

# Panama

## Overall findings

### Overall determination on the legal framework: In Place But Needs Improvement

Panama's legal framework implementing the AEOI Standard is in place but needs improvement in order to be fully consistent with the requirements of the AEOI Terms of Reference. While Panama's international legal framework to exchange the information with all of Panama's Interested Appropriate Partners (CR2) is consistent with the requirements, its domestic legislative framework requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures (CR1) has deficiencies significant to the proper functioning of elements of the AEOI Standard. More specifically, Panama does not fully incorporate some of the due diligence procedures and does not incorporate the categories of Non-Reporting Financial Institutions in accordance with the requirements. Moreover, there is a deficiency in Panama's legal framework for the enforcement of the requirements.

The methodology used for the peer reviews and that therefore underpins this report is outlined in Chapter 2.

## Conclusions on the legal framework

### General context

Panama commenced exchanges under the AEOI Standard in 2018.

In order to provide for Reporting Financial Institutions to collect and report the information to be exchanged, Panama:

- enacted the Law 51 of 27 October 2016;
- promulgated the Executive Decree 124 of 12 May 2017;
- promulgated the Executive Decree 461 of 26 December 2017; and
- issued Resolution No 201-3931 of 29 June 2017.

Under this framework Reporting Financial Institutions were required to commence the due diligence procedures in relation to New Accounts from 1 July 2017. With respect to Preexisting Accounts, Reporting Financial Institutions were required to complete due diligence procedures on High Value Individual Accounts by 30 June 2018 and on Lower Value Individual Accounts and Entity Accounts by 30 June 2019.

With respect to the exchange of information under the AEOI Standard, Panama is a Party to the Convention on Mutual Administrative Assistance in Tax Matters and activated the associated CRS Multilateral Competent Authority Agreement in time for exchanges in 2018.

### Detailed findings

The detailed findings for Panama are below, organised per Core Requirement (CR) and sub-requirement (SR), as extracted from the AEOI Terms of Reference ([www.oecd.org/tax/transparency/documents/aeoi-terms-of-reference.pdf](http://www.oecd.org/tax/transparency/documents/aeoi-terms-of-reference.pdf)).

***CR1 Domestic legal framework: Jurisdictions should have a domestic legislative framework in place that requires all Reporting Financial Institutions to conduct the due diligence and reporting procedures in the CRS, and that provides for the effective implementation of the CRS as set out therein.***

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| <b>Determination: In Place But Needs Improvement</b> |
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Panama's domestic legislative framework is in place and contains many of the key aspects of the CRS and its Commentary requiring Reporting Financial Institutions to conduct the due diligence and reporting procedures, but it needs improvement in relation to the scope of Reporting Financial Institutions required to report information (SR 1.1), the due diligence procedures that must be applied to Financial Accounts (SR 1.2) and the framework to enforce the requirements (SR 1.4). Most significantly, Panama provides for two Non-Reporting Financial Institutions that do not meet the requirements. Furthermore, Panama does not fully incorporate some of the due diligence procedures, and there is a deficiency in Panama's enforcement framework.

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**SR 1.1** Jurisdictions should define the scope of Reporting Financial Institutions consistently with the CRS.

Panama has defined the scope of Reporting Financial Institutions in its domestic legislative framework in a manner that is largely consistent with the CRS and its Commentary. However, deficiencies have been identified. Most significantly, Panama does not fully incorporate the category of Exempt Collective Investment Vehicle as a Non-Reporting Financial Institution and provides for a jurisdiction-specific Non-Reporting Financial Institution that is not in accordance with the requirements. The scope of Reporting Financial Institutions, including the provision of Non-Reporting Financial Institutions, is material to the proper functioning of the AEOI Standard.

**Recommendations:**

Panama should amend its domestic legislative framework to prevent Exempt Collective Investment Vehicles from issuing bearer shares from a specified date in order to be treated as Non-Reporting Financial Institutions.

Panama should amend its domestic legislative framework to remove *Fideicomisos* (trusts) that serve solely as escrow for a debt or purchase obligation of a settlor from its jurisdiction-specific list of Non-Reporting Financial Institutions as this type of Entity is a Non-Financial Entity so should be treated as such under the AEOI Standard.

Panama should amend its domestic legislative framework to fully incorporate the term "managed by" in relation to the definition of Investment Entity.

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**SR 1.2** Jurisdictions should define the scope of Financial Accounts and Reportable Accounts consistently with the CRS and incorporate the due diligence procedures to identify them.

Panama has defined the scope of the Financial Accounts that are required to be reported in its domestic legislative framework and incorporated the due diligence procedures that must be applied to identify them in a manner that is largely consistent with the CRS and its Commentary. However, deficiencies have been identified. More specifically, Panama's legal framework:

- does not specify that Reporting Financial Institutions may only rely on a self-certification for the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person;
- does not incorporate all the elements related to the residence address test for the purposes of identifying Reportable Accounts among Preexisting Individual Lower Value Accounts; and
- sets a threshold for the identification of Controlling Persons that differs from the one defined in its AML law.

These elements of the due diligence procedures are material to the proper functioning of the AEOI Standard.

**Recommendations:**

Panama should amend its domestic legislative framework to specify that, for New Entity Accounts, Reporting Financial Institutions may only rely on a self-certification provided by a Passive NFE Account Holder or its Controlling Person to determine whether the Controlling Person is a Reportable Person.

Panama should amend its domestic legislative framework to require Reporting Financial Institutions to use only a “current” residence address when applying the residence address test, in particular by specifying that if mail has been returned as undeliverable, then the address cannot be considered as “current”.

Panama’s should amend its domestic legislative framework to require Reporting Financial Institutions to apply the specified procedures if there is a change of circumstance relating to the cases where the residence address test was used.

Panama should amend its domestic legislative framework to ensure that the approach to determine Controlling Persons under the AEOI Standard is aligned to its approach to determine beneficial owners under its domestic AML/KYC procedures, by including a 10% threshold with respect to financial entities and a 25% threshold in relation to non-financial entities.

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**SR 1.3** Jurisdictions should incorporate the reporting requirements contained in Section I of the CRS into their domestic legislative framework.

Panama has incorporated the reporting requirements in its domestic legislative framework in accordance with the CRS and its Commentary.

**Recommendations:**

No recommendations made.

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**SR 1.4** Jurisdictions should have a legislative framework in place that allows for the enforcement of the requirements of the CRS in practice.

Panama has a legislative framework in place to enforce the requirements in a manner that is largely consistent with the CRS and its Commentary. However, a deficiency has been identified. More specifically, Panama’s domestic legal framework does not include sufficient rules to prevent Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures as required. This is a key element of the required enforcement framework and is therefore material to the proper functioning of the AEOI Standard.

**Recommendations:**

Panama should amend its domestic legislative framework to include rules to prevent all Financial Institutions, persons and intermediaries from adopting practices intended to circumvent the due diligence and reporting procedures, rather than only Financial Institutions, persons and intermediaries located within the territory of Panama.

***CR2 International legal framework: Jurisdictions should have exchange relationships in effect with all Interested Appropriate Partners as committed to and that provide for the exchange of information in accordance with the Model CAA.***

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| <b>Determination: In Place</b> |
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Panama’s international legal framework to exchange the information is in place, is consistent with the Model CAA and its Commentary and provides for exchange with all of Panama’s Interested Appropriate

Partners (i.e. all jurisdictions that are interested in receiving information from Panama and that meet the required standard in relation to confidentiality and data safeguards). (SRs 2.1 – 2.3)

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**SR 2.1** Jurisdictions should have exchange agreements in effect with all Interested Appropriate Partners that permit the automatic exchange of CRS information.

Panama has exchange agreements that permit the automatic exchange of CRS information in effect with all its Interested Appropriate Partners.

**Recommendations:**

No recommendations made.

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**SR 2.2** Such an exchange agreement should be put in place without undue delay, following the receipt of an expression of interest from an Interested Appropriate Partner.

Panama put in place its exchange agreements without undue delay.

**Recommendations:**

No recommendations made.

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**SR 2.3** Jurisdictions should ensure that the exchange agreements in effect provide for the exchange of information in accordance with the requirements of the Model CAA.

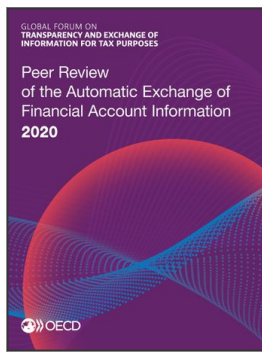
Panama's exchange agreements provide for the exchange of information in accordance with the requirements of the Model CAA.

**Recommendations:**

No recommendations made.

## Comments by the assessed jurisdiction

No comments made.



From:

## Peer Review of the Automatic Exchange of Financial Account Information 2020

Access the complete publication at:

<https://doi.org/10.1787/175eeff4-en>

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### Please cite this chapter as:

OECD (2020), "Panama", in *Peer Review of the Automatic Exchange of Financial Account Information 2020*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/626ead81-en>

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