdB makes it a requirement to execute a Memorandum of Understanding to facilitate the inter-institutional cooperation, exchange of information, and on-site inspection of the bank, foreign branches or subsidiaries, which allows the SdB to require the financial institutions to apply a higher standard with respect to branches and subsidiaries in countries with weak AML/CFT regimes or insufficient application of the FATF standard. The consolidated supervision process, which is a requirement for foreign branches or subsidiaries for obtaining a license, gives the SdB the ability to conduct the supervision on its own or jointly with the local supervisor. In this context, inspections are conducted using the higher standards, as permitted by local laws and regulations.

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

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

Recently, the SdB identified through its consolidated on-site inspection process that AML/CFT measures in one of their financial institution (with foreign subsidiaries) needed to be strengthened. In this instance, the SdB report of

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examination included recommendations to address the deficiencies and required the Panamanian institution to report the status of the corrective action. The SdB is monitoring the strengthening efforts.

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

Recommendations and Comments

R.15

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

R.22

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

Compliance with FATF Recommendations

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

Shell banks (R.18)

Description and analysis

R.18

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

Although there is no specific obligation that prevents the establishment of correspondent banking relationship with shell banks, nor is there a requirement that financial institutions satisfy themselves that respondent financial institutions in a foreign country not allow their accounts to be used by shell banks, the SdB does not license shell

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banks. The SdB will provide further guidance in this area when revising the Agreement 9-2000.

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

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

Recommendations and comments
None

Compliance with FATF Recommendations		
R.18	Compliant	

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

Description and analysis

R.17

Article 8 of Law 42-2000 establishes the administrative sanctions for noncompliance with the requirements of the Law. These sanctions are imposed by the supervisory authorities on their own or at the request of the UAF. Sanctions for noncompliance include fines ranging from B5,000 to B1,000,000, based on the severity of the violation and the frequency of these violations. These sanctions are applicable to the officers, directors, senior management, administrative or operational personnel of the legal entities, as well as to the legal entities. In addition, the persons conducting such acts of noncompliance are subject to civil penalties as prescribed by the law. Under Article 1 of Executive Decree 1-2001, which implements Law 42-2000, also establishes the obligation for the supervisory authorities to impose sanctions on reporting institutions for noncompliance with the requirements of the Law and makes specific reference to the sanctions established under Article 8 above. The sanctions for noncompliance with Law 42-2000 and Executive Decree 1-2001 are imposed on natural persons, as well as legal entities.

The SdB has adequate sanction and enforcement powers ensure financial institutions and individuals comply with the requirements of the Law and Agreements. The sanctions available to the SdB range from reprimand, fines, suspension, removal, intervention, and in extreme circumstances the revocation of the banking license. Compliance with the Law and Agreements is tested by the SdB during the on-site inspections.

For the CNV, Law Decree 1-1999 regulates the capital market and delegates to the CNV the powers to impose sanctions/penalties for violations of the Law and/or noncompliance with the requirements of the Law. When imposing sanctions/penalties, the CNV should take into consideration the level of noncompliance or the severity of the violation, as well as the frequency of noncompliance/violation. The Decree also established the powers to suspend or revoke the license granted to a brokerage house, an investment administrators, principal, stock brokers or analyst. Also, the powers to prohibit and/or reprimand principals, stock brokers or analysts, and brokerage houses.

Although the sanctions and enforcement powers available to the SdB and CNV appear adequate, the lack of supervision identified within the other supervision and control bodies, the SSRP and the BHN, respectively, makes

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it difficult to assess the effectiveness of their sanction and enforcement powers.

R.23

Law 42-2000, Articles 5 and 6 designate the supervisory authorities with responsibilities over AML matters and also establish the obligation on the supervisory authorities to conduct inspections to ensure that reporting entities comply with the requirements of the Law. Executive Decree No. 1-2001, which implements Law 42-2000, establishes the competent authorities for supervision and control and the obligation of these authorities for ensuring compliance by reporting entities. The SdB has issued Agreement 9-2000 as the enforcing regulation for banks to prevent ML within the banking system. CNV Agreement 5 of 2005, Article 14, numeral 4, encourages investment advisors to designate and/or appoint a person to monitor this area, to act as a Compliance Officer, although this is not required under Law 42 - 2000.

In addition, Agreement No. 1-2005 of the CNV establishes the code of conduct for brokerage houses, agents, investment advisors, and administrators for the prevention of ML in accordance with Law No. 42-2000. This same Law vests the CNV with the responsibility and obligation to effect supervision over the entities mentioned earlier and to impose the necessary measures to prevent ML activities. Decreto Ley No. 1-1999 establishes the requirements for granting a license including measures designed to prevent criminals from holding a controlling interest in an investment entity.

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

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

R.29

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

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

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conducted.

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

R.30

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

Recommendations and comments

R. 17

In order to assess the effectiveness of the sanctions and enforcement powers of the SSRP, as the sole supervisor of the insurance sector, the SSRP needs to strengthen its overall AML/CFT supervisory function and processes to ensure that on-site inspections are conducted in a timely and frequent manner. The authorities should also amended the Law 42-2000 to extend the obligations to the BHN, as the supervisor for the savings and loans associations sector. As indicated in other parts of this assessment, these institutions are not subject to AML/CFT inspections by the BHN.

R. 23

The supervisory authorities for insurance and savings and loans need to develop the necessary supervisory tools to conduct effective supervision as required by the AML/CFT law. The supervisory tools should take into account the risks facing the institutions as well as the overall risk profile in relation to money laundering and the financing of terrorism issues.

The supervisors for insurance and savings and loans sectors should also focus on evaluating the adequacy of internal control systems in place, risk management practices, board oversight and involvement, as well as those requirements to comply with the law and enforcing regulations. The goal is to ensure that the institution's risk management systems in place are performing as intended.

R.29

The supervisory authorities, especially for insurance and saving, loans, and remittances should conduct AML/CFT inspections, as required by law and implementing regulations. Supervisory authorities should also establish a formal inspection program to ensure that all institutions, or those identified as posing the greatest risk to the system, received timely and effective supervision. Supervisors should also consider implementing a risk-based approach culture to maximize current resources available. The AML/CFT approach should focus on evaluating the internal control systems and measures in place to deter and detect money laundering and the financing of terrorism, including suspicious or unusual activities.

R.30

The supervisory authorities need to re-assess the manner in which they conduct AML/CFT compliance inspections

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to ensure that they have the necessary resources, including human, financial, and technical. Some supervisory authorities with responsibility over entities in the financial sector do not have a trained pool of supervisors to conduct effective supervision. In other cases, the number of regulated entities is overwhelming when compared to the number of supervisors available. Against this background, it is important that the supervisory authorities consider adopting a risk-based supervisory approach or methodology to effectively identify, measure, control, and monitor risk within their institutions. This approach will also assist the authorities in prioritizing resources and developing an adequate scope for AML/CFT inspections.		
Compliance with FATF Recommendations		
R.17	Largely Compliant	Sanctions and enforcement powers available to the SdB and CNV and in force appear adequate However, limited supervision by the SSRP and lack of supervision by the BHN, within their respective sectors, raise concerns with respect to the ensuring compliance with the requirements of the AML Law and evaluating effectiveness of their sanctioning powers.
R.23	Largely Compliant	There is concern about the quality of licensing process and fit and proper test performed when applying for a license (insurance, savings, and loans). Competent authority in the insurance industry relies heavily on the comments/observations of the UAF, while the measures in place for savings and loans are based on providing the necessary documentation as required by law in order to obtain a license. In addition, although AML/CFT supervision in banking, securities, and cooperatives appears adequate, there is no AML/CFT supervision taking place in the insurance and savings and loans areas. The supervisory agencies in these areas lack the expertise, resources, and supervisory tools to conduct inspections and understand money laundering and the financing of terrorism risks.
R.29	Largely Compliant	Although AML/CFT supervision in banking, securities, and cooperatives appears adequate, there is no AML/CFT supervision taking place in the insurance and savings and loans areas. The supervisory agencies in these areas lack the expertise, resources, and supervisory tools to conduct inspections and understand money laundering and the financing of terrorism risks.
R.30	Largely Compliant	Effective supervision to ensure compliance with the AML/CFT law and implementing regulation is not taking place in all areas. The main constraint is the limited resources available in light of the increasing number of reporting entities. Considering the number of regulated entities, a risk-based supervisory approach should be adopted to effectively identify risky institutions, resources needed, and scope of inspections to be conducted.
Financial institutions–market entry and ownership/control (R.23)		
Description and analysis		
R. 23 The process of licensing a financial institution in Panama is established under several laws, including the Banking Act, the Securities Act, the Insurance Act, the Cooperatives Act, etc. Measures in place also include performing "fit and proper" tests of owners/beneficial owners and senior management, interviews, review of business, strategic and operational plans, obtaining references, physical inspections of premises, as well as contacting counterparts abroad for that application coming from other jurisdictions. As an additional measure, the UAF solicits feedback, to ascertain whether there is any criminal record (expediente policivo). Individuals with criminal background cannot establish a financial institution in Panama.		

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The final approval decision remains with the respective supervisory authority.

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

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

Recommendations and comments

R.23

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

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

Compliance with FATF Recommendations

Recommendations and comments

R.23

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Compliance with FATF Recommendations

Recommendations and comments

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

AML/CFT Guidelines (R.25)

Description and analysis

The SdB has issued guidelines instruction financial institutions on the requirements for effective implementation of AML/CFT measures. Law 42-2000 requires financial institutions to establish procedures and internal control mechanisms, including communication standards, designed to prevent ML. The adequacy of these mechanisms and procedures is evaluated by the SdB during on-site inspections. The SdB also has in place a reporting mechanism for communicating to financial institutions money laundering and financing of terrorism techniques or new trends. This includes issuing Banking Circulars to reflect persons, jurisdictions, activities that represent a primary concern with respect to money laundering and the financing of terrorism. Through these Banking Circulars, the SdB also

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communicates to financial institutions new trends and typologies as identified by FATF, providing direct link to the sites. In addition both the SdB and the CNV require their reporting entities to inform on a monthly basis, of any revisions to these lists or potential matches. Articles 10 and 11 of Agreement 12-2005 complements these measures by providing guidance with respect to transactions that have no apparent economic or lawful purpose, as well as the obligation to document in writing the findings and making this information available to the supervisory authorities. The CNV under Agreement 1-2005 has established similar preventive measures to prevent their entities from being used by criminals. However, some supervisory authorities (i.e., insurance and savings and loans associations) have not yet established implementing regulation to ensure that regulated entities report, not only currency transactions, but also unusual or suspicious transactions to the UAF.

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

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

Recommendations and comments

R. 25

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

Compliance with FATF Recommendations

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

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

Description and analysis

R.23

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

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

R.29

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The supervisory authorities have all the powers and authority under Articles 5 and 6 of Law 42-2000 to conduct inspections of financial institutions to ensure compliance with the AML Law. The supervisory authorities delegated with responsibility for ensuring compliance with the AML Law are listed on Paragraph 11 of this report. All supervisory authorities have access to information without requiring a court order. Although some of these supervisory authorities have adopted and are currently conducting risk-based supervision (mostly banks and securities supervisors), others conduct "compliance-based" supervision, which only determines whether the institution is complying or not with the requirements of the law and regulations. The supervisory authorities also have powers to compel production of documents, as well as access to all types of customer information, as necessary. Interviews with management of financial institutions visited revealed that the SdB, the CNV, and the IPACOOP are conducting on-site visits on a periodic basis and consider the scope and coverage adequate. Evidence of the quality of supervision was validated by the BCP assessment of the banking sector, which reflected adequate supervisory powers and adequate supervision. The assessment of the securities sector, under the IOSCO Principles, also revealed adequate supervisory powers and supervision of the sector. However, the assessment of the insurance sector, under the IAIS Principles identified supervisory shortcomings, including weak supervision. Powers for enforcement and sanctions for noncompliance are explained under R.17 and are applicable to both, natural and legal persons. Although the obligation to inspect reporting entities to ensure compliance with the law is granted to the supervisory authorities within the financial system, there is no AML/CFT supervision taking place in the insurance and savings and loans areas. The supervisory agencies in these areas lack the expertise, resources, and supervisory tools to conduct inspections and understand money laundering and the financing of terrorism risks. For those insurance companies that are subsidiaries of banks, the SdB provides limited oversight through its consolidated supervision approach. **R.32** Supervisory authorities develop an annual inspection program and maintain statistics of the inspections performed in both the prudential and AML/CFT matters. Supervisors also maintain records/statistics of sanctions reported to the UAF or coming from the UAF for noncompliance with AML/CFT laws and regulations. However, a similar supervisory program is not in place for the insurance and savings and loans sectors. Inspections in these areas are limited to reviewing compliance with currency reporting.
Recommendations and comments
R.23 Supervisors for the insurance and savings and loans sectors need to strengthen overall supervisory frequency and practices as required by the standards. **R.29** Supervisory authorities for the insurance and savings and loans sectors need to effectively use the supervisory powers granted under the AML/CFT law to carry out their supervisory responsibility for ensuring compliance by reporting institutions with requirements to prevent ML and combat FT. **R.32** Competent authorities in Panama need to create a process for sharing statistical information and statistics to ensure that information on the effectiveness and efficiency of the AML/CFT regime in Panama can be reviewed and measures for enhancing the regime established, if needed.
Compliance with FATF Recommendations

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

Money or value transfer services (SR.VI)

Description and analysis

SR.VI

In Panama, money or value transfer services are conducted by banks and money remittance services. These institutions are already covered by Law 42 – 2000, which imposes the full range of obligations in line with the FATF requirements. Regarding licensing, both are required to be licensed and are supervised by the SdB and the MICI, respectively. Implementation of control and preventive measures for remittances within the banking system is considered adequate.

Money remittance services provided by businesses other than banks and the national post service (which have their own laws), are regulated by Law 48-2003. The applicant for a license must furnish (through an attorney) an application before the Directorate of Finance Companies of the MICI with his identification details (or those of the company's directors), a business plan and evidence of a minimum capital of $50,000, among other requirements. Article 6 of Law 48-2003 requires that the MICI undertakes a due diligence process "to verify the veracity of the information." Licensees pay a one-time application fee and an annual "fiscalization fee" which are exclusively destined to cover the expenses that this activity entails for the MICI. The licensees and the representatives of money remitters must be domiciled in Panama.

Licensed money remitters are authorized to operate through intermediaries or "sub-agents" (a business model not yet common in Panama), and the MICI maintains a registry of all of them, including a copy of each contract between a money remitter and his sub-agent.

In 2004 the MICI issued Resolution 328 which describes in more detail the requirements for non-bank money remitters with regards to identification of customers, reporting of suspicious transactions and filling of cash-transaction reports. However, implementation of suspicious transaction requirements is still weak, as most reports prepared by this businesses have been based only on the established cash-threshold, with little attention given to suspicious transactions. Additionally, the amount of $10,000 appears too high given that, according to industry representatives, most transactions are below $300. In practice, the major remittance business licensed in Panama is already requesting customers to complete the CTR form for amounts much lower than the legal threshold.

The customer identification requirements issued by the MICI, appear to be adequately implemented and supervised. However, other aspects of the preventive systems revealed an excessive reliance on cash-thresholds for the detection and reporting of transactions with little attention given to assessing the overall AML/CFT policies, training or internal controls both by the money remittance businesses and the MICI. This is likely due to resource constrains at the Directorate of Finance Companies and to lack of training of its auditors in this area which was

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regulated only recently. The non-bank money remittance industry in Panama is relatively small. Only six money remitters have been licensed. During 2004 they paid approximately $104 million in remittances from abroad and sent $72 million. Except for concerns about the large amounts of cash carried into Panama by travelers for their purchases at the Free Zone of Colon (discussed in the appropriate sections of this report), there are no indications of a significant informal or alternative remittance system. Such a system would be illegal in Panamá (given the need for a license) and Law 48-2003 provides for appropriate sanctions for illegal remitters (articles 31 and 32) and for breach of the licensee's obligations (articles 29 and 30).
Recommendations and comments
SR.VI Consideration should be given to adjusting the threshold amount for filing currency transaction reports to provide the UAF with useful information for the detection of structured transactions in the remittance area. Priority should be given to enhancing the auditing capabilities of the Directorate of Empresas Financieras of the MICI which is responsible for overseeing compliance by remittance businesses. The current plans within the framework of the National Project for Transparency constitute a good step in that direction, and should be accompanied by efforts to evaluate the risk management systems, internal controls, and record keeping systems in place for monitoring suspicious or unusual transactions. The authorities responsible for overseeing compliance need training on issues of AML/CFT specific to the remittance industry.

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

Preventive Measures–Designated Non-Financial Businesses and Professions

Customer due diligence and record-keeping (R.12)
Description and analysis
Overview: There are three categories of "designated non-financial businesses and professions" (as defined by FATF) which are subject to various degrees of AML/CFT regulations in Panama. These are trust service providers, casinos and real estate agents. The DNFBPs that are not subject to AML/CFT laws or regulations are: company service providers, dealers in precious metals and stones, accountants, lawyers, notaries and other independent legal professionals. The authorities have not undertaken an explicit review of the level of risk in any of these sectors. With respect to casinos and real estate agents, Law 42 - 2000 (article 7) only requires them to report cash -and cash equivalent- transactions above $10,000 and to keep records of them (regulatory authorities are empowered by Law 42-2000 to lower the threshold and they did so for casinos). Other basic requirements, especially the basic obligations under FATF Recommendations 5, 10 and 13 to identify customers, keep adequate records and report suspicious transactions, were introduced by the regulatory authorities of these sectors. The Executive Decree No. 1 of 2001, which regulates Law 42 - 2000, designates the competent authorities for all reporting institutions. This decree empowers the authorities to "adopt measures for the reporting institutions

Preventive Measures–Designated Non-Financial Businesses and Professions

under their regulation and supervision which contribute to fulfilling the objectives of Law 42 - 2000" (article 5). Given that the law only establishes a CTR requirement for these two categories of DNFBPs, there is a loophole in the authority of the MICI and of the Gaming Board to create additional obligations and to impose sanctions for lack of compliance.

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

DNFBPs that are subject to AML/CFT obligations

Casinos:

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

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

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

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

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

With regards to fit and proper tests prior to the issuance of a casino license, Decree-Law No. 2 of 1998 (article

Preventive Measures–Designated Non-Financial Businesses and Professions

42) and Gaming Board's Resolution 92 of 997 (article 5) establish the Board's obligation to perform background checks of the applicants (and of any owner of more than 10 percent of a casino). However, according to information provided during the mission's interviews with the authorities, the Gaming Board relies excessively on consultations with the UAF which is not in a position to provide all the necessary information. Neither the Gaming Board nor the UAF are considered "competent authorities" under the law to obtain the criminal record of any person.

There is a very low level of suspicious-transaction reporting by casinos: only four STRs were filed in 2004, which raises questions when compared to the large size of that industry.

Real estate businesses:

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

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

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

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

Trust service providers:

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

DNFBPs not subject to AML/CFT obligations

Dealers in precious metals and stones:

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

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Notaries:

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

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

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

Company Service Providers:

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

Lawyers:

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

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

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

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

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

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

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

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

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

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

Accountants:

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

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

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Recommendations and comments
Establish the legal obligation of lawyers and accountants to comply with appropriate AML/CFT measures when they engage, on behalf of their customers, in any of the activities described in FATF R.12. Impose identification, reporting, and record-keeping requirements for all dealers in precious metals and stones. Provide guidance to DNFBPs for the graduation of their customer due diligence procedures according to the specific risks and nature of each activity. Review the legal framework applicable to all DNFBPs to make sure that the regulations issued by each competent authority are supported by clear legal powers and are enforceable.

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

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

Description and analysis
There are preventive obligations for casinos and other gaming businesses established in Resolutions 29, 286 and 373 of 2003 of the Gaming Board. Also, for real estate agents in Resolution 327 of 2004 of the MICI. These regulations contain comprehensive AML/CFT requirements which include identification of customers, internal controls, record-keeping obligations (5 years), reporting of cash transactions above $10,000 and of suspicious transactions, regardless of value. However, as explained before, the legal basis for the AML/CFT obligations of DNFBPs, other than reporting cash transactions, is not clear. Law 42 - 2000 does not include any of these institutions among those listed in Article 1 which are subject to the full range of AML/CFT obligations (especially customer due diligence and reporting of suspicious transactions, as required by FATF R.12). Article 7 only establishes the obligation of gaming businesses and real estate agents and promoters to file CTRs, but not to detect and report suspicious transactions. Implementation and supervision of these measures has also been excessively focused on the filing of CTRs above $10,000, as reflected in the meager amount of suspicious transaction reports received from these sectors. Specifically, with regard to casinos, the current $10,000 reporting threshold which triggers CTR and customer due diligence controls does not comply with the $3,000 threshold recommended by FATF. The office of the MICI responsible for overseeing real estate agents has no personnel available to perform fiscalization of this businesses. On the other hand, the Gaming Board has a reasonable number of auditors and inspectors, but little attention is given to AML/CFT matters in their inspection procedures and during their visits. Several casino operators interviewed reported that some customers often claim that other casinos normally don't bother them with identification procedures regardless of the amount and are able to threaten to take their business

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to the competition. The actual policy among casino operators still seems to be that identification and CTR-filing is only mandatory above the $10,000 threshold (without regard to Resolution 31 of 2003, which requires them to consolidate and report multiple operations of $2,000 or higher made by a single customer during a one-week period).

Recommendations and comments

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

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

Compliance with FATF Recommendations

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

Suspicious transaction reporting (R.16)

Description and analysis

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

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

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

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

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

Recommendations and comments

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

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

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

Compliance with FATF Recommendations

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

Internal controls, compliance & audit (R.16)

Description and analysis

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

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

Recommendations and comments

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

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

Compliance with FATF Recommendations

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

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

Description and analysis

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

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enforceable regulations.

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

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

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

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

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

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

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

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

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

Recommendations and comments

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

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

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

Compliance with FATF Recommendations

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

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

Description and analysis

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

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

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

Although many report monthly to the UAF (through the Administration of the ZLC) that there are no cash transactions to report, there is little oversight in place to sanction underreporting. The sanctions applicable for failing to file a CTR would be those prescribed in article 8 of Law 42-2000 (as is the case with all other reporting

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institutions).

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

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

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

Recommendations and comments

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

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

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

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

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

Compliance with FATF Recommendations

R.20	Largely Compliant	Regulations need to address sector specific risks. CTR and other requirements for ZLC are still insufficiently implemented despite major risks being identified. New AML/CFT law for pawn shops not yet implemented.

Legal Persons and Arrangements & Nonprofit Organizations

Legal Persons–Access to beneficial ownership and control information (R.33)
Description and analysis
There are several types of corporate associations or companies in Panama, ranging from individually-owned companies, to limited liability companies and bearer-share companies, the latter being the most predominant. The lack of detailed statistics about the number and type of companies registered every year, limits the authorities' ability to adequately address the different risks that this activity entails. Bearer share companies are used both for local and offshore purposes, so there is not a special category of International Business Company in Panama. All companies, including bearer-share companies are subject to the same incorporation requirements, including the obligation to have a resident agent and of being registered in the Public Registry, which is regarded as efficient and reliable with respect to information on companies. At the time of registry disclosure is made of the identity of directors and resident agents only, while disclosure of the identity of shareholders is not required. Any change of these officers needs to be updated in the Public Registry in order to have effect in contracts with third parties. According to Law 32 of 1927, only lawyers can draft the contract to incorporate a company and request its notarization for the incorporation of companies. The same requirement is applicable to any minutes that need to be registered in the public registry. Therefore, Corporate Service Providers are mostly a separate sub-category of the legal profession in Panama. As explained in the section on DNFBPs, accountants can only provide those services in conjunction with the legal services of a lawyer. Lawyers, in turn, are not subject to any AML/CFT requirement even when acting as company service providers. Lawyers expressed not having difficulty in obtaining information about the beneficial owner of any company whose shareholder is a Panamanian resident. However, access to that same information is very limited in the case of bearer-share companies incorporated in Panama whose shareholders are foreign residents or companies domiciled abroad. Reportedly, this occurs because foreign customers are normally represented by foreign law firms who fear that their customers may be enticed to deal with the Panamanian law firm directly. In many cases lawyers get to know only the identity of their immediate correspondent counterparts in a different country (usually a lawyer or another type of company service provider and not the real owner of the company being incorporated). Some areas of the Panamanian system partially mitigate the risk of legal persons being used for money laundering and the financing of terrorism purposes, namely: i) banks' strict customer due diligence practices with respect to legal persons: this is immaterial if the Panamanian system is used in the layering, not the placement, state of an international ML scheme; ii) the availability of some information (described above) in a centralized public registry; iii) the unrestricted access of judiciary authorities by court order (in the context of a formal investigation) to the records of any company, its resident agent or any service provider; and iv) the fact that all companies are required to have a resident agent and the obligation imposed by Decree 468–1994 on resident agents to know the customer and to keep his data on record. As noted before, this requirement has the following limitations: no evidence of implementation by the private sector or supervision from the Government; no legal obligation for service providers to get to know the real beneficiary of the companies that they incorporate, and access to information potentially limited to drug-related investigations. However, the existence of bearer shares constitutes, by nature, a significant limitation to the proper identification of customers by banks and other reporting institutions, as well as by judicial authorities. This is

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compound by other aspects of the Panamanian corporate legislation, such as the following:

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

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

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

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

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

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

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

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

Recommendations and comments

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

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

Compliance with FATF Recommendations

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

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

Description and analysis

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

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

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

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

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

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

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

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

The mission considers it unlikely that, in these cases, a fiduciary company will report any suspicious transaction involving the grantor of a trust to whom its affiliated law firm owes a duty of confidentiality. In practice, no STRs have been reported by any fiduciary company to the UAF.

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

Legal Persons and Arrangements & Nonprofit Organizations

In brief, the fact that there are some fiduciary companies owned by law firms which are not subject to any reporting obligations, neither to supervision, poses practical and legal obstacles for full compliance with AML/CFT requirements of trust service providers.		
Recommendations and comments		
Same as Recommendation 33 (make lawyers subject to AML/CFT requirements)		
Compliance with FATF Recommendations		
R.34	Largely Compliant	AML/CFT requirements on trust service providers may be turned inapplicable when the client of a law firm is also the client of a trust service providers (fiduciaria) which is owned and controlled by that law firm. Effective supervision is also hampered in these circumstances Although there is a reporting obligation for trust service providers (fiduciaries), implementation remains weak.
Nonprofit organizations (SR.VIII)		
Description and analysis		
Nonprofit organizations and commercial companies are subject to very similar requirements, mainly, the intervention of lawyers and the obligation to be registered, although registration is administered the Ministry of Justice instead of the Public Registry of Companies. In addition, they must file a petition with the Ministry of Justice to obtain their legal personality and the procedure amounts to the granting of a license which can be revoked, albeit under very limited circumstances (Executive Decree 160 of 2000). NPOs are not subject to any AML/CFT requirements, except for the fact that Article 3 of Law 50, 2003 requires them to document and maintain a book of the identity and source of all donations received. The Ministry of Justice is currently unable to determine how many NPOs have been licensed in Panama, what their activities are and the level of money laundering and the financing of terrorism risks associated to the numerous NPOs (and NGOs) in Panama. However, they are concerned that the sector is being misused for tax evasion and fraud. Therefore, the Ministry has made significant advances in gathering information that will allow them to enhance their oversight and define what strategy to follow, including strengthening of regulation and oversight. Before this report was concluded the authorities issued Decree 524 of 2005, which entered into force in November 2, 2005. Reportedly, said decree grants powers to the Ministry of Justice to revoke the legal personality of associations and foundations and creates the obligation to be registered. However, the assessors did not have the opportunity to evaluate the formal adequacy of this new decree or its relevance to overcome the present difficulties.		
Recommendations and comments		
Priority should be given at the Ministry of Government and Justice to creating a database and registry (inventory) of these organizations, assessing their risks and, depending on the results of the assessment, updating the regulatory framework to include CFT regulations and oversight of these entities.		
Compliance with FATF Recommendations		
SR.VIII	Partially Compliant	The Ministry of Justice has just began to create a database of the licensed NPOs in order to be able to assess the risk in this sector and enhance its oversight. Law 50, 2003 (article 3) has not been implemented.

National and International Cooperation

National cooperation and coordination (R.31)

Description and analysis

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

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

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

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

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

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

Under the Ministry of Foreign Affairs, the Department of Analysis and Study Against Terrorist Activities was created through Executive Decree No. 59 of June 15, 2004. This department serves to protect and serve national and world security. The object of this cooperation is to develop formal links to each ministry's

specialized directorates and to define responsibilities and participation in carrying out the national security agenda. Among the cooperation projects are:

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

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

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

Recommendations and comments

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

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

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

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

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

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

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

Compliance with FATF Recommendations

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

The Conventions and UN Special Resolutions (R.35 & SR.I)

Description and analysis

Panama is a member of the United Nations and has taken steps to ratify numerous treaties:

Panama passed Law 20 of December 7, 1993 approving the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention). Published in Official Gazette No. 22,429 of December 9, 1993.

Panama ratified the United Nations Convention Against Transnational Organized Crime (Palermo Convention) by Law 23 of July 7, 2004.

Panama ratified the International Convention for the Suppression of the Financing of Terrorism by Law 22 of May 9, 2002.

To give effect to its international commitment to combat terrorism and FT, Panama passed Law 50. This adds Chapter VI entitled Terrorism to Title VII, Book II of the Penal Code, and established other dispositions with regard to terrorism.

Panama has signed Mutual Legal Assistance and Cooperation Treaties since 1991 with several countries throughout the world. These treaties target the prevention and suppression of the crimes of drug trafficking and include crimes punishable in the signatory countries that arise out of, result from, are related to, or involve illicit activities involving drug trafficking, theft, violent crimes, fraud, violation of the law of any of the signatory states related to cash or other financial transactions.

In 2002, Panama, Colombia, Venezuela, and the United States of America signed a cooperation agreement to combat the black market economy and to prevent ML.

The United Nations Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children was approved by Law 23 of July 7, 2004 and went into effect in Panama on July 16, 2004.

Panama has also ratified the following conventions and treaties:

1. Inter-American Convention Against Terrorism: adopted on June 3, 2002, in Bridgetown, Barbados. Approved by Law No. 3 of December 2002. Published in Official Gazette No. 24,943 of December 9, 2003. Went into effect in Panama on February 19, 2004.
2. International Convention for the Suppression of the Financing of Terrorism. Adopted December 9, 1999 in New York, United States of America. Approved by Law No. 22 on May 9, 2002. Published in Official Gazette No. 24,551 of May 14, 2002. Went into effect on August 2, 2002.
3. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf: Adopted on March 10, 1988 in Rome, Italy. Approved by Law No. 21 of May 9, 2002. Published in Official Gazette No. 24,220 of May 14, 2002. Went into effect on October 1, 2002.
4. International Convention for the Suppression of Terrorist Bombings: Adopted December 15, 1997 in New York, United States of America. Approved by Law No. 89 of December 15, 1998. Published in Official Gazette No. 23,703 of December 31, 1998. Went into effect on May 23, 2001.
5. Law 14 of March 13, 2002: Published in Official Gazette No. 24,512 of March 15, 2002. Approves Statute of Rome of the International Criminal Court.
6. Law 61 of December 5, 2001: Published in Official Gazette No. 24,447 of December 7, 2001. Approves Agreement between the Republic of Panama and the Government of the State of Israel on Cooperation in Combating Illicit Trafficking and Abuse of Narcotic Drugs and Psychotropic Substances and Other Serious Crimes.

7. Convention on the Safety of United Nations and Associated Personnel: Adopted on December 15, 1994 in New York, United States of America. Approved by Law No. 14 of January 3, 1996. Went into effect on January 15, 1999.

8. Convention on the Physical Protection of Nuclear Material: Adopted on March 3,1980, in Vienna, Italy [sic]. Approved by Law No. 103 of December 30, 1998. Published in Official Gazette No. 23,715 of January 19, 1999. Went into effect on May 1, 1999.

9. Law 20 of December 7, 1993, approving United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Went into effect on May 1, 1999. (Vienna Convention). Official Gazette No. 22,429 of December 9, 1993.

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

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

Recommendations and comments

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

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

Compliance with FATF Recommendations

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

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

Description and analysis

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

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

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

The criteria of FATF Recommendation 38.1 are also complied with, when the request makes reference to a

criminal act of corresponding type, regardless of its designation.

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

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

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

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

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

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

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

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

There is a simplified procedure of extradition by consenting persons who waive formal extradition proceedings in Panama. Since terrorism and FT are crimes in Panama, this process is available.

Panama does not have any specific asset-sharing agreements with other countries through which it could share forfeited assets obtained by other countries as a result of coordinated law enforcement efforts. The authorities informed the mission that asset sharing with other countries would be possible under the provisions of some of

the bilateral treaties signed by Panama (for example, with the United States of America and Argentina).

Recommendations and comments

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

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

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

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

Compliance with FATF Recommendations

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

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

Description and analysis

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

Extradition is permitted only through compliance with the formalities of the extradition process. National law provides that, for reasons of public policy and the interests of society, a person should be surrendered to the requesting State despite the fact that penal proceedings are being pursued against him in Panama, or that he is

serving a sentence imposed by a Panamanian court for criminal conduct. This requirement is found in Article 2505 of the Judicial Code.

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

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

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

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

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

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

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

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

information and elements of proof that would contribute to the investigation of the case.

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

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

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

Recommendations and comments

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

Compliance with FATF Recommendations

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

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

Description and analysis

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

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

Based on Decree 78 of June 5, 2003, Article 2, section (f) provides that the UAF is permitted to exchange information with counterpart authorities from other countries in order to analyze cases that may be related to money laundering and the financing of terrorism, subject to said authorities signing memoranda of understanding or other cooperation agreements. Based on the most recent version of the law authorizing the UAF, the collection of information on terrorist financing was added to the responsibilities of the UAF. Therefore, the UAF has the direct responsibility to cooperate with its international counterparts on the exchange of information regarding terrorist finance. The feedback from neighboring countries and other close counterparts was very positive as to the cooperation by Panama.

The UAF has signed 27 different MOUs for the exchange of information related to ML cases. The UAF shares information with Egmont member countries through the Egmont Secure Web, which has all the necessary information protection protocols in place. Information exchanges are available on request or spontaneously, subject only to the parameters set forth in the memoranda of understanding, which reflect basic principles of international law. There is both formal and informal cooperation by Panamanian law enforcement authorities with their counterparts in other countries. Authorities in Panama advised that there is an Interpol Bureau in Panama which has access to the Interpol General Secretariat's Computer Database on Terrorism, as well as the ability to obtain the cooperation of Interpol members on criminal investigations. In 2002 Panama, Colombia, Venezuela and the United States of America entered into a cooperation to combat the Black Market Peso Exchange and to combat ML. Requests for cooperation are not refused on the ground that the request is considered to involve fiscal matters as long as the request involves other crimes. The SdB has signed multiple Memorandum of Understanding (MOU) with foreign counterparts to promote cooperation and exchange of information. In total, there were 21 MOUs in place with foreign counterparts including: the United States of America, Ecuador, El Salvador, Guatemala, Brazil, Colombia, Dominican Republic, Turk and Caicos, Anguila, Bolivia, Nicaragua, Venezuela, Antigua and Barbuda, Honduras, Costa Rica, Peru, Cayman Islands, Mexico, British Virgin Islands, Bahamas, and Canada. In practice, these MOUs provide the mechanism for facilitating the exchange of information, as established in the MOU, including for money laundering and the underlying predicate offences. In preparation for this assessment, the International Monetary Fund requested comments about from foreign supervisors about the degree of cooperation received from Panamanian supervisory authorities. Letters were sent to the authorities of neighboring countries, countries with significant financial institutions in Panama, and the membership of FATF, IAIS and IOSCO (through their secretariats). All the responses received were positive.

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

Compliance with FATF Recommendations		
R.32	Largely compliant	Centralized statistics needed.
R.40	Compliant	
SR.V	Largely compliant	Centralized statistics on International cooperation needed.

Table 4.2 Summary Table of Compliance with the FATF Recommendations

FATF 40+9	Rating	Summary of Factors for Rating
Legal systems		
1. ML offense	**LC**	Incrimination of ML not fully consistent with Palermo convention regarding predicate acts.
2. ML offense–mental element and corporate	**C**	Corporate liability is against fundamental principles of Panamanian law, and appropriate civil/admin. penalties do apply.

Table 4.2 Summary Table of Compliance with the FATF Recommendations

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

Table 4.2 Summary Table of Compliance with the FATF Recommendations

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

Table 4.2 Summary Table of Compliance with the FATF Recommendations

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

Table 4.2 Summary Table of Compliance with the FATF Recommendations

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

Table 4.2 Summary Table of Compliance with the FATF Recommendations

FATF 40+9	Rating	Summary of Factors for Rating
9 Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	**LC**	Same as R. 35
SR.II Criminalize terrorist financing	**LC**	With regard to FT and associated ML, implementation is needed on the Conventions and Treaties to which Panama is a party. FT needs to be inserted in the list of predicate crimes in Panamanian AML law.
SR.III Freeze and confiscate terrorist assets	**PC**	Reporting institutions do not have a mechanism in place for freezing accounts of persons or entities involved in FT.
SR.IV Suspicious transaction reporting	**LC**	Reporting of suspicious transactions related to FT is covered under a Legislative Decree. The SdB revised Agreement 9-2000 (now Agreement 12-2005 and Agreement 12-2005 E) to include the reporting requirement for suspicious transactions related to terrorism. Additional oversight needed over the money remitters with respect to STR reporting related to FT, where the focus has been on complying with the cash reporting requirements.
SR.V International cooperation	**LC**	Same as R. 37; Panama has criminalized terrorism and terrorist finance, so would be able to cooperate regarding these crimes. But terrorist finance is not on ML predicate list.
SR.VI AML requirements for money and value transfer services	**LC**	Implementation of AML/CFT requirements is weak and reports are almost only cash-threshold based (there is little detection of suspicious transactions by the licensed remitters).
SR.VII Wire transfer rules	**C**	
SR.VIII Nonprofit organizations	**PC**	Authorities are in the process of updating a list of NPOs licensed in order to be able to assess the risk in this sector. Law 50, 2003 (Article 3) has not been implemented.
SR.IX Cash Couriers	**PC**	The declaration obligation does not apply to outgoing transportation of cash; it does not apply to cash transported in non-accompanied freight; it is enforced only at the Airport of Tocumen; and there is little control of cash smuggled in cargo containers.

C. Recommended Action Plan

Table 4.3 Recommended Action Plan in Relation to the FATF Recommendations

FATF 40+9	Recommended Action
1. Legal System and Related Institutional Measures	
Criminalization of Money Laundering (R.1 & 2)	• Amend Article 389 to criminalize all money laundering predicate offenses as required by the Vienna and Palermo Conventions. • Address the differing treatment for the conspiracy offense that depends on whether or not the offense is drug-related (treatment should be consistent). • Implement the UN Convention against Corruption following the National Assembly's approval May 10, 2005.
Criminalization of Terrorist Financing (SR.II)	• Expand predicate list to include financing of terrorism for the AML Law.
Confiscation, freezing and seizing of proceeds of crime (R.3)	• Amend legislation to permit the investigating authority to freeze and seize in all criminal cases to conform to Palermo Convention. • Amend legislation to permit forfeiture of assets of criminals without necessarily showing nexus to a particular crime. • Establish/improve systems to hold and maintain seized assets pending forfeiture orders to reduce the potential for improper use or the appearance regarding maintenance of assets which have not been determined to belong to the government.
Freezing of funds used for terrorist financing (SR.III)	• Expand predicate list to include financing of terrorism for the AML Law in order that prosecutors gain freeze and seize authority under the Unified Text on Drug Laws to this offense.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• Review funding arrangements for UAF. • Strengthen protection of the information reported to UAF to maximize the secured electronic receipt and dissemination. • UAF undertake more outreach and awareness-raising to government agencies, UAF reporting entities, and the public.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• Review staffing levels and training requirements with a view to increasing capacity for investigations and prosecutions. Consider whether special courts should be created for financial crimes. Review the dependence on a general budget allotment to ensure proper distribution of funds for enforcement purposes. • Develop training for judicial authorities, prosecutors, financial police, and UAF staff to undertake the investigation of financial crime (e.g., fraud, corruption), protection of informants, investigative skills, and use of typologies. • Develop a process for the courts to independently obtain expert forensic and accounting assistance on complicated financial matters related to financial crimes and money laundering. • Develop secure data base systems for investigative agencies and the courts. • Develop process of coordination of government statistics so that AML/CFT data can be interpreted across agencies. • Carry out more frequent coordination meetings among relevant government enforcement agencies to exchange ideas and report policy recommendations to the High Level Commission.
Cash couriers (SR IX)	• Require the declaration in all circumstances for currency that is mailed, transported or shipped by any means of transportation. • Consider a more systematic approach for spot checking containers for smuggled

FATF 40+9	Recommended Action
	currency. • Make better use of the current investigative powers of Customs, in cooperation with the UAF.
2. Preventive Measures–Financial Institutions	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• SSRP and BHN should take measures to put in place and implement requirements for customer identification and due diligence in the insurance and savings and credit institution sectors.
Third parties and introduced business (R.9)	• Supervisory authorities should issue guidance that considers customer due diligence measures performed by third parties or introducers in line with the essential elements of R.9.
Record keeping and wire transfer rules (R.10 & SR.VII)	• Extend full record-keeping requirements to the insurance sector (including for insurance brokers and agents) and to the savings and credit institution sector.
Monitoring of transactions and relationships (R.11 & 21)	• Amend the AML law to impose monitoring obligation on insurance and savings and credit institutions.
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• Amend the law to extend coverage to reporting transactions related or linked to terrorism and require reporting by the insurance sector, and savings and credit institutions. • Supervisory/competent authorities should provide more feedback to reporting institutions by conducting forums, periodic meetings. • Supervisory/competent authorities should provide training to ensure greater awareness of obligations including when transactions do not take place.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	The SSRP and the BHN should extend internal control requirements to insurance sector and savings and credit institutions including obligations for: (i) policies, procedures and practices to deter money laundering and financing of terrorism; (ii) customer identification and due diligence; (iii) appointment of a compliance officer; (iv) Independent audit and compliance program; (v) training programs; and (vi) codes of ethics and policies for recruitment.
The supervisory and oversight system - competent authorities. Role, functions, duties and powers (including sanctions) (R. 17, 23, 25, 29, 30, & 32).	• Amend Law 42-2000 to extend AML/CFT obligations and sanctions authority to the BHN. • SSRP and BHN should develop supervisory capabilities to better evaluate internal controls, risk management, board oversight and involvement, and compliance with laws and regulations. • SSRP, BHN, and MICI should develop inspection programs to ensure that higher risk institutions and activities receive timely and effective supervision. • Ensure that the SSRP and BHN introduce formal licensing requirements and procedures, including fit and proper tests of owners and senior managers. • Supervisory/competent authorities should issue guidance on AML/CFT obligations for regulated entities and ensure that there are mechanisms for providing feedback on effectiveness consistent with Recommendation 25. • Ensure SSRP, BHN, MICI are adequately resourced (including human, financial, and technical skills) to effectively supervise consistent with Recommendation 30 all of the entities that they are responsible for. • Competent authorities need to create processes for collecting and sharing statistical information on the effectiveness and efficiency of the AML/CFT regime consistent with Recommendation 32.
Money value transfer	• Ensure that MICI is adequately resourced to supervise remittance and exchange

FATF 40+9	Recommended Action
services (SR.VI)	houses. • Consider adjusting the threshold amount for filing currency transaction reports to provide the UAF with useful information for the detection of structured transactions in the remittance area.
3. Preventive Measures–Nonfinancial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• Extend customer due diligence and recordkeeping obligation to lawyers, accountants, and dealers in precious metals and stones. • Provide guidance to DNFBPs for customer due diligence that considers the specific risks from money laundering. • Review the legal framework for DNFBPs to ensure regulations are supported by clear legal powers.
Monitoring of transactions and relationships (R.12 & 16)	• Extend monitoring obligation to real estate agents and promoters for customers meeting FATF thresholds, and for both casinos and real estate agents, to monitor customer activity and to report any suspicious transaction to the UAF. • Authorities should identify the risks that DNFBPs face according to their special nature and issue relevant guidance based on the risk presented. Different degrees of control may be warranted in different industries.
Suspicious transaction reporting (R.16)	• Provide training to authorities and issue guidance to DNFBPs on the typologies of money laundering in their respective sectors. The AML/CFT regulations for real estate businesses merit review to make them sector specific, having regard to the different risks of real estate as opposed to that of financial institutions. • Extend legal protection to DNFBPs from civil or criminal liability for reports made in good faith.
Internal controls, compliance & audit (R.16)	• Clarify the obligation of when to file cash-threshold reports or suspicious transaction reports by regulated institutions. • DNFBPs should be required to implement adequate internal controls (i.e., AML Programs) according to their specific activities.
Regulation, supervision and monitoring (R.17, 24-25)	• MICI should implement an AML/CFT oversight program that allocates resources based on money laundering risks within each sector. The program should include criteria for monitoring (off-site surveillance) and inspections. • The auditors of MICI should receive training on AML/CFT issues targeting in order to be able to identify areas of priority. • Ensure greater stability and independence of personnel of the Gaming Board, and update the regulations and inspection procedures to prevent the misuse of casinos by their own owners or operators.
Other designated nonfinancial businesses and professions (R.20)	• Strengthen enforcement of preventive requirements for Free-Trade Zone merchants, especially in higher risk areas. Better auditing capabilities and training for the administrator in the ZLC are needed, as well as close cooperation with the UAF and with Customs. • Free Trade Zone merchants need training and awareness of the modalities by which their businesses could be misused for money laundering, in order to foster compliance with the obligation to report suspicious transactions. • MICI should ensure that the Directorate of Finance Companies (Empresas Financieras) has adequate resources and training. • Regulation and oversight of pawn shops needs to be targeted according to its identified risks to better prioritize the scarce resources available to the MICI.
4. Legal Persons and Arrangements & Nonprofit Organizations	
Legal Persons–Access to beneficial ownership and control information	• To the extent that lawyers are involved in the financial activities or nonfinancial activities described under the FATF recommendations, these activities should be regulated and supervised.

FATF 40+9	Recommended Action
(R.33)	
Legal Arrangements–Access to beneficial ownership and control information (R.34)	• Company incorporation and related services should be subject to AML/CFT reporting obligations, to avoid the negative incentive that trust companies owned by law firms do not have to report suspicious transactions.
Nonprofit organizations (SR.VIII)	• The Ministry of Government and Justice should create a registry (inventory) for NPOs, and undertake a risk assessment of the NPO sector. Depending on the result, an updating of the regulatory framework to include AML regulations and other oversight may be appropriate.
5. National and International Cooperation	
National cooperation and coordination (R.31)	• Ensure that the High Level Presidential Commission against money laundering and financing of terrorism is fully appointed and functioning. • Develop a coordinating government committee on AML/CFT matters, which assigns working groups to address specific issues, including sensitive internal matters. • Review overlaps between the authorities of the AML/CFT Commission and CONAPRED as to drug and nondrug-related money laundering. • Develop a working group within the coordinating committee for the review of the supervision or need for supervision of DNFBPs. • Review the CONAPRED's use of the drug asset forfeiture fund to determine whether current monies could be more promptly and effectively spent. • Determine whether CONAPRED could benefit from lower level task forces to improve coordination of law enforcement efforts in drug-related money laundering cases.
The Conventions and UN Special Resolutions (R.35 & SR.I)	• Review newly-ratified financing of terrorism convention to determine which of its provisions need national enabling legislation for effective implementation. • Amend Penal Code to add additional predicate act offenses, including financing of terrorism.
Mutual Legal Assistance (R.32, 36-38, SR.V)	• Review dual criminality principle to determine whether Panama might render mutual legal assistance in cases where Panama would normally reject the request for mutual legal assistance due to the lack of dual-criminality. Consider eliminating the requirement of dual criminality. • Review the policy that noncriminal forfeiture orders will not be recognized or enforced.
Extradition (R.32, 37 & 39, & SR.V)	• Review the statutory authority regarding the requirement of dual criminality to determine whether Panama might render mutual legal assistance.
Other Forms of Cooperation (R.32 & 40, & SR.V)	• Ensure that all of the statistics required by R.32 are collected and maintained.

D. Authorities' Response to the Assessment

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

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

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

Panama has been known for being a model country with respect to regulation and implementation of measures designed to prevent money laundering and terrorist financing risks, and this is a responsibility that we take very seriously. We have achieved continuous and consistent achievements, although we still have a long way to go. Nevertheless, we appreciate the fact that we are not alone in this effort. The support that we receive from neighboring countries, international organizations, and cooperating nations are important incentives to continue our fight against these crimes.

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

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

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

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

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

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

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

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

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

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

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

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