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Executive summary

Note by the Secretariat

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II. Executive summary

Panama

1. Introduction: overview of the legal and institutional framework of Panama in the context of implementation of the United Nations Convention against Corruption

The implementation by Panama of chapters III and IV of the United Nations Convention against Corruption was reviewed during the first review cycle (CAC/COSP/IRG/II/2/1/Add.16).

Panama has a monist system in place and can implement the Convention directly.

The legislation implementing chapters II and V of the Convention includes acts No. 6 of 2002, No. 59 of 1999, No. 23 of 2015 and No. 11 of 2015 and the Electoral Code.

The most important bodies responsible for preventing and combating corruption are the National Authority for Transparency and Access to Information, the Authority for Government Innovation, the Office of the Attorney General of the Administration, the National Police, the Court of Auditors, the Office of the Attorney General of the Nation and the Office of the Comptroller General.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

Most government regulations establish internal rules containing anti-corruption provisions. Panama does not have a national anti-corruption strategy. The National Authority for Transparency and Access to Information is authorized to coordinate and implement anti-corruption policies (Act No. 33 of 2013, art. 2; art. 4, para. 7; and art. 6, para. 4). The authorities are not required to submit their prevention policies to the National Authority for Transparency and Access to Information.

A number of authorities have created training programmes on preventing and countering corruption and have appointed ethics officers available to advise public officials on issues related to their conduct and responsible for liaising with the National Authority for Transparency and Access to Information.

The public procurement system is assessed every two years to enhance its effectiveness, and the National Authority for Transparency and Access to Information assesses compliance with the disclosure requirement under Act No. 6 of 2002 on a monthly basis. Assessments of other legislative or administrative measures are conducted in an ad hoc rather than a scheduled manner.

Panama hosts the Regional Anti-Corruption Academy for Central America and the Caribbean.

The Office of the Comptroller General participates at the regional level in a project aimed at giving public officials an integrity index score.

There are several anti-corruption bodies in Panama: the National Authority for Transparency and Access to Information, which is autonomous and independent (Act No. 33 of 2013, art. 1), is the main authority responsible for enforcing Act No. 6 of 2002, on transparency and access to information. It is responsible for ensuring that the rights enshrined in the Constitution regarding requests for and access to information, as well as the rights provided for in international treaties and national standards on preventing corruption, are respected and that prevention policies are incorporated into public management at the governmental level.

The Legal Department of the National Authority for Transparency and Access to Information receives and processes anonymous, personal and ex officio claims and complaints regarding alleged administrative irregularities.

The Court of Auditors, which is autonomous and independent (Act No. 67 of 2008, art. 5), resolves cases of restitution to the State for irregularities committed by public servants and private actors.

The Office of the Comptroller General is an independent body (Act No. 32 of 1984, art. 1) that oversees public management, maintains national accounts and examines the accounts of public officials.

Panama has informed the Secretary-General that the National Authority for Transparency and Access to Information is the national anti-corruption authority.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The Constitution provides that career personnel appointments shall be based on a merit system (art. 302). The Law on Administrative Careers (consolidated text of 29 August 2008) establishes a selection process based on the professional competence, merit and public morals of applicants (arts. 51 and 52). No mention is made of positions that are considered particularly vulnerable to corruption. At the time of the visit, a draft law (draft law No. 230) was being prepared.¹

Matters relating to election to public office are regulated by the Constitution, the Electoral Code and the Decree Regulating General Elections.² Public servants who have held certain official positions at any time during the six months preceding an election (Electoral Code, arts. 27 and 225),³ and candidates who have been disqualified (Constitution, arts. 153, 180 and 226) shall not be eligible for elected office.

The Electoral Code also regulates the financing of political candidates. Political parties and candidates for elected office are required to register private contributions received for their operations and campaigns (Electoral Code, art. 209).⁴ This information is handled confidentially by the Electoral Court and used exclusively to rule out criminal law violations.⁵ If there is evidence of any such violations, the information is shared with the Office of the Public Prosecutor or the judicial branch, at their request. The Electoral Court periodically publishes the details of budget implementation of public financing by political parties (Electoral Code, art. 187).⁶ Political parties may not accept donations from legal entities that are not engaged in economic activities in Panama; anonymous donations or contributions, except those

¹ The Panamanian authorities reported that the draft law had been approved by Act No. 23 of 12 May 2017, amending Act No. 9 of 1994, which established and regulated administrative careers.

² The Panamanian authorities reported that the last relevant decree was Decree No. 12 of 21 March 2018, which adopted the electoral calendar and regulated the General Elections of 5 May 2019.

³ The Panamanian authorities reported that the text of articles 27 and 225 was amended by Act No. 29 of 29 May 2017, amending the Electoral Code, and that articles 30 and 288 of the amended Electoral Code would be applicable.

⁴ The Panamanian authorities indicated that the text of article 209 was amended by Act No. 29 of 29 May 2017, amending the Electoral Code, and that articles 205 and 246 of the amended Electoral Code would be applicable.

⁵ The Panamanian authorities indicated that, in accordance with the amendment to Act No. 29 of 29 May 2017, this information would be published on the website of the Electoral Court (Electoral Code, art. 209).

⁶ The Panamanian authorities indicated that, in accordance with the amendment to Act No. 29 of 29 May 2017, article 200 would apply pursuant to the amendment to Act No. 29 of 29 May 2017, an amendment that was integrated into the consolidated text.

originating from public fundraising; or donations from foreign Governments, persons or bodies (Electoral Code, art. 190).⁷

Information on the recruitment and appointment of civil servants or other persons performing public functions is public (Act No. 6 of 2002, art. 11) and made available by many institutions on their websites.

There is a Uniform Code of Ethics for Public Servants Working in Central Government Entities, which was approved by Executive Decree 246 of 15 December 2004. Despite its name, the Code is applicable to most public officials. Certain institutions or bodies (the judiciary, the Panama Canal Authority and the Office of the Comptroller General) have their own codes of ethics.

The Uniform Code of Ethics provides for administrative penalties (art. 44). However, the penalties applied are those that are set out in institutions' internal regulations, some of which deal with conflict of interest, such as those that prohibit individuals from supporting the appointment of relatives to positions within the Office of the Attorney General of the Administration (internal regulations of the Office of the Attorney General of the Administration, art. 33).

The Code of Criminal Procedure (art. 83) and the Uniform Code of Ethics require public officials to report certain forms of conduct that could be detrimental to the State or constitute a crime or a violation of the provisions of the Uniform Code of Ethics (art. 29).

Panama established a system of sworn declarations of assets that is applicable to most public officials (Constitution, art. 304; Act No. 59 of 29 December 1999, art. 1) and aimed at preventing conflicts of interest and detecting illicit enrichment. Declarations must be submitted in writing within 10 working days of taking office and upon separation (Act No. 59 of 29 December 1999, art. 2). Declarations are not public and do not contain information regarding spouses or minor children of public officials, nor regarding debts. The Office of the Comptroller General verifies the form, but not the content, of the declarations.

Public officials who fail to submit a declaration may be sanctioned (Act No. 59 of 29 December 1999, art. 4).

The Uniform Code of Ethics for public servants establishes a general prohibition on accepting gifts or benefits (art. 34), but its article 35 prohibits the acceptance of gifts in certain situations, which could lead to confusion. There are also exceptions regarding the acceptance of gifts (Uniform Code of Ethics, arts. 37 and 38). The authorities confirmed that the threshold for gifts considered acceptable was \$150. There is no registry of gifts, nor is there an obligation to declare them.

There is no blanket ban on external employment or an obligation to declare such employment, although the Constitution does ban individuals from obtaining two or more State salaries and having jobs with overlapping workdays (art. 303). Occupying a position in the judiciary is incompatible with working in the legal profession, in commerce and in any other remunerated position, with the exception of employment as a university law professor (Constitution, arts. 208 and 212).

Judicial independence is enshrined in the Constitution (art. 210).

Panama has a Judicial Service Act (Act No. 53 of 2015) that is also applicable to the Office of the Public Prosecutor. The act provides for the creation of an integrity and transparency tribunal (title III). It also covers requirements and prohibitions applying to recruitment (arts. 55 and 56), the rights and obligations of individuals entering the judicial service (arts. 61–64) and selection by competitive examination to enter the judicial service. However, the act is not yet being applied in practice.

⁷ The Panamanian authorities indicated that, in accordance with the amendment to Act No. 29 of 29 May 2017, article 203 would apply pursuant to the amendment to Act No. 29 of 29 May 2017, an amendment that was integrated into the consolidated text.

A Code of Judicial Ethics (approved by Decision No. 523 of 4 September 2008) provides for disciplinary sanctions in the event of non-compliance with the obligations contained therein. The Office of the Attorney General of the Nation and the Office of the Attorney General of the Administration jointly adopted, through Resolution 1 of 6 July 2005, the Uniform Code of Ethics for Public Servants.

Public procurement and management of public finances (art. 9)

The public procurement system was created under Act No. 22 of 27 June 2006. At the time of the on-site visit, a draft law (No. 305)⁸ amending Act No. 22 of 2006 had been submitted to the Assembly. Panama uses an electronic system – *PanamaCompra* (Act No. 22 of 2006, art. 124)⁹ – for its public procurement (except, pursuant to Executive Decree No. 54 of 26 April 2011, for purchases of less than \$15,000 made by entities facing access problems). The Directorate General for Public Procurement is the entity authorized inter alia to regulate, interpret, audit and advise on procurement procedures (Act No. 22 of 2006, art. 8).¹⁰ Act No. 22 of 2006 establishes procurement principles (arts. 16–23),¹¹ the requirement to establish criteria for analysing proposals (art. 24),¹² requirements for proposals (art. 37)¹³ and procurement procedures (arts. 38–44).¹⁴ It also provides for the possibility of filing a complaint with the Directorate General for Public Procurement (art. 111)¹⁵ or an appeal to the Administrative Tribunal for Public Procurement (art. 114).¹⁶ However, the decisions made by the Directorate General for Public Procurement regarding complaints are not open to any form of appeal.

The budget is adopted in accordance with the Constitution (arts. 267–278) and Decree No. 234 of 1997. Pursuant to Article 10 of Act No. 6 of 22 January 2002, quarterly reports are published on the implementation of the budget. The Office of the Comptroller General oversees the execution of the budget in accordance with article 280, paragraph 2, of the Political Constitution of the Republic of Panama. The Office of the Comptroller General also establishes the accounting methods and systems of public, national, provincial, municipal, autonomous or semi-autonomous agencies and State-owned enterprises (Constitution, art. 280, para. 8).

Counterfeiting public deeds and public documents, as well as accounting books, accounting records, financial statements and other financial information of banks or financial institutions, is classified as a crime (Criminal Code, arts. 366 and 370).

Public reporting; participation of society (arts. 10 and 13)

Act No. 6 of 22 January 2002 regulates access to information. The act requires institutions to ensure that their internal regulations, general policies, internal procedure manuals and a description of their organizational structure (art. 9), inter alia, are available in printed form and to publish them on their websites. State institutions are also required to provide information on their functioning and

⁸ The authorities confirmed that the draft law was approved by Act No. 61 of 27 September 2017 “reforming Act No. 22 of 2006, which regulates public procurement, among other provisions”.

⁹ The authorities indicated that, according to the consolidated text as amended by Act No. 61 of 27 September 2017, article 161 of the act would be applicable.

¹⁰ The authorities indicated that, according to the consolidated text as amended by Act No. 61 of 27 September 2017, articles 11 and 12 would be applicable.

¹¹ The authorities indicated that, according to the consolidated text as amended by Act No. 61 of 27 September 2017, articles 20 to 32 would be applicable.

¹² The authorities indicated that, according to the consolidated text as amended by Act No. 61 of 27 September 2017, article 33 would be applicable.

¹³ The authorities indicated that, according to the consolidated text as amended by Act No. 61 of 27 September 2017, article 50 would be applicable.

¹⁴ The authorities indicated that, according to the consolidated text as amended by Act No. 61 of 27 September 2017, articles 51 to 59 would be applicable.

¹⁵ The authorities indicated that, according to the consolidated text as amended by Act No. 61 of 27 September 2017, article 143 would be applicable.

¹⁶ The authorities indicated that, according to the consolidated text as amended by Act No. 61 of 27 September 2017, article 146 would be applicable.

activities, with the exception of information that is confidential and restricted (Act No. 6 of 2002, art. 9). Everyone is entitled to request publicly accessible information held or known by the institutions set out in the Act and to request personal information contained in archives, registers or files maintained by State institutions (Act No. 6 of 2002, arts. 2 and 3).

Restricted information (Act 6 of 2002, art. 1, para. 7) may not be disclosed, in general, until 10 years following classification (Act 6 of 2002, art. 14) and confidential information may not be disclosed (Act No. 6 of 2002, art. 13). If the information requested is not provided, any person has the right to bring a habeas data action before the High Courts or the Supreme Court of Justice (Act No. 6 of 2002, arts. 17 and 18).

Panama has an online transparency portal (<http://www.defensoriadelpueblo.gob.pa/portal/transparencia/>). Through the *Panamá en Línea* portal, approved by Executive Decree 928 of 21 September 2010, a number of state services can be accessed through a single website to facilitate consultation. In addition, the *Panamá Apps* programme provides access to services from mobile devices.

Participation of society in public administration processes is ensured through elections, public consultations and hearings, forums, workshops and direct participation in institutional bodies (Act No. 6 of 2002, art. 25).

There is a National Directorate for the Promotion of Citizen Participation (resolution 72 of 11 July 2000 and resolution 49 of 30 May 2001), aimed at encouraging popular initiative in areas related to legislation and oversight of government management and at collecting the views of citizens on issues of national interest.

Schools and colleges carry out activities to promote ethical behaviour and combat corruption.

The country belongs to the Open Government Partnership.

In addition, the 311 Citizens' Assistance Office was created to register complaints and claims and to enable citizens to present their ideas and suggestions for the consideration of the various entities.

Private sector (art. 12)

Panama has a finance company registry (Act No. 42 of 23 July 2001, art. 15).

The financial statements of insurance companies must be audited by independent external auditors (Act No. 12 of 3 April 2012, art. 223, para. 5). The Superintendency of Banks established that the International Financial Reporting Standards would be the only technical accounting standards that could be used to prepare accounting records and present the financial statements of regulated entities (Decision 06-2012 of 18 December 2012, art. 2).

Other entities may apply the International Financial Reporting Standards but they are not required to do so. There are no restrictions on private sector employment of former public officials.

Altering or forging certain accounting documents issued by banks or financial institutions, but not documents issued by other entities, is classified as a crime (Criminal Code, art. 370).

There is no provision expressly denying tax deductions for expenses that would constitute bribes or for other expenses incurred in furtherance of corrupt conduct.

Measures to prevent money-laundering (art. 14)

Act No. 23 of 2015 covers all aspects of money-laundering. A risk-based approach is applied pursuant to the Act (art. 26).

Panama has a Financial Analysis Unit (Act No. 23 of 2015, art. 9; see below in relation to article 58 of the Convention). Supervisory bodies (including the Superintendency of Banks), listed in Act No. 23 of 2015, article 19, are authorized to enter into

agreements at the national level and with counterparts at the international level to facilitate the exchange of information (Act No. 23 of 2015, art. 20, para. 12).

Panama provides for measures to detect and monitor the cross-border movement of cash and negotiable instruments (Cabinet Decree 10 of 9 March 1994, art. 1; Regulation of the Central American Uniform Customs Code, art. 579) and requires notification of any such transfers exceeding 10,000 balboas (\$10,000) (Criminal Code, art. 375-A).

Financial entities subject to reporting obligations must ensure that information attached to electronic transfers includes the name of the originator and the beneficiary, remains throughout the payment chain and is available, inter alia, to the competent judicial authorities and the Financial Analysis Unit (Act No. 23 of 2015, art. 46; Decision 10-2015 of 27 July 2015, art. 18). Electronic transfers that do not contain this information cannot be completed (Act No. 23 of 2015, art. 28, subsect. 7, and art. 60).

Panama is a member of the Financial Action Task Force of Latin America and the Central American Council of Comptrollers of Banks, Insurance Companies and other Financial Institutions.

2.2. Successes and good practices

- The establishment of various electronic means of providing information and opening new businesses (the transparency portal, *Panamá en Línea* (Panama Online), *Panamá Apps* (Panama Apps), *Panamá Emprende* (Panama Does Business) (arts. 10 and 12)).

2.3. Challenges in implementation

It is recommended that Panama:

- develop and implement effective, coordinated anti-corruption policies and strengthen coordination between national authorities in that regard. The development of a national anti-corruption strategy might be beneficial in that connection (art 5, para. 1);
- periodically evaluate relevant legal instruments and administrative measures outside the public procurement system (art. 5, para. 3);
- promote the increase and dissemination of knowledge by its anti-corruption bodies (art. 6, para. 1 (b));
- determine the public positions considered especially vulnerable to corruption, establish adequate procedures for the selection and training of individuals for those positions and, where appropriate, their rotation to other positions (art. 7, para. 1 (b));
- consider whether it would be feasible and useful to grant the Electoral Court the power and ability to verify ex officio the information provided by political parties and candidates on private contributions received (art. 7, para. 3);
- strengthen the system for sworn declarations of assets by requiring the inclusion of information on outside activities and employment, and consider the possibility of including information on the assets of minor children and spouses and on debt, and of increasing the frequency of such declarations; consider establishing a robust system to verify the content of the declarations; clarify the rules on gifts and benefits and establish a system for declaring gifts and benefits, assessing whether the threshold of \$150 should be reduced (art. 8, para. 5);
- consider establishing a procedure for appealing the decisions of the Directorate General of Public Procurement regarding complaints (art. 9, para. 1 (d));
- urgently implement the measures to strengthen integrity and prevent opportunities for corruption among members of the judiciary provided for in

Act No. 53 of 2015, including with regard to the selection of members of the judiciary (art. 11);

- take additional measures, in accordance with article 12, paragraphs 1 and 2, to prevent corruption, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures (art. 12, paras. 1 and 2);
- expressly disallow the tax deductibility of expenses that constitute bribes and, where appropriate, other expenses incurred in furtherance of corrupt conduct (art. 12, para. 4).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The regulatory framework for asset recovery is set out in Act No. 11 of 2015, article 12, which provides for international legal assistance in criminal matters (Act No. 11 of 2015).

Panama is in the process of adopting an asset recovery manual, developed with the support of the Regional Office for Central America and the Caribbean of the United Nations Office on Drugs and Crime in Panama.

In direct application of the Convention, Panama can transmit information on suspicious transactions or unusual payments without first receiving a request.

Panama has not established specific agreements on asset recovery but engages in cooperation under bilateral and multilateral agreements, and on the basis of the principle of reciprocity. In addition, Panama engages in cooperation through the asset recovery network of the Financial Action Task Force of Latin America and the Egmont Group, and is negotiating other bilateral treaties. A multilateral agreement on the return and distribution of recovered assets is being negotiated between the countries of Central America and the Dominican Republic.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Panama made mandatory the identification of clients and the verification of their identities according to their level of risk, as well as the identification of beneficial owners (Act No. 23 of 2015, arts. 26–29). This requirement applies to all accounts; there is no definition of high-value accounts.

The establishment of anonymous accounts is prohibited (Act No. 23 of 2015, art. 27, para. 1, and art. 28, para. 7).

Domestic and foreign politically exposed persons are considered high-risk clients and are subject to enhanced due diligence. The same applies to their close associates (Act No. 23 of 2015, art. 34). The definition of “close associates” (Act No. 23 of 2015, art. 4) does not cover legal persons.

The Superintendency of Banks established a list of warning signs (Decision No. 07-2015) applicable to the types of persons and behaviours subject to enhanced scrutiny. Other superintendencies may issue similar guidelines.

Financial institutions cannot be notified of the identity of persons to whose accounts enhanced scrutiny should be applied.

Banks and trust companies are required to keep updated all records of information and documentation obtained during the due diligence process, documents supporting operations or transactions and any other documents that make it possible to reconstruct their clients’ individual operations or transactions, and to retain them for

a minimum of five years after the end of the contractual relationship with the client (Decision No. 10-2015, art. 25).

Banking services may only be provided by institutions that have obtained the relevant banking licence (Banking Act, art. 2). Having a physical presence and being affiliated with a regulated financial group are not expressly included among the criteria for obtaining such a licence (Banking Act, art. 48); however, such criteria could be established if deemed appropriate by the Superintendent or the Board of Directors (Banking Act, art. 48, para. 5). The establishment of shell banks is not expressly prohibited. Banks established in Panama that are regulated and supervised by the Superintendency of Banks cannot establish, maintain, administer or manage correspondent relationships with shell banks and must require that the client banks with which they maintain relationships do not allow their accounts to be used by shell banks (Decision No. 07-2016, art. 2, para. 3, and art. 6).

Some public officials are required to declare their assets in a public instrument upon assuming their functions and upon separation from service (Act No. 59 of 1999, art. 1). There are penalties for non-declaration and false declaration (Act No. 59 of 1999, art. 4; Criminal Code, art. 366). In criminal proceedings, the information contained in such declarations may be shared with foreign authorities (Act No. 11 of 2015, art. 7, para. 6). The reporting of an interest in or signature or other authority over a financial account in a foreign country is not specifically required.

The Financial Analysis Unit is a member of the Egmont Group and has signed 78 memorandums of understanding with its counterparts. The Unit is authorized to cooperate with other entities, in accordance with Act No. 23 of 27 April 2015, article 11. Its operational independence is established under article 10 of that same law. Entities obliged to report to the Unit are required to preventively freeze funds, property or other assets of individuals or entities on the lists established by the United Nations Security Council for that purpose. However, the Financial Analysis Unit is not authorized to freeze property through administrative channels.

Panama is a party to the regional memorandum of understanding among financial intelligence units on combating money-laundering and the financing of terrorism, and exchanges information with such units in Central America, the Dominican Republic and Colombia through the regional secure web platform established pursuant to that instrument.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Other States may, in their capacity as legal persons, initiate civil action in Panama to establish title to or ownership of property acquired through the commission of an offence (Judicial Code, art. 585, para. 2).

The courts may order the payment of compensation or damages to another State that has been harmed by such offences (Code of Criminal Procedure, art. 122).

The competent authorities cannot recognize another State's claim as a legitimate owner of property acquired through the commission of an offence under the Convention when deciding on confiscation.

Panama may give effect to orders of confiscation issued by foreign courts but not to orders for termination of ownership issued by foreign courts (Act No. 11 of 2015, art. 12).

Panama has received requests for the recovery of assets and cited the example of a case in which a confiscated quantity of sugar had been returned in full to the requesting State. Panama may order the confiscation of property of foreign origin by adjudication of an offence of money-laundering or other such offence as may be within its jurisdiction. At the time of the on-site visit, a draft law on non-conviction-based confiscation was being prepared.

Panama may assist in the seizure, freezing or confiscation of movable and immovable property, money, securities, property or assets derived from the commission of an offence and from instruments used or intended to be used in a criminal act, as well as property of equivalent value (Act No. 11 of 2015, art. 7, para. 9). It is not clear whether the authorities may freeze or seize property upon an order issued by a foreign court that provides a reasonable basis for Panama to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of article 54, paragraph 1 (a), of the Convention; whether the authorities may freeze or seize property in the absence of an order issued by a foreign court; or whether Panama has considered taking additional measures to permit its competent authorities to preserve property for confiscation.

Act No. 11 of 2015, article 9, sets out the requirements for requests for assistance in criminal matters, which may be fulfilled in accordance with any procedures specified in the request, provided that such procedures are consistent with the fundamental principles of Panamanian law (Act No. 11 of 2015, art. 11).

Panama provided a copy of its laws designed to give effect to article 55 of the Convention during the review and does not make assistance for purposes of confiscation conditional on the existence of a treaty.

There is no minimum value threshold for the provision of assistance under the Panamanian regulatory framework, and Act No. 11 of 2015 does not provide for grounds for the rejection of requests. In direct application of the Convention, Panama may refuse assistance or lift provisional measures if it does not receive sufficient and timely evidence or if the property in question is of a *de minimis* value.

Panama may authorize the participation of the competent authorities or official representatives of the requesting State during the fulfilment of a request (Act No. 11 of 2015, art. 7, para. 8), and, in practice, before lifting any provisional measure, gives the requesting State the opportunity to present its reasons in favour of continuing the measure.

The rights of bona fide third parties are protected in domestic confiscation proceedings (Criminal Code, art. 75). There is no specific provision protecting them in confiscation proceedings involving international cooperation.

Return and disposal of assets (art. 57)

Without distinction as to the underlying offence, Panama may transfer to the requesting State all or part of any proceeds or instruments seized or confiscated in Panama, following receipt of a duly authenticated copy of the confiscation order issued by the competent judicial authority in the requesting State (Act No. 11 of 2015, art. 12).

Panama has not concluded agreements for the final disposal of confiscated property but could do so on the basis of Act No. 11 of 2015, article 12. Article 12 also provides for agreements for the distribution of property and does not limit deductions of reasonable expenses.

3.2. Successes and good practices

- The large number of memorandums of understanding (78) signed by the Financial Analysis Unit, even though no such instrument is needed to exchange information (art. 58).

3.3. Challenges in implementation

It is recommended that Panama:

- include legal persons under the definition of “close associates” to ensure that they are subject to enhanced scrutiny (art. 52, para. 1);
- notify financial institutions of the identity of particular persons to whose accounts enhanced scrutiny should be applied (art. 52, para. 2 (b));
- explicitly require institutions to have a physical presence or be affiliated with a regulated financial group in order to obtain banking licences, so as to explicitly prohibit the establishment of banks that do not have a physical presence and are not affiliated with a regulated financial group (art. 52, para. 4);
- consider taking measures that would require public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship and to maintain appropriate records related to such accounts (art. 52, para. 6);
- take measures to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State’s claim as a legitimate owner of property acquired through the commission of an offence under the Convention (art. 53, para. (b));
- take measures to permit its competent authorities to give effect to orders for termination of ownership issued by foreign courts (art. 54, para. 1 (a));
- consider adopting the draft law on non-conviction-based confiscation, ensuring that it includes the measures provided for in article 54, paragraph 1 (c), of the Convention (art. 54, para. 1 (c));
- take measures to enable the authorities to freeze or seize property:
 - upon an order issued by a foreign court that provides a reasonable basis for Panama to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of article 54, paragraph 1 (a), of the Convention (art. 52, para. 2 (a));
 - in the absence of an order issued by a foreign court, upon a request that provides a reasonable basis for Panama to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of article 54, paragraph 1 (a), of the Convention (art. 54, para. 2 (b));
- consider taking additional measures to permit its competent authorities to preserve property for confiscation (art. 54, para. 2 (c));
- take into account the rights of bona fide third parties when returning confiscated property (art. 57, para. 2);
- in the case of embezzlement of public funds or of laundering of embezzled public funds, when confiscation was executed in accordance with article 55 of the Convention and on the basis of a final judgment in the requesting State party, a requirement that can be waived by Panama, return the confiscated property to the requesting State party (art. 57, para. 3 (a)). It is recommended that Panama ensure that Act No. 11 of 2015, article 12, is applied accordingly. Should the judiciary not interpret the law accordingly, legislative reform is recommended to ensure the return of the funds in accordance with the Convention;
- in the case of proceeds of any other offences under the Convention, when confiscation was executed in accordance with article 55 of the Convention and on the basis of a final judgment in the requesting State party, a requirement that may be waived by Panama, return the confiscated property to the requesting State party, when it reasonably establishes its prior ownership of such

confiscated property or when Panama recognizes the damage to the requesting State party as a basis for returning the confiscated property (art. 57, para. 3 (b));

- in all other cases, give priority consideration to returning confiscated property to the requesting State party, returning such property to its prior legitimate owners or compensating the victims (art. 57, para. 3 (c));
 - limit any deductions of reasonable expenses incurred, in accordance with article 57 of the Convention (art. 57, para. 4);
 - assess whether authorizing the Financial Analysis Unit to freeze or suspend transactions through administrative channels could be beneficial (art. 58).
-