Global Forum on Transparency
and Exchange of Information for Tax Purposes

Supplementary Peer Review Report
Phase 1
Legal and Regulatory Framework

MONACO

OECD

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004. The standards have also been incorporated into the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once adopted by the Global Forum.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to *www.oecd.org/tax/transparency* and *www.eoi-tax.org*.

Executive Summary

1. This is a supplementary report on the amendments made by Monaco to its legal and regulatory framework for transparency and exchange of information. It complements the Phase 1 Peer Review report of Monaco which was adopted and published by the Global Forum on Transparency and Exchange of Information for Tax Purposes in September 2010 (the "2010 Report") and the Supplementary Peer Review Report adopted and published by the Global Forum in October 2011 ("the 2011 Report"). This supplementary report considers the changes made by Monaco since August 2011, the date at which the legal and regulatory framework was previously assessed, to address the recommendations made in the 2010 and 2011 Reports. It responds to Monaco's intermediary report sent to the Peer Review Group in April 2012 (the "2012 Intermediary Report"), in accordance with paragraph 57 of the Global Forum's Methodology (see Annex 2).

2. The report details the steps Monaco has taken to address the determinations and recommendations made in the 2010 and 2011 Reports in relation to element A.1 (availability of ownership information) which was previously assessed to be "In place, but certain aspects of the legal implementation of the element need improvement" and A.2 (availability of accounting information), which was previously assessed to be "Not in place". It also describes the recent developments as to the negotiation of agreements containing exchange of information (EOI) mechanisms, in response to the recommendations under element C.2 (EOI network covering all relevant partners), which was previously assessed to be "In place, but certain aspects of the legal implementation of the element need improvement". However, the 2012 Intermediary Report is silent as to the deficiencies identified under element B.2 (requirements regarding notification, rights and safeguards), which was found to be "In place, but certain aspects of the legal implementation of the element need improvement" in the 2010 and 2011 Reports.

3. Since its commitment to the international standard on transparency and exchange of information on 24 March 2009, Monaco has signed 24 agreements which meet the standard, in addition to the existing DTC with France, dating back to 1963. Twenty two of these agreements are in force and two

more are already ratified by Monaco. Monaco expects to sign shortly four more agreements and is currently negotiating with, amongst others, Poland, Spain and the United Kingdom. Monaco is encouraged to continue making progress in negotiating new EOI agreements to the standard.

4. The initial assessment of the legal and regulatory framework in force in Monaco showed that, overall, the Principality's legal framework meets the international standard for transparency and exchange of information with respect to availability of ownership information. Administrative authorisation to engage in a business activity, as well as registration in the Monegasque Directory of Commerce and Industry, provide broad assurance that ownership and accounting information concerning commercial companies and partnerships is available. The same holds true with regard to banking information, the availability of which is assured under the Anti-Money Laundering (AML) legislation.

5. By virtue of the amendments made to its legal and regulatory framework in 2011 and 2012, Monaco now ensures the availability of ownership information for all types of companies incorporated in Monaco thanks to the obligation to keep a share register. Bearer shares are now prohibited by Monaco's legislation and existing bearer shares issued by two listed companies must be converted into registered shares by the end of 2014. In addition, the two companies that were allowed to issue bearer shares in order to fulfil requirements to be listed on a French regulated stock exchange are required from the end of 2011 to have knowledge of the identity of all owners of such shares and to provide this information upon request of Monaco's authorities. These new requirements are supported by sanctions. Amendments to Monaco's AML framework ensure the availability of ownership information in relation to express trusts established in or with a presence in Monaco. Consequently, the three recommendations made under A.1 are removed and the determination of this element is upgraded to "the element is in place".

6. New legal requirements ensure that all types of entities that exist in Monaco, including partnerships under civil law, foreign trusts and foundations, are required to keep reliable accounting records for at least five years. As a result, the three recommendations made under A.2 are removed and this element is now assessed to be "In place".

7. In the area of access to information, Monegasque legislation provides for access to available information held by any person when such information is required for the purposes of international information exchange, including information that is required to be kept in Monaco for AML purposes. Likewise, the absence of any reference to a domestic tax interest, whether domestically or in the treaties concluded by Monaco, ensures that the Monegasque competent authorities can exercise their powers to collect information for EOI purposes. However, Monaco implemented a prior notification procedure which

is inconsistent with the international standard since it does not allow for any exceptions. As in the 2010 and 2011 Reports, Monaco is again recommended to introduce some exceptions to the prior notification procedure to bring it in line with the international standard, *e.g.* in cases in which the information requested is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction.

8. Monaco's response to the determinations, factors and recommendations in this report, as well as the application of the legal framework to the practices of its competent authority, will be considered in detail in the Phase 2 Peer Review, which is scheduled for the second half of 2012.

Introduction

Information and methodology used for the follow up report of Monaco

9. The assessment of Monaco's legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 58 of the *Methodology for Peer Reviews and Non-member Reviews* and considers recent changes to the legal and regulatory framework of Monaco based on the international standard for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*. This supplementary report is based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at July 2012, and information supplied by Monaco. It follows the Phase 1 Report of Monaco which was adopted and published by the Global Forum in September 2010 and the Phase 1 Supplementary Report of Monaco which was adopted and published by the Global Forum in October 2011.

10. The Terms of Reference breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. In respect of each essential element a determination is made that: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In particular, this report considers changes in Monaco's legal and regulatory framework which relate to four of the essential elements (elements A.1, A.2, C.1 and C.2).

11. The supplementary review was conducted by an assessment team, which consisted of three expert assessors: Ms. Shauna Pittman, Adviser in the Canadian Revenue Agency; Ms. Manon Hélie, Manager in the exchange of information service of the Canadian Revenue Agency; Mr. Sukesh Kumar

Jain, Director in the Foreign Tax and Tax Research Division, Ministry of Finance, Government of India; and two representatives of the Global Forum Secretariat, Ms. Mélanie Robert and Mr. Rémi Verneau.

12. An updated summary of determinations, recommendations and factors underlying recommendations in respect of the 10 essential elements of the Terms of Reference, which takes into account the conclusions of this supplementary report, can be found in the annexes to this report.

Compliance with the Standards

A. Availability of Information

Overview

13. Effective exchange of information requires the availability of reliable information. This report considers the legal and regulatory framework now in place in Monaco as regards the availability of ownership information, accounting records and banking information.

14. The 2010 and 2011 Reports concluded that element A.1 (availability of ownership information) was "In place, but certain aspects of the legal implementation of the element need improvement" and three gaps were identified : (i) the availability of ownership information on certain types of companies; (ii) the identification of owners of bearer shares which may be issued by companies that are eligible for trading on a regulated market; and (iii) the identification of settlors and beneficiaries of foreign trusts administered in Monaco or in respect of which a trustee is resident in Monaco.

15. Element A.2 (availability of accounting information) was found to be "Not in place" and three recommendations were made concerning: (i) partnerships under civil law; (ii) foreign law trusts established in or having a presence in Monaco; and (iii) foundations. In respect of these relevant entities, Monaco was requested to ensure that reliable accounting records, including underlying documentation, are kept for at least five years, in accordance with the *Terms of Reference* (*ToR*). As to element A.3 (bank information), which was found to be "In place", no recommendations were made in the 2010 Report.

16. Monaco has taken several steps to remove the deficiencies highlighted in both 2010 and 2011 reports. As a result of these steps, Monaco ensures that ownership information in relation to all type of companies and partnerships that can be created under Monaco's law is kept. Joint stock companies (SAMs) and partnerships limited by shares (SCAs) are now prohibited from issuing bearer shares and must convert shares already issued under such form into registered shares before the end of 2014. From the end of 2011, these companies must at any time be in position to provide a list of shareholders upon request of Monaco's authorities. These companies also have to maintain a share register where all transfers of registered shares must be recorded in a timely fashion. These new requirements are supported by sanctions in case of failure to comply. Amendments made to Monaco's Anti Money Laundering (AML) law now ensures that accurate ownership information in relation to beneficiaries of trusts will be kept by trustees. Consequently, the three recommendations previously made under A.1 are removed and this element is now assessed as "In place".

17. Monaco also enacted new legal provisions requiring partnerships under civil law, foundations and trustees of foreign trusts to keep accounting records with the underlying documentation for at least five years. As a result, Monaco now ensures that all legal entities created under its laws are subject to a record keeping requirement in line with the international standard. Consequently the three recommendations previously made under A.2 are removed and the determination of this element is upgraded from "the element is not in place" to "the element is in place". Element A.3 is "In place" from the 2010 report and this determination remains unchanged.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

18. The 2010 Report noted that Monaco had a sound legal and regulatory framework ensuring the availability of ownership information on companies and partnerships by virtue of registration requirements and other mechanisms such as the obligation to obtain an administrative authorisation to engage in business activities in Monaco.

19. However, the 2010 Report also identified some deficiencies concerning (i) the availability of ownership information on certain types of companies (*sociétés anonymes monégasques* (SAMs) – joint stock companies; *sociétés en commandite par actions* (SCAs) – partnerships limited by shares); (ii) the identification of owners of bearer shares which may be issued by SAMs and SCAs that are eligible for trading on a regulated market; and (iii) the identification

of settlors and beneficiaries of foreign trusts administered in Monaco or in respect of which a trustee is resident in Monaco. Accordingly, Monaco was recommended to address these shortcomings and to ensure that identity information on shareholders of companies and settlors and beneficiaries of foreign law trusts administered from Monaco is available in all circumstances. At the time of the 2011 Report, no steps were taken by Monaco to address these recommendations but some were by the end of 2011 and in early 2012.

Companies (ToR A.1.1)

20. Within 15 days of incorporation, SAMs and SCAs must submit to the General Clerk's office a list of shareholders detailing all their particulars (art. 5 of the Order of 5 March 1895). As also described in the 2010 Report, before coming into existence and registering with the Directorate of Commerce and Industry, all companies (SAMs and SCAs included) must receive an administrative authorisation from the Department for Economic Development. To receive this authorisation, a company must provide all particulars in relation to its shareholders. This includes their names and addresses. These two separate requirements ensure that ownership information in relation to SAMs and SCAs is known by Monaco's authorities upon incorporation and registration of the company.

21. On 15 December 2011, Monaco enacted a new law[1] providing for rules for the registration of shares. First, Articles 1 and 4 of the Law provide that all shares issued by SAMs and SCAs must be in a registered form. Second, article 5 of the Law amends Article 43 of the Code of Commerce and provides that all shares issued by SAMs and SCAs must be registered in a share register. All transfers must be effected through a transfer document and registered in the share register within one month of transfer. The transfer document must detail the identity (for natural persons: first name and last name; for legal entities: name – see Ministerial Order of 5 April 2012, art. 8) and addresses of both transferor and transferee. All registers and transfer documents must be kept at the Company's headquarters and can be accessed by the Department for Economic Development at any time. These rules are applicable from the entry into force of the new law (30 December 2011).

22. By virtue of the legal framework existing at the time of the 2010 report and the measures adopted by Monaco in December 2011 and April 2012, Monaco now ensures that ownership information in relation to SAMs and SCAs is available and kept up-to-date in a timely fashion. Consequently, the first recommendation made under A.1 in the 2010 and 2011 Reports is removed.

1. Law No 1.385 of 15 December 2011 providing for Miscellaneous Provisions to update the Legislation on Companies, Partnerships under Civil Law, Trusts and Foundations.

Bearer shares (ToR A.1.2)

23. The 2010 Report mentioned that companies incorporated in Monaco were allowed to issue *actions au porteur* that was translated into English by the words "bearer shares". However, on further analysis, it appears that these *actions au porteur* are shares under electronic format with no physical certificate and consequently are not bearer shares in the traditional sense. The two companies that were allowed to issue these *actions au porteur* are listed on a French stock exchange where ownership information in relation to these shares is available to the financial intermediaries responsible for trading these shares.[2] There was, nevertheless, no means for Monaco's authorities to get an access to this information as it is stored in a foreign country.

24. A recommendation asking Monaco to remove this shortcoming was made in the 2010 Report. However, element A1 was assessed to be "in place but needs improvement", taking into account that only two companies were in this situation.[3] Monaco's authorities have advised that since then, no other SAMs or SCAs incorporated in Monaco have issued bearer shares.

25. Pursuant to Articles 1 and 4 of Law No 1.385 of 15 December 2011, SAMs and SCAs can now only issue registered shares and *actions au porteur* ("bearer shares") are therefore clearly prohibited. The two companies incorporated in Monaco that were allowed to issue such shares had to immediately comply with this new obligation and no other companies in Monaco can since the entry into force of this law issue bearer shares.

26. Article 2 of this new Law provides that all companies that were allowed to issue bearer shares must amend their articles of incorporations within six months of the entry into force of the Law, that is by 30 June 2012, to remove any reference to bearer shares. Once these articles are amended to comply with the new legal requirements, written confirmation must be provided to the State Minister (art. 1 of the Ministerial Order of 5 April 2012) and further be published in Monaco's Official Gazette.

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2. As described in the Combined Peer Review Report for France, the financial intermediaries responsible for the trading these shares are subject to a set of legal rules requiring shareholders to be identified at any time (see in particular the French Anti-Money Laundering Law). The shares of the two Monaco companies listed in France are subject to the same rules. Therefore, the identity of owners of such shares is known at any time although this is not from a professional situated in Monaco but in France.
3. The "Société des Bains de Mer" and the "Crédit Foncier de Monaco". The statutes of the "Société des Bains de Mer" already provide that all shares must be under a registered form and prohibit bearer shares. These two companies are listed in France.

27. Article 3 of the new Law provides that from the entry into force (December 2011) SAMs' and SCAs' shareholders have three years (to December 2014) to present their shares to the company to ensure their conversion into registered shares. During this timeframe a shareholder can still exercise his/her rights in the company, even though his/her bearer shares are not converted. Once this timeframe is over, shareholders have two additional years to ask for the conversion of the shares (up to December 2016). During this timeframe, shareholders can no longer exercise any rights in the company until their shares have been converted. If still not converted after these two years, these shares must be converted and sold by the company on the foreign stock exchange where it is listed. Therefore, shareholders conserve their rights attached to the shares up to December 2014. After 2014, shareholders that have not asked for the conversion can no longer exercise their rights (such as voting right, right to dividend) until conversion. After 2016, bearer shares that have not been converted must be converted and sold by the company and shareholders lose their rights and titles.

28. Although bearer shares issued before the entry into force of the new Law have to be converted by the end of 2014 in order for the shareholder to continue to exercise rights, the two companies affected by these new provisions are also required to be in a position, upon request of the Department for Economic Development, to provide the identity of the owner of the bearer shares (art. 1 of the new Law). To comply with this obligation, these companies can rely on the information already in possession of the financial intermediary responsible of the trading of these shares on the French stock exchange as this intermediary is required, under the French law, to have knowledge of the identity of these shareholders.

29. If a company does not comply with its obligation to keep a share register updated or is not in a position to provide on request of the Department for Economic Development the identity of all holders of shares listed on a foreign regulated stock exchange, its administrative authorisation can be withdrawn or revoked.[4] In the most serious situations, Monaco's authorities can ask the General Prosecutor to strike-off this company from the Directorate of Commerce and Industry

30. The possibility to issue "bearer shares" in Monaco was already strictly limited to two listed companies. Monaco has now amended its legal and regulatory framework to prohibit the issue of bearer shares. Moreover, these two companies must identify, since 30 December 2011, their shareholders in all instances to comply with the legal requirement to provide, upon request, this

4. Pursuant to article 9-7 of the Law No 1.144 of 26 July 1991, any company not complying with any applicable legal or regulatory requirement can have its administrative authorisation withdrawn or revoked.

information to the Department of Economic Development. In these circumstances, the second recommendation made under A.1 in the 2010 Report is removed.

Trusts (ToR A.1.4)

31. No trusts can be created under Monaco's law but trusts created under a foreign law can be established in or have a presence in Monaco. As described in the 2010 Report, Monaco's Law No. 1.362 of 3 August 2009 on the Fight against Money Laundering, Financing of Terrorism and Corruption provides for ownership information in relation to trusts to be kept by trustees acting in a business capacity. Pursuant to Article 2 of the Law as supplemented by the Sovereign Order No. 2.318 of 3 August 2009, when establishing a business relationship a professional acting as trustee must identify his(her) customers (art. 3 of the Law) and verify his(her) identities. The definition of professional, as provided by article 1 and 2 of the Law, is very broad and includes a large number of professions and in particular notaries, bailiff, accountants, lawyers and trust service providers. The elements needed to provide for identification are:

- in respect of natural persons: first name, last name, date of birth and address. An official document showing a photograph must be provided (art 6 of the Sovereign Order);
- in respect of legal entities: the official name, head office, list of officers, knowledge of provisions governing the power to make commitments on behalf of the legal person. A copy of an official registration document as well as the status of the legal entity must be provided (art. 7 of the Sovereign Order);
- the professional must ascertain the existence, the nature, the intended purpose and the management and representation arrangements of the trust concerned.

32. In relation to trusts, the economic beneficial owners of the trust must also be identified and this identity further verified (art. 5 of the Law). Whenever a transaction or an operation is carried out, Article 5 of Law 1.362 in conjunction with Article 15 of Sovereign Order No. 2.318 as amended by the Sovereign Order No 3.450 of 15 September 2011 provides that when the client is a trust, economic beneficial owners must be understood as:

- when beneficiaries have already been designated, the natural persons who are the beneficiaries of the assets of a trust;
- when beneficiaries have not yet been designated, the group of persons for the principal interest of which a trust has been created;
- the natural persons who exercise a control over the assets of a trust;
- the settlor(s) of a trust;

33. By virtue of the amendments made to its AML framework, Monaco now ensures information that identifies the settlors, trustees and beneficiaries of express trusts administered in Monaco or in respect of which a trustee is resident in Monaco to be kept in all circumstances by trustees acting in a business capacity. Consequently, the third recommendation made under A.1 in the 2010 and 2011 Reports is removed. Information may not necessarily be available for trusts administered by individual not acting in a business capacity, therefore a potential narrow gap remains. This issue will be followed up in the Phase 2 review.

Enforcement provisions to ensure availability of information (ToR A.1.6)

34. The 2010 report concluded that all legal requirements in Monaco were supported by sanctions whose effectiveness will part of the phase 2 Peer Review of Monaco. The legal requirements described in the current report are supported by the following sanctions.

35. Starting a business activity in Monaco without first receiving an administrative authorisation is subject to the sanction provided by Article 26-4 of the Criminal Code which is a fine between EUR 18 000 and 90 000. If a company does not comply with its obligation to keep a share register updated or is not in a position to provide on request of the Department for Economic Development the identity of all holders of shares listed on a foreign regulated stock exchange, its administrative authorisation can be withdrawn or revoked[5]. In the most serious situations, Monaco's authorities can ask the General Prosecutor to strike-off this company from the Directorate of Commerce and Industry.

36. As regards AML obligations, non-compliance with identification and verification requirements is addressed in Article 39 of Law No. 1.362 on the Fight against Money Laundering, Financing of Terrorism and Corruption, which provides that any failure to comply with these obligations shall be punishable by one of the following sanctions: (i) a warning; (ii) a reprimand; (iii) a fine proportional to the seriousness of the failure, the maximum amount of which cannot exceed EUR 1.5 million; (iv) prohibition from carrying out certain operations; (v) temporary suspension of the authorisation to carry on a business activity; (vi) withdrawal of that authorisation.

37. When relevant entities are required to make ownership information available under Monaco's laws, these requirements are supplemented by

5. Pursuant to article 9-7 of the Law No 1.144 of 26 July 1991, any company not complying with any applicable legal or regulatory requirement can have its administrative authorisation withdrawn or revoked.

sanctions in cases where these obligations are not complied with. The effectiveness of enforcement provisions which are in place in Monaco is an issue of practice and will be considered as part of its Phase 2 Peer Review.

Determination and factors underlying recommendations

<table>
<tr><th colspan="2">Phase 1 determination</th></tr>
<tr><td colspan="2">The element is in place~~, but certain aspects of the legal implementation of the element need improvement~~.</td></tr>
<tr><th>Factors underlying the recommendations</th><th>Recommendations</th></tr>
<tr><td>~~In Monaco there is no requirement and no legal mechanism for keeping information available and up to date with regard to the shareholders of SAMs and SCAs.~~</td><td rowspan="2">~~Monaco must ensure that its competent authorities have continuous access to information on the shareholders of trading companies, irrespective of the type of company in question.~~</td></tr>
<tr><td>~~Monegasque legislation allows companies traded on a foreign stock exchange to issue bearer shares but contains no mechanism that would ensure the availability of ownership information. There are, however, only two companies in this situation.~~</td></tr>
<tr><td>~~While Monegasque legislation authorises the creation in or transfer to Monaco of foreign trusts, the record-keeping requirements of the law on the fight against money laundering do not ensure that information on the settlors and beneficiaries of trusts is available in all circumstances.~~</td><td>~~Monaco should ensure that trustees are required to hold identity information on settlors and beneficiaries of express trusts in all circumstances.~~</td></tr>
</table>

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

General requirements** (ToR A.2.1**), Underlying documentation** (ToR A.2.2**) and the 5-year retention standard** (ToR A.2.3**)

38. The 2010 Report found that Monaco had serious deficiencies in its legal and regulatory framework concerning the availability of accounting records for all relevant entities. Accordingly, element A.2 was found to be

"Not in place" and three recommendations were made concerning (i) partnerships under civil law; (ii) foreign law trusts established in or with a presence in Monaco, and (iii) foundations. None of these entities were required, under Monaco's laws, to keep accounting records and Monaco was consequently requested to ensure that reliable accounting records, including underlying documentation, are kept for at least five years, in accordance with the *Terms of Reference*. At the time the 2011 Report was drafted, no steps had been taken to address these deficiencies but since then, Monaco has adopted a Law, a Sovereign Order, and a Ministerial Order providing that accounting records must be kept by partnerships under civil law, foreign trusts, companies not considered traders under the Commercial Code and foundations.

39. Article 6 of Law No 1.385 of 15 December 2011 provides that "partnerships under civil law are required to keep accounting records as provided by Ministerial Order. All accounting records as well as the underlying documentation must be kept at the headquarters for at least five years".

40. A similar provision is provided for trusts by Article 7 of the same Law except that accounting records are required to be kept by the trustee.

41. For implementing these provisions, a Ministerial Order was published in the Gazette on 5 April 2012 (Ministerial Order No 2012-182). Its Article 10 provides that partnerships under civil law and companies not considered traders under the Commercial Code must record all their transactions in a profit and loss account and keep the underlying documentation, including banking information for at least five years. Its Article 11 provides that trustees of trusts are required to establish an annual balance sheet where all endowments must be recorded, as well as a profit and loss account and, when applicable, an assessment of the fair market value of the assets held. The profit and loss account must be filed annually with the Directorate of Industry and Commerce within three months of the end of the business year. All accounting records and underlying documents must be kept for five years, including a record of the book value of all assets.

42. Foundations can only be set up for public interest and charitable purposes. Nevertheless, by Sovereign Order No 3.449 of 15 September 2011, Monaco took measures detailing the record keeping requirements to which foundations are subject. Article 1 of this Order provides that foundations must keep a balance sheet where all endowments must be recorded, a profit and loss account and, when applicable, an assessment of the fair market value of the assets held. Pursuant to Article 2, these documents as well as the underlying documentation must be kept for at least five years at the foundation's headquarters.

43. Administrators of partnerships under civil law, of companies not considered traders under the Commercial Code, trustees of foreign trusts

and administrators of foundations failing to comply with these record keeping requirements are subject to the sanction provided by article 26-4 of the Criminal Code, that is, a fine of between EUR 18 000 to 90 000.

44. Considering the measures taken by Monaco since the adoption of the 2011 Report, it appears that partnerships under civil law, companies not considered traders under the Commercial Code, foreign trusts and foundations are now required to keep accounting records and underlying documents for at least five years. These records correctly explain all transactions, enable the financial position of the entity or arrangement to be established and financial statements to be prepared. These obligations are supported by effective enforcement provisions. Considering these improvements, all recommendations previously made under element A.2 are removed and this element is now assessed as "In place"

Determination and factors underlying recommendations

<table>
<tr><th colspan="2">Phase 1 determination</th></tr>
<tr><td colspan="2">The element is ~~not~~ in place.</td></tr>
<tr><th>Factors underlying the recommendations</th><th>Recommendations</th></tr>
<tr><td>~~No accounting obligation is imposed under Monegasque legislation on non-trading partnerships or companies that are not deemed traders under the Commercial Code. And yet 80% of Monegasque partnerships fall into this category.~~</td><td rowspan="3">~~Monaco should ensure that reliable accounting records be kept for all relevant entities and arrangements that may be created in Monaco, among which, inter alia, are trusts, foundations and non-trading partnerships, and these records should be accessible for at least five years, in compliance with the terms of reference.~~</td></tr>
<tr><td>~~Monegasque legislation imposes no bookkeeping or record-keeping obligations on foreign-law trusts established in or transferred to Monaco.~~</td></tr>
<tr><td>~~Monegasque legislation imposes no requirements as to form and makes no reference to an international accounting standard in respect of the accounting records to be kept and supplied by foundations.~~</td></tr>
</table>

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

45. The 2010 Report found that Monaco had a legal framework in place to ensure the availability of relevant banking information for all account holders. The determination for A.3 was, and remains, "The element is in place".

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to Information

Overview

46. A variety of information may be needed in respect of the administration and enforcement of the relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities.

47. Both 2010 and 2011 Reports noted that element B.1 (access to information) was "In place" and no recommendations were made while element B.2 (notification requirements and rights and safeguards) was found to be "In place, but certain aspects of the legal implementation of the element need improvement" and one recommendation on the new procedure concerning prior notification was made. It appears that Monaco has taken no steps to address the deficiency identified under element B.2 and Monaco is again recommended to bring its prior notification procedure into line with the international standard.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

Ownership and identity information (ToR B.1.1), Accounting records (ToR B.1.2), Use of information-gathering instruments without reference to domestic interest (ToR B.1.3), Compulsory powers (ToR B.1.4), Secrecy provisions (ToR B.1.5)

48. In the area of access to information, the 2010 Report concluded that the Monegasque legislation provides for sufficient access powers to information held by any person when such information is requested under an EOI arrangement, including information that is required to be kept in Monaco for anti-money laundering purposes. The absence of a domestic tax interest requirement ensures that the Monegasque competent authorities can exercise their powers to collect information for exchange purposes. The determination for B.1 was, and remains, "The element is in place".

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B.2. Notification requirements and rights and safeguards

The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Not unduly prevent or delay exchange of information (ToR B.2.1)

49. The 2010 Report found that, at the time of the assessment, Monaco had put in place a new prior notification procedure which was considered inconsistent with the standard since it did not allow for any exceptions. The 2010 Report noted, however, that the EOI agreement with France is not affected by these new rules. At the time the 2011 Report was drafted, no steps had been taken to address this deficiency.

50. Monaco has still not taken any action to introduce some exceptions to the prior notification procedure to bring it into line with the standard, *e.g.* in cases in which the information requested is of a very urgent nature or the

notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction. Therefore, no changes are made to determination, factors and recommendations made under element B.2 in the 2010 Report.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need to be improved.	
Factors underlying the recommendations	**Recommendations**
The prior notification procedure does not allow for any exception and therefore applies to any incoming requests sent by Monaco's partners, with the exception of the ones sent by France.	Monaco should examine the conditions under which the new notification procedure that applies in Monaco is compatible with an effective exchange of information.

C. Exchanging Information

Overview

51. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanisms for doing so. In Monaco, the legal authority to exchange information is derived from bilateral mechanisms (double tax conventions (DTCs) and tax information exchange agreements (TIEAs)), as well as domestic law to a lesser extent. This section of the report examines whether Monaco has a network of information exchange arrangements that would allow it to achieve the effective EOI in practice.

52. The 2010 Report found element C.1 (exchange of information mechanisms) to be "In place" but a recommendation was made since, at the time of the assessment, Monaco had brought into force only four of its 23 EOI agreements. In the 2011 Report, the recommendation made under C.1 in the 2010 Report was removed considering the steps taken by Monaco to ratify the treaties signed since 2010. Element C.2 (network of exchange of information mechanisms) was assessed in both situations as to be "In place but certain aspects of the legal implementation of the element need improvement" and recommendations were made as: (i) Monaco's EOI network did not cover all relevant partners, *i.e.* all jurisdictions which had indicated that they would like to enter into such a relationship with the Principality, in particular Italy, Poland and Spain; and (ii) Monaco's treaty negotiation policy did not focus on rapidly expanding its EOI network with its relevant partners. Both reports also noted that each of the elements C.3 (confidentiality) and C.4 (rights and safeguards of taxpayers and third parties) were "In place". Finally, as with other Phase 1 reports, in respect of C.5 (timeliness of responses to requests for information), both Reports noted that it involved issues of practice that would be dealt with in Monaco's Phase 2 review.

53. Currently, Monaco has 25 EOI agreements, 22 of which are in force. Since the 2011 Report, Monaco has concluded one more DTC, with Mali, and expects to sign shortly TIEAs with India and Mauritius. As for the five initialled treaties with

Brunei (DTC), Cyprus (DTC)[6, 7], Mexico (TIEA), New Zealand (TIEA) and South Africa (TIEA), the treaties are either in the process of translation or the translation has been completed. Once the translation is completed, the treaty can be signed between the two jurisdictions. TIEA negotiations are currently underway with, amongst others, Poland, Spain, and the United Kingdom. The determinations for element C.1 and C.2 made in the 2011 Report remain unchanged.

C.1. Information exchange mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

54. At the time the 2011 Supplementary Report was drafted (August 2011), Monaco's EOI network covered 24 jurisdictions[8] and these EOI agreements were found to be in accordance with the standard in that they allowed all types of foreseeably relevant information to be exchanged with respect to all persons, with no domestic restrictions or formalities that could hinder the effective EOI.

55. In its 2012 Intermediary Report, Monaco has indicated that it signed one new DTC with Mali. Only the provisions of this treaty will be considered during this assessment. For the other agreements, please refer to the 2010 and 2011 Reports.

Foreseeably relevant standard (ToR C.1.1)

56. The international standard for EOI envisages information exchange to the widest possible extent. Nevertheless it does not allow "fishing expeditions", *i.e.* speculative requests for information that have no apparent nexus to

6. Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".
7. Footnote by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.
8. France, Luxembourg, Qatar, St. Kitts and Nevis, the Seychelles (jurisdictions with which Monaco has signed DTCs), Andorra, Argentina, Austria, Australia, The Bahamas, Belgium, Denmark, the Faroe Islands, Finland, Germany, Greenland, Iceland, Liechtenstein, the Netherlands, Norway, Samoa, San Marino, Sweden, and the United States (jurisdictions with which TIEAs have been signed).

an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 26 of the *OECD Model Tax Convention* and Article 1 of the *OECD Model TIEA*.

57. The DTC with Mali provides in its Article 27(1) that the "competent authorities of the Contracting States exchange information that is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws of the contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention".

In respect of all persons (ToR C.1.2)

58. For EOI to be effective it is necessary that a jurisdiction's obligations to provide information are not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard for EOI envisages that EOI mechanisms will provide for exchange of information in respect of all persons.

59. The DTC with Mali does not explicitly provide for the exchange of information in respect of all persons.

Exchange information held by financial institutions, nominees, agents and ownership and identity information (ToR C.1.3)

60. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the *OECD Model Tax Convention* and the *OECD Model TIEA*, which are primary authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

61. The DTC signed by Monaco with Mali contains wording akin to paragraph 5 of Article 26 of the *OECD Model Tax Convention*.

Absence of domestic tax interest (ToR C.1.4)

62. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A

refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

63. Article 26 of the Monaco-Mali DTC includes a provision whose wording is similar to Paragraph 4 of Article 26 of the *OECD Model Tax Convention*. As described in the 2010 Report, there is no domestic tax interest requirement in Monaco.

Absence of dual criminality principles (ToR C.1.5)

64. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to the information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

65. The Monaco-Mali DTC does not apply the dual criminality principle to restrict the exchange of information

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

66. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

67. The Monaco-Mali DTC provides for EOI in both civil and criminal tax matters

Provide information in specific form requested (ToR C.1.7)

68. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

69. Monaco is in position to exchange information in the specific form requested, to the best extent allowable under its domestic laws.

In force (ToR C.1.8)

70. The exchange of information cannot occur unless a jurisdiction has information exchange mechanisms in force. Where such mechanisms have been signed, the international standard requires a jurisdiction to complete the measures needed for them to take effect.

71. At the time the 2011 Supplementary Report was drafted, the EOI agreements concluded with 19jurisdictions were in force. Since then, three more agreements have entered into force (Germany, Greenland and St Kitts and Nevis). Monaco has also ratified its TIEAs with Samoa and the Seychelles.

In effect (ToR C.1.9)

72. In order for information exchange to be effective, the contracting parties have to take the necessary measures to comply with their commitments.

73. Monaco has created a domestic framework for exchange of information based on the EOI agreements signed by it. Monaco's competent authority has powers to access information to give effect to the terms of its international EOI agreements.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.2. Exchange of information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

74. The standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

75. In the 2010 Report, element C.2 was assessed to be "In place but certain aspects of the legal implementation of the element need improvement" and recommendations were made as: (i) Monaco's EOI network did not cover all relevant partners, that is to say all jurisdictions which had indicated that they would like to enter into such a relationship with the Principality, in particular Italy; and (ii) Monaco's treaty negotiation policy did not focus on rapidly expanding its EOI network with its relevant partners. In the 2011 Report, it was underlined that two of Monaco's partners had difficulties entering into TIEA negotiations with Monaco. Monaco reiterated its commitment to the standard and its willingness to enter into TIEA negotiations with these two countries. As a result the determination made under C.2 remained unchanged but the first recommendation was amended to cover these two partners.

76. According to the 2012 Intermediary Report, Monaco has continued to expand its EOI network by concluding a DTC with Mali. For the five agreements that have been initialled with Brunei (DTC), Cyprus (DTC), Mexico (TIEA), New Zealand (TIEA) and South Africa (TIEA), the treaties are either in the process of translation or the translation has been completed. TIEAs with India and Mauritius will be signed very soon. Negotiations of TIEAs are underway with Poland, Spain and the United Kingdom to address the first recommendation made in the 2011 Report. EOI agreements are also being negotiated with the Czech Republic, Guernsey, Kenya, Montenegro, UAE and Vietnam. In addition, the Monegasque authorities met, in July 2012, an Italian delegation. The framework for the coming negotiations between the two countries was specified during this meeting.

77. Currently, Monaco has 25 EOI agreements, including 22 with Global Forum members, 13 of which are OECD member countries.

78. In the course of the preparation of this report, comments were sought from Global Forum members and no Global Forum members have indicated that they have been unable to conclude an EOI agreement with Monaco.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying the recommendations	**Recommendations**
The network of treaties containing provisions regarding the exchange of information does not currently cover all of those jurisdictions who have indicated that they would like to enter into such a relationship with the Principality.	Monaco should enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it, including Italy, Poland, Spain and United Kingdom.
No priority has been given in Monaco's negotiating policy to the rapid signing of information exchange agreements with these partners.	Monaco must ensure that its negotiating policy and the priorities set internally are such that it can obtain, as rapidly as possible, a network of information exchange mechanisms which covers all relevant partners.

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use and safeguards (ToR C.3.1) and all other information exchanged (ToR C.3.2)

79. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

80. This element was found as to be "In place" in both 2010 Report and 2011 Report and no recommendations were made. The DTC with Mali

contains a confidentiality provision that is consistent with Article 26(2) of the *OECD Model Tax Convention*.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

Exceptions to requirement to provide information (ToR C.4.1)

81. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other listed secret may arise. This element was found as to be in place in the 2010 and 2011 Reports and no recommendations were made.

82. The Monaco-Mali DTC contains a wording akin to paragraph 3 of article 26 of the *OECD Model Tax Convention*, providing that information which is subject to legal privilege, would disclose any trade, business, industrial, commercial or professional secret or trade process, or would be contrary to public policy, is not required to be exchanged.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Response within 90 days (ToR C.5.1), Organisational process and resources (ToR C.5.2), Absence of restrictive conditions on exchange of information (ToR C.5.3)

83. There is no provision in Monaco's legislation or in its EOI agreements that sets out clear conditions governing the information exchange, other than those set out in Article 26 of the OECD Model Convention or Article 5(6)

of the OECD Model TIEA. A review of the practical application of these processes and the resources available to the Monegasque authorities will be conducted in the context of its Phase 2 review.

Determination and factors underlying recommendations

Phase 1 determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying the recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
The element is in place.		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
The element is in place.		
Banking information should be available for all account holders. *(ToR A.3)*		
The element is in place.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
The element is in place.		
The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The prior notification procedure does not allow for any exception and therefore applies to any incoming requests sent by Monaco's partners, with the exception of the ones sent by France.	Monaco should examine the conditions under which the new notification procedure that applies in Monaco is compatible with an effective exchange of information.
Information exchange mechanisms should provide for effective exchange of information. *(ToR C.1)*		
The element is in place.		

Determination	Factors underlying the recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement. No priority has been given in Monaco's negotiating policy to the rapid signing of information exchange agreements with these partners.	The network of treaties containing provisions regarding the exchange of information does not currently cover all of those jurisdictions who have indicated that they would like to enter into such a relationship with the Principality	Monaco should enter into agreements for exchange of information (regardless of their form) with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement with it, including Italy, Poland, Spain and United Kingdom.
	Monaco must ensure that its negotiating policy and the priorities set internally are such that it can obtain, as rapidly as possible, a network of information exchange mechanisms which covers all relevant partners.	
The information exchange mechanisms of jurisdictions should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
The element is in place.		
Information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review		

Annex 1: Jurisdiction's Response to the Supplementary Review[9]

After reading the final report approved by the PRG in Paris, which followed the discussions that took place on 19 September, Monaco wishes to make the following comments.

First, as said in our statement made in front of the peers, Monaco would like to thank the assessment team for recognising the progresses made since the first supplementary report dated September 2011, and upgrading the determinations under elements A1 and A2 to « the element is in place » without any recommendation.

Indeed, such assessment is important in connection with the willingness of the Government of the Principality of Monaco to comply with the OECD standard, in accordance with the Sovereign Prince's instructions, both for the motivation of all civil servants involved in this process and the elected assembly that was asked to urgently vote the concerned law.

Likewise, if this assessment is adopted by the Global Forum, Monaco will be in a better position to start its phase 2 by reinforcing even more the motivation of all stakeholders involved.

In addition to the previous, Monaco would like to stress that this year, its legal and regulatory framework for the collection of different taxes (VAT, business income of individuals and legal entities, estate tax, taxes on real estate transfer, etc) was reinforced. This system is being implemented and improved to strength, despite the international crisis, a structurally balanced State budget, as it was already the case last year, and will certainly be this year.

Finally, as regards its network of bilateral agreements, the Principality of Monaco would like to add, in addition to information mentioned in the report, some new developments that happened since the report was finalised, with the signature of a 26th agreement with India on 31 July 2012.Moreover,

9. This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

negotiations are undergoing with several countries, including those that are mentioned as being relevant in the recommendations made under element C2.

In conclusion, Monaco has no remarks on the draft report proposed by the assessors and hope that it will be agreed without any changes by the Global Forum. Monaco is waiting for the phase 2 assessment to demonstrate the effectiveness, in practice, of the implementation of its laws.

Annex 2: Request for a Supplementary Report Received from Monaco

Monaco's Intermediary Report, submitted in April 2012
(Unofficial translation from French)

17 April 2012

PROGRESS REPORT OF MONACO

The final version of the Supplementary Phase 1 Report for Monaco was adopted during the Peer Review Group Meeting in Paris on 26 October 2011. This report follows the PRG decision taken during its meeting of 18-22 July 2011 in the Caymans Islands to launch a follow up procedure according to paragraph 59 of the methodology

In accordance with this methodology Monaco had to establish an intermediary report within 6 months, that is, following the information provided by the GF Secretariat, before 18 April 2012.

The purpose of this intermediary report is to let the PRG know the steps undertaken by Monaco to answer all the issues mentioned in the Supplementary Report since its adoption. It also reminds those steps that were already reported during the discussions on the supplementary review but were not taken into account as these progresses took place after the cut-off date (9 September 2011).

Important progresses were actually not taken into account in the Supplementary Report as, on one hand the related Sovereign Orders were only published on 16 September 2011 and, on the other hand, the draft bill submitted to the national Council the same day could only be considered after its adoption and entry into force.

It is necessary to further detail the provisions contained in the different texts taken by the Government to answer the recommendations made by the assessors during the course of the phase 1 and supplementary reviews.

First the two Orders were published on 16 September 2011 and are enclosed to this submission. Their subject is:

- to provide rules to identify all natural persons who are beneficiaries of trust assets and those who are exercising a control over these assets (A1); and
- to require foundations to keep accounting records for at least five years at the foundation's headquarters (A2).

Similarly, the provisions of Law No 1.385 "providing for miscellaneous rules to update the legislation on Joint Stock Companies, Partnership under Civil Law, Trusts and Foundations" of 15 December 2011, tabled by the National Council on 16 September 2011, adopted on 7 December 2011 and gazetted in Monaco's Public Gazette on 30 December 2011, as enclosed to this report, aim at:

- definitely removing bearer shares, including for Publicly Listed Companies. The law provides that all shares in private and public companies can only be registered shares, without any exceptions, and grants to the Competent Office of the Finance Department, the powers to ask a publicly listed company to identify all its shareholders and to provide the result of this identification procedure (A.1);
- making mandatory the registration of share transfers in a share register. The Law also gives the Competent Office of the Finance Department the powers to consult, at any time, these registers that must be kept updated (A.1).
- making mandatory for partnerships under civil law in Monaco and foreign trusts (it is reminded that there are not trusts under Monaco Laws) established or having a presence in Monaco, to keep accounting records with the underlying documentation for at least five years at the headquarters, under significant criminal sanctions if failure to comply (A.2); and
- amending the criminal sanction for foundation not keeping accounting records to make this sanction more dissuasive and similar to what is provided for partnerships under civil law and trusts (A2). It must be reminded that there are only 12 foundations in Monaco which can only be set up for public interest and cannot be confused with private foundations or trusts that can exist in other jurisdictions.

Some of these legal provisions provide the adoption of implementing measures which have been taken by Ministerial Order. This Order, No 2012-182 of 5 April 2012, was published in Monaco's Public Gazette No 6.083 of 12 April 2012 (see enclosure). This Order gives some precisions on:

- article 2 of the Law and how joint stock companies status must be amended to comply with the prohibition of bearer shares (Chapter I, art. 1 and 4 of the Ministerial Order);
- article 3 of the law and how bearer shares non converted into registered shares during the legal timeframe provided to do so must be sold out (Chapter II, art. 5 to 7 of the Ministerial Order);
- article 5 of the Law and the legal provisions that must be mentioned on the transfer of shares document established for the transfer of shares, persons allowed to keep these documents as well as the transfer of shares register on behalf of the company (Chapter III, art. 8 and 9 of the Ministerial Order)
- art. 6 and 7 of the Law providing the rules to keep accounting records for partnerships under civil law and trusts (chapter IV, art. 10 and 11 of the Ministerial Order).

Finally, as regards its network of bilateral agreements, Monaco wants to mention progresses made since the October 2011 Supplementary Report:

- three agreements have entered into force: Germany, St Kitts and Nevis and Greenland, bringing the number of treaties in force to 21;
- a new agreement has been signed with Mali, bringing the number of agreements signed to 25. An agreement with Mauritius is expected to be signed before the end of April and the signature of that with India, initially planned for 11 April 2011, has been postponed on request of this Country, because of program changes in the European travel of the Vice Minister for Finances;
- five agreements have been initialed with Brunei, Cyprus[10,11], Mexico, New Zealand and South Africa. The French version of these agreements has been provided and Monaco is waiting for a date to sign them;
- negotiations are underway with Spain, the UK and Poland.

10. Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Untila lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".
11. Footnote by all the European Union Member States of the OECD and the European Commission: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

As regards Italy, we're currently waiting for their answer to our submission made in 2011, prior to the follow up procedure. This submission was provided to answer a request made by Italy during our first contacts.

On the basis of these elements, and in particular, those concerning the recommendations made by the Global Forum on element A.1 and steps taken to address critics made under element A.2 leading to consider this element as "not to be in place", Monaco officially requests, when submitting this progress report, and considering the major improvements that took place in Monaco's legal framework over the last 6 months, for a supplementary report to be established. The provisions to be considered during this review should lead to remove all recommendations made under A.1 and to upgrade elements A.2 from "not in place" to "in place".

Annex 3: List of All Information Exchange Mechanisms in Force

	Jurisdiction	Type of agreement	Date of signature	Date in force
1	Andorra	TIEA	18 Sep 2009	16 Dec 2010
2	Argentina	TIEA	30 Oct 2009	7 Aug 2010
3	Australia	TIEA	1 Apr 2010	13 Jan 2011
4	Austria	TIEA	15 Sep 2009	1 Aug 2010
5	The Bahamas	TIEA	18 Sep 2009	18 Feb 2011
6	Belgium	Taxation information exchange agreement (TIEA)	15 Jul 2009	
7	Denmark	TIEA	23 Jun 2010	6 Oct 2010
8	Faroe Islands	TIEA	23 Jun 2010	7 May 2011
9	Finland	TIEA	23 Jun 2010	20 Nov 2010
10	France	Double taxation convention (DTC)	18 May 1963	1 Sep 1963
11	Germany	TIEA	27 Jul 2010	9 Dec 2011
12	Greenland	TIEA	23 Jun 2010	13 Apr 2012
13	Iceland	TIEA	23 Jun 2010	23 Feb 2011
14	Liechtenstein	TIEA	21 Sep 2009	14 Jul 2010
15	Luxemburg	DTC	27 Jul 2009	3 May 2010
16	Mali	DTC	13 Feb 2012	
17	The Netherlands	TIEA	11 Jan 2010	1 Dec 2011
18	Norway	TIEA	23 Jun 2010	30 Jan 2011
19	Qatar	DTC	17 Sep 2009	15 Jun 2010
20	Samoa	TIEA	7 Sep 2009	
21	San Marino	TIEA	29 Sep 2009	3 May 2010

	Jurisdiction	Type of agreement	Date of signature	Date in force
22	Seychelles	DTC	4 Jan 2010	1 January 2013
23	St. Kitts and Nevis	DTC	17 Sep 2009	1 Dec 2011
24	Sweden	TIEA	23 Jun 2010	26 Dec 2010
25	United States	TIEA	8 Sep 2009	23 Mar 2010

Annex 4: List of All Laws, Regulations and Other Documents Received

Law No 1.385 of 15 December 2011 providing for Miscellaneous Provisions to update the Legislation on Companies, Partnerships under Civil Law, Trusts and Foundations

Sovereign Order No 3.449 of 15 September 2011 implementing Article 13-1 of Law No 56 of 29 January 1922 on Foundations, as amended

Sovereign Order No 3.450 of 15 September 2011 amending the Sovereign Order No 2.318 of 3 August 2009 implementing the Law No 1.632 in the field of the Fight against Money Laundering, Financing of Terrorism, and Corruption.

Ministerial Order No 2012-182 of 5 April 2012 implementing the Law No 1.385 of 15 December 2011 providing for Miscellaneous Provisions to update the Legislation on Companies, Partnerships under Civil Law, Trusts and Foundations

Convention between the Principality of Monaco and the Republic of Mali to avoid double taxations and prevent fiscal evasion with respect to income taxes