

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information
on Request

SAMOA

2019 (Second Round)



Global Forum on Transparency and Exchange of Information for Tax Purposes: Samoa 2019 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE
OF INFORMATION ON REQUEST

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(reflecting the legal and regulatory framework
as at August 2019)

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Table of contents

Reader’s guide	5
Abbreviations and acronyms	9
Executive summary	11
Overview of Samoa	19
Part A: Availability of information	25
A.1. Legal and beneficial ownership and identity information	25
A.2. Accounting records	53
A.3. Banking information	64
Part B: Access to information	69
B.1. Competent authority’s ability to obtain and provide information	69
B.2. Notification requirements, rights and safeguards	75
Part C: Exchanging information	77
C.1. Exchange of information mechanisms	77
C.2. Exchange of information mechanisms with all relevant partners	82
C.3. Confidentiality	82
C.4. Rights and safeguards of taxpayers and third parties	85
C.5. Requesting and providing information in an effective manner	86
Annex 1: List of in-text recommendations	91
Annex 2: List of Samoa’s EOI mechanisms	92
Annex 3: Methodology for the review	95
Annex 4: Samoa’s response to the review report	98

Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multi-lateral framework within which work in the area of tax transparency and exchange of information is carried out by over 150 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All 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 reports, please refer to www.oecd.org/tax/transparency and <http://dx.doi.org/10.1787/2219469x>.

Abbreviations and acronyms

AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
CBS	Central Bank of Samoa
CDD	Customer Due Diligence
CEO	Chief Executive Officer
DTC	Double Tax Convention
EOI	Exchange of information
EOIR	Exchange of information on request
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
IRS	Inland Revenue Services
LP	Limited Partnership
MCIL	Ministry of Commerce, Industry and Labour
MER	Mutual Evaluation Report
MFR	Ministry for Revenue
MLP	Money Laundering Prevention
Multilateral Convention	The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended
PRG	Peer Review Group of the Global Forum
SIFA	Samoa International Finance Authority
SISTA	Samoa International Special Trust Arrangement

SFIC	Segregated Fund International Companies
SPIC	Special Purpose International Company
TCSP	Trust and Company Service Provider
TIE Act	Tax Information Exchange Act 2012
TIEA	Tax Information Exchange Agreement
VAGST	Value Added Goods and Services Tax
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference (ToR)	Terms of Reference related to Exchange of Information on Request (EOIR), as approved by the Global Forum on 29-30 October 2015.

Executive summary

1. This second round report analyses implementation by Samoa of the standard of transparency and EOIR for tax purposes against the 2016 ToR. It includes an assessment of its legal framework, as well as its operation in practice as it concerns the handling of EOI requests received during the period from 1 April 2015 to 31 March 2018. This second round report concludes that Samoa is rated **Largely Compliant** overall. In 2015, the Global Forum evaluated Samoa against the 2010 ToR and assigned an overall rating of Partially Compliant. As a result of the Fast-Track review in 2017, Samoa received a provisional upgraded rating of Largely Compliant.

Comparison of ratings for First Round Report and Second Round Report

Element	First Round Report (2015)	Second Round Report (2018)
A.1 Availability of ownership and identity information	PC	PC
A.2 Availability of accounting information	PC	LC
A.3 Availability of banking information	C	LC
B.1 Access to information	C	LC
B.2 Rights and Safeguards	C	C
C.1 EOIR Mechanisms	C	C
C.2 Network of EOIR Mechanisms	C	C
C.3 Confidentiality	C	C
C.4 Rights and Safeguards	C	C
C.5 Quality and timeliness of responses	PC	PC
OVERALL RATING	PC	LC

C = Compliant; LC = Largely Compliant; PC = Partially Compliant; NC = Non-Compliant

Progress made since previous review

2. The major issues identified in the Phase 2 report published in October 2015 related to: ensuring custodians of bearer shares are aware of the abolition of bearer shares and conducting more in-depth inspections of TCSPs

(element A.1); ensuring all relevant entities and arrangements are required to keep accounting records, monitoring the implementation of new accounting laws, and putting in place a monitoring regime to ensure the availability of accounting records (element A.2); and responding to EOI requests in a timely manner, providing status updates where relevant, and monitoring the practical implementation of the organisational processes and resources of the EOI unit (element C.5). All other elements were rated Compliant with the EOIR standard, though element C.2 contained a recommendation that Samoa continue to develop its EOI network with all relevant partners.

3. Since the 2015 Report, Samoa has enacted new laws applicable to foundations and TCSPs, as well as amending laws to address issues identified in its MER. Samoa signed the multilateral Convention on 25 August 2016 and it entered into force in Samoa on 1 December 2016. Samoa has also increased its monitoring activities of TCSPs and international entities and arrangements.

Key recommendation(s)

4. Key issues where improvement is recommended are: ensuring the availability of beneficial ownership information for all relevant entities and arrangements; monitoring the new requirement to provide beneficial ownership information for business licensing purposes; strengthen supervisory activities to ensure the availability of ownership and accounting information; putting in place a monitoring regime for accountants and lawyers; ensuring the Competent Authority's access and compulsory powers are used effectively; and responding to EOI requests in a complete and timely manner.

5. Improvements are also recommended in respect of: ensuring that liquidators and unit trusts maintain accounting records for at least five years; updating the Money Laundering Prevention Guidelines; and continuing to develop its EOI network with all relevant partners.

EOI practice

6. During the review period, Samoa received 16 requests from six EOI partners. Samoa fully responded to 31% of requests within 180 days. Partial information was provided for nine of the 16 requests. Status updates were routinely provided. Samoa did not send any EOI requests during the review period. Overall, peer input was positive, although a couple of peers noted lengthy response times.

Overall rating

7. Samoa has achieved a rating of Compliant for five elements (B.2, C.1, C.2, C.3, and C.4), Largely Compliant for three elements (A.2, A.3, and B.1), and Partially Compliant for two elements (A.1 and C.5). Samoa’s overall rating is Largely Compliant based on a global consideration of Samoa’s compliance with the individual elements.

8. This report was approved at the PRG meeting in October 2019 and was adopted by the Global Forum in November 2019. A follow-up report on the steps undertaken by Samoa to address the recommendations made in this report should be provided to the PRG no later than 30 June 2020 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
<p>The legal and regulatory framework is in place, but certain aspects of the legal implementation need improvement.</p>	<p>Although a significant amount of beneficial ownership information on domestic and foreign companies will be available in Samoa, it is not clear that all of the beneficial owners will be identified as required under the standard. Further, a requirement for domestic and foreign companies to provide beneficial ownership for business licensing purposes was recently enacted, and, although the definition of beneficial owner is in line with the standard, no guidance has been issued. With regard to trusts, not all beneficial owners of a domestic or foreign trust will be identified.</p>	<p>Samoa should ensure that all beneficial owners of domestic and foreign companies, and domestic and foreign trusts are identified in line with the standard.</p>

Determinations and Ratings	Factors underlying Recommendations	Recommendations
<p>Partially Compliant</p>	<p>Although the Inland Revenue Service carries out supervisory activities, taxpayer compliance and audit rates have been decreasing over the review period, therefore these activities may not be sufficient to ensure the availability of ownership information of domestic and foreign legal entities and arrangements.</p>	<p>Samoa should strengthen its supervisory measures to ensure that ownership information is being maintained by all relevant domestic and foreign legal entities and arrangements in line with the standard.</p>
	<p>A requirement for legal entities and arrangements to provide beneficial ownership for business licensing purposes was recently enacted, consequently its implementation could not be assessed.</p>	<p>Samoa should monitor the implementation of the requirement to provide beneficial ownership information for business licensing purposes.</p>
	<p>Samoa has implemented supervisory and enforcement programmes to monitor the record-keeping obligations in the international financial sector. Although each trust and company service provider (TCSP) is reviewed twice a year and non-compliant international companies have been struck from the register, ownership information, the subject of EOI requests, has not always been available as required. To address this, Samoa recently introduced obligations on a TCSP to maintain its records after it ceases business. However, it has not yet been tested in practice.</p>	<p>Samoa should continue to strengthen its supervisory activities in the international financial sector to ensure the availability of legal and beneficial ownership information.</p>

Determinations and Ratings	Factors underlying Recommendations	Recommendations
	Although lawyers and accountants are subject to customer due diligence (CDD) obligations, there was no supervision of either profession during the review period.	Samoa should put in place a monitoring regime of lawyers and accountants to ensure that beneficial ownership information is available with these professionals in line with the standard.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The legal and regulatory framework is in place.		
Largely Compliant	Although the Inland Revenue Service carries out supervisory activities, taxpayer compliance and audit rates have been decreasing over the review period, therefore these activities may not be sufficient to ensure the availability of accounting information of domestic and foreign legal entities and arrangements.	Samoa should strengthen its supervisory measures to ensure that accounting information is being maintained by all relevant domestic and foreign legal entities and arrangements in line with the standard.
	Samoa has implemented supervisory and enforcement programmes to monitor the record-keeping obligations in the international financial sector. New accounting record-keeping obligations for TCSPs were only recently introduced and therefore not sufficiently tested in practice. Also, Samoa recently introduced obligations on a TCSP to maintain its records after it ceases business. However, it has not yet been tested in practice.	Samoa should continue to strengthen its supervisory activities in the international financial sector to ensure the availability of accounting information.

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Banking information and beneficial ownership information should be available for all account-holders (<i>ToR A.3</i>)		
The legal and regulatory framework is in place, but certain aspects of the legal implementation need improvement.	It is unclear whether the CDD procedures used by banks will identify all of the beneficial owners of legal entity account-holders as required under the standard. There is also no obligation on banks to identify all of the beneficial owners of a trust.	Samoa should ensure the availability of beneficial ownership information in respect of legal entity and arrangement account-holders.
Largely Compliant		
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) (<i>ToR B.1</i>)		
The legal and regulatory framework is in place.		
Largely Compliant	Samoa has powers in place to obtain information for EOI purposes. During the review period, Samoa did not fully use its access powers to contact the international companies subject of EOI requests in order to obtain banking information. Further, Samoa did not use its compulsory powers when information was not produced.	Samoa should ensure that the Competent Authority's access and compulsory powers are effectively used to obtain all information included in an EOI request.
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 (<i>ToR B.2</i>)		
The legal and regulatory framework is in place.		
Compliant		
Exchange of information mechanisms should provide for effective exchange of information (<i>ToR C.1</i>)		
The legal and regulatory framework is in place.		

Determinations and Ratings	Factors underlying Recommendations	Recommendations
Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
The legal and regulatory framework is in place.		
Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
The legal and regulatory framework is in place.		
Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The legal and regulatory framework is in place.		
Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner (<i>ToR C.5</i>)		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
Partially Compliant	Samoa has experienced difficulties during the review period to answer EOI requests in a complete and timely manner mainly due to delays in obtaining information where it was held offshore.	Samoa should ensure that it responds to EOI requests in a complete and timely manner.

Overview of Samoa

9. This overview provides some basic information about Samoa that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of Samoa’s legal, commercial, or regulatory systems.

Legal system

10. Samoa is a parliamentary democracy. The system of government is based on the Westminster model, which provides for a separation of powers between the Legislature, the Executive, and the Judiciary. The supreme law is the Constitution of Samoa. The hierarchy of laws is, in decreasing order of rank: (i) the Constitution, (ii) legislation (Acts of Parliament, Ordinances continued from pre-independence, international agreements), (iii) subsidiary legislation (regulations, orders, by-laws, etc.), (iv) common law and equity, and (v) Samoan custom and usage.

11. The Constitution provides for a Head of State, a Prime Minister and Cabinet of Ministers, and a Legislative Assembly. The Village Fono Act 1990 gives village councils authority over village law and order, health, and social issues.

12. Samoa’s court system is made up of the District Court that also houses specialised courts such as the Family and Youth Courts and a Supreme Court that also houses the Alcohol and Drugs Court. These courts are manned by ten local judges. There is also an Appeal Court that sits once or twice a year and is overseen by the Chief Justice together with the Supreme Court judges, and, at times, overseas judges. There is a separate Land and Titles Court that deals with matters relating to customary land ownership and *matai* (chief) titles.

Tax system

13. Samoa's tax system consists of both direct and indirect taxes. Direct taxes comprise of income tax, capital gains tax, and provisional tax. Indirect taxes comprise of VAT, excise tax, and customs duties.

14. A natural person is considered a Samoan tax resident if he or she has a home in Samoa at any time during a tax year, or is present in Samoa for a period amounting to 183 days in any 12-month period, or is a citizen of Samoa who is an officer or employee of the Government or a statutory authority.¹ A foreign national residing in Samoa for more than six months but less than three years for employment purposes, may elect to be treated as a non-resident for the duration of their employment. A company is considered a Samoan tax resident if: (i) it is incorporated, registered, or formed in Samoa; or (ii) it has its central management and control in Samoa.

15. A person liable for income tax or that has a loss for a tax year, and every person liable for capital gains tax must file each year a return with the Inland Revenue Service (IRS). This includes companies that are Samoan tax residents. When income is derived by two or more persons jointly as partners, the partnership must file a partnership return, although the partnership itself is not liable for the tax. In addition, each partner must be separately assessed and liable for the tax payable on his or her total income, including the share of the income of any partnership. Trustees of domestic and foreign trusts are assessable and liable for income derived by the trust and, as such, they are required to file an annual tax return regardless of whether they are carrying on business activities or earn assessable income.

16. For income tax purposes, individuals are taxed progressively from a minimum rate of 0% for annual income of SAT 15 000 (USD 5 767) or less, up to a maximum rate of 27% for annual income of more than SAT 25 000 (USD 9 558). Companies are taxed at a 27% flat rate. Capital gains tax is levied at a rate of 27% if the capital asset was sold within 12 months and 10% if sold 12 months after acquisition. Residents are taxed on their worldwide income. Non-residents (natural and legal persons) are taxed on Samoa-sourced income. This income is taxed by withholding at 15% in respect of interest, royalty, insurance premium, management fee, fee for personal (including professional) services, or natural resource amount from sources in Samoa (with certain insurance premiums taxed at 7.5%). Income is taxed by withholding at 5% in respect of international transportation income derived from operating a ship or aircraft in international traffic.

17. A tax on the supply of goods and services is imposed under the VAGST Act 2015. Any person (natural or legal) who carries on a taxable

1. Income Tax Act 2012, s. 6.

activity in Samoa is required to register for VAGST. However, VAGST registration is optional for a person whose annual profit from their taxable activity is less than SAT 130 000 (USD 49 984) per year. VAGST is levied at 15% rate.

18. Excise tax is levied on imports as well as on domestic manufacture of excisable goods (tobacco products, alcohol, soft drinks, passenger vehicles, petrol, kerosene, and aviation gas) in Samoa. Rates of excise vary according to the classification of goods, but rates on import and domestic manufacture are identical.

19. Custom duties are imposed *ad valorem* rates based on the Harmonised System of Tariffs. The valuation of goods for the purpose of determining the applicable duties is done in accordance with the WTO Agreement on Customs Valuation.

20. Except for TCSPs, all entities and arrangements registered under the international financial sector legislation benefit from tax exemptions. Accordingly, these international entities and arrangements are not subject to any taxes or duties (whether direct or indirect) on their profits or gains, or upon transactions and contracts, and are exempt from tax filing obligations in Samoa.

Business licensing

21. Any person (natural or legal) carrying on business or economic activity in Samoa must obtain a business licence from the Commissioner (or CEO) of IRS. Business or economic activity is defined as including any activity aimed at generating revenue in trade, commerce or industry, and includes any trade or profession, but does not include persons earning income solely from salaries or wages. As such, business licensing requirements apply to domestic and foreign entities and arrangements, while international entities and arrangements are exempt.

22. In order to apply for a licence, applicants must provide the full name and address of each director, partner, shareholder, or trustee; the ownership percentage of each director, partner or shareholder; the contact details and address of the company, partnership or trust; and copies of photo identification of the shareholders, directors, partners, and trustees. Applicants must also provide the number of a bank account held within Samoa. Business licences are not transferrable and must be renewed annually. If there is a change in controlling ownership, a new business licence application is required. Further, the licensee must inform of any changes to the information maintained by the IRS within 30 days of its occurrence. Failure to do so may result in the licence being cancelled, suspended, or a fine of 20 penalty units² (SAT 2 000/USD 769).

2. In Samoa, one penalty unit is equal to SAT 100.

23. Information submitted in connection with a business licence application is kept in the same file as the taxpayer information.

Foreign investors

24. Foreign investors conducting business in Samoa must obtain a Foreign Investment Registration certificate from the Ministry of Commerce, Industry and Labour (MCIL) and must disclose the following information concerning each shareholder or partner: name, share capital or ownership interest held, address, contact details, passport photo, and passport details. Any change in this information must be provided to MCIL with the same detailed information on new shareholders or partners. Foreign investment certificates are not subject to renewal but remain valid for the duration of the business. Information filed with MCIL is kept indefinitely.

25. This requirement applies to domestic companies and partnerships with foreign shareholders or partners, and foreign companies and partnerships.

Financial services sector

26. The Central Bank of Samoa (CBS) is responsible for licensing and supervising all domestic financial institutions in Samoa. Samoa's domestic financial sector encompasses a range of financial institutions governed by the Financial Institution Act, including four domestic banks, four general insurance companies, three life insurance companies, four insurance brokers and nine insurance agents (both corporate and individual), 15 credit unions, 16 money transfer and money changer operations, five money lending institutions, and one unit trust. There is also one development bank that is owned and administered by the Samoan government.

27. Samoa's international financial sector is monitored and supervised by the Samoan International Finance Authority (SIFA). The following entities fall within the scope of SIFA's supervisory role: international companies incorporated under the International Companies Act 1988; SFICs incorporated under the SFIC Act 2000; international partnerships and LPs formed under the International Partnership and LP Act 1998; foreign benefitting trusts and SISTAs under the Trusts Act 2014; SPICs incorporated under the SPIC Act 2012; foundations formed under the Foundations Act 2016; international insurance companies formed under the International Insurance Act 1988; international banks formed under the International Banking Act 2005; international mutual funds and fund managers under the International Mutual Funds Act 2008; and TCSPs under the Trustee Companies Act 2017.

28. As of April 2018, there were 35 116 international companies, five SFICs, four LPs, three foreign benefitting trusts, two international banks, three international insurance companies, four international mutual funds, three fund managers, and 12 TCSPs registered with SIFA. There were no SPICs, international partnerships, SISTAs, or foundations registered with SIFA or formed in Samoa.

FATF assessment

29. The FATF and its regional bodies evaluate jurisdictions for compliance with the AML/CFT standards. Its evaluations are based on a country's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of AML/CFT issues.

30. The Asia Pacific Group conducted an evaluation of Samoa's compliance with the AML/CFT standards in 2015. The MER provides a summary of the AML/CFT measures in place in Samoa as at the date of the on-site visit on 3 to 14 November 2014. The MER concluded that, in general, Samoa's legal framework did provide for a requirement to identify and verify the identity of legal persons and arrangements, as well as a requirement to identify and retain information on beneficial ownership. However, further strengthening of the legal framework was required. Also, the frequency and intensity of supervisory inspections needed to be improved and AML/CFT obligated persons needed additional training regarding their legal obligations. Immediate Outcome 5 was rated Moderate and Recommendations 10, 22, 24, and 25 were rated Partially Compliant.

31. As a result of the MER, Samoa was put under enhanced follow-up (expedited). In the 2018 enhanced follow-up report, recommendation 10 was re-rated Largely Compliant. The ratings to Immediate Outcome 5 and recommendations 22, 24, and 25 did not change. The complete MER and follow-up reports have been published and are available at www.fatf-gafi.org/countries/#Samoa.

Recent developments

32. Amendments to the MLP Act 2007 took effect on 22 June 2018. These amendments address some of the issues raised in the MER. Further information regarding these laws is discussed in element A.

33. A new Trustee Companies Act 2017 took effect on 17 November 2017. This Act repeals the Trustee Companies Act 1988 which was outdated, particularly with regard to the current international regulatory standards

and requirements. This Act incorporates standards set by the Group of International Finance Centre Supervisors (GIFCS) and FATF. Regulations were also introduced in 2017, 2018, and 2019. Further information regarding these laws is discussed in elements A.1 and A.2.

34. New legislation was enacted on 20 October 2016 which allows for the establishment of foundations in the international financial sector in Samoa. Further information regarding this legislation is discussed in elements A.1 and A.2.

35. A new requirement was enacted at the end of 2018 to require business license applicants and license holders to provide beneficial ownership information to the IRS. The IRS will start collecting this information in December 2019. Further information regarding this new requirement is discussed in element A.1.

36. Samoa committed to implement the Common Reporting Standards (CRS) for the sharing of financial account information with other CRS participating jurisdictions. Amendments to the TIE Act were enacted in 2017 and 2018 to implement the CRS in Samoa. Samoa began exchanges under the CRS in September 2018.

Part A: Availability of information

37. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

A.1. Legal and beneficial ownership and identity information

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

38. The 2015 Report concluded that Samoa's legal and regulatory framework requiring the availability of legal ownership information in respect of relevant legal entities and arrangements was in place. No changes have been made to the legal framework for those legal entities and arrangements reviewed in 2015. New legislation was enacted in 2016 allowing for the establishment of a foundation, which must engage a TCSP. As such, the availability of legal ownership information in respect of all relevant entities and arrangements continues to be in place.

39. Under the 2016 ToR, beneficial ownership information of relevant legal entities and arrangements is required to be available. Beneficial ownership information of domestic and foreign partnerships, and international entities and arrangements will be available. It is unclear that all beneficial owners of domestic and foreign companies will be identified in line with the standard. For domestic, foreign, and unit trusts, a protector or any natural person exercising ultimate effective control is not required to be identified.

40. The 2015 Report did not raise any issues related to the practical supervision of domestic and foreign entities. Supervision continues to be carried out through annual return filings and onsite visits carried out by the Ministry of Commerce, Industry and Labour (MCIL), and tax filings and audits. However, these measures may not be sufficient to ensure the availability of ownership information of domestic and foreign entities and arrangements.

41. The 2015 Report recommended that Samoa ensure that custodians of bearer shares are aware of the abolition of bearer shares and remediate any ownership information that was not maintained. Samoa has taken steps to address this recommendation, which has therefore been deleted.

42. A second recommendation in the 2015 Report was that Samoa should conduct more in-depth inspections of its TCSPs. Since 2015, Samoa implemented a monitoring and enforcement regime. Numerous on-site inspections of each TCSP have been conducted and non-compliant companies have been struck from the register. Although Samoa has taken significant measures to address this recommendation, Samoa received a number of EOI requests for legal and beneficial ownership information during the review period and was unable to provide the requested beneficial ownership information because the TCSP did not have the information readily available, as required under the law, and that TCSP later wound-up its operations. In order to address this, Samoa recently enacted amendments requiring a TCSP to preserve its records for seven years after it has ceased business. Penalties may be applied against the TCSP that fails to comply, however, it has not yet been tested in practice. Therefore, it is recommended that Samoa continue to strengthen its supervisory activities in the international financial sector to ensure the availability of legal and beneficial ownership information.

43. Lawyers and accountants are subject to CDD obligations, but during the review period there was no supervision of either profession. The FIU and the legal and accountant professional associations recently began discussions to develop AML/CFT supervisory policies and procedures; nevertheless, it is recommended that Samoa put in place a monitoring regime.

44. Finally, a requirement for legal entities and arrangements to provide beneficial ownership information for business licensing purposes was recently enacted, but its implementation could not yet be assessed. It is recommended that Samoa monitor the implementation of this requirement.

45. During the review period, Samoa received 14 requests related to legal and beneficial ownership information. Two peers indicated that they received the requested information (including beneficial ownership information), while two peers indicated that they had not received all of the requested information.

46. The table of determinations and ratings is as follows:

Legal and Regulatory Framework		
Deficiencies identified	Underlying Factor	Recommendation
	Although a significant amount of beneficial ownership information on domestic and foreign companies will be available in Samoa, it is not clear that all of the beneficial owners will be identified as required under the standard. Further, a requirement for domestic and foreign companies to provide beneficial ownership for business licensing purposes was recently enacted, and, although the definition of beneficial owner is in line with the standard, no guidance has been issued. With regard to trusts, not all beneficial owners of a domestic or a foreign trust will be identified.	Samoa should ensure that all beneficial owners of domestic and foreign companies, and domestic and foreign trusts are identified in line with the standard.
Determination: The element is in place, but certain aspects of the legal implementation need improvement.		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified	Although the Inland Revenue Service carries out supervisory activities, taxpayer compliance and audit rates have been decreasing over the review period, therefore these activities may not be sufficient to ensure the availability of ownership information of domestic and foreign legal entities and arrangements.	Samoa should strengthen its supervisory measures to ensure that ownership information is being maintained by all relevant domestic and foreign legal entities and arrangements in line with the standard.
	A requirement for legal entities and arrangements to provide beneficial ownership for business licensing purposes was recently enacted, consequently its implementation could not be assessed.	Samoa should monitor the implementation of the requirement to provide beneficial ownership information for business licensing purposes.

Practical implementation of the standard		
	Underlying Factor	Recommendation
	Samoa has implemented supervisory and enforcement programmes to monitor the record-keeping obligations in the international financial sector. Although each trust and company service provider (TCSP) is reviewed twice a year and non-compliant international companies have been struck from the register, ownership information, the subject of EOI requests, has not always been available as required. To address this, Samoa recently introduced obligations on a TCSP to maintain its records after it ceases business. However, it has not yet been tested in practice.	Samoa should continue to strengthen its supervisory activities in the international financial sector to ensure the availability of legal and beneficial ownership information.
	Although lawyers and accountants are subject to customer due diligence (CDD) obligations, there was no supervision of either profession during the review period.	Samoa should put in place a monitoring regime of lawyers and accountants to ensure that beneficial ownership information is available with these professionals in line with the standard.
Rating: Partially Compliant		

A.1.1. Availability of legal and beneficial ownership information for companies

47. The 2015 Report concluded that legal ownership information in respect of domestic companies, international companies, SFICs, foreign companies, and nominees that are operating in Samoa is required to be available in line with the standard.³ In addition, persons carrying on regulated activities (including international banking business, international insurance business or international mutual fund business) are required to disclose updated legal ownership information to SIFA. This section also discusses the obligations imposed on TCSPs.

3. An international company is a company incorporated pursuant to the International Companies Act 1988 or a company re-domiciled to Samoa. A foreign company means a company incorporated outside of Samoa whether or not it is registered under Part II of the Companies Act 2001.

48. Under the 2016 ToR, beneficial ownership information on companies should be available. The MLP Act 2007 requires a financial institution (which includes domestic and international financial institutions, TCSPs, lawyers, and accountants) to maintain beneficial ownership information on their clients. The Trustee Companies Act 2017 also imposes obligations on TCSPs to maintain beneficial ownership information on their clients. Beneficial ownership information on international companies, SFICs, and companies carrying out regulated activities will be available since these companies must engage a TCSP. Some beneficial ownership information of domestic and foreign companies may be available as a financial institution must be engaged for business licensing purposes; however, it is not clear that all beneficial owners will be identified in line with the standard. Finally, the requirement for domestic and foreign companies to provide beneficial ownership information to the IRS for business licensing purposes was recently enacted and, although the definition of beneficial owner is in line with the standard, no guidance has yet been issued.

49. As of April 2018, the following number of companies were registered in Samoa: 1 552 domestic companies, 35 116 international companies, five SFICs, 30 foreign companies, two international banks, three international insurance businesses, four international mutual funds, three fund managers, and 12 TCSPs. The following table⁴ shows a summary of the legal requirements to maintain legal and beneficial ownership information in respect of companies in Samoa:

Type	Company law	Business licensing ^a	Tax law	MLP law	Trustee companies law
Domestic companies	Legal – all	Legal – all	Legal – all	Legal – all	Not applicable
	Beneficial – none	Beneficial – all	Beneficial – none	Beneficial – some	
International companies and SFICs	Legal – all	Not applicable	Not applicable	Legal – all	Legal – all
	Beneficial – all			Beneficial – all	Beneficial – all
Regulated activities	Legal – all	Not applicable	Not applicable	Legal – all	Legal – all
	Beneficial – all			Beneficial – all	Beneficial – all
Foreign companies	Legal – some	Legal – all	Legal – some	Legal – some	Not applicable
	Beneficial – none	Beneficial – all	Beneficial – none	Beneficial – none	

Note: a. The IRS will start collecting beneficial ownership information for business licensing purposes beginning in December 2019.

4. The table shows each type of company and whether the various rules applicable require availability of information for “all” such entities, “some” or “none”. “All” in this context means that every company of this type is required to maintain ownership information in line with the standard and that there are sanctions and appropriate retention periods. “Some” in this context means that a company will be required to maintain a portion of this information under applicable law.

Domestic companies – legal ownership information

50. An entity's legal personality only comes into effect once registered with the Registrar of Companies (part of the MCIL); without registration a company cannot conduct commercial operations or financial activity.

51. As explained in the 2015 Report (paragraphs 46-60), when registering with the Registrar, legal ownership information on directors and shareholders must be provided and any changes to this information must be filed with the Registrar. Further, any company with foreign shareholders must obtain a foreign investment certificate (refer to paragraph 24). Domestic companies must also submit annual returns with the Registrar, disclosing any changes to shareholding that might have occurred during the year. Domestic companies are required to maintain a share register that records shareholder information for the last seven years. When filing a tax return, taxpayers must provide the number of their required bank account maintained in Samoa. Legal ownership information does not need to be provided on the tax return; however, domestic companies must provide updated legal ownership information to the IRS as part of their business licensing obligations. Taxpayers must retain records for seven years after the end of the tax period to which is relates. There are sanctions under the companies, business licensing, and tax laws for cases of non-compliance.

52. With regard to companies struck from the register, companies may be struck voluntarily, once liquidated, or for non-compliance. Before being removed from the register, MCIL will confirm that the IRS has no objection to the removal. The Registrar must also give notice to the company (if applicable), any person who is entitled to a registered charge in respect of the property of the company, and the public (Companies Act 2001, s.263). An objection to the removal must be filed with the Registrar within 20 working days after the date of the notice (Companies Act 2001, s.264). If there is no objection, the company is removed from the register. All former directors of a struck-off company remain liable for any act or omission that took place before the company was removed from the register. The liability continues and maybe enforced as if the company had not been removed from the register (Companies Act 2001, s.272). Also, as of 1 July 2019, a liquidator must maintain a liquidated company's records for at least five years after the completion of the liquidation. Further, all ownership information filed with the Registrar is kept indefinitely.

53. The availability of legal ownership information for domestic companies continues to be in line with the standard.

International companies – legal ownership information

54. Paragraphs 61-74 of the 2015 Report determined that legal ownership information with respect to an international company and SFICs will be available with a TCSP. All international companies must engage a TCSP. Also, every SFIC must have at all times a TCSP as a registered segregated fund manager in Samoa. TCSPs are subject to CDD requirements under the MLP and trustee companies laws. Through the CDD requirements, TCSPs will maintain updated legal ownership information, which must be maintained for seven years after the relationship with an international company or SFIC has ceased (refer to *Beneficial ownership information* beginning at paragraph 61).

55. Pursuant to the International Companies Act 1988, international companies are required to keep a register of all members, including changes in ownership, and persons who ceased to be a member during the last seven years. The register must be kept with the TCSP. The international company must file any changes to legal ownership with the TCSP. Penalties apply in the event of non-compliance. The International Companies Act 1988 also applies to SFICs.

56. There have been no changes to the legal framework since the 2015 Report, therefore, the availability of legal ownership information continues to be in line with the standard.

Regulated activities – legal ownership information

57. The 2015 Report (paragraphs 77-86) explained that updated legal ownership information in respect of international banking business, international insurance business, international mutual funds, and fund managers will be available. Persons carrying on these activities must obtain a licence from SIFA and, as part of the application form, must provide ownership information. Any changes to ownership information must be reported to SIFA immediately. Ownership information filed with SIFA is maintained indefinitely. International banks must have a physical presence in Samoa in the form of an administrative office to maintain the required records, in addition to being represented by a TCSP in Samoa. Non-compliance is an offence and may result in a fine.

58. There have been no changes to this legal framework since the 2015 Report, therefore, the availability of legal ownership information continues to be in line with the standard.

Foreign companies – legal ownership information

59. A company is considered a Samoan tax resident if: (i) it is incorporated in Samoa, or (ii) it has its central management and control in Samoa

(Income Tax Act 2012, s. 2). Further, any domestic or foreign person carrying on business or economic activity in Samoa must obtain a business licence. Foreign investors conducting business in Samoa must also obtain a foreign investment certificate (refer to paragraph 24). Of the 30 foreign companies registered in Samoa, 21 were issued a business license and 20 obtained a foreign investment certificate.

60. Paragraphs 88-93 of the 2015 Report found that updated legal ownership information in respect of a foreign company will be available with the IRS (as part of the obligations under the business licensing and tax laws) and/or the MCIL (as part of the obligations under the companies and foreign investors laws). Obligations for foreign companies are the same as those described in paragraphs 51 and 52. The availability of legal ownership information continues to be in line with the standard.

Beneficial ownership information

61. Samoa collects beneficial ownership information on companies through its business licensing, MLP, and trustee companies laws.

(a) Business licensing laws

62. Amendments to the Business Licence Regulations 2012 were enacted in December 2018. The amendments add the definition of beneficial owner and require applicants for a licence and those renewing their licence to provide beneficial ownership information to the IRS (Business Licence Regulations 2012, ss.2 and 7). The IRS must also be informed of any changes to this information within 30 days of the change. In order to ensure that all business licences holders provide beneficial ownership information, the IRS will begin collecting this information in December 2019 when licence holders must renew their licences. The IRS will keep the filed information indefinitely.

63. Pursuant to the Regulations, a beneficial owner means “any natural person who ultimately owns or controls any person on whose behalf a transaction is being conducted and includes any person who exercises ultimate control over a legal person or any arrangement.” There is currently no further guidance as to how this definition is to be interpreted or how the beneficial owners are to be identified. However, Samoa intends to enact clarifying legislation prior to December 2019.

(b) MLP laws

64. The MLP Act 2007 and Regulations apply to financial institutions (includes all domestic and international financial institutions, TCSPs, and

other relevant professionals, such as lawyers and accountants). Under the law, financial institutions are required to undertake CDD measures when: establishing a business relationship, conducting any transaction, there is a suspicion of money laundering or the financing of terrorism, or there are doubts about the veracity or adequacy of the CDD documentation or information (MLP Act 2007, s. 16(1)).

65. A financial institution must verify the customer's identity using reliable, independent source documents, data or information, or other evidence of identity as prescribed in the MLP Regulations 2009. Regulation 5 sets out an extensive list of suitable customer identification and verification documents. In addition, a financial institution must take reasonable measures to understand and document the ownership and control structure of the customer (MLP Regulations 2009, r.6(2)). This includes taking reasonable measures to verify any beneficial owner's identity as well as verifying the identity and authority of any person acting on behalf of the customer using reliable, independent source documents, data, or information (MLP Act 2007, s. 16B; MLP Regulations 2009, r.9).

66. The definition "beneficial owner" was added to the MLP Act 2007 (taking effect on 22 June 2018) to mean "a person who owns or controls a customer as well as the person on whose behalf a transaction is being conducted and includes those persons who exercise ultimate effective control over a legal person or arrangement." Prior to June 2018, financial institutions were collecting beneficial ownership information of their clients as the MLP laws (which came into effect in 2007) required the identification of beneficial owner(s) and the MLP Regulations 2009 specified the measures to be applied, as well as who must be identified as the beneficial owner(s).

67. According to the MLP Regulations 2009, a financial institution must identify the natural person who ultimately owns or controls a legal entity or arrangement. Specifically, where a customer is a company, the financial institution must verify the identity of: (a) each natural person who owns directly or indirectly any percentage of the vote or value of an equity interest in the entity; (b) any person exercising effective control of the entity; and (c) each natural person who exercises a signing authority on behalf of the entity (MLP Regulations 2009, r.6(3)).

68. Financial institutions are required to establish and maintain a customer profile for each customer of sufficient nature and detail to enable the institution to apply ongoing CDD (MLP Act 2007, s.20; MLP Regulations 2009, r.12, 13). This includes keeping all identification documents obtained in the course of carrying out the CDD measures. In addition, financial institutions are required to ensure that documents, data or information under identification procedures are kept up to date and relevant. These records must be kept for a minimum of five years from the date: (i) the identification

documents were obtained; (ii) of any transaction or correspondence; or (iii) the account is closed or the business relationship ceases, whichever is the later.

69. The amendments to the MLP Act 2007 in 2018 clarified that financial institutions must verify the identity of customers and beneficial owners according to risk-based procedures. Enhanced CDD must be conducted if the customer is a trust or other similar vehicle; a non-resident customer from a country that has insufficient AML/CFT systems or measures in place; the customer is a company with nominee shareholders or shares in bearer form; the customer seeks to conduct a complex, unusually large transaction or unusual pattern of transactions; the bank considers that the level of risk involved is such that enhanced CDD should apply; the FATF makes an official request to the FIU; non face-to-face customers; or other circumstances determined by the CBS Governor (MLP Act 2007, s. 16C; MLP Regulations 2009, r.8). Enhanced CDD must include enhanced scrutiny of: (i) a customer's identity (including the beneficial owner and controller); (ii) the source and legitimacy of funds; (iii) transaction monitoring; and (iv) customer profiling (MLP Regulations 2009, r.14).

70. If a financial institution is not satisfied with the identification information received from a customer or is unable to obtain the information, the institution must not open an account, commence the business relationship, or perform the transaction, and shall send a report to the FIU (MLP Act 2007, s. 17). A financial institution may delay completion of the customer verification if the delay is essential to maintaining the normal course of business, where the risks of money laundering or terrorist financing are effectively managed, and verification occurs as soon as practicable afterwards (MLP Regulations 2009, r.10).

71. Financial institutions may rely upon third parties to perform CDD measures on their behalf, if certain conditions are met, but the ultimate responsibility remains with the relying institution (MLP Regulations 2009, r.11). The conditions for third party reliance are that: (i) the relying institution must be satisfied that the third party is regulated, supervised and has measures in place to comply with the CDD requirements of the MLP laws; (ii) the relying institution must immediately obtain from the third party the CDD information required by the MLP laws; (iii) the relying institution must take adequate steps to satisfy itself that copies of the identification data and other relevant information relating to the CDD requirements will be made available without delay; and (iv) an institution may not rely on a third party that the FIU has identified as non-compliant with the MLP laws or the institution, itself, has reason to believe that the third party is not complying with the MLP laws.

72. A financial institution or person who fails to comply with the CDD and record-keeping requirements commits an offence and is liable

upon conviction to a fine not exceeding 500 penalty units (SAT 50 000/USD 19 116), imprisonment for a term not exceeding five years, or both (MLP Act 2007, s. 22).

73. Finally, the FIU published “Guidelines for Financial Institutions” in April 2010 which outline the requirements of the MLP laws and provide a practical interpretation of the MLP laws. The Explanatory Forward of this document explains that these guidelines are “provided as general information only.” This document is inconsistent with the MLP laws as it has not been revised to reflect the legislative amendments that have been enacted since 2010. Samoa should, where appropriate, update these MLP guidelines (see Annex 1).

(c) Trustee companies laws

74. The Trustee Companies Act 1988 was replaced by the Trustee Companies Act 2017 (effective 17 November 2017). The new Act introduces the definition of beneficial owner and the requirement to keep beneficial ownership information; however, TCSPs were already collecting and maintaining beneficial ownership information as required under the MLP laws (as described above).

75. A TCSP is a domestic company registered with MCIL, has a business licence issued by the IRS, and is licensed by SIFA. To obtain a licence from SIFA, the entity must provide identification information of every key person (i.e. owner, shareholder controllers, all shareholders, and directors) and beneficial owner of the entity, information on the organisational and ownership structure of the entity, and copies of AML/CFT policies and compliance manuals (Trustee Companies Act 2017, ss.26, 27). Any change in ownership must be reported to SIFA within five days (Trustee Companies Act 2017, s.29). TCSPs must file annual reports and renew their licences annually. Non-compliance with these obligations will result in a fine or may lead to the revocation of its licence.

76. Section 30 of the Trustee Companies Act 2017 sets out the professional duties of a TCSP. These duties include a requirement to: record, verify, and keep updated beneficial ownership information of the vehicle; know the beneficial ownership of the source of funds being vested in those vehicles; maintain full documents evidencing the nature of business to be engaged in; and have policies and procedures to establish, access in a timely manner and retain documents and information as to the beneficial ownership for vehicles.

77. Beneficial owner is defined as any natural person who ultimately owns or controls any person on whose behalf a transaction is being conducted and includes any person who exercises ultimate control over a legal person or an arrangement (Trustee Companies Act 2017, s. 2).

78. Regulation 3 of the Trustee Companies Regulations 2018 sets out how a beneficial owner is to be identified. Where a vehicle is a company, the TCSP must verify the identity of: (a) each natural person who owns directly or indirectly 25% or more of the vote or value of an equity interest in the vehicle; (b) if no such person in (a) exists or can be identified, the natural person exercising effective control of the vehicle through other means; (c) if no such person in (a) or (b) exists or can be identified, then the TCSP must identify and verify the relevant natural person who holds the position of senior managing official of the company.

79. In order to verify identity, TCSPs must comply with regulation 5 of the MLP Regulations 2009, which sets out the list of customer identification and verification documents that may be used (Trustee Companies Regulations 2018, r.3(5)). Any changes to beneficial ownership information must be reported to the TCSP without delay (Trustee Companies Regulations 2018, r.3(11)).

80. Beneficial ownership information must be maintained for seven years after the relationship with the vehicle has ceased (Trustee Companies Regulations 2018, r.3(8)). A TCSP that fails to maintain beneficial ownership information is in breach of its obligations, set out in section 30 of the Act, and SIFA may take measures against the TCSP, including imposing fines, imposing conditions on the TCSP's licence or revoking its licence (Trustee Companies Act 2017, s. 38).

81. TCSPs may rely upon third parties to perform CDD measures on their behalf, if certain conditions are met, but the ultimate responsibility for the CDD measures are with the relying TCSP. The conditions are that: (i) the TCSP must ensure that contractual agreements with third parties are sufficiently robust to ensure that third parties can fulfil the obligations for obtaining and recording the information; (ii) the TCSP must test the abilities of those third parties to provide any sufficient information (which includes any of the CDD documents prescribed by the Regulations) without delay and to ensure that there is a contractual requirement between the TCSP and the third party; and (iii) the TCSP must terminate the contract with the third party if the third party does not properly perform the contract.

Discussion

82. Beginning in December 2019 domestic and foreign companies are required to provide beneficial ownership information to the IRS for business licensing purposes. There is currently no further guidance as to how the definition “beneficial owner” is to be interpreted or how the beneficial owners are to be identified; however, Samoa intends to enact clarifying legislation prior to December 2019 and is also developing an awareness programme.

83. When applying for a business licence and filing annual tax returns, domestic and foreign companies must provide bank account information, consequently, these companies must engage a Samoan financial institution, which has CDD obligations under the MLP laws. A significant number of beneficial owners of a company will be identified under the MLP laws, but it is uncertain whether all beneficial owners will be identified as required by the standard. Although the definition of beneficial owner under the Act is in line with the standard; the MLP Regulations 2009 do not appear to be consistent with the Act. The test set out in Regulation 6(3) (see paragraph 67) is not a cascade approach, rather all of the persons listed must be identified. While this would seem to go beyond the standard, it is unclear that the person(s) exercising *ultimate effective control* of the company need to be identified, since according to the Regulations only the person exercising “effective control” needs to be identified. Further, there has been no guidance issued on this point. It is unclear whether “effective control” has the same meaning as “ultimate effective control” and would include situations in which control is exercised through a chain of ownership or by means of control other than direct control, as required under the standard. Consequently, it is recommended that Samoa take further measures to ensure that beneficial ownership information of domestic and foreign companies is available in line with the standard.

84. With respect to international companies and persons carrying out regulated activities, updated beneficial ownership information will be available with TCSPs and, in some cases, with SIFA. The definition of beneficial owner and the measures by which the beneficial owners are to be identified under the trustee companies laws are in line with the standard.

Supervision of obligations to maintain ownership information

85. The 2015 Report concluded that the monitoring of TCSPs was not sufficiently rigorous. This section discusses the supervision of ownership information carried out by the MCIL, the IRS, and SIFA, as well as the measures taken by Samoa to address the Phase 2 recommendation.

86. Domestic financial institutions are supervised by the FIU (discussed in element A.3 below). The FIU is also the designated supervisor of accountants and lawyers, under the MLP Act 2007; however, the FIU did not carry out any supervisory measures of accountants or lawyers during the review period. The FIU and the legal and accountant professional associations recently began discussions to develop AML/CFT supervisory policies and procedures; nevertheless, it is recommended that Samoa put in place a monitoring regime.

(a) Supervision by MCIL and IRS

87. The table below sets out the number of entities registered with the MCIL and the IRS as of April 2018:

Number of entities registered with the MCIL and IRS

Domestic companies	Foreign companies	Domestic partnerships	Foreign partnerships	Trusts
1 552	30	74	0	11

88. When a new registration application is received, Registry staff will check that the relevant forms are signed, valid identification documents are included (such as a drivers licence or passport), and verify that the names and address match those on the identification documents. If a director's consent form is not signed or a name is incorrect, the form is returned to the applicant to be corrected. Documents such as the copies of identification or documents requiring signature are first uploaded onto the system and assessed online by Registry staff against the actual proof of identity provided. Once the Registry officer is satisfied and the fee is paid, the applicant is given a username and password to access the online system for subsequent filings (including annual returns and periodic notifications of any change). It generally takes the Registry staff three days to assess new applications.

89. Documents submitted to the MCIL are kept in paper copy and entered into an electronic register. The register is publicly searchable, and displays details of the name of the company, registered office, director(s), shareholder(s), date of incorporation, regulatory filings including the annual return, and notices of change in shareholding.

90. Annual returns are due each 12 month anniversary after the initial registration of the company. A first reminder is sent by email to each company in advance of the annual return due date. The MCIL has an internal database which shows which companies have outstanding annual returns due and automatically generates reminder letters to the company. If the annual return is not filed on time, a reminder is sent after one month if the annual return is still outstanding. If the annual return is still outstanding at that point, a maximum penalty of SAT 200 (USD 76) applies and a notice is published in the local paper. The company has three months to respond to the notice, if it does not, the company is then deregistered.

91. Annual returns, once submitted, are checked against the return for the previous year and notifications of change to verify that periodic changes in name, address, company rules, directors or shareholders that were required to be filed during the year were in fact filed. Although the Companies Act 2001 allows for prosecution of the provision of false information in

registration or annual returns, there are no known instances of false information being provided, therefore, the Samoan authorities have not had the occasion to prosecute.

92. The MCIL conducts on-site inspections of approximately 550 to 700 companies a year. These inspections are to ensure that the company is carrying on business and, in most cases, MCIL officials will review the share register.

93. Companies that are no longer carrying on business, non-compliant with their obligation to maintain a share register, or fail to file their annual returns are deregistered once it is confirmed with the IRS that the company is no longer active.

94. During the review period, the MCIL applied 448 penalties (total of SAT 42 500 (USD 16 249)) to companies for late filings and non-filings of annual returns. In 2016, no companies were deregistered; in 2017, 108 companies were deregistered; and in 2018, 103 companies were deregistered.

95. The IRS co-ordinates with the MCIL to ensure that no business licences are issued unless a valid certificate of incorporation and foreign investment certificate (if applicable) is produced. The IRS also monitors new company registrations using the electronic registry. With respect to the new obligation to provide beneficial ownership information for business licensing purposes, the IRS is developing a document verification procedure which should be in place by December 2019.

96. To ensure compliance with business licensing obligations, the IRS undertakes spot checks or on-site inspections to ensure businesses are operating with a valid business licence. If a business is found to be operating without a valid licence, a warning is issued for the business to immediately pay the required licence fee for all of those years the business operated without a valid licence. Failure to comply with the warning is a criminal offence. During the review period, four warnings were issued and each business took corrective actions. No other measures needed to be applied.

97. The IRS has an automated system which generates reminders to staff as to which licence holders are due to renew their licence. Monthly meetings of staff are held to identify how many renewals are due and how many are outstanding, and the work to issue reminders is assigned. In no case has a licence been suspended or cancelled for failure to comply with the licensing obligations. However, in 2015, 844 penalties for late renewal of licences were applied; in 2016, this fell to 603 penalties; in 2017, 690 penalties were applied; and in 2018, 671 penalties were applied.

98. As described in paragraph 62, new provisions requiring domestic and foreign companies to provide beneficial ownership information for business

licensing purposes recently entered into force and their implementation could not yet be assessed. Samoa is recommended to monitor its implementation.

99. The table below sets out the number of taxpayers registered with the IRS, the number of tax returns filed, the number of audits conducted, and the number of late filing penalties applied in 2015 to 2017:

Taxpayers		Year		
		2015	2016	2017
Individuals/Sole traders	Number registered with IRS	6 480	6 480	6 480
	Number of returns filed	4 295	3 271	2 106
	Number of audits	64	34	27
	Number of late filing penalties	464	355	148
Companies	Number registered with IRS	1 070	1 070	1 214
	Number of returns filed	662	552	474
	Number of audits	118	73	62
	Number of late filing penalties	692	398	141
Partnerships	Number registered with IRS	22	22	36
	Number of returns filed	17	14	9
	Number of audits	1	0	0
	Number of late filing penalties	2	0	0
Trusts	Number registered with IRS	10	10	10
	Number of returns filed	9	7	4
	Number of audits	0	3	0
	Number of late filing penalties	0	3	2

100. In order to monitor tax obligations, the IRS has a system to identify taxpayers that fail to file a return. This system is automated and generates reminders to staff to enable identification of such taxpayers. Two reminder notices are sent to a taxpayer with an outstanding tax return, and thereafter direct contact with the taxpayer is made.

101. During the review period, penalties for late filing of tax returns were applied. In addition to incurring a penalty, the failure to file a tax return is an offence under the tax law. At the end of 2018, charges were filed against 20 taxpayers and are waiting to proceed to court.

102. In terms of tax audits, the IRS selects taxpayers for audit either as a result of the IRS discovering a discrepancy in a tax return, as a result of taxpayers being profiled or selected through a compliance software program, or on the basis of information provided by another division of the IRS or from the public. In practice, a broad range of documents are required from

taxpayers who are subject to audit investigations, and legal and beneficial ownership information is pertinent to the analysis conducted in many company audits.

103. The number of audits conducted over the review period has been decreasing. According to IRS officials, this is a result of delays of receiving information from taxpayers and from reforms introduced within the MFR. These reforms introduced organisational and procedural changes, for instance, the target of the new compliance model, used by the audit unit, is to get the maximum revenue from the minimum number of cases audited. IRS officials further maintain that despite the falling audit rate, they have become more adept in identifying potential tax violations, which is evidenced from the increase in revenue collected. For the financial year 2016-17, the IRS collected SAT 171.1 million (USD 64.2 million), this increased in 2017-18 to SAT 176.6 million (USD 66.3 million). The IRS also exercises other statutory powers with a view to increasing compliance, including educational awareness programmes, seizures of property belonging to taxpayers, and collection of taxes from third parties.

104. Although the IRS is carrying out supervision and enforcement measures, this may not be sufficient to ensure the availability of ownership information for domestic and foreign companies. The compliance with tax filing requirements is low, approximately 61% of companies filed returns in 2015 and this rate fell to 39% in 2017 (refer to the table in paragraph 99). Moreover, although the IRS carries out supervisory activities, the proportion of taxpayers subject to tax audits is low. It is noted that during the review period, Samoa did not receive any requests for ownership information regarding a domestic or foreign company; nevertheless, Samoa is recommended to strengthen its measures to ensure that ownership information is being maintained by domestic and foreign companies in line with the standard.

(b) Supervision by SIFA

105. SIFA maintains a register for all entities that it supervises. The register records the name of the entity, name of the TCSP acting for the entity, the due date for annual reports/returns and renewal, records of annual reports/returns received and renewal payments made, and the legal and beneficial ownership information of licensed entities (e.g. international banks and TCSPs).

106. During the review period SIFA imposed the following sanctions on supervised entities; one international bank was fined USD 2 500 for failing to obtain prior approval for the change of its shareholders; late filing of annual reports/returns penalties on TCSPs (a total of USD 450), international banks (a total of USD 3 200), and international insurance companies (USD 300); and

revocation of two international banking licences. There were no cases during the review period where an entity failed to file an annual report/return.

107. SIFA monitors compliance by undertaking off-site and on-site inspections. Off-site inspections are carried out when annual returns/reports are submitted, as well as when an application for a change of ownership of a licensed entity, transfer of shares, or any material change from an entity's initial application is filed. In addition, SIFA assesses licensed entities' KYC policies and procedures and compliance manuals to ensure they are consistent with the laws.

108. The table below sets out the number of on-site inspections conducted by SIFA between 2016 and the beginning of 2019. Note that, except in March 2016 and 2019, each TCSP licensed in Samoa was reviewed during each round of inspection.

Round of inspection	Number of licensed entities reviewed
March 2016	5 international banks
November 2016	9 TCSPs
June 2017	8 TCSPs
November 2017	11 TCSPs
March 2018	10 TCSPs
November 2018	12 TCSPs
February and March 2019	2 international banks and 2 international insurance companies

109. In 2016 and June 2017, the inspections of TCSPs focused on legal ownership requirements. All subsequent inspections reviewed legal and beneficial ownership requirements. The November 2018 inspection also verified compliance with the obligation to maintain information of struck-off companies.

110. Two to three weeks prior to an on-site inspection, SIFA sends a letter to the TCSP to notify them of the upcoming visit. The letter also sets out the name and number of the international entities to be inspected (which are randomly selected), and lists what information is to be made available of SIFA inspectors.

111. There are eight SIFA staff conducting on-site inspections. They spend approximately two or three days per TCSP. During the inspection, SIFA staff use a template checklist to verify record-keeping obligations. This includes verifying whether the documents include identification and beneficial ownership records (and if such information is up to date), measures the TCSP takes to determine the identity and beneficial ownership of a client, measures the TCSP takes to determine whether a client is acting on behalf of a third party, and the compliance regime such as whether policies are applied and whether training is provided on the AML/CFT regime.

112. A report of findings is produced at the end of an inspection which identifies any issues that need to be addressed. If remedial action is required (including providing information that was not available during the on-site visit), SIFA will advise the TCSP and mark the issue to be checked at a follow-up visit which is generally conducted one or two weeks after the initial visit. During the review period, SIFA carried out 53 follow-up visits.

113. The table below sets out the number of international business companies reviewed by SIFA between 2016 and 2018, the number of those companies that had legal and beneficial ownership information with the TCSP, and the number of companies struck from the register for non-compliance.

Round of inspection	Number of international companies reviewed	Number of companies with ownership information	Number of struck-off companies	Compliance rate
November 2016	180	180	0	100%
June 2017	240	240	0	100%
November 2017	440	440	0	100%
March 2018	502	500	2	99.6%
November 2018	1 036	999	37	96%

114. As shown in the table, almost all reviewed international companies were compliant with their legal and beneficial ownership obligations. Non-compliant companies were struck from the register. A company that is struck from the register may not be restored to the register or transferred to another TCSP until the company provides the outstanding information to SIFA. In 2017, approximately 2% of the total number of international companies registered in Samoa were reviewed by SIFA. This increased to 4.4% in 2018. According to SIFA officials, this number will continue to increase as SIFA staff become more efficient and experienced with conducting inspections.

115. SIFA has implemented a monitoring and enforcement regime to ensure that international entities and TCSPs are compliant with their ownership information requirements. However, Samoa received a few EOI requests for legal and beneficial ownership information of international companies and was unable to provide the requested beneficial ownership information because the TCSP did not have the information readily available, as required under the law, and subsequently that TCSP wound-up its operations.

116. The abrupt closure of this TCSP in March 2018, reflects both on the actual availability of ownership information in Samoa – which has been demonstrated during the review period to have instances of failure – and the effectiveness of SIFA’s supervisory measures. Although Samoa requires that international entities and their TCSPs retain ownership information for at least five years, this TCSP did not have the ownership information readily

available when requested to provide information. Further, there were no provisions in place, until recently, to ensure that a shuttered TCSP had document retention procedures or other preservation mechanisms in place to ensure the availability of ownership information. On 1 July 2019, Samoa enacted amendments to the Trustee Companies Act 2017 requiring a TCSP to preserve its records for seven years after it has ceased business. Under this law, prior to revoking or suspending a licence, the TCSP must inform SIFA about how its records will be kept, who will keep the records, where the records will be kept, and how the records will be made available. Failure to comply will result in a fine, but this has not yet been tested in practice. Taking this into consideration, it is recommended that Samoa continue to strengthen its supervisory activities to ensure the availability of legal and beneficial ownership information in the international financial sector.

Availability of ownership information in practice

117. During the review period, Samoa received 14 requests related to legal and beneficial ownership information. Two peers provided input that they received the requested information, including beneficial ownership information, while two peers indicated that they had not received all of the requested information (this resulted from the reason set out in paragraph 115).

Nominees in Samoa

118. The 2015 Report (paragraphs 94-97) concluded that nominee shareholders may exist in Samoa. Updated ownership information will be available if a financial institution acts as, or arranges for another person to act as, a nominee, pursuant to CDD requirements under the MLP laws. With regard to nominee shareholders, other than financial institutions, there is no specific legal obligation to retain ownership information on the person for whom they act as the legal owner. Nevertheless, the report concluded that this group of nominee shareholders would be limited. This conclusion continues to apply and no changes to the legal framework described in the 2015 Report have been made.

119. The 2015 Report contained an in-text monitoring recommendation because the Samoan authorities did not have information on the occurrences of nominee shareholding, and considered that this practice does not arise in Samoa. To address this recommendation, the Trustee Companies Act 2017 provides that a TCSP may act, or arrange for another person to act, as a nominee shareholder for its clients. As part of a TCSP's obligations, it must take reasonable measures to determine if a customer is acting on behalf of any other persons including on behalf of a beneficial owner or a nominee, and must verify the identity of both persons (Trustee Companies Act 2017, s. 30). CDD documentation must be kept by a TCSP for seven years after the relationship with the client has ceased.

120. A subsidiary (wholly-owned by a TCSP) or a related company of a TCSP (i.e. the TCSP is directly or indirectly a shareholder controller of the company) may also act as a nominee to provide services under the International Companies Act 1988, the Trusts Act 2014, or the Foundations Act 2016. However, in order to do so, the TCSP must apply for approval with the SIFA. SIFA conducts due diligence verification prior to granting approval. To date, SIFA has granted 17 approvals. Once approval is granted, the TCSP must ensure that the subsidiary or related company complies with all requirements of the trustee companies laws as if the subsidiary or related company were a TCSP. This includes all CDD obligations and maintaining ownership information on nominees. Accordingly, the 2015 in-text recommendation has been addressed.

121. During the review period, Samoa did not receive any requests with respect to nominees. No peers raised any concerns.

ToR A.1.2. Bearer shares

122. The 2015 Report concluded that with regard to domestic companies, the Companies Act 2001 ensures that ownership of each share issued by a company is known. International banks, limited life international companies, and segregated fund international companies cannot issue bearer instruments. As of April 2014, international companies could no longer issue bearer shares or share warrants and the existing bearer shares and share warrants would be either converted into registered shares or cancelled by operation of law by 27 October 2015. Prior to the abolition of bearer shares, all bearer shares and share warrants to bearer issued by an international company were to be physically lodged with a TCSP in Samoa. The TCSP acted as a custodian of the original bearer instruments for the beneficial owners. No amendments to the legal framework have been made since the 2015 Report.

123. The 2015 Report determined that in practice no monitoring was undertaken with respect to the previous custodial regime that existed during that review period, and it was impossible to determine the level of compliance with those obligations. Accordingly, a monitoring recommendation was included in the report.

124. To address this recommendation, in 2015, SIFA advised all TCSPs of the legislative amendment that abolished bearer shares and conducted on-site inspections. SIFA officials determined, through these visits, that all of the TCSPs, except for one, were compliant. One TCSP still had custody over bearer shares that had been issued by ten of its international companies which had not been cancelled or converted into registered shares. The ten international companies were struck from the register in February 2017. Records of these struck companies must be retained by the TCSP for seven years following the date of being struck from the register. No sanctions were

applied against the TCSP because the legislation did not provide for sanctioning measures against non-compliant TCSPs.

125. Since 2015, SIFA officials continue to conduct on-site inspections (as described in section A.1.1) and have not found any other TCSP to be non-compliant with its obligations relating to bearer shares. As such, the recommendation contained in the 2015 Report has been addressed.

ToR A.1.3. Partnerships

126. The 2015 Report concluded that partner information for partnerships and LPs is in line with the standard. Partnerships and LPs are legal persons. There have been no relevant changes to the legal framework since that Report.

127. Under the 2016 ToR, beneficial ownership information on partnerships is required to be available. Any individual who directly or indirectly owns or controls a domestic or foreign partnership must be identified to the MCIL and the IRS. International partnerships and LPs must engage a TCSP, which is required to identify the beneficial owners of partnerships and LPs.

128. As of April 2018, there were 74 domestic partnerships, four LPs, and no international partnerships registered in Samoa. Six foreign partnerships obtained a foreign investment certificate from MCIL and two of these six obtained a business license from the IRS.

Domestic and foreign partnerships – partner information requirements

129. Paragraphs 110-115 and 125-127 of the 2015 Report describe the requirements under the business licences, foreign investors, and tax laws which require a partnership to provide updated partner information to the MCIL and the IRS. These obligations are the same as those applicable to companies (refer to paragraph 51). Further, in order to comply with tax obligations, it can be reasonably inferred that the partnership would need to hold at least all the records concerning the identity of all partners. Under the tax law, each partner must retain records for seven years after the end of the tax period to which it relates. As no changes to the legal framework have been made since the last report, the availability of partner information continues to be in line with the standard.

International partnerships and LPs – partner information requirements

130. The 2015 Report (paragraphs 117-123) explained that international partnerships and LPs must engage a TCSP. TCSPs must identify the partners of these partnerships and retain the partnerships' records for seven years from the date the relationship with the client ceased. There have been no

changes to the legal framework described in the 2015 Report, therefore the availability of partner information continues to be in line with the standard.

Beneficial ownership information

131. Samoa collects beneficial ownership information on partnerships through its business licensing, foreign investor, MLP, and trustee companies laws.

132. Domestic and foreign partnerships carrying on business or economic activity in Samoa must obtain a business licence. To apply for a licence, an applicant must provide the full name and address of each partner (natural person) who directly or indirectly owns or controls the partnership and any partner (natural person) who exercises ultimate control over the partnership; the ownership percentage of each partner; and copies of photo identification of the partners. According to IRS officials, where any partner is in turn an entity or arrangement, information on the beneficial owners behind that entity or arrangement must be provided on the application form. Business licences are not transferrable and must be renewed annually. If there is a change in controlling ownership, a new business licence application is required. Further, the licensee must inform of any changes to the information maintained by the IRS within 30 days of its occurrence. Failure to do so may result in the licence being cancelled, suspended, or a fine of 20 penalty units (SAT 2 000/USD 769).

133. In addition, domestic partnerships with a non-resident partner and foreign partnerships must obtain a foreign investor certificate. When applying for the certificate, the applicant must provide the information concerning each foreign partner, including: name, ownership interest held, address, contact details, passport photo, and passport details. Any change in this information must be provided to MCIL with the same detailed information on new partners.

134. As explained in paragraphs 62 and 63, recent amendments to the business licensing law require applicants and licence holders to provide beneficial ownership information to the IRS. This requirement will not have an impact on partnerships since partnerships have had to provide such information to the IRS since 2012.

135. With respect to international partnerships and LPs, a TCSP must be engaged. TCSPs have CDD obligations under the MLP and trustee companies laws (see *Beneficial ownership information* in section A.1.1 above for additional details).

136. According to subsection 6(3) of the MLP Regulations, where a customer is a partnership or LP, the TCSP must verify the identity of: (a) each natural person who owns directly or indirectly any percentage of the vote or value of an equity interest in the entity; (b) any person exercising effective

control of the entity; and (c) each natural person who exercises a signing authority on behalf of the entity.

137. Pursuant to this section, a significant number of beneficial owners of partnerships will be identified; however, it is unclear whether all beneficial owners will be identified as required under the standard for the reason set out in paragraph 83.

138. Nevertheless, under the trustee companies laws, Regulation 3 defines the beneficial owner of a partnership or LP as: (a) a natural person who owns directly or indirectly 25% or more of the vote or value of an equity interest in the partnership; (b) if no such person in (a) exists or can be identified, the natural person exercising effective control of the partnership through other means; (c) if no such person in (a) or (b) exists or can be identified, then the natural person who holds the position of senior managing official of the partnership. This is in line with the standard in respect of legal persons.

Supervision of obligations to maintain partner and beneficial ownership information

139. Supervision of partner and beneficial ownership information is carried out by the IRS and MCIL in the same manner as described in section A.1.1 above. The concerns and recommendation set out in paragraph 104 are applicable.

140. The monitoring of the obligations on TCSPs is described in section A.1.1 above. As part of its inspections, SIFA reviewed the files of one LP, which was found to be compliant. Note that there are only four LPs and no international partnerships registered in Samoa.

Availability of ownership information in practice

141. During the review period, Samoa did not receive any requests for partnership information. No peers raised any concerns.

ToR A.1.4. Trusts

142. The 2015 Report determined that information on the settlor, trustee(s), and all beneficiaries of trusts would be available. There have been no changes to the legal framework since that report.

143. Under the 2016 ToR, beneficial ownership information on trusts is required to be available. In Samoa, a protector or any natural person exercising ultimate effective control over a domestic, foreign, or unit trust is not required to be identified. Foreign benefitting trusts (i.e. international trusts) and SISTAs must engage a TCSP, which must identify all beneficial owners of trusts.

144. As of April 2018, there were 10 domestic trusts and one unit trust registered in Samoa. Foreign benefitting trusts and SISTAs do not need to register with SIFA; however, SIFA has found through its monitoring programme that there are three foreign benefitting trusts⁵ and no SISTAs in Samoa. Finally, there are no foreign trusts registered in Samoa.

Domestic trusts – identification of settlor, trustee and beneficiaries

145. As discussed in paragraphs 132-137 of the 2015 Report, domestic trusts are governed by the Trusts Act 2014, common law trust principles, the income tax laws (also refer to paragraph 15), and, in some cases, the Business Licences Act 1998. Under this legal framework, there are no requirements concerning the registration, verification, or retention of information pertaining to the identity of settlors, trustees, or beneficiaries; however, in order for trustees to comply with their legal obligations, the trustees must maintain information on the settlors, trustees, and beneficiaries. Under the tax laws, records must be kept for seven years. There have been no changes to this legal framework since the 2015 Report.

Foreign benefitting trusts and SISTAs – identification of settlor, trustee and beneficiaries

146. The 2015 Report (paragraphs 140-145) explained that a foreign benefitting trust must engage a TCSP and that the TCSP must retain information on the settlors, trustees, and beneficiaries of the trust. There have been no changes to the legal framework since that report.

147. The 2015 Report did not examine SISTAs. Pursuant to sections 48 to 62 of the Trusts Act 2014, a SISTA is a trust governed by Samoan law which holds the shares of a Samoan company and at least one of the trustees must be a TCSP. Like foreign benefitting trusts, it is not necessary to register or file any documents with SIFA in order to create a SISTA, and there is

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5. The 2015 Report indicated that there were 155 international trusts registered with SIFA. The decrease in the number of trusts is a result of a transitional provision set out in the Trusts Act 2014, which gave international trusts 12 months from the date of the commencement of the Act (7 April 2014) to engage a TCSP as a trustee. As of 7 April 2015, only three trusts had complied with this requirement and the 152 remaining trusts were terminated. Note that the 155 international trusts existed under the International Trusts Act 1988 (which has been repealed) and under this Act, the trusts were required to have a TCSP as one of the trustees. TCSPs are required to maintain their clients' records for seven years after the relationship has ended, accordingly records for these trusts should be available with their TCSPs.

no obligation to renew or notify SIFA of any changes. Rather, all information regarding the settlors, trustees and beneficiaries of the trust must be maintained by the TCSP, and SIFA has the power to request this information.

Unit trusts – identification of settlor, trustee and beneficiaries

148. As explained in the 2015 Report (paragraphs 148-153), every unit trust is subject to approval by the MFR and is considered to be a financial institution under the MLP laws. The trustee of a unit trust must be a trust corporation (subject to the Trust Act 2014), or a company (subject to the Companies Act 2001) or a bank approved by the MFR (Unit Trust Act 2008, s. 6). A combination of obligations set out under the Trusts Act 2014, the MLP laws, the common law, and the tax law require a trustee to maintain information on the settlors, trustees, and unit holders. Further, as the only unit trust that exists in Samoa is a government agency, it is required to maintain all records in perpetuity and the records cannot be destroyed or disposed of without the prior approval of the National Archives and Records Authority. There have been no changes to the legal framework since that report.

Foreign trusts – identification of settlor, trustee and beneficiaries

149. Paragraphs 154-156 of the 2015 Report determined that information on the settlors, trustees, and beneficiaries of a foreign trust will be available pursuant to the business licensing (also refer to paragraph 21) and income tax laws (also refer to paragraph 15). There have been no changes to this legal framework since that report.

Beneficial ownership information

150. An individual does not need to be licensed in order to act as a trustee of a domestic, foreign, or unit trust (unless the trustee of a unit trust is a TCSP). However, if a domestic, foreign, or unit trust engages a “financial institution” (as defined in the MLP Act 2007), then CDD obligations apply (see beneficial ownership in section A.1.1 above for additional details). As it relates to trusts, regulation 6(4) of the MLP Regulations 2009 specify that the identity of the settlors, trustees, and beneficiaries must be verified. The identification of a protector or any natural person exercising ultimate effective control over the trust is not required, as such, not all beneficial owners will be identified in line with the standard. It is therefore recommended that Samoa take measures to ensure that all beneficial owners of domestic, foreign, and unit trusts are identified in line with the standard. With respect to unit trusts, it is noted that this legal gap applies to one unit trust and is likely not relevant for EOI purposes taking into account the low materiality. Therefore, the recommendation applicable for unit trusts is included as in-text (see Annex 1).

151. Foreign benefitting trusts and SISTAs must engage a TCSP, and a trustee of a unit trust may be a TCSP. In order to provide trust services, a TCSP must obtain a trust licence from SIFA (Trustee Companies Act 2017, s.25) and is subject to the MLP and trustee companies law. Although the CDD requirements set out in the MLP laws do not require the identification of all beneficial owners of a trust, the CDD requirements set out in regulation 3(3) of the Trustee Companies Regulations 2018 are in line with the standard. Pursuant to this subsection, TCSPs must verify the identity of settlors, trustees, beneficiaries, protectors, and any other natural person exercising ultimate effective control over the trust. Accordingly, beneficial ownership information on foreign benefitting trusts and SISTAs will be available. Also, if the trustee of a unit trust is a TCSP beneficial ownership information will be available.

Supervision of obligations to maintain ownership information

152. Supervision of ownership information of domestic and foreign trusts is carried out by the IRS in the same manner as described in section A.1.1 above. The concerns and recommendation set out in paragraph 104 apply here.

153. There has only been one unit trust created, the Unit Trust of Samoa, which is subject to review by the FIU (CBS). The FIU's supervisory activities are described in element A.3.

154. With regard to foreign benefitting trusts and SISTAs, two TCSPs have been issued trust licences and SIFA conducted on-site inspections of these TCSPs during the review period. Supervision is carried out in the same manner as described in section A.1.1 above. Through its supervision, SIFA determined that there were three foreign benefitting trusts and no SISTAs in Samoa. SIFA officials reviewed these trusts' files and found that the TCSPs were compliant with their obligations to maintain beneficial ownership information.

Availability of ownership information in practice

155. As it relates to EOI requests, Samoa received one request for ownership information in relation to a trust during the reviewed period and was able to fully respond to this request. No peers raised any concerns.

ToR A.1.5. Foundations

Special purpose international companies

156. The 2015 Report (paragraphs 161-164) determined that Samoa's laws provided for the establishment of SPICs which operate like foundations. SPICs must be established and registered with SIFA through a TCSP.

SPICs must keep, at their registered office in Samoa, a register containing the names and addresses of its directors, secretaries and resident agents. This information must be filed with SIFA and updated in the event of any changes. Further, a TCSP must retain a SPIC's records for seven years after the relationship with the SPIC has ceased. There has been no change to the SPIC Act 2012 since that report.

157. With respect to the identification of beneficial owners, TCSPs are subject to CDD requirements under the trustee companies and MLP laws. The MLP Regulations 2009 do not specify who should be identified as the beneficial owners of a foundation. However, pursuant to regulation 3(4) of the Trustee Companies Regulations 2018, a TCSP must identify and verify the identity of the founders, members of the foundation council, and beneficiaries, as well as any beneficial owners of the foundation or persons with the authority to represent the foundation. This is in line with the standard.

Foundations

158. New legislation was enacted on 20 October 2016 which allows for the establishment of foundations in Samoa. A foundation must be established and registered through a TCSP, which must file the foundation's charter and a declaration with SIFA. The charter includes the name and addresses of the proposed members, supervisory person, guardian, and the TCSP. The declaration confirms that the TCSP has in its possession the constitution of the foundation and/or a guardian has been appointed (Foundations Act 2016, s.3).

159. According to Schedule 4 of the Foundations Act 2016, on registration, SIFA will issue a certificate of registration, containing the name and registration number of the foundation, the registered office of the foundation, and the date of its establishment. SIFA must be notified of any changes, within 21 days of any change to the TCSP, the registered office, or when a person becomes or ceases to be an official (i.e. a member of the council, an officer of the foundation, any supervisory person, or any guardian) (Foundations Act 2016, Schedule 4). Failure to comply is an offence, for both the foundation and official, punishable by a fine of 500 penalty units (SAT 50 000/USD 19 116) or two years imprisonment for the first offence, and for any subsequent offence a fine of 1 000 penalty units (SAT 100 000/USD 38 233) or five years imprisonment.

160. The certificate of registration is evidence of compliance with the requirements of the law, and it ceases to be valid when a foundation is struck from the register. A foundation may be struck from the register for failing to provide its TCSP with any information necessary for the TCSP to comply with its obligations, or the foundation fails to pay its annual renewal fees (Foundations Act 2016, s. 76A).

161. Section 39 of the Foundations Act 2016 requires the foundation's council to ensure that the foundation keeps, at its registered office, any information concerning the foundation as required under the Act. If no member is resident in Samoa, the TCSP must comply with this obligation. Failure to comply is an offence, punishable by a fine not exceeding 100 penalty units (SAT 10 000/USD 3 845).

162. Such information must be kept for seven years after the end of the financial year or accounting period to which they relate. If a foundation is wound-up, the TCSP must retain the information for six years from the commencement of the winding-up (Foundations Act 2016, s. 83(10)). A compulsory winding-up process takes 58 days to take effect, while a voluntary winding-up process must be completed within 120 days.

163. Schedule 4 of the Act also requires SIFA to keep a register of foundations which contains the names and addresses of the members, supervisory person(s), guardian, and resident agent.

164. With respect to the identification of beneficial owners, TCSPs must identify and verify the identity of the founders, members of the foundation council, and beneficiaries, as well as any beneficial owners of the foundation or persons with the authority to represent the foundation. This is in line with the standard.

Availability of ownership information in practice

165. In practice, no SPICs or foundations have been registered in Samoa. Nevertheless, SIFA has monitoring procedures, which would be the same as those described beginning at paragraph 107, in place to ensure that these entities and their TCSPs are compliant with their obligations.

A.2. Accounting records

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

166. The 2015 Report concluded that the legal framework was in place but needed improvement. It recommended that Samoa ensure that liquidated domestic and foreign companies, foreign benefitting trusts, and unit trusts be required to keep accounting records in accordance with the standard. On 1 July 2019, Samoa enacted legislation requiring a liquidator to maintain the accounting records of a liquidated domestic or foreign company for at least five years after completion of the liquidation. With regard to foreign benefitting trusts, one trustee must be a TCSP and pursuant to the trustee companies law, the TCSP, acting as a trustee, has obligations under the Trusts

Act 2014 to maintain accounting records. Accordingly, this aspect of the recommendation has been addressed. No measures have been taken to address the recommendation with respect to unit trusts. It is noted that the legal gap currently applies to one and unit trust; further, these trusts are likely not relevant for EOI purposes taking into account the low materiality. Therefore, this recommendation has been moved from in-box to in-text.

167. The 2015 Report contained two monitoring recommendations because there was limited monitoring of accounting record-keeping obligations in the international financial sector and that the recently introduced obligations had not been tested in practice. To address these recommendations, SIFA implemented a monitoring programme, conducted numerous on-site inspections of TCSPs, struck non-compliant companies from the register, and sanctioned one TCSP.

168. New obligations to maintain accounting information were imposed on TCSPs at the end of 2017 and are in line with the standard. During the review period a TCSP abruptly shut down and the Samoan Competent Authority was no longer able to obtain information from it. This event did not affect any of the requests Samoa received during the review period, but in order to address this, Samoa enacted amendments in July 2019 to impose an obligation on a TCSP that ceases business to preserve its records for seven years and advise SIFA of who is keeping the records and where the records are being kept. As these obligations have not been sufficiently tested in practice, it is recommended that Samoa continue to strengthen its supervisory activities in the international financial sector.

169. With regard to the domestic and foreign legal entities and arrangements, the IRS is carrying out supervision activities, but this may not be sufficient to ensure the availability of accounting information. Samoa is recommended to address this.

170. During the review period, Samoa received 12 requests for accounting information, all related to international companies. Two peers indicated that they received the requested information, while two peers said that they did not.

171. The table of determinations and ratings is as follows:

Legal and Regulatory Framework
Determination: The element is in place.

Practical implementation of the standard		
Deficiencies identified	Underlying Factor	Recommendation
	Although the Inland Revenue Service carries out supervisory activities, taxpayer compliance and audit rates have been decreasing over the review period, therefore these activities may not be sufficient to ensure the availability of accounting information of domestic and foreign legal entities and arrangements.	Samoa should strengthen its supervisory measures to ensure that accounting information is being maintained by all relevant domestic and foreign legal entities and arrangements in line with the standard.
	Samoa has implemented supervisory and enforcement programmes to monitor the record-keeping obligations in the international financial sector. New accounting record-keeping obligations for TCSPs were only recently introduced and therefore not sufficiently tested in practice. Also, Samoa recently introduced obligations on a TCSP to maintain its records after it ceases business. However, it has not yet been tested in practice.	Samoa should continue to strengthen its supervisory activities in the international financial sector to ensure the availability of accounting information.
Rating: Largely Compliant		

ToR A.2.1. General requirements and A.2.2. Underlying documentation

Domestic companies

172. As explained in paragraphs 213-218 of the 2015 Report, under the Companies Act 2001, the directors of a domestic company are required to maintain accounting records (including underlying documentation) in line with the standard. Domestic companies must also keep accounting records under the tax laws (see *Tax laws* below). Penalties apply in the event of non-compliance. No changes to these obligations have been made since the report.

173. The 2015 Report recommended that Samoa ensure that liquidated domestic companies be required to keep accounting records (including underlying documentation) in accordance with the standard. Not mentioned in that report is that all former directors of a struck-off company remain liable for any act or omission that took place before the company was removed from

the register (Companies Act 2001, s.272). The liability continues and maybe enforced as if the company had not been removed from the register. Further, on 1 July 2019, amendments to the Companies Act 2001 were enacted requiring a liquidator to maintain the accounting records of a liquidated domestic company for at least five years after completion of the liquidation. Prior to this enactment, a liquidator was only required to maintain records for at least one year after completion of the liquidation. Accordingly, this recommendation has been addressed, but Samoa should monitor to ensure that liquidators are complying (see Annex 1).

International companies

174. As explained in paragraphs 221-223 of the 2015 Report, section 113 of the International Companies Act 1988 requires an international company, a foreign company registered under this Act, or a SFIC⁶ to keep accounting records (including underlying documentation) in line with the standard. Penalties apply for non-compliance. There have been no amendments to the legal framework since that report.

175. With regard to wound-up international companies, section 185 of the International Companies Act 1988 provides that the TCSP must keep all accounts and records of the company for six years from the commencement of the winding-up. Section 216D of the Act provides that a TCSP must maintain the records of an international company that was struck from the register for seven years from the date the company was struck. TCSPs are also subject to accounting record-keeping obligations (see *Trustee companies laws* below).

Regulated activities

176. Section 26 of the International Banking Act 2005, section 13 of the International Insurance Act 1998, and section 27 of the International Mutual Funds Act 2008 require a licensee to maintain accounting records, and underlying documentation, in line with the standard. Further, all licensees are required to provide audited financial statements to the SIFA within six months of the end of the financial year. SIFA keeps this information indefinitely. Further, international banks must have a physical presence in Samoa in the form of an administrative office to maintain the required records, in addition to being represented by a TCSP in Samoa.

6. By virtue of section 5 of the SFIC Act 2000, the provisions of the International Companies Act 1998 apply to a SFIC.

Foreign companies

177. The 2015 Report (paragraph 226) concluded that foreign companies, other than liquidated foreign companies, are required under the tax laws to maintain accounting records (including underlying documentation) in line with the standard (see *Tax laws* below). Penalties apply for non-compliance. There have been no changes to the legal framework since that report.

178. The 2015 Report recommended that Samoa ensure that foreign liquidated companies maintain reliable accounting records (including underlying documents) for at least five years. On 1 July 2019, amendments to the Companies Act 2001 were enacted requiring a liquidator to maintain the accounting records of a liquidated foreign company for at least five years after completion of the liquidation. Prior to this enactment, a liquidator was only required to maintain records for at least one year after completion of the liquidation. Accordingly, this recommendation has been addressed, but Samoa should monitor to ensure that liquidators are complying (see Annex 1).

Domestic partnerships

179. Paragraphs 227-228 of the 2015 Report concluded that the accounting record-keeping obligations of domestic partnerships and partners under the Partnerships Act 1975 and the tax laws were in line with the standard. No amendments have been made to the laws since that report.

International partnerships and LPs

180. As explained in paragraphs 229-231 of the 2015 Report, section 46 of the International Partnerships and LPs Act 1998 requires international partnerships and LPs to keep accounting records (including underlying documentation) in line with the standard. Penalties apply in the event of non-compliance. No amendments have been made to the law since the 2015 Report.

181. There is no explicit requirement in the International Partnerships and LPs Act 1998 regarding the record-keeping requirement of a dissolved partnership; however, there are record-keeping obligations for TCSPs (see *Trustee companies laws* below).

Domestic trusts

182. Paragraph 233 of the 2015 Report explained that a combination of obligations set out under the Trusts Act 2014, the common law, and the tax law required a trustee of a domestic trust to keep accounting records of the trust (including underlying documentation) in line with the standard. No amendments have been made to the legal framework since the 2015 Report.

Foreign benefitting trusts and SISTAs

183. The 2015 Report concluded that the accounting record-keeping obligations for foreign benefitting trusts were not in line with the standard. As discussed in section A.1.4 above, one trustee of a foreign benefitting trust or a SISTA must be a TCSP. A TCSP acting as a trustee has obligations under the Trusts Act 2014 to keep accurate accounts and records of the trustee's trusteeship, reliable accounting records, and underlying documentation regarding the trust, for at least seven years (Trustee Companies Act 2017, s. 32(2), and Trustee Companies Regulations 2018, r.4). This is in line with the standard, therefore, this recommendation has been addressed.

Unit trusts

184. The 2015 Report (paragraphs 236-237) determined that the Unit Trusts Act 2008 requires a trustee or manager of a unit trust to maintain accounting records. However, there was no requirement in the Act to maintain underlying documentation, nor did the Act mention for how long accounting records needed to be maintained. As such, there was a recommendation.

185. Although the trustee of a unit trust must be a TCSP, or a company or a bank approved by the MRF, there are no specific requirements in the Trustee Companies Act 2017, the Companies Act 2001, or the banking law requiring the TCSP, the company or the bank, acting as trustee of a unit trust, to maintain the trust's accounting information. No relevant changes have been made to the legal framework, thus, the recommendation has not been addressed. Nevertheless, given that there is only one unit trust registered in Samoa and it is likely not relevant for EOI purposes, the recommendation has been moved from in-box to in-text (see Annex 1).

Foreign trusts

186. Paragraphs 239-241 of the 2015 Report explained that under the Trusts Act 2014, a resident trustee of a foreign trust must maintain accounting records (including underlying documentation) in line with the standard. Additionally, resident trustees of foreign trusts are subject to record-keeping requirements under the tax laws (see *Tax laws* below). Penalties apply in the event of non-compliance.

SPICs

187. As explained in paragraphs 242-243 of the 2015 Report, pursuant to section 58 of the SPIC Act 2012, SPICs are required to maintain accounting records (including underlying documentation) in line with the standard. Not mentioned in the report, but section 112 of the Act requires a TCSP to keep all

accounts and records of a wound-up SPIC for six years from the commencement of the winding-up. Penalties apply in the event of non-compliance. No amendments have been made to the law since that report.

Foundations

188. The council of a foundation must ensure that the foundation keeps, at its registered office, any accounting information concerning the foundation (Foundations Act 2016, s. 39). If no member of the foundation is resident in Samoa, then the TCSP must ensure that the foundation's accounting records are kept at its office. TCSPs are subject to record-keeping obligations (see *Trustee companies laws* below).

189. The accounting records must sufficiently show and explain the foundation's transactions; disclose with reasonable accuracy, at any time, the foundation's financial position at that time; enable the officials to ensure that the foundation's accounts are prepared properly pursuant to any enactment relating to the standards of accounting; and contain the day to day entries of all sums of money received and expended by the foundation, the matters in respect of which the receipt and expenditure takes place and a record of the property and liabilities of the foundation. Such records must be kept for seven years after the end of the financial year or accounting period to which they relate. If a foundation is wound-up, the TCSP must retain the foundation's accounting information for six years from the commencement of the winding-up (Foundations Act 2014, s. 83 (10)). Failure to comply with these obligations is an offence, punishable by a fine not exceeding 100 penalty units (SAT 10 000/USD 3 845) (Foundations Act 2014, s. 39 (5)). Accordingly, accounting records requirements for foundations are in line with the standard.

Tax laws

190. Sections 81 and 90 of the Income Tax Act 2012 require every person to keep such accounts, documents, and records to enable the computation of the income tax or capital gains tax payable by the person for a tax year. For more details regarding which legal entities and arrangements are liable to tax in Samoa, refer to paragraphs 13 to 20. Section 29 of the Tax Administration Act 2012 requires every person to maintain documents required by any tax law and which will enable the person's liability under the tax law to be readily ascertained. Also, a person carrying on a business must issue a serially numbered written receipt for any amount received in respect of goods sold or services performed in connection with that business and must retain a duplicate of the receipt. Alternatively, where such records are maintained by machine, the Commissioner may authorise that person to not issue receipts if the machine automatically records all sales made and the total of all sales made in each day is transferred at the end of the day to a record of sales.

These records must be retained for seven years after the end of the tax period to which it relates, or such shorter period as provided in the tax laws.

Trustee companies laws

191. The Trustee Companies Act 2017 came into effect on 17 November 2017 and Regulations took effect on 26 October 2018. According to section 32 of the Act, a TCSP must keep “books, records or documents that accurately reflect the business of the TCSP”.⁷ The records must produce financial statements in line with the accounting standards applicable in Samoa and these statements must be audited by an auditor registered with SIFA. Audited financial statements and annual reports must be submitted to SIFA annually within six months of the TCSP’s year-end and a copy of the TCSP’s annual return must also be submitted to the MCIL. The books, records, and documents must be kept within Samoa for at least seven years. A TCSP that fails to submit audited financial statements and/or the annual report is liable to a penalty of USD 200 per month for each month the document(s) are not submitted (Trustee Companies (Fees and Forms) Regulations, r.5). Also, non-compliance could lead to non-renewal of a TCSP’s licence.

192. A TCSP is also required to “comply with any regulations to retain accounting, financial and audit information” (Trustee Companies Act 2017, s.32 (2(a))). Regulation 4 provides that for the purposes of section 32(2) of the Act, accounting records must be kept pursuant to section 113 of the International Companies Act 1988, section 79A of the Trusts Act 2014, section 46 of the International Partnership and LP Act 1998, and section 39 of the Foundations Act. This regulation also clarifies that if the accounting records of an international entity or arrangement are not kept at the TCSP’s office, then the TCSP must obtain from its client, and keep at the TCSP’s office, the name, address and contact details of the person keeping the accounting records, and a copy of the client’s statement of financial position as at the end of the financial year or accounting period to which it relates. A TCSP that fails to maintain such information is in breach of its obligations and SIFA may take measures, including imposing fines or conditions on the TCSP’s licence, or revoking the licence (Trustee Companies Act 2017, s. 38).

193. Any changes to the name, address and contact details of the person keeping the accounting records must be updated and reported to the TCSP without delay (Trustee Companies Regulations 2018, r.4(4)). If a client fails to update such information, the TCSP may begin the procedure to resign as the

7. The term “books, records or document” is broadly defined in the Interpretation Act 2015 to mean a record of information, including anything on which there is writing, figures, marks, numbers perforations, symbols or anything else having meaning for persons qualified to interpret them.

TCSP for that client. If a TCSP resigns, the entity or arrangement must find a new TCSP or is struck from the register.

194. A TCSP is required to keep the accounting records for seven years after the relationship with the entity or arrangement has ended (Trustee Companies Regulations 2018, r.4 (2)).

195. A TCSP must provide accounting records to SIFA within 15 days of a request (Trustee Companies Regulations 2018, r.4(5)). If, after doing all in its power to obtain the accounting records from a client, the TCSP is unable to obtain the records, the TCSP may begin the procedure to resign as TCSP for that client.

Supervision of obligations to maintain accounting information

196. It was recommended in the 2015 Report that Samoa implement a rigorous monitoring programme and monitor the implementation of new accounting obligations.

197. The availability of accounting records is verified by audits undertaken by the IRS and inspections undertaken by SIFA. The MCIL does not inspect whether domestic companies maintain accounts as required by the Companies Act 2001, but rather focusses its resources on monitoring the maintenance of the share register as described in section A.1.1 above. Although the MCIL has the power to inspect and copy documents, this power has not been exercised with respect to accounting records.

(a) Supervision by the IRS

198. As described in section A.1.1 above, the IRS conducts audits of taxpayers. Tax returns are accompanied by financial statements. A broad range of documents are required from taxpayers who are subject to audit investigations. This includes either a general category of documents (e.g. all invoices, receipts, etc.) or specifically named documents that are listed in a requisition letter (e.g. copies of contract agreements or exemption certificates). In general, underlying supporting documentation is required in an audit investigation. The table at paragraph 99 sets out the number of taxpayers registered with the IRS and the number of audits conducted and penalties for late filing applied in 2015 to 2017.

199. As discussed in section A.1.1, the number of audits conducted and the number of penalties applied over the review period has been decreasing. According to IRS officials, the falling audit rate is a result of delays in receiving information from taxpayers necessary to conduct the audits and from reforms introduced within the MFR; and while the audit rate has decreased, the IRS is more adept in identifying potential tax violations. Although the

IRS is carrying out supervision and enforcement measures, this may not be sufficient to ensure the availability of accounting information for domestic and foreign legal entities and arrangements. The compliance with tax filing requirements is relatively low, moreover, the proportion of taxpayers subject to tax audits is low. It is noted that during the review period, Samoa did not receive any requests for accounting information regarding a domestic or foreign legal entity or arrangement. Nevertheless, Samoa is recommended to strengthen its supervisory measures to ensure that accounting information is being maintained by all relevant domestic and foreign legal entities and arrangements in line with the standard.

(b) Supervision by SIFA

200. Between 2016 and 2018 SIFA conducted five rounds of on-site inspections, with each licensed TCSP being reviewed in each round. In total, SIFA reviewed the files of one LP, three foreign benefitting trusts, and 2 401 international companies.

201. The table below sets out the number of international companies' files that were reviewed for accounting records, the number of companies compliant with the accounting record-keeping obligation, and the number of companies struck from the register for non-compliance.

Round of inspection	Number of international companies reviewed	Number of compliant companies	Number of struck-off companies	Compliance rate
November 2016	180	148	32	82%
June 2017	241	205	36	85%
November 2017	443	405	38	91%
March 2018	502	492	10	98%
November 2018 ^a	1 036	969	57	95%

Note: a. The number of compliant companies and number of struck-off companies does not equal to the total number of companies reviewed as SIFA continues to take follow-up action with respect to 10 companies. Refer to paragraph 205 for further information.

202. The on-site visits conducted in November 2016 were the first to include verification of compliance with accounting record-keeping obligations. International companies are required to maintain accounting records at its TCSP or at such other place as the director thinks fit, in which case there must be an undertaking in the client's file stating where the records are being kept. Of the 180 international companies reviewed in 2016, 148 maintained accounting records with their TCSP or had undertakings in their files, and 32 companies were struck from the register.

203. A follow-up to these on-site visits was conducted in 2017 to test international companies' responsiveness to responding to SIFA's request for accounting information. In March 2017, SIFA sent a request to the TCSPs for accounting information relating to the 126 companies reviewed in 2016 and were given three weeks to provide the requested accounting information. Based on this request, 104 companies complied and 22 were struck from the register.

204. For all subsequent on-site visits, SIFA sends a letter to the TCSPs notifying them of the upcoming visit. The letter also sets out the name and number of the international entity to be inspected (which are randomly selected), and requests that accounting information be available. At the on-site visit, SIFA inspectors will verify that the accounting information was obtained from the international entity or is contained in the TCSP's file and meets the legal requirements.

205. As seen from the table, over 80% of international companies reviewed were compliant with their accounting record obligations in 2016, which increased to 95% in November 2018. The number of files reviewed by SIFA has increased each year, especially at the end of 2018. Between 2016 and 2018, SIFA reviewed approximately 7% of the international companies registered in Samoa, with 4.4% of the international companies registered with SIFA being inspected in 2018. SIFA advises that it plans to increase the number of files it reviews at future on-site inspections as SIFA staff become more efficient and experienced with carrying out these inspections. Finally, those companies that refuse to provide accounting information have been struck from the register. With respect to the November 2018 inspections, 57 companies have been struck-off. Further, in July 2019, SIFA imposed a sanction of USD 1 000 on one TCSP who failed to provide the requested information for 10 companies. The amount of this sanction will continue to increase until the TCSP provides the requested information.

206. The monitoring and enforcement measures undertaken by Samoa have addressed the monitoring recommendations included in the 2015 Report. However, new accounting obligations on TCSPs were introduced at the end of 2017, which SIFA began monitoring in 2018, and therefore have not been sufficiently tested in practice. In addition, the abrupt shut down of a TCSP (discussed in paragraph 116) highlights a potential issue regarding the availability of accounting information in Samoa and the effectiveness of SIFA's supervisory measures. Samoa has addressed this issue by recently enacting amendments requiring a TCSP to preserve its records for seven years after it has ceased business. Failure to comply will result in a fine. This has not yet been tested in practice. It is therefore recommended that Samoa continue to strengthen its supervisory activities in the international financial sector to ensure the availability of accounting information.

Availability of accounting information in practice

207. During the review period, Samoa received 12 requests for accounting information, all related to international companies. Two peers indicated that they received the requested information. Two peers, however, indicated that they had not received the information. The peers were informed that the reasons for the unavailability of the information were: (i) the companies for which the records were sought had been struck from SIFA's register prior to 27 April 2015; (ii) the information requested pre-dated the commencement of the legal obligation on international companies (i.e. 27 April 2015) and TCSPs (i.e. 17 November 2017) to maintain accounting information; and (iii) the TCSP acting for the companies subject to the requests wound-up its operations in 2018 (however, as the companies had been struck from the register prior to 27 April 2015, there was no obligation on the TCSP to maintain the accounting information).

A.3. Banking information

Banking information and beneficial ownership information should be available for all account-holders.

208. The 2015 Report concluded that banks' record-keeping requirements and their implementation in practice were in line with the standard. Samoa's MLP laws include comprehensive obligations on the part of banks to verify the identity of their clients and maintain detailed and accurate records of their transactions.

209. In accordance with the new 2016 ToR, the availability of beneficial ownership information of account-holders must also be assessed. Although beneficial ownership information will be available to a large extent with banks, it is not clear that all beneficial owners of legal entity and arrangement account-holders will be identified as required under the standard.

210. Supervision by the CBS and SIFA ensures the availability of banking information, including beneficial ownership information.

211. During the review period, Samoa received 14 requests for banking information, all relating to international companies. Two peers indicated that they were satisfied with the information received from Samoa. Two peers, however, indicated that they had not received the requested information.

212. The table of determinations and ratings is as follows:

Legal and Regulatory Framework		
Deficiencies identified	Underlying Factor	Recommendations
	It is unclear whether the CDD procedures used by banks will identify all of the beneficial owners of legal entity account-holders as required under the standard. There is also no obligation on banks to identify all of the beneficial owners of a trust.	Samoa should ensure the availability of beneficial ownership information in respect of legal entity and arrangement account-holders.
Determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.		
Practical Implementation of the standard		
Rating: Largely Compliant		

ToR A.3.1. Record-keeping requirements

213. The 2015 Report concluded that banks' record-keeping requirements and their implementation in practice were in line with the standard. There have been no changes to the legal framework since that report.

214. The MLP Act 2007 applies to financial institutions, including persons carrying on banking business, as defined in the CBS Act and the Financial Institutions Act 1996, as well as persons carrying on international banking business, as defined by the International Banking Act 2005 (MLP Act 2007, s. 2(1)). International banks must have a physical presence in Samoa in the form of an administrative office to maintain the required records, in addition to being represented by a TCSP in Samoa.

215. The MLP Act 2007 and Regulations set out a bank's CDD obligations, which are generally in line with the standard (see element A.1). However, there are a few issues to be addressed. First, regulation 6 of the MLP Regulations 2009 specifies who should be identified as the beneficial owner(s) of account-holders. By applying this section, banks will identify a significant number of beneficial owners of account-holders; however, not all beneficial owners may be identified in line with the standard.

216. As explained in paragraphs 83 and 138, although the test to identify the beneficial owners of companies, partnerships, or LPs would seem to go beyond the standard (i.e. in requiring the identification of all persons listed in the test), it is unclear that the person(s) exercising *ultimate effective control* must be identified, since under subsection 6(3) of the MLP Regulations 2009

only the person(s) exercising “effective control” needs to be identified. Therefore it is unclear whether “effective control” has the same meaning as “ultimate effective control” and would include situations in which control is exercised through a chain of ownership or by means of control other than direct control, as required under the standard. Therefore, Samoa should clarify its law to ensure that banks are identifying all beneficial owners of legal entities in line with the standard.

217. With regard to trusts, there is no obligation for banks to identify a protector or any other natural person exercising ultimate effective control over the trust (see paragraph 150). Accordingly, Samoa should ensure that banks are required to identify all beneficial owners of a trust which holds an account with a bank in Samoa as required under the standard.

218. Pursuant to the MLP Act 2007, banks must identify the beneficial owners of a foundation. However, the MLP Regulations 2009 do not specify who should be identified as the beneficial owners of a foundation. Although no foundations have yet registered in Samoa, it is recommended that Samoa ensure that banks are identifying all beneficial owners of a foundation as required under the standard.

219. Finally, as explained in paragraph 73, the FIU published guidelines for the MLP laws; however, the guidelines are inconsistent with the MLP laws. Samoa should, where appropriate, update these guidelines (see Annex 1).

Supervision

(a) Domestic banks

220. Samoa has four domestic banks and one development bank. These entities must be domestic companies and are all licensed and supervised by the FIU in the CBS. The initial licensing process considers the financial reputation, character reputation and experience of the entity and individual directors and shareholders, the applicant’s AML/CFT manual, as well as liaison with any relevant supervisory authorities in foreign countries where the entity group operates. Financial information is reported to the FIU on a regular basis. This information is reviewed by the FIU to ensure compliance with the banking laws.

221. In addition to off-site inspections, every bank is subject to an on-site inspection by the FIU every two years. The FIU has five staff. Up to five staff attend an on-site inspection, depending on the risk profile of the entity. An on-site inspection takes approximately two weeks. Customer record-keeping practices are examined during the course of an on-site inspection. FIU examiners randomly select client files to review in order to determine whether banks are complying with their obligations. Following

the inspection, FIU examiners inform the bank's management of any issues identified and the bank has one month (for small issues) or up to three months to remedy the issues. FIU examiners prepare a report that is provided to the CBS Governor and the bank's CEO. In general, banks are compliant with their MLP obligations, if any problems are discovered during the inspections, such as missing supporting documentation, these are remedied by the bank within a short period. Penalties can be issued by the FIU for banks failing to comply with their AML/CFT obligations; however, the FIU has not had to apply such penalties.

(b) International banks

222. During the review period there were five international banks registered with SIFA. The licences of two international banks were revoked in 2016-17 and one bank voluntarily dissolved. There are currently two licensed international banks operating in Samoa.

223. These international banks have been licensed to conduct group financing for affiliated companies (refer to section A.1.1). The financing transactions are carried out outside Samoa. International banks must have a physical presence in Samoa, in the form of an administrative office. The office is generally staffed by two employees to manage the record-keeping requirements. This office is in addition to the TCSP acting for the international bank in Samoa.

224. International banks must submit to SIFA, within six months of the end of the bank's financial year, audited accounts as well as annual reports of each year (International Banking Act 2005, s.26). The accounts must be audited by an auditor registered with SIFA. SIFA compliance officers analyse and assess this information to ensure compliance. Late filing results in a fine of USD 200 for each month or part thereof that the failure continues. Late filing penalties were imposed during the review period (refer to paragraph 106). Also, international banking licences are renewed annually. SIFA will not renew a licence unless the bank has paid any outstanding penalties and complied with all requirements under the Act.

225. In 2016, SIFA conducted on-site inspections of the five international banks. The focus of these inspections was on record-keeping and assessing banking activities. SIFA inspectors reviewed a random sample of between 10 and 20 of the bank's files and interviewed relevant staff. Inspections generally last three day for each bank. These inspections were in addition to the on-site inspections of the TCSPs, which act for the banks, undertaken twice per year by SIFA (see section A.1.1 above). In February 2019, SIFA conducted on-site inspections of two international banks and both were found to be compliant with their obligations.

226. After an on-site inspection, SIFA prepares a report identifying any issues that must be addressed. The bank has up to two months to respond to the report by outlining their action plan to address the issue. SIFA will verify that the issues have been addressed. If a bank fails to address the issue, SIFA can impose sanctions. As mentioned, SIFA revoked two banking licences as a result of non-compliance.

Conclusion

227. Supervision carried out by the CBS and SIFA ensures the availability of banking information, including beneficial ownership information.

Availability of banking information in practice

228. During the review period, Samoa received 14 requests for banking information, all relating to international companies. Two peers indicated that they were satisfied with the information received from Samoa. Two peers, however, indicated that they had not received the requested information and were advised that the Samoan Competent Authority had sought the information from the domestic banks, but this information was not available because these banks did not maintain bank accounts for the companies subject to the requests. The Samoan Competent Authority also sought the requested information from the TCSPs engaged by the international companies subject of the requests, however the information was not available and there is no obligation on TCSPs to maintain banking information. The Samoan Competent Authority did not seek the requested information from the international companies themselves (refer to in element B.1).

Part B: Access to information

229. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information; and whether rights and safeguards are compatible with effective EOI.

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).

230. The 2015 Report concluded that the Samoan Competent Authority has appropriate powers to access information for the purpose of responding to EOI requests. During the review period, these powers were successfully applied to obtain a wide range of information from TCSPs and banks. However, the Competent Authority did not seek banking information directly from the international companies subject to EOI requests and this affected a number of EOI requests.

231. In the case of failure to provide the requested information, the Competent Authority has adequate powers to compel the production of information. These compulsory powers were not used in the review period, even though it could reasonably have been expected. This is because non-compliance occurred with respect to one TCSP affecting a number of EOI requests.

232. The table of determinations and ratings is as follows:

Legal and Regulatory Framework
Determination: The element is in place.

Practical implementation of the standard		
Deficiencies identified	Underlying Factor	Recommendation
	Samoa has powers in place to obtain information for EOI purposes. During the review period, Samoa did not fully use its access powers to contact the international companies subject of EOI requests in order to obtain banking information. Further, Samoa did not use its compulsory powers when information was not produced.	Samoa should ensure that the Competent Authority's access and compulsory powers are effectively used to obtain all information included in an EOI request.
Rating: Largely Compliant		

***ToR B.1.1. Ownership, identity and bank information and
ToR B.1.2. Accounting records***

233. The 2015 Report (paragraphs 271-280) concluded that Samoa's legal and regulatory framework permitted access to information for the purposes of responding to a valid request for information pursuant to an EOI agreement. No changes to the legal or regulatory framework have been made since this report.

234. Pursuant to the TIE Act and the Tax Administration Act 2012, the Commissioner (or CEO) of IRS can access and collect all relevant information for the purposes of complying with an EOI request. These Acts grant access powers to the Commissioner and apply regardless from whom the information is sought and, notwithstanding any law relating to privilege including legal professional privilege, or any contractual duty of confidentiality. The Commissioner has provided a general delegation to the EOI Unit staff for the purpose of EOI, which allows the EOI Unit to exercise these powers without specifically obtaining the permission of the Commissioner for each case.

235. An owner or occupier of a premises who fails, without reasonable excuse, to provide assistance commits an offence and is liable on conviction to a fine not exceeding 10 penalty units (SAT 1 000/USD 382) or to imprisonment for a term not exceeding one year, or both (Tax Administration Act 2012, s. 72). Similar sanctions apply to a person who fails to appear before the Commissioner, refuses to take an oath as witness, or having been sworn as a witness refuses to answer or produce a document. Further, a person who has been asked to attend to give evidence, and willingly gives false evidence, commits the crime of perjury.

236. As noted in the 2015 Report (paragraphs 276-277), section 4 of the TIE Act requires the Commissioner to provide a copy of an EOI request to

the Attorney General before acting on the request. The Attorney General is to consider and determine whether the EOI request conforms to the information prescribed in Schedule 2 of the TIE Act. Schedule 2 of the TIE Act lists the information that must be contained in a valid request to meet the standard of foreseeable relevance – this list is consistent with the Global Forum’s EOIR Manual – and Article 26(3)(b) of the OECD Model Tax Convention and Article 7 of the OECD Model TIEA. Although the Act does not specify timelines under which the Attorney General would provide this advice, the Samoan authorities indicate that internal procedures require the determination to be completed within a period of three days of receipt. The Attorney General has never determined that a request did not conform to Schedule 2 of the Act.

Access to ownership, accounting, and banking information in practice

237. During the review period, Samoa received 16 EOI requests. Generally, the Competent Authority used its access powers effectively to obtain information required to respond to a request. This included accessing ownership, accounting, and banking information. All requests received to date have been in relation to international entities, which are not taxpayers.

238. To obtain information, the Competent Authority issues a notice under section 9 of the TIE Act to the relevant TCSP to compel the production of the requested information. The information holder is given an initial period of 14 days to provide the information. If the information request was complex, up to a maximum of five weeks would be given. If a request was related to a domestic taxpayer and the information was already held by the IRS, the information would be extracted and provided directly. In practice, responses have been received from information holders within a range of 14 days for information held by banks and government agencies, and up to six months for information provided by TCSPs.

239. If the information holder asserts that the requested information is held offshore, the Competent Authority requests that electronic copies be obtained first in order to provide an interim answer to the requesting jurisdiction. When this occurs, which is generally the case, the information is provided within three months.

240. During the review period, Samoa received requests for ownership information in respect of 14 international companies and one trust. Two peers indicated that they did not receive all of the requested ownership information. Samoan officials explain that the information was not available because the TCSP did not keep the information as required under the law and that TCSP later wound-up its operations (refer to discussion in elements A.1 and B.1.4). To address this, Samoa enacted legislation requiring a TCSP to preserve its records for seven years after it has ceased business.

241. Samoa received requests for accounting information in respect of 12 international companies. Two peers indicated that they did not receive the requested information. The information was not provided for reasons related to availability (refer to discussion in element A.2).

242. During the review period, Samoa received requests for banking information in respect of 14 international companies. Two peers indicated that they did not receive the requested information. As described in element A.3, information was not available because the domestic banks did not maintain bank accounts for the companies subject to the requests and the TCSPs did not have such information. The Samoan Competent Authority did not seek the requested information directly from the international companies because the TCSP is their main contact point for all international companies. Samoa should ensure that the Competent Authority's access powers are fully used to obtain all information included in an EOI request.

ToR B.1.3. Use of information gathering measures absent domestic tax interest

243. 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.

244. The 2015 Report concluded that the powers granted to the Commissioner to obtain information can be used to respond to an EOI request regardless of whether the Samoan tax administration has any need for the information for its own tax purposes. There has been no change in the applicable rules since that report.

245. Samoa's ability to provide information regardless of domestic tax interest was confirmed in practice. There was no case where a domestic tax interest restriction prevented the Commissioner from accessing and providing the requested information. This was also confirmed by peers.

ToR B.1.4. Effective enforcement provisions to compel the production of information

246. Jurisdictions should have in place effective enforcement provisions to compel the production of information.

247. The 2015 Report concluded that the Commissioner had adequate powers to compel the production of information in line with the standard. There has been no change to the legal provisions since this report.

248. Once the Attorney General has determined a request to be valid, a notice, from the Commissioner, is sent to the information holder. The

Commissioner has discretion to specify the deadlines before which the information is to be provided or produced (TIE Act, s. 7(1)(b)).

249. If a person fails to comply with a notice, or provides false statements in responding to the notice, that person commits an offence and is liable upon conviction to a fine not exceeding SAT 25 000 (USD 9 558), to imprisonment for a maximum of five years, or both (TIE Act, s. 12(1)). The same penalties apply to persons who intentionally remove, tamper or destroy information requested, or intentionally prevent or impede submission of that information. Also, if a person fails to comply or only partly complies with a notice, the Commissioner may decide to exercise its inspection powers (TIE Act, s. 9(a)).

250. In practice, during the review period, information was not available in order to respond to a number of EOI requests due to a variety of reasons (as explained in elements A.1-A.3). In particular, the Competent Authority sought ownership information from one TCSP, but that TCSP was unable to provide the requested information (although it was required to do so under Samoan law). The Competent Authority did not apply punitive measures to the TCSP. This TCSP later wound-up its operations, and its records are no longer available. Samoa has taken measures to prevent this from happening in the future (refer to paragraphs 116 and 200), but the unavailability of ownership information affected two peers during the review period. It is therefore recommended that Samoa applies its compulsory powers where appropriate in cases where information is not produced.

ToR B.1.5. Secrecy provisions

251. The 2015 Report concluded that although there are a range of confidentiality and secrecy provisions that apply to entities and arrangements in Samoa, these provisions are overridden for EOI purposes. There has been no change to the legal framework since that report.

252. Subsection 10(1) of the TIE Act states that the provisions allowing for the collection of information have effect “despite an obligation as to secrecy, confidentiality or other restriction upon the disclosure of information imposed by any law or otherwise on the persons referred to in section 7(1)(a)”. The persons referred to in section 7(1)(a) include regulated persons registered or licensed under any international financial services legislation; persons carrying on international financial services; a financial institution under the Financial Institutions Act 1996; and a person acting in an agency or fiduciary capacity including nominees and trustees. Further, subsection 10(2) of the Act provides that any obligation as to secrecy, confidentiality or other restriction upon disclosure imposed by any law or otherwise is subject to the provisions of the Act, including a provision enacted after the commencement of the TIE Act.

253. Subsection 3(2) of the TIE Act also states that “a lawful obligation as to secrecy, confidentiality or other restriction on the disclosure of information does not prevent the Commissioner from disclosing information required to be disclosed under an agreement to an authorised officer of a competent authority”. The only exception to this rule concerns the disclosure or production of information that is protected by legal professional privilege (TIE Act, s. 6).

254. Legal professional privilege in Samoa is a common law principle that applies to confidential communications between a client and the client’s legal adviser for the dominant purpose of giving or receiving legal advice or for use in existing or anticipated litigation. Legal privilege is however also dealt with in statutes and professional rules.

255. Section 344 of the Companies Act 2001, defines privileged communication as only that between a legal practitioner in his or her capacity and another legal practitioner in that capacity; or a legal practitioner in his or her capacity and the client, whether made directly or indirectly through an agent, which is made for obtaining or giving legal advice or assistance, and it is not made for the purpose of committing an illegal or wrongful act. The scope of legal privilege, as defined under the Companies Act 2001, continues to be consistent with the international standard.

256. Section 1.07 of the Rules of Professional Conduct for Barristers and Solicitors of Samoa, issued by Samoa Law Society pursuant to the Lawyers and Legal Practice Act 2014, provides for indications concerning attorney-client privilege in respect of facts and information gathered or learned by attorneys or legal advisers in connection with providing services to their clients. These stipulate that a practitioner has a duty to “hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship”. Although this section does not establish any restriction as to the communication protected under the attorney-client privilege, this section is overridden by the Commissioner’s compulsory powers (Tax Administration Act 2012, ss.27, 28). Further, the limits on information which must be exchanged under Samoa’s TIEAs mirror those provided for in the OECD Model TIEA. Accordingly, communications between a client and an attorney or other admitted legal representative are only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Therefore, the attorney-client privilege in Samoa meets the international standard.

257. During the review period, the EOI Unit did not have any access issues in obtaining information from third parties and there were no issues regarding a claim of privilege to avoid responding to an EOI request. No peers raised any concerns.

B.2. Notification requirements, 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.

258. The rights and safeguards that apply to persons in the requested jurisdiction should be compatible with effective EOI. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction) and time-specific post-exchange notification.

259. As described in the 2015 Report, section 8 of the TIE Act contains a notification requirement when an EOI request relates to information protected from unauthorised disclosure. Exceptions to notification exist for urgent cases or when the notification is likely to undermine the provision of the requested information or the chance of success of the requesting jurisdiction's investigation. Accordingly, the notification requirements are consistent with the international standard. There is also no right of appeal available to the person receiving the notice; however, judicial review may be sought. There has been no change to the law since the first round review and no judicial reviews were sought during the review period. Also, the TIE Act does not provide for time-specific post-exchange notification.

260. In practice, where notice is issued to the subject to an EOI request, the notice indicates that a request for information has been received from a treaty partner, that the request is valid pursuant to the relevant EOI agreement, and sets out the minimum information necessary to allow the information holder to provide the required information. Where the subject of the information request is an international entity or arrangement, the notification requirement is considered to be fulfilled by notifying the resident agent in Samoa. If the requesting jurisdiction has asked that the subject of the request not be notified, then the notice issued by the Competent Authority instructs the information holder to not notify any of the persons mentioned in the notice and that non-compliance is an offence under the TIE Act. The information request from the treaty partner is not provided with the notification.

261. In practice, during the review period, the Competent Authority did not need to contact the taxpayer directly in order to obtain the information necessary to respond to an EOI request. As indicated in the paragraph above, when the request is in relation to an international company, the Competent Authority will send a notice to the TCSP. No practical difficulties were experienced by Samoa in regard to rights and safeguards and no peers raised any concerns.

262. The table of determinations and ratings is as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

Part C: Exchanging information

263. Sections C.1 to C.5 evaluates the effectiveness of Samoa’s EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether it respects the rights and safeguards of taxpayers and third parties and whether Samoa could request and provide information relevant for tax purposes in an effective manner.

C.1. Exchange of information mechanisms

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

264. The 2015 Report concluded that Samoa’s network of EOI mechanisms was in line with the standard and provided for effective EOI. At that time, Samoa’s EOI network covered 17 jurisdictions. Since that report, Samoa has expanded its EOI network by signing the multilateral Convention on 25 August 2016, which entered into force in Samoa on 1 December 2016.

265. In practice, Samoa applies its EOI agreements in line with the standard. No issue in this respect was identified in the first round review and no issue was identified during the current period under review. Samoa provides information to the widest possible extent as was also confirmed by peers.

266. The table of determinations and ratings is as follows:

Legal and Regulatory Framework
Determination: The element is in place.
Practical implementation of the standard
Rating: Compliant

ToR C.1.1. Foreseeably relevant standard

267. Exchange of information mechanisms should allow for EOIR where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. This concept, as articulated in Article 26 of the OECD Model Tax Convention, is to be interpreted broadly, but does not extend so far as to allow for “fishing expeditions”. The Article 26 commentary recognises that the standard of “foreseeable relevance” can be met when alternative terms are used in an agreement, such as “necessary” or “relevant”. The 2015 Report concluded that all of Samoa’s agreements met the “foreseeably relevant” standard.

268. Samoa’s legislation governing the approval of information requests mirrors its EOI agreements. Section 5(c) of the TIE Act establishes that a request for assistance is approved when the competent authority of the requesting jurisdiction supplies information prescribed in Schedule 2 of the TIE Act. This includes the identity of the person under examination or investigation and, to the extent known, the name and address of any person believed to be in possession or control of the requested information. If the information provided by the requesting competent authority does not satisfy all the requirements expressed in Schedule 2, the Commissioner may request further information from the requesting jurisdiction.

269. Concerning the practical application of the criteria of foreseeable relevance, the 2015 Report did not identify any issues. This continues to be the case and no concerns were raised by peers.

270. Samoa does not require its EOI partners to complete a standardised template for the formulation of requests and instead receives and accepts requests in a wide variety of formats. If Samoa receives a request and it is unclear whether the foreseeable relevance standard has been met, Samoa will request additional information or clarifications from the requesting jurisdiction.

271. During the period under review, Samoa did not refuse to answer any EOI requests on the basis of lack of foreseeable relevance and there were no cases where it requested clarification on belief that the request was overly broad or vague. Peers did not raise any concerns regarding Samoa’s interpretation of the standard of foreseeable relevance.

Group requests

272. None of Samoa’s EOI agreements contain language prohibiting group requests. Schedule 2 of the TIE Act provides that the identity of the person under examination or investigation must be provided by a requesting jurisdiction in order for a request to be approved. However, the EOIR Manual clarifies that in cases of group requests, in order for the request to be approved the requesting jurisdiction must provide the following information:

a detailed description of the group of taxpayers; specific facts and circumstances that led to the request; an explanation of the applicable law and why there is reason to believe that this group of taxpayers have been non-compliant; and an explanation that the requested information would assist in determining compliance by the group of taxpayers.

273. Samoa interprets its agreements, domestic law, and guidance as allowing it to provide information requested pursuant to group requests in line with Article 26 of the OECD Model Tax Convention and its commentaries.

274. During the period under review Samoa did not receive or make any group request. The same access powers and general procedures will apply as in respect of other types of requests (see section C.5.2).

ToR C.1.2. Provide for exchange of information in respect of all persons

275. The 2015 Report found that all of Samoa’s EOI agreements allow for EOI with respect to all persons. Although the TIEA with Monaco used the words “obtainable by” instead of the expression “in control of” used in Article 2 of the OECD Model TIEA,⁸ Samoa’s interpretation of “obtainable by” did not restrict EOI. To date, Samoa has not received a request, nor sent any requests, for information under this agreement. Further, Samoa and Monaco are parties to the multilateral Convention, which allows for EOIR with respect to all persons. Finally, no peers raised any concerns on this issue.

ToR C.1.3. Obligation to exchange all types of information

276. The OECD Model Tax Convention Article 26(5) and the Model TIEA Article 5(4), which are 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.

277. The 2015 Report concluded that all of Samoa’s EOI agreements included the equivalent of Article 5(4). Further, the report found that there were no restrictions in Samoa’s domestic laws regarding access to bank information that prevented the exchange of bank information.

8. According to this TIEA, the requested party is under no obligation to provide information “which is neither held by the authorities nor in the possession or control by persons within its territorial jurisdiction, or which is not obtainable by persons who are within its territorial jurisdiction”. (Underlined for emphasis).

278. During the period under review, Samoa received 14 requests relating to banking information. Two peers indicated that they did not receive the banking information requested; however, this was not due to bank secrecy (refer to paragraph 228).

ToR C.1.4. Absence of domestic tax interest

279. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party. Such obligation is explicitly contained in the OECD Model Tax Convention Article 26(4) and the Model TIEA Article 5(2).

280. The 2015 Report concluded that all of Samoa's EOI agreements contained wording akin to Model TIEA Article 5(2). The report also found that there were no limitations in Samoa's domestic law that prevented EOI absent a domestic tax interest. No concerns regarding domestic tax interest arose in practice.

ToR C.1.5. Absence of dual criminality principles

281. There are no dual criminality provisions in any of Samoa's EOI agreements. In practice, no concern as to dual criminality has arisen in practice.

ToR C.1.6. Exchange information relating to both civil and criminal tax matters

282. All of Samoa's EOI agreements provide for EOI in both civil and criminal matters. In practice, Samoa answered all requests during the review period, whether they related to civil or criminal tax matters. Peers have not raised any issues.

ToR C.1.7. Provide information in specific form requested

283. There are no restrictions in Samoa's EOI agreements or domestic laws that would prevent it from providing information in a specific form. During the review period, Samoa provided information in the specific form requested by a partner, if so indicated. No peers raised any concerns.

ToR C.1.8. Signed agreements should be in force

284. The 2015 Report concluded that 13 of 18 of Samoa's EOI agreements were in force. This should have been reported as 14 as the TIEA with Greenland came into force in March 2014. The report also found that Samoa had taken all steps necessary to bring into force its remaining four EOI agreements.

285. Since then, all of the EOI agreements have entered into force. Samoa has not signed any new bilateral EOI agreements since the 2015 Report; however, Samoa signed the multilateral Convention on 25 August 2016, which entered into force in Samoa on 1 December 2016. Samoa’s EOI network now covers 128 jurisdictions through 18 bilateral agreements and the multilateral Convention.

286. The following table summarises the outcomes of the analysis under element C.1 in respect of Samoa’s EOI relationships:

Total EOI relationships, including bilateral and multilateral or regional mechanisms	128
In force	
In line with the standard	114
Not in line with the standard	0
Signed but not in force	
In line with the standard	14 ^a
Not in line with the standard	0
Among which – Bilateral mechanisms (DTCs/TIEAs) not complemented by multilateral or regional mechanisms	0

Note: a. The multilateral Convention is currently not in force in 14 jurisdictions: Armenia, Burkina Faso, Dominican Republic, Ecuador, Gabon, Kenya, Liberia, Mauritania, Morocco (enters into force on 1 September 2019), North Macedonia, Paraguay, Philippines, Serbia, and the United States.

ToR C.1.9. Be given effect through domestic law

287. For EOI to be effective, the parties to an EOI agreement must enact any legislation necessary to comply with the terms of the agreement. Samoa has in place the legal and regulatory framework to give effect to its EOI agreements.

288. In practice, once an agreement is signed by the Minister for Revenue, the Samoan Ministry of Foreign Affairs and Trade will advise the treaty partner that Samoa has completed its procedures. The EOI agreement will state the date for entry into force, which in most cases is 30 days after receipt of the later notification.

289. Effective implementation of EOI agreements in domestic law has been confirmed in practice as there was no case encountered where Samoa was not able to obtain and provide the requested information due to unclear or limited effect of an EOI agreement in Samoa’s law. No issues were reported by peers.

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

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

290. The 2015 Report did not identify any issue in respect of the scope of Samoa's EOI network or its negotiation policy. It was recommended that Samoa continue to develop its EOI network with all relevant partners.

291. Since that report, Samoa has expanded its EOI network from 17 to 128 jurisdictions, comprising of two DTCs,⁹ 16 TIEAs and the multilateral Convention. Samoa's EOI network encompasses a wide range of counterparties, including all of its major trading partners, all the G20 members and all OECD members. Samoa indicated that four jurisdictions have shown an interest in entering into a TIEA with Samoa. No peer advised that Samoa had refused to negotiate or sign an EOI agreement with it.

292. Samoa is recommended to continue to conclude EOI agreements with any new relevant partner who would so require (see Annex 1).

293. The table of determinations and ratings is as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

C.3. Confidentiality

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

294. The 2015 Report concluded that the applicable EOI agreement provisions and domestic rules that apply to officials with access to EOI information and the practice in Samoa regarding confidentiality were in accordance with the standard. Since that report Samoa has continued to ensure that its EOI confidentiality practices meet the requirements of the standard. There are adequate confidentiality provisions protecting tax information under Samoa's domestic tax laws. No case of breach of confidentiality has been encountered in the EOI context and no concerns have been reported by peers.

9. Samoa has a DTC and a TIEA with New Zealand.

295. The table of determination and rating remains as follows:

Legal and Regulatory Framework
Determination: The element is in place.
Practical implementation of the standard
Rating: Compliant

ToR C.3.1. Information received: disclosure, use and safeguards

296. The 2015 Report concluded that all of Samoa’s EOI agreements meet the standards for confidentiality including the limitations on disclosure of information received and use of the information exchanged, which are reflected in Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD Model TIEA.

297. There are adequate confidentiality provisions protecting tax information contained in the TIE Act and the Tax Administration Act 2012 which are supported by administrative and criminal sanctions applicable in the case of breach of these obligations. This includes confidentiality provisions on the information transmitted by the Commissioner to the Attorney General (who provides an assessment as to whether the EOI request conforms to the information required in Schedule 2 of the TIE Act). There has been no change in these provisions since the 2015 Report.

298. The information contained in an EOI request received by Samoa is treated as confidential. Information received from a treaty partner is only used for the purposes provided for it in the EOI agreement. Samoa may disclose EOI information for non-tax purposes only with the express written consent of the other jurisdiction. Samoa did not receive any EOI requests seeking to use the tax information provided for non-tax purposes during the review period.

299. All EOI related tasks are centralised within a single EOI Unit within the Legal Division of the MFR and all EOI Unit staff are trained on confidentiality principles. In addition, all MFR officers are required to take an oath of fidelity and undergo training of their confidentiality obligations (which subsists for the duration of an officer’s employment and remains applicable after their employment ceases).

300. To manage the confidentiality of documents and information, the MFR maintains and regularly reviews its Information Security Framework. This requires the classification of all information received and maintained by the MFR and the coding of all documents according to their security classification. Information received pursuant to EOI requests is classified as highly protected information, which is the highest level of protection. This information can only be viewed by members of the EOI Unit and the Commissioner.

301. All information gathered pursuant to EOI requests is kept within the EOI Unit and is only released under cover of a formal letter from the Commissioner, which emphasises the confidential nature of the information. Original hard copies are kept in a locked filing cabinet in the EOI Unit’s office. Hard copies of documents that are no longer needed are disposed of by shredding. The EOI database is on a secure server, which is password protected and accessible only by EOI Unit staff.

302. Members of the public are not permitted to enter the EOI Unit’s office. Other MFR officers are not permitted to enter the office except with the EOI manager’s permission. Access to passwords and keys is restricted to EOI Unit staff.

303. All documents pertaining to an EOI request are stamped “confidential” and the responses provided by Samoa always contain the standard wording stating that the information is furnished under the provisions of a tax treaty and is subject to tax confidentiality under the provisions of that treaty. Before sending information to a treaty partner, the Competent Authority will confirm whether it is acceptable to provide the information by a password protected email. If so, the email is sent with a separate email containing the password. If the information is not sent by a password protected email, it is sent by courier mail. Status updates are provided by regular email.

304. In order to obtain information from an information holder outside of the MFR, the information holder receives a notice from the Competent Authority which indicates that a request for information has been received from a treaty partner, that the request is valid pursuant to the relevant EOI agreement, and discloses only the minimum amount of information necessary to obtain the requested information.

305. If it were necessary for EOI related information to be disclosed outside of the EOI Unit, such as in court proceedings where the information is required by the judicial authorities, the consent of the foreign competent authority would be obtained in advance.

306. No case of breach of the confidentiality obligation in respect of EOI has been encountered by the Samoa authorities and no peers raised any concerns.

ToR C.3.2. Confidentiality of other information

307. Confidentiality rules should apply to all types of information exchanged, including information provided by a requesting jurisdiction in a request, information transmitted in response to a request and any background documents to such request. Samoa authorities confirm that in practice they consider all types of information relating to an EOI request confidential (including communications between Samoa and the requesting jurisdiction).

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

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

308. The international standard allows requested parties to not supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege.

309. The 2015 Report concluded that Samoa’s legal framework and practices concerning the rights and safeguards of taxpayers and third parties were in line with the standard. No relevant changes have occurred since the last review.

310. An EOI request can be declined where it may impose the disclosure of trade, business, industrial, commercial, or professional secrets or trade process, or where the information disclosed would be contrary to public policy (TIE Act, s. 6). Nevertheless, information may not be treated as a secret or trade process merely because it is held by a person who is “a regulated person”, “a person carrying on international financial services”, “a financial institution under the Financial Institutions Act 1996”, “a person acting in an agency or fiduciary capacity including nominees and trustee”, and “to a person reasonably believed to have the information to which the notice relates” (TIE Act, s. 7). Further, the Commissioner is able to obtain and provide information requested by foreign competent authorities and the rights and safeguards established under Samoan domestic law do not prevent or delay effective EOI (TIE Act, s. 3).

311. A person is not required to disclose or produce information that he or she would be entitled to refuse to disclose or produce on the grounds of legal professional privilege. A legal practitioner may nonetheless be required to provide the name and address of the client (TIE Act, s. 10). As described in element B.1, the attorney-client privilege in Samoa meets the international standard.

312. As also mentioned in element B.1, the Commissioner may not act on an EOI request before obtaining the Attorney General’s advice regarding whether the EOI request is in conformity with the information contained in Schedule 2 of the TIE Act. In practice, this procedural step does not cause an undue delay to effective EOI.

313. There was no instance during the review period where a person refused to provide the requested information because of professional secrecy. Further, Samoa did not decline to provide the requested information because it was covered by legal professional privilege or any other professional secret. No peer indicated any issue in this respect.

314. The table of determination and rating remains as follows:

Legal and Regulatory Framework
Determination: The element is in place.
Practical implementation of the standard
Rating: Compliant

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

315. The 2015 Report contained three recommendations. First, it was recommended that Samoa ensure that answers to EOI requests are made in a timely manner. Second, Samoa was to provide status updates where relevant. Finally, as Samoa had put new EOI processes into place, it was recommended that Samoa monitor the practical implementation to ensure effective EOI.

316. During the review period, Samoa received 16 requests from six EOI partners. Samoa fully responded to 31% of requests within 180 days, and routinely provided status updates. Partial information was provided for nine of the 16 requests. As noted in elements A and B.1, there were a number of cases where the information requested was not available, for a variety of reasons. Where information was unable to be provided, Samoa reverted back to the requesting jurisdiction to inform them of the outcome of the request. Overall, peer input was positive, although some peers did note lengthy response times.

317. The table of determination and rating is as follows:

Legal and Regulatory Framework		
This element involves issues of practice that are dealt with in the implementation of EOIR in practice. Accordingly, no determination has been made.		
Practical implementation of the standard		
	Underlying Factor	Recommendation
Deficiencies identified in the implementation of EOIR in practice	Samoa has experienced difficulties during the review period to answer EOI requests in a complete and timely manner mainly due to delays in obtaining information where it was held offshore.	Samoa should ensure that it responds to EOI requests in a complete and timely manner.
Rating: Partially Compliant		

ToR C.5.1. Timeliness of responses to requests for information

318. Over the period under review (1 April 2015 to 31 March 2018), Samoa received a total of 16 requests for information. The information requested related to (i) ownership information (14 cases), (ii) accounting information (12 cases), (iii) banking information (14 cases) and (iv) other type of information (16 case).¹⁰ The legal entities and arrangements for which information was requested are broken down to companies (16 cases) and trusts (one case).¹¹

319. The following table relates to the requests received during the period under review and gives an overview of response times needed by Samoa to provide a final response to these requests, together with a summary of other relevant factors impacting the effectiveness of Samoa's EOI practice during the reviewed period.

	1 April 2015- 30 March 2016		1 April 2016- 30 March 2017		1 April 2017- 30 March 2018		Total	
	Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received [A+B+C+D+E+F]	1	6	10	63	5	31	16	100
Full response: ≤ 90 days	1	100	0	0	0	0	1	6
≤ 180 days (cumulative)	1	100	3	30	1	40	5	31
≤ 1 year (cumulative) [A]	1	100	3	30	2	40	6	38
> 1 year [B]	0	0	1	6	0	0	1	6
Declined for valid reasons	0	0	0	0	0	0	0	0
Status update provided within 90 days (for outstanding cases with full information not provided within 90 days, responses provided > 90 days)	0	0	10	100	5	100	15	100
Requests withdrawn by requesting jurisdiction [C]	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested [D]	0	0	0	0	0	0	0	0
Requests still pending at date of review [E]	0	0	0	0	0	0	0	0
Partial information exchanged and closed [F]	0	0	6	60	3	60	9	56

Notes: a. Requests are counted as per the number of taxpayers subject of the request. If a request relates to one taxpayer, it is counted as one even where more than one piece of information is requested. If Samoa received a further request for information that relates to a previous request, with the original request still active, Samoa will append the additional request to the original and continue to count it as the same request.

b. The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued.

10. Please note that some requests entailed more than one information category.

11. Please note that some requests entailed more than one individual or entity type.

320. As shown in the table, Samoa provided full and complete responses to 31% of requests within 180 days and 38% of requests within a year. Generally, full and complete responses were not provided within 90 days because there were delays in obtaining information where it was held offshore. Samoa would provide requesting jurisdictions with partial information while it was in the process of obtaining the remaining information. In cases where Samoa was unable to provide a full or partial response within 90 days, a status update was provided. As such, the recommendation regarding status updates has been addressed.

321. The statistics reflected in the table above are heavily influenced by the issues faced by Samoa in obtaining some of the requested information. Of the 16 requests received by Samoa, it exchanged partial information in nine cases. As noted in elements A and B.1, some of the information requested was not available for a variety of reasons including: (i) the TCSP did not have the beneficial ownership information readily available as required under the law; (ii) there was no legal obligation on the companies subject of the requests or the TCSPs to maintain accounting information for the time period sought by the requesting jurisdictions; (iii) the companies had been struck from the register prior to the legal obligation to maintain accounting information and, in one case more than five years before the request was sent; (iv) a service provider closed down; (v) the companies subject of the requests did not maintain bank accounts in Samoa; and (vi) banking information was not sought from the international company itself. It is important to note that in these nine cases, the Samoan Competent Authority provided its EOI partner with the available information, such as the certificate of incorporation, the articles of association, and information on the transfer of shares, as soon as it could (generally within 180 days). The Samoan Competent Authority also indicated that they had exhausted all avenues to obtain the requested information in these cases and that the reason for not exchanging the information was explained to the EOI partners. Since Samoa has taken action to remedy the deficiencies (i.e. in-depth on-site inspections and enacted laws), the availability of information to the Samoan Competent Authority is expected to be improved.

322. Peer input was positive with respect to Samoa's EOI practices; however, a few peers did note lengthy response times. Considering the long response times, it is recommended that Samoa continue to ensure that answers to EOI requests are made in a timely manner.

ToR C.5.2. Organisational processes and resources

323. The Samoan Competent Authority is the Minister responsible for Revenue. This function is delegated to the CEO of the MFR or the authorised representative. The contact details of the Competent Authority are published

on the MFR website and in the Global Forum’s secure competent authorities database. Peer input is positive in connection with the ease of contacting the Samoan Competent Authority.

324. In 2015, the Samoa EOI Unit comprised of two staff. Currently, there are eight EOI Unit staff, all of whom work in the Legal and Technical Division of the MFR and are trained in EOI matters. These are the Assistant CEO (the manager of the EOI Unit); a Legal Consultant (International); a Principal Legal Officer (supervisor of the EOI Unit); a Principal Tax Officer (supervisor of the EOI Unit); a Senior Legal Officer; and three Technical Officers (the case officers in the EOI Unit). These personnel are qualified in law or accounting. Given the low volume of EOI requests received by Samoa to date, it is not necessary to have personnel in the EOI Unit working on EOI full time. Each of these persons has full time roles working on revenue matters; however, when an EOI request is received, they prioritise the EOI request.

325. Given that most of the information requested of Samoa will likely be in relation to entities supervised by SIFA, staff members within SIFA have also been trained on EOI matters. Additionally, the CEO, Assistant CEO, and SIFA Compliance Officers have represented Samoa at the PRG meetings.

Incoming requests

326. The EOI Unit uses a computerised database (based on the EOI database developed by the Global Forum) for easier tracking and monitoring of EOI requests.

327. The procedures for handling incoming EOI requests remain the same as those described in the 2015 Report (paragraphs 380-393). An EOIR Manual based on the Global Forum’s EOIR Manual was developed in 2014 and was recently updated to include information on group requests and application of the multilateral Convention. The manual sets out the procedures for handling incoming requests, provides template forms for EOI, and information on confidentiality.

Outgoing requests

328. The 2016 ToR also addresses the quality of requests made by the assessed jurisdiction. Jurisdictions should have in place organisational processes and resources to ensure the quality of outgoing EOI requests.

329. Samoa did not make any EOI requests during the review period; however, the EOIR Manual does provides rules for handling outgoing requests and establishes procedures to ensure the quality of EOI requests. All outgoing requests would be made through the EOI Unit and would follow standard procedures to ensure consistency, all of which are contained in the manual.

Communication

330. Samoa accepts requests in English. If the request is not in English, the requesting jurisdiction will be asked to translate the request. Samoa sends outgoing requests in English as agreed with the particular treaty partner.

331. If information requested is already in the possession of the IRS, then the EOI case officer will contact the relevant division of the IRS by email to obtain the required information.

332. Where it is necessary to contact another government agency (such as SIFA) or a third party, the EOI case officer will draft a notice to that information holder, which is then signed by the Commissioner. The notice is usually sent by mail, but, if to expedite the request, it may be sent by email.

333. Communication with other jurisdictions is done mostly through password protected email. However, Samoa will send information by registered mail if requested to do so by the requesting jurisdiction. E-mails are also used for sending acknowledgment letters, requests for clarification, or to provide status updates.

ToR C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI

334. There are no factors or issues identified under this element that could unreasonably, disproportionately or unduly restrict effective EOI in Samoa.

Conclusion

335. During the current review period, Samoa had difficulty in responding fully to EOI requests, for the reasons explained in paragraph 321, which have been dealt with under other elements (i.e. elements A and B.1). Samoa has put in place EOI organisational processes and has sufficient resources; however, the lack of timeliness and partial responses were issues identified by peers. Based on a holistic horizontal analysis of Samoa's EOI practices, this element is rated as Partially Compliant.

Annex 1: List of in-text recommendations

Issues may have arisen that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. However, in order to ensure that the Global Forum does not lose sight of these “in text” recommendations, they should be listed in an annex to the EOIR report for ease of reference.

- **Element A.1.4:** Samoa should ensure that all beneficial owners of a unit trust are identified in line with the standard (paragraph 150).
- **Element A.1 and A.3:** The MLP Guidelines for Financial Institutions have not been revised since 2010; Samoa should, where appropriate, update these guidelines (paragraphs 73 and 219).
- **Element A.2:** Samoa should monitor to ensure that liquidators are maintaining accounting records for at least five years (paragraphs 173 and 178).
- **Element A.2:** Samoa should require unit trusts to keep reliable accounting records, including underlying documentation, for a minimum of five years (paragraph 185).
- **Element C.2:** Samoa is recommended to conclude EOI agreements with any new relevant partner who would so require (paragraph 292).

Annex 2: List of Samoa's EOI mechanisms

1. Bilateral international agreements for the exchange of information

	EOI partner	Type of agreement	Date signed	Date entered into force (ToR C.1.8)
1	Australia	TIEA	20-Mar-2010	24-Feb-2012
2	Denmark	TIEA	16-Dec-2009	22-Mar-2012
3	Faroe Islands	TIEA	16-Dec-2009	01-Dec-2016
4	Finland	TIEA	16-Dec-2009	24-Mar-2012
5	Greenland	TIEA	16-Dec-2009	01-Mar-2014
6	Iceland	TIEA	16-Dec-2009	23-May-2012
7	Ireland	TIEA	08-Dec-2009	21-Feb-2012
8	Japan	TIEA	04-Jun-2013	06-Jul-2013
9	Korea	TIEA	15-May-2015	19-Mar-2019
10	Mexico	TIEA	30-Nov-2011	18-Jul-2012
11	Monaco	TIEA	07-Sep-2009	19-Mar-2012
12	Netherlands	TIEA	14-Sep-2009	02-Mar-2012
13	New Zealand	TIEA	16-Dec-2009	26-Mar-2012
		DTC	08-Jul-2015	23-Dec-2015
14	Norway	DTC	16-Dec-2009	30-Mar-2012
15	San Marino	TIEA	01-Sep-2009	21-Mar-2012
16	South Africa	TIEA	26-Jul-2013	28-May-2017
17	Sweden	TIEA	16-Dec-2009	01-Dec-2012

2. Convention on Mutual Administrative Assistance in Tax Matters (amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).¹² The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The original 1988 Convention was amended to respond to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The Multilateral Convention was opened for signature on 1 June 2011.

Samoa signed the Multilateral Convention on 25 August 2016 and it entered into force on 1 December 2016 in Samoa. Samoa can exchange information with all other Parties to the Multilateral Convention.

As of 9 August 2019, the Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Brunei Darussalam, Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People’s Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,¹³ Czech

12. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.
13. Note 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”.

Note by all the European Union Member States of the OECD and the European Union: 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.

Republic, Denmark, Dominica, El Salvador, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by, or its territorial application extended to, the following jurisdictions, where it is not yet in force: Armenia, Burkina Faso, Dominican Republic (enters into force on 1 December 2019), Ecuador (enters into force on 1 December 2019), Gabon, Kenya, Liberia, Mauritania, Morocco (enters into force on 1 September 2019), North Macedonia, Paraguay, Philippines, Serbia (enters into force on 1 December 2019), and United States (the original 1988 Convention in force on 1 April 1995, the amending Protocol signed on 27 April 2010).

Annex 3: Methodology for the review

The reviews are based on the 2016 ToR, conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

The current evaluation provides the outcomes of the second peer review of Samoa's implementation of the EOIR standard conducted by the Global Forum.

Laws, regulations and other material received

Business Licences Act 1998, Business Licences Regulations 2012, and Business Licence Amendment Regulations 2018

Companies Act 2001 and Companies Amendment Act 2019

EOIR Manual

Financial Institutions Act 1996

Foundations Act 2016 and Foundations Amendment Act 2019

Income Tax Act 2012 and Tax Administration Act 2012

International Banking Act 2005

International Companies Act 1988 and International Companies Amendment Act 2015

International Insurance Act 1988

International Mutual Funds Act 2008

International Partnership and Limited Partnership Act 1998 and International Partnership and Limited Partnership Amendment Act 2016

Interpretation Act 2015

Lawyers and Legal Practice Act 2014

Money Laundering Prevention Act 2007, Money Laundering Prevention Amendment Act 2018, Money Laundering Prevention Regulations 2009, and Money Laundering Prevention Guidelines

Partnership Act 1975

Samoa International Finance Authority Act 2005

Segregated Fund International Companies Act 2000

Special Purpose International Companies Act 2012

Tax Information Exchange Act 2012, Tax Information Exchange Amendment Act 2015, Tax Information Exchange Amendment Act 2017, Tax Information Exchange Amendment Act 2018, and Tax Information Exchange Amendment Act 2019

Trustee Companies Act 2017 (consequentially amended Segregated Fund International Companies Act 2000), Trustee Companies Regulations 2017 (Fees and Forms), Trustee Companies Regulations 2018, Trustee Companies Amendment Act 2019, and Trustee Companies Amendment Regulations 2019

Trusts Act 2014 and Unit Trust Act 2008

Administrations and organisations interviewed during the on-site visit

Central Bank of Samoa

Ministry of Commerce, Industry and Labour

Ministry for Revenue

Office of the Attorney General

Samoa International Finance Authority

Current and previous reviews

Samoa previously underwent an EOIR review through two assessments during the first round of reviews: the 2012 Phase 1 Report and the 2015 Phase 2 Report. These assessments were conducted according to the ToR approved by the Global Forum in February 2010 (2010 ToR) and the Methodology (2010 Methodology) used in the first round of reviews. In addition, Samoa underwent a Fast-Track review in 2017, which included a provisional assessment in respect of Samoa's legal framework and the practical implementation of the 2010 ToR.

This evaluation was based on information available to the assessment team including the EOI agreements signed, laws and regulations in force or effective as of 9 August 2019, Samoa’s EOIR practice in respect of EOI requests made and received during the review period (1 April 2015 to 31 March 2018), Samoa’s responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Samoa during the on-site visit that took place from 16-18 January 2019 in Apia, Samoa.

Information on each of Samoa’s reviews are listed in the table below.

Review	Assessment team	Period under review	Legal Framework as of	Date of adoption by Global Forum
2012 Report	Ms Ingeborg Granig-Sinz of Liechtenstein; Mr Carlo Carag of Philippines; and Ms Renata Fontana and Mr Francesco Positano of the Global Forum Secretariat.	Evaluation of the legal and regulatory framework only	August 2012	October 2012
2015 Report	Mr Carlo Carag of Philippines; Ms Antoinette Musilek of Spain; and Ms Melissa Dejong of the Global Forum Secretariat.	1 January 2011 to 31 December 2013	August 2015	October 2015
2019 Report	Mr Kosugi Naofumi of Japan; Mr Fida Muhammad of Pakistan; and Ms Kaelen Onusko of the Global Forum Secretariat.	1 April 2015 to 31 March 2018	August 2019	November 2019

Annex 4: Samoa’s response to the review report¹⁴

Having completed the Second Round peer review of its 2019 Exchange of Information on Request Peer Review Report (Report), Samoa is pleased with the findings of its Report. The Report provides an accurate account of Samoa’s legislative framework as well as its practical implementation for the handling of EOI requests received during the period from 1 April 2015 to 31 March 2018.

Samoa would like to record its heartfelt gratitude to the members of the Assessment Team for their excellent work in preparing a Report that accurately reflects Samoa’s progress under the 2016 Terms of Reference to date.

Samoa would also like to thank all those who have been involved in the process – the Secretariat, the members of the Peer Review Group and the Global Forum – for their valuable input. This would also include the assistance received during the mock assessment for which Samoa had the opportunity to better prepare itself for the actual onsite visit.

Samoa takes note of the positive findings in its Report, and restates its commitment to addressing the remaining recommendations.

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

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report on the Exchange of Information
on Request SAMOA 2019 (Second Round)**

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 150 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This report contains the 2019 Peer Review Report on the Exchange of Information on Request of Samoa.

Consult this publication on line at <https://doi.org/10.1787/d8954bf5-en>.

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