

## Panama: Private and Sole Registry of Final Beneficiaries

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The obligation of Panamanian lawyers<sup>1</sup> to know their client by acting as resident agents in public limited companies has existed legally since 1994, that is, more than 25 years ago.<sup>2</sup>

Its compliance, effectiveness and efficiency have not been scientifically measured by the Panamanian authorities, private sector or academia. Not until very recently<sup>3</sup>, have we had official local data that would allow us to objectively assess whether on any occasion in which resident agents have been required to inform, locally or internationally<sup>4</sup>, of who is the client/final beneficiary of the corporation's or private interest foundation's resident agent, this has been done timely and properly. This single omission and delay speak volumes.

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<sup>1</sup> According to data from the Supreme Court of Justice of Panama, in 1994 there were 3,100 lawyers registered with practicing certificate. In 2012 there were 16,200 attorneys with practicing certificate. In 2020 the number of attorneys with practicing certificate exceeds 25,000.

<https://www.organojudicial.gob.pa/consulta-de-idoneidades-y-firmas-de-abogados>

The deceased attorneys must be subtracted from these figures. Any Panamanian lawyer can be a resident agent. Only Panamanian lawyers, or Panamanian law firms, can be resident agents. According to the report of the Mutual Evaluation of Panama of the Latin American Financial Action Group (GAFILAT), of January 2018, pages 29 and 30, there were 3905 natural persons lawyers and 311 law firms registered as resident agents with the Panama Supervision and Regulation Intendancy of Non-Financial Subjects. (Replaced by Law 124 of January 7, 2020 by the Superintendency of Non-Financial Subjects).

<https://superseguros.gob.pa/images/files/prevencion/informe-201801.pdf>

<sup>2</sup> Executive Decree 468 of September 19, 1994 amended by Executive Decree 124 of April 27 2006 (repealed).

<sup>3</sup> In the mutual evaluation carried out by the Latin American Financial Action Group (GAFILAT), 2018.

<https://superseguros.gob.pa/images/files/prevencion/informe-201801.pdf>

<sup>4</sup> Some examples: "More than half of the requests for information sent to Panama in the last 10 years were ignored. Panama has ignored most requests for information sent by the Malta Anti-Money Laundering Agency (FIAU) for 10 years." Jacob Borg, Tuesday March 15, 2016.

<http://www.timesofmalta.com/articles/view/20160315/local/more-than-half-requests-for-information-sent-to-panama-in-past-.605743>

"France: Panama does not send information." La Prensa, Panama, December 23, 2015.

[http://impresa.prensa.com/panorama/Francia-Panama-envia-informacion\\_0\\_4375812379.html#sthash.vbmhVkOG.dpuf](http://impresa.prensa.com/panorama/Francia-Panama-envia-informacion_0_4375812379.html#sthash.vbmhVkOG.dpuf)

I have good reason to believe that the legal formulas developed<sup>5</sup> during the last 25 years, particularly those related to the obligations<sup>6</sup> of resident agents, have not functioned properly. This is due to a combination of factors ranging from its poor formulation, sometimes intentional, to the palpable lack of will to strictly apply it. This is constantly reflected in the results of Panama in mutual evaluations of compliance with recommendations on money laundering for more than 20 years<sup>7</sup>, and more recently, Panama's own analysis in its national self-assessment of risk in the fight against money laundering and terrorist financing carried out in 2018.

If the above were not enough, the media strength of investigative journalistic work made available to the world, highlighting among them, undoubtedly, the so-called *Panama Papers*<sup>8</sup> have made it impossible for Panama not to react with changes that may adjust to the new realities and transparency needs.

Faced with incessant international pressure, and with the unsatisfactory results of the latest international evaluations<sup>9</sup>, the National Assembly of Panama approved on December 19, 2019 the Draft Law presented by the Executive Branch through which a Private and Sole System of Registry of Final Beneficiaries in Panama<sup>10</sup> is created. As of January 27, 2020, the project was pending sanction by the President of Panama.<sup>11</sup>

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<sup>5</sup> The obligation to know your client and supply the information to the Public Ministry or the Judicial Branch was limited to drug trafficking or money laundering crimes arising from this activity due to processes already initiated in Panama or under the Mutual Legal Assistance Treaties (TALM). Executive Decree 468 of September 19, 1994. 12 years later, through Executive Decree 124 of April 27, 2006, it was extended to crimes related to drug trafficking, money laundering and terrorism.

<sup>6</sup> Law 2 of February of 2011, as amended by Laws 23 of 2015, 52 of 2016 and 49 of 2018, deals with the obligation of the Panamanian residents agents to know their client. This regulation contains certain articles that, in my opinion, contradict the objectives of anti-money laundering rules.

<sup>7</sup> <https://superseguros.gob.pa/images/files/prevencion/informe-201801.pdf>

<sup>8</sup> <https://www.icij.org/investigations/panama-papers/>

<sup>9</sup> New jurisdiction subject to monitoring: Panama. FATF has identified Panama as a jurisdiction with strategic AML/CFT deficiencies. Outcomes FATF Plenary, June 16-21, 2019.

<https://www.fatf-gafi.org/publications/fatfgeneral/documents/outcomes-plenary-june-2019.html>

<sup>10</sup> [https://www.asamblea.gob.pa/APPS/SEG\\_LEGIS/PDF\\_SEG/PDF\\_SEG\\_2010/PDF\\_SEG\\_2019/2019\\_P\\_169.pdf](https://www.asamblea.gob.pa/APPS/SEG_LEGIS/PDF_SEG/PDF_SEG_2010/PDF_SEG_2019/2019_P_169.pdf)

<sup>11</sup> The creation of the Sole System has followed an accelerated process. The Cabinet Council approved the Draft Law on November 7, 2019. It was presented by the Executive Branch to the National Assembly on December 12, 2019. It was approved in the National Assembly in one week. In the Government, Justice and Constitutional Affairs Commission, on December 17, 2019 and in the third debate by the plenary session of the National Assembly, on December 19, 2019. There was no option to follow up on a methodology to make a prior evaluation with diagnosis and action plan, nor a practical exercise prior to its approval to consider the practical and operational difficulties of its implementation. For example, the Colombian consultant on compliance issues, Alma Balcázar, member of the International Council of Transparency International, has prepared, and shared with me, the document entitled: ***Draft for a practical guide of steps prior to the implementation of Central Registries on Real Beneficiaries in local contexts.*** Following-up of a methodology such as the one indicated could have been of benefit in the case of Panama.

The new Sole System is limited to information on final beneficiaries of legal entities in which a Panamanian lawyer, or a Panamanian law firm, provides the service of resident agent. This information will remain in the Sole System for not less than 5 years after the inscription of the dissolution of the corporation or private interest foundation in the Public Registry of Panama.

It should be remembered that in Panama there is, through Agreement 307 of April 24, 2015 issued by General Business Fourth Chamber of the Supreme Court of Justice, a special registry for the registration of lawyers or law firms that act as custodians of shares certificates issued to the bearer and establishes provisions related to its administration in accordance with the provisions of Law 47 of August 6, 2013 on custody of bearer shares.<sup>12</sup> The validity and practical relevance of this special registry is subject to interpretation and doubt before the existence of this new Sole System.

By final beneficiary it must be understood, according to the new norm, “natural person or persons who, directly or indirectly possess, control and/or exercise significant influence over the account, contractual and/or businesses relationship; or the natural person in whose name or benefit a transaction is carried out, which also includes natural persons who exercise final control over a legal entity.

Amongst the criteria for determining possession, control or influence, are included, but not limited to, the following:

- a. Shareholder Criteria. The natural person who ultimately owns or controls<sup>13</sup>, directly or indirectly 25% or more of the shares or voting rights in the legal entity, except for those companies with common shares that are listed on a local or international stock exchange, or that are owned of an international, multilateral or State agency.

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<sup>12</sup> [https://www.organojudicial.gob.pa/uploads/wp\\_repo/uploads/2015/05/Acuerdo-No.307-de-24-04-15-Que-crea-el-Regis6.pdf](https://www.organojudicial.gob.pa/uploads/wp_repo/uploads/2015/05/Acuerdo-No.307-de-24-04-15-Que-crea-el-Regis6.pdf)

<sup>13</sup> Law Decree 1 of July 8, 1999, which regulates the stock market in Panama, contains the following definition of Control: “For the purposes of the term affiliate, contained in this article, and article 56 of this Law Decree, is the direct or indirect power to exercise a determining influence on the administration, management and policies of an entity through the ownership of shares with voting rights, contractual rights or otherwise. Any person who, individually or in common agreement with other persons, owns or has the right to vote with respect to more than 25% of the issued and outstanding shares of a company shall be presumed to exercise control over this company. Similarly, it will be presumed that the person who has less than 25% does not exercise control over said company. Both presumptions will admit evidence to the contrary. The Superintendency may identify situations in which it considers that control exists or not, even when more or less than the percentage indicated above is have.” Another important source to consider regarding the definition of the concept of Control is found in the **International Financial Reporting Standards (IFRS)** applicable in Panama by legal mandate.

b. Control Criteria:

b.1. The case of a civil company, the partner or partners who hold the administration of the company.

b.2. In the case of a trust which holds a shareholding of 25% or more over legal entities; the settlor, in the event that the trust is revocable or the latter retains for itself administrative control or disposition power of the assets; the beneficiary, in case the trust is considered as non-discretionary regarding the payment of benefits; and the trustee or any natural person who exercises effective and definitive control over the trust.

A discretionary trust shall be understood as the one in which the payment of benefits is at the discretion of the trustee under the terms of the trust.

b.3. In the case of a legal person in liquidation, insolvency or creditors arrangements, the natural person who is appointed as liquidator or curator of the legal entity.

b. 4. In the case of a shareholder of the legal person who would otherwise be a final beneficiary according to this section, but died, the natural person acting as executor or a personal representative of the deceased's patrimony.

c. In any other case not foreseen in the previous provisions, the natural person who otherwise exercises effective and definitive control over the management of the legal entity, that is, who has the capacity to take relevant decisions over the legal entity and impose such resolutions.

The concept of Effective Owner is used in the Panama stock market. The definition of the concept is, in my opinion, relatively simple, realistic and flexible. By effective owner, when used in relation to a security, it must be understood to be *“the person or persons who, whether or not they are registered as the owners of said security, have the right, directly or through an intermediary, to receive the return on said security, to exercise voting rights in relation to said security, to transfer of or dispose of said security or to receive the proceeds of the transference or disposition of said security.”*<sup>14</sup>

The declared purpose of the new regulation on the Sole System is: “to facilitate access to final beneficiaries of legal entities collected by lawyers who provide resident agent services to assist the competent authority in the prevention of money laundering”.

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<sup>14</sup> Article 49 number 51 of the Sole Text of the Panama Stock Market Law.

For legal and practical purposes, it refers to the Panamanian corporation<sup>15</sup>, which is the type of company that requires a resident agent. In addition, for the other types of companies, which are considered by Panamanian civil and commercial law<sup>16</sup>, there is already a Public and Sole Registry<sup>17</sup>, with important legal effects, and in which the names of the partners or shareholders of said companies are available. The current system, both registry and legal, looks no further. The people who appear in the Panamanian Public Registry in all companies are understood to be the beneficiaries and especially those legally responsible for legal purposes. It is in the Panamanian corporation, due to the anonymity of its shareholders and the practical use of figureheads, via figures such as directors/nominal dignitaries that more information should be sought.

The Panamanian corporation is, without a doubt, the one that is most constituted<sup>18</sup>. It has also been the one that has been most involved in scandals, local and international, and, therefore, the most affected by reputational risk, which is reflected in the drastic drop in the number of constituted corporations. For example, if you compare the year 2009 with the year 2019, the substantial drop is evident. In 2009, 37,408 Panamanian corporations were incorporated. In 2019, 13,763 Panamanian corporations were incorporated.

The effect of the *Panama Papers* can be clearly seen not only in the decrease in new incorporations but in the increase in the dissolutions of Panamanian corporations.

In 2014, 1,261 corporations were dissolved, in 2015, 12,332 corporations were dissolved, in 2016, 14,353 corporations were dissolved, in 2017, 12,074 corporations were dissolved, in 2018, 7,760 corporations were dissolved and in 2019, 6,612 corporations were dissolved.<sup>19</sup>

The situation of the various types of companies registered in the Public Registry of Panama, with access to the name of their partners or shareholders, demonstrates, in my opinion, that the condition of anonymity and the existence of a resident agent do not constitute elements or inherent rights for the very existence of a legal person.

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<sup>15</sup> Law 32 of 1927 [https://www.oas.org/juridico/spanish/mesicic3\\_pan\\_ley32.pdf](https://www.oas.org/juridico/spanish/mesicic3_pan_ley32.pdf)

<sup>16</sup> In Panama, according to the Commercial Code, there is a collective partnership, a limited partnership, a simple limited partnership, a limited partnership by shares. There is a limited liability company (LLC) (Law 4 of 2009). In civil matters, the Civil Code of Panama contemplates the civil society contract.

<sup>17</sup> <https://registro-publico.gob.pa/?start=3>

<sup>18</sup> The limited liability company (LLC) created by Law 4 of 2009, a company which partners can be known in the Public Registry of Panama, is less constituted than the corporation. In 2017, 141 LLC were registered, in 2018, 109 LLC were registered and in 2019, 175 LLC were registered. Source: Public Registry of Panama.

<sup>19</sup> Source: Public Registry of Panama. <https://registro-publico.gob.pa/?start=3>

Legal persons are a fiction of the law. To some types, the law has given **limited liability and anonymity** for their partners. It was not always so. Limited liability may cease, either by legal mandate, *“when the company is used for illicit purposes or when maneuvers tending to defraud the credit of third parties are carried out”* (Article 74 of now repealed law 24 of 1966 by which limited liability companies are regulated), or via the jurisprudence of lifting the corporate veil, of little application in Panama. The anonymity of partners, due to sometimes aiding in committing money laundering and/or terrorist financing, is close to disappearing worldwide.<sup>20</sup>

It must be understood that the Panamanian Private Interest Foundation<sup>21</sup> is included in the new regulation of the Sole System, as it is a legal entity and has a resident agent. Trusts are not legal entities, even when they have a resident agent, so they do not fall within the scope of the new rule.<sup>22</sup>

Access to this new private registry is limited to the Competent Authority. Competent Authority comprises only 4 entities:

1. The Superintendency of Non-Financial Subjects,<sup>23</sup>
2. The Financial Analysis Unit (UAF),
3. The Public Ministry, and
4. The Ministry of Economy and Finance.

It is interesting to note that the Judicial Branch, with its various instances including the Supreme Court of Justice and lower courts, is not included as a Competent Authority. For example, in civil proceedings in which a party requires to know who is the final beneficiary of a corporation or private interest foundation, a judge will not be empowered to obtain such information. This potentially affects the proper administration of justice.

The new standard actually refers to two records, even though its name or title refers only to one.

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<sup>20</sup> See <http://barsallocarlos.blogspot.com/2019/11/propietarios-efectivos.html>

<sup>21</sup> Law 25 of 1995 <http://www.lasocienciacivil.org/doc/ley-de-fundaciones-de-interes-privado-de-panama-texto-de-ley/#> The information on Private Interest Foundations (FPIs) in the Public Registry of Panama indicates that in 2017, 2,517 FPIs were registered, in 2018, 2,216 FPIs were registered and in 2019, 2,113 FPIs were registered. Source: Public Registry of Panama.

<sup>22</sup> Law 1 of 1984

[https://www.superbancos.gob.pa/superbancos/documentos/fiduciarias/leyes/Ley1\\_1984\\_Fideicomisos.pdf](https://www.superbancos.gob.pa/superbancos/documentos/fiduciarias/leyes/Ley1_1984_Fideicomisos.pdf)

The information on trusts that have been registered in the Public Registry of Panama indicates that in 2017, 2,361 trusts were registered, 2,205 trusts were registered in 2018 and 2,435 were registered in 2019. Not all trusts are registered in the Public Registry of Panama. Only those that are constituted on real estate property are registered. Most trusts are not registered.

<sup>23</sup> Created by Law 124 of January 7, 2020. The Superintendence of Non-financial Subjects replaces the Supervision and Regulation Intendancy of Non-Financial Subjects.

[https://www.asamblea.gob.pa/APPS/SEG\\_LEGIS/PDF\\_SEG/PDF\\_SEG\\_2010/PDF\\_SEG\\_2019/2019\\_P\\_056.pdf](https://www.asamblea.gob.pa/APPS/SEG_LEGIS/PDF_SEG/PDF_SEG_2010/PDF_SEG_2019/2019_P_056.pdf)

On the one hand, the Registry of Resident Agents at the Superintendency of Non-Financial Subjects<sup>24</sup>, which already exists. This registry concerns Panamanian lawyers or law firms that act as resident agent.<sup>25</sup>

Pursuant to the new standard, legal entities whose resident agent is not duly registered in the Resident Agent registry before the Superintendency of Non-Financial Subjects are suspended "the corporate rights provided by the Public Registry."

On the other hand, the new standard refers to a Sole System that is the technological tool that will be administered by the Superintendency of Non-Financial Subjects to facilitate access and guarantee the confidentiality of the information contained in the Private and Sole System of Registration of Final Beneficiaries, and which constitutes the novelty.

The Sole Registry of final beneficiaries is administered and guarded by the Superintendence of Non-Financial Subjects.

The characteristics of the Registry are that it is: 1. free, 2. private, 3. of limited access, 4. with security controls and 5. technological protections.

The concept of private is opposed to the public registration of final beneficiaries. Regarding public registration, Panama has the experience that applies to all other companies in that it allows knowing who their partners or shareholders, except for public limited companies.<sup>26</sup>

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<sup>24</sup> Entity that came to replace the Supervision and Regulation Intendancy of Non-Financial Subjects of Panama.

<sup>25</sup> Law 23 of 2015 on the prevention of money laundering in Panama in its Article 24 provides the activities carried out by professionals subject to supervision. Lawyers will only be subject to supervision by the Supervision and Regulation Intendancy of Non-Financial Subjects (replaced by Law 124 of January 7, 2020 by the Superintendency of Non-Financial Subjects) when in the exercise of their activity they carry out on behalf of their client, or for a client, the following activities:

7. Acting or arranging for a person, paid by the lawyer or law firm, to act as a proxy director of a company or a similar position, in relation to other legal entities.
8. Provide a registered address, business address or physical space, postal or administrative address for a company, society or any other legal person or legal structure not owned by it.
9. Acting or arranging for a person paid by the attorney or law firm to act as figurehead shareholder for another person.
10. Acting or arranging for a person, paid by the lawyer or law firm, to act as a participant in an express trust or to perform the equivalent function for another form of legal structure.
11. That of resident agent of legal entities constituted or existing in accordance with the laws of the Republic of Panama.

<sup>26</sup> The Panamanian Public Registry informs the identity of the directors and dignitaries of legal entities, who are sometimes colloquially named **nominal directors**. This concept does not legally exist in Panama. The identity of the shareholders is not disclosed.

In Panama, article 24 of Law 23 of 2015 on the prevention of money laundering, paradoxically legalizes a figure considered negative and even criminal in many other jurisdictions. It is identified as a lawyer service, and providing it is subject to the supervision of the Supervision and Regulation Intendancy of Non-Financial Subjects, the: "Act or arrangement for a person, paid by the lawyer or law firm, to act as a shareholder figurehead for someone else."

In 2019, Transparency International has published the interesting and complete document<sup>27</sup> titled **Who is behind the Wheel? Fixing The Global Standards on Company Ownership** in which it advocates for the establishment of a public registry of final beneficiaries, after demonstrating with concrete evidence the limitations and deficiencies of other systems currently used.

**Who is behind the Wheel? Fixing the The Global Standards on Company Ownership** demonstrates the degree of effective compliance with Recommendation 24 of the **Financial Action Task Force (FATF)** on knowing beneficial owners. The results show that globally compliance with this recommendation is not satisfactory. A qualitative analysis of 26 mutual **FATF** evaluations shows that of 83 countries evaluated by **FATF** since 2014, only one, Trinidad and Tobago, complies with the Recommendation 24. 45% partially comply with the recommendation, including **Panama**, and 14% do not, including the United States. Transparency International proposes, as a solution to the problem, the creation of public registries of final beneficiaries of companies.

In the case of Panama, Transparency International's proposal coincides with the recommendation contained in the report<sup>28</sup> published in 2016 by Nobel Prize-winning economist Joseph Stiglitz and the Swiss anti-corruption expert Mark Pieth.

Stiglitz and Pieth were initially part of the Commission of Independent Experts appointed by the government of Panama after the publication of the Panama Papers. Both resigned before the Committee submitted its report and recommendations and they generated own report and recommendations.

Among the recommendations in the Stiglitz and Pieth report, it is stated: *"Each country should establish a public registry that can be consulted by anybody and that identifies the directors and real owners of all companies, trusts and foundations established within its borders."*

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<sup>27</sup> It is a work by Maíra Martini that had Fabrizio Constantino, Guilherme France and Maíra Martini as researchers. It received review, comments and collaboration from José María Marín, Maximilian Heywood, Eka Rostomashvili and Michael Hornsby.  
[https://www.transparency.org/whatwedo/publication/who\\_is\\_behind\\_the\\_wheel\\_fixing\\_the\\_global\\_standards\\_on\\_company\\_ownership](https://www.transparency.org/whatwedo/publication/who_is_behind_the_wheel_fixing_the_global_standards_on_company_ownership)

<sup>28</sup> "Overcoming the Shadow Economy", <http://policydialogue.org/publications/network-papers/overcoming-the-shadow-economy/>



The decision on the adoption of a public or private registry must be made after an in-depth evaluation of the local situation and whether the system in force in the corresponding jurisdiction works or not.

Related to the concept of private registration is the limited access feature. Only the resident agents or the legal entities and two officials designated by the Superintendency of Non-Financial Subjects have access to the sole registry of final beneficiaries, who must comply with specific requirements set forth in the new regulation.

The sole Registry of final beneficiaries must ensure the privacy of the information provided by the resident agents. You must ensure the integrity, confidentiality and traceability and computing security of the data stored. It must follow: *"the international standards of management and protection of personal data"*.

In this logical and basic security feature, there is some agreement with the Final Report of the Committee of Independent Experts of Panama of November 18, 2016, which states:

"III. Recommendations.

5. Access to information.

g. Develop a high security technological platform, where private and public entities, store the information that is their responsibility to collect, so that it is easily accessible to the authorities when, following legal processes, it becomes necessary to access it."

In my opinion, this is very important after the *Panama Papers* experience, since a leak may occur in the future this time of the entire database of final beneficiaries.<sup>29</sup>

The custodian and administrator of the registry, the Superintendence of Non-Financial Subjects, is not responsible for the truthfulness or accuracy of the information provided by the resident agent. Nor is the resident agent responsible.

The Resident Agent may not be sued nor subjected to seizure of assets, nor precautionary measures or injunctions in relation to the data in the Single System.

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<sup>29</sup> <https://www.tvn-2.com/2016/11/21/independentessss.pdf?hash=fd9c29b8adb14d64e948bdc290020ff52847348c>

There is no judicial or administrative recourse or any action of other nature for access to information in the single system by persons other than those authorized by law.

Regarding responsibilities, Law 2 of 2011 that regulates for the resident agents, of existing legal entities in accordance with the laws of the Republic of Panama, the measures to know their clients, releases the resident agent from the obligation to carry out proactive action or verification of the information provided by the client on the activity to which the legal entity will be engaged. The resident agent complies with the obligation to obtain the information from the client, at the time of starting the provision of its services.<sup>30</sup> This contrasts with the obligation established by law 23 of 2015, adopting measures to prevent money laundering, terrorism financing and the financing of the proliferation of weapons of mass destruction, which, in article 28, demands a more proactive activity of the subject bound by what can be inferred from law 2 of 2011 for the attorney/resident agent.

It is stated in Law 2 of 2011 that the resident agent, by the mere fact of having provided his services as such to the client's entities, will not be considered as author or accomplice, even if the client is found guilty of perpetrating a misdemeanor or infringement of rules be it of an administrative, civil, criminal or tax nature.

This norm contrasts with other current criminal regulations that clearly indicate who should be considered an accomplice in the perpetration of a crime.

In my opinion, the resident agent, depending on the specific case and the particular circumstances, could be an accomplice. In Panamanian criminal law, a primary accomplice is the person who takes part in the execution of the punishable act or provides the author with help without which he could not have committed the crime. It is a secondary accomplice: 1. Whoever helps, in any other way, the author or authors in carrying out the punishable act; or 2. Who, in any other way, provides help or conceals the proceeds of the crime, in fulfillment of a promise made prior to its execution.

The most important elements to ensure whether the new Sole System registry of final beneficiaries will work or not, are directly related to two aspects: compliance with providing initial information, and, above all, making the necessary updates in a timely manner.

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<sup>30</sup> Law 2 of 2011 in its article 7 states that the resident agent will not require obtaining information from the third party on behalf of which the client acts, when it is certain that this is a legal entity that belongs to a professional body whose conduct or practices require it to adopt and maintain professional and ethical standards for the prevention and detection of money laundering, the fight against terrorism and any other illegal activity in terms not inferior to those required in compliance with this Law, such as law firms, banks, trust companies, insurers, value houses and authorized public accountants. Curiously, in 2011, nor now, with the exceptions of Law 23 of 2015, in Panama authorized public accountants fall into this category.

As for the initial information, the term for the registration of the data of the legal person and the final beneficiary is a maximum of thirty business days after the constitution or registration or the appointment of a new resident agent in the Public Registry of Panama.

Regarding the completion of the updates, the resident agent must keep all the required information updated. The legal representative of any legal entity is obliged to provide its resident agent with the required information, as well as notify any variation within a maximum period of thirty business days from the date of the variation. The agent has thirty business days to update the record.

From the creation of the sole system, the resident agents must proceed with their registration as registrants, as well as with the obtention of the information for each legal entity constituted or registered in force within the six months following the notification made by the Superintendence of Non-Financial Subjects in national circulation media.

To ensure compliance, the new regulations contain a variety of penalties for different actions or omissions.<sup>31</sup>

There are penalties for not complying with the registration and update obligations ranging from US \$ 1,000.00 to US \$ 5,000.00. In addition, there are progressive daily fines, the amount of which will be equivalent to 10% of the originally imposed fine, until the breach is remedied for a term of 6 months. In any case, the resident agent must provide the information of the final beneficiary at the request of the competent authority.

There are specific sanctions that entail ordering the Public Registry of Panama to suspend the corporate rights of the corporation or private interest foundation that has not been duly registered or updated in the Sole System by its resident agent. This suspension can last up to two years, since the reactivation can be requested, which can be requested by any administration body, shareholder, partner, resident agent or any interested third party. If the registration of the agent and the reactivation of the legal entity have not been verified, the legal entity will be considered dissolved.

If false information about the final beneficiary is provided by the resident agent, the sanction is twice the indicated penalty, without prejudice to civil and criminal penalties. If the legal entity or final beneficiary is the one that has provided the false information to the resident agent, and has done so with intent, the resident agent is exempt from liability and the responsibility falls on the legal entity or final beneficiary.<sup>32</sup>

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<sup>31</sup> Chapter IV. Sanctions. Articles 22 to 26. Text approved by the National Assembly of Panama in the third debate on December 19, 2019, which approves the Private and Sole Registry System for Final Beneficiaries in Panama.

<sup>32</sup> In Panamanian anti-money laundering regulations, falsifying such information theoretically has consequences. Pursuant to article 255 of the Panamanian Penal Code, the penalty corresponding to money laundering (five to twelve years in prison) will be punished by anyone who personally or through an intermediary, natural or legal

Another sanction is that no document and/or agreement can be registered, nor can certifications be issued except those requested by the competent authority or third parties to assert their rights.

There are also penalties for violation of confidentiality duties and for unauthorized access. They are applicable to those who, for their own benefit or that of a third party, either directly or indirectly, by any means, access the Sole System or the information contained, without the due authorization of the person who must issue it. The penalty is half a million dollars (US \$ 500,000.00).

The sanctions are applied by the Superintendency of Non-Financial Subjects.

The duty of confidentiality is imposed by the new regulations for those who have access to the information of the Sole System and it lasts after the cessation of its functions. The breach of the duty of confidentiality is sanctioned with US \$ 200,000.00, which is in addition to the civil or criminal responsibilities that may correspond.

In the event that the resident agent cannot update the final beneficiary information, they must resign as the resident agent. Failure to submit the resignation will correspond to the imposition of sanctions by the Superintendency of Non-Financial Subjects.

In addition to the resignation as a consequence of not being able to update the information, the resident agent can resign voluntarily. He/She must notify the Superintendency of Non-Financial Subjects within 30 business days after the registration of his/her resignation in the Public Registry so that he/she are removed from the legal person in the Sole System and have no further access to information. The information on the final beneficiary remains in the Sole System.

When appointing a new resident agent proceed in the same way and within the same period from the date of faith. cha of designation of the new resident agent in the Public Registry of Panama. This in order for the new resident agent to be linked to the legal entity and to enter all the information. The new resident agent will not have access to the information previously registered by another Resident Agent.

The professional secrecy of the lawyer is not violated by the delivery of information for the purposes of the Single System to the Superintendency of Non-Financial Subjects, it cannot

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entity, supplies the bank establishment with false information for opening a bank account with resources from money laundering. There is no known frequent or effective application of this criminal sanction.

constitute a breach of confidentiality imposed by contract or by any legal or regulatory provision and will not imply any liability for the resident agents.

The point is not clarified in the new rule on the duty to report suspicious operations by lawyers, which contains a somewhat ambiguous presentation in Law 23 of 2015.<sup>33</sup>

### Conclusions:

This new norm is a formal advance that implies order and the search for better information management, until now dispersed and carried in a varied way by the obligated parties. Only time will tell if it works or not. It can help if there is a will and is strict in its compliance.

The history of Panamanian regulatory progress shows that sometimes more modern, up-to-date, and comprehensive rules are formally approved than those in other jurisdictions, but their application, or enforcement, is usually poor or lacking.

Let us remember what was indicated at the beginning, the purpose of the new regulation is: *“to facilitate access to final beneficiaries of legal entities collected by lawyers who provide the services of a resident agent to assist the competent authority in the prevention of money laundering”*. We can objectively conclude that what is approved contains the *formal* elements to achieve the desired end.

Formally, the end must be achieved through:

1. The creation and correct administration of the Sole System.

It must be signed by the president on Panamá and enacted by publication in the Official Gazette so that it becomes law.

From the creation of the Sole System, the resident agents must proceed with their registration as registrants, as well as with the capture of the information required for each legal entity constituted or registered in force, within **6 months** of the notification made by the Superintendency of Non-Financial Subjects in national circulation media.

2. Timely registration of information.

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<sup>33</sup> Article 25 of Law 23 of 2015. Protection of professional secrecy. Attorneys and certified public accountants, who in the course of their professional activity are classified as activities carried out by supervised professionals, do not have to report suspicious transactions if the pertinent information was obtained in circumstances in which they are subject to professional secrecy or legal privilege in the defense of his client or the confession that his client makes for his due defense.

There is a period of **30 business days** to register the information in the case of new corporations and foundations of private interest.

3. The assurance of the quality and reliability of the initial information.

Deterrents (sanctions) are created in case of not providing the information in a timely manner or providing false information. Monetary fines, progressive fines that increase daily and that double in case of falsity, suspension of corporate rights in the Public Registry of Panama and mandatory resignation of the resident agent are contemplated.

4. The permanent updating of the information.

If the information is not updated, there are penalties for those responsible. The deadline is **30 business days** to update.

5. Prompt and timely delivery of information to the competent authority.

When the information is requested by the competent authority, it must be provided in a timely manner, this is a maximum of **7 business days** following the date of the request.

All these items will take time, effort and real will for their due compliance. All these items seek to attack the problem that Panama has had when it comes to cooperation and information exchange and that generates, as a practical problem, poor results in international evaluations.

With this norm, and it is not its end, the underlying issue of the very system of corporations and foundations of private interest is not treated, that is, the reason for being, justification of anonymity and its limits.<sup>34</sup>

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<sup>34</sup> Panama maintains bearer shares, but it is required that they be deposited for custody with an authorized custodian. See Law 47 of 2013. [https://www.organojudicial.gob.pa/uploads/wp\\_repo/uploads/2015/05/Ley-47-de-6-de-agosto-de-2013.pdf](https://www.organojudicial.gob.pa/uploads/wp_repo/uploads/2015/05/Ley-47-de-6-de-agosto-de-2013.pdf)

The system of deposit or custody of this type of shares with an authorized custodian has been adopted, for which records of authorized custodians have been created that include: banks and trustees, supervised by the Superintendency of Banks of Panama (SBP) (SBP Agreement 10-2018), [https://www.superbancos.gob.pa/superbancos/documentos/leyes\\_y\\_reglaciones/acuerdos/2018/Acuerdo\\_10-2018.pdf](https://www.superbancos.gob.pa/superbancos/documentos/leyes_y_reglaciones/acuerdos/2018/Acuerdo_10-2018.pdf) brokerage houses regulated and supervised by the Superintendence of the Panama Stock Market (SMV) (Agreement SMV 7-2015), <http://www.supervalores.gob.pa/reglamentacion/acuerdos/acuerdos-vigentes-english/agreements-2015/1548-agreement-07-2015/file> and lawyers with a special registry kept by the Fourth General Business Chamber of the Supreme Court of Justice (Agreement 307 of 2015). [https://www.organojudicial.gob.pa/uploads/wp\\_repo/uploads/2015/05/Acuerdo-No.307-de-24-04-15-Que-crea-el-Regis6.pdf](https://www.organojudicial.gob.pa/uploads/wp_repo/uploads/2015/05/Acuerdo-No.307-de-24-04-15-Que-crea-el-Regis6.pdf)

It is a system to allow this type of bearer shares to subsist.

This is a regulation and a mechanism for managing the current system and for dealing with requests, primarily external. It is not a rethinking or review of the system as a whole, with analysis of its benefits, sustainability and risks.

Finally, and referring to risks, paradoxically the Sole System introduces a new and important one.

By concentrating now all the information on final beneficiaries, previously non-existent, poorly carried and/or dispersed in potentially thousands of resident agents, in a Single System or database, the risk of a massive leak increases and must be properly evaluated and mitigated.

If there were a possible leak of the content of the new **Private and Sole System of Registry of Final Beneficiaries in Panama**, this time it could be referred to with full ownership of "the" *Panama Papers*.