

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

THE REPUBLIC OF LIBERIA



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: The Republic of Liberia 2012

PHASE 1

June 2012
(reflecting the legal and regulatory framework
as at April 2012)

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About the Global Forum

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

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Liberia. The international standard which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information (EOI) partners. While Liberia has a developed legal and regulatory framework, the report identifies a number of areas where Liberia could improve its legal infrastructure to more effectively implement the international standard. The report includes recommendations to address these shortcomings.

2. Liberia is a country of approximately 112 000 square kilometres situated on the Western coast of Africa, bordering the Atlantic Ocean, Sierra Leone, Guinea and Cote D’Ivoire. Nearly 10 years of dictatorial rule followed immediately by a seven year civil war ending in 1997 devastated Liberia’s economy and infrastructure.

3. Liberia joined the Global Forum in 2009 and has concluded Tax Information Exchange Agreements (TIEAs) with 15 jurisdictions, these adhering to the OECD Model Tax Information Exchange Agreement, in addition to a Double Tax Convention (DTC) with Germany signed in 1970. Liberia has taken all necessary steps to bring all of its EOI agreements in to force.

4. In terms of assessing the framework to ensure the availability of relevant information, Liberia has clear requirements with respect to companies that have a tax obligation in Liberia and for private foundations including penalties for failure to comply. Corporations, LLCs, RBCs and partnerships are required to keep ownership and identity information; however, no penalties are provided for. There is no provision for nominee ownership or requirements for a nominee to know the person for whom the shares are held. Corporations and RBCs can issue bearer shares or share warrants to bearer and there are no appropriate mechanisms to ensure that the owners of shares or warrants are known.

5. Liberia has clear requirements pertaining to ownership and identity information with respect to banking information, including penalties for failure to comply. With the exception of Registered Business Companies and entities and arrangements that carry on business in Liberia or which have tax obligations in Liberia, the requirements to keep accounting records do not meet the standard in Liberia.

6. In respect of access to information, Liberia's competent authorities are vested with the power to access information, including bank and accounting information, pursuant to the Revenue Code, complimented by adequate compulsory powers.

7. Despite having emerged from a lengthy civil war which devastated almost all aspects of the country's infrastructure and capacity, Liberia has, within the last 4 years, made significant strides. Liberia is fully committed to implementing the international standards. As the peer review is an ongoing and dynamic process, the Global Forum is committed to working with Liberia as it moves to address the recommendations in this report.

8. However, as elements which are crucial to achieving effective exchange of information are not yet in place in Liberia, it is recommended that it does not move to a Phase 2 Review until it has acted on the recommendations contained in the Summary of Factors and Recommendations to improve its legal and regulatory framework. Liberia's position will be reviewed when it provides a detailed written report to the Peer Review Group within 12 months of the adoption of this report. It should also provide an intermediary report within 6 months of this report.

Introduction

Information and methodology used for the peer review of Liberia

9. The assessment of the legal and regulatory framework of Liberia was based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference*, and was prepared using the Global Forum’s *Methodology for Peer reviews and Non-Member Reviews*. The assessment was based on the laws, regulations, and exchange-of-information mechanisms in force or effect as at April 2012, other materials supplied by Liberia, and information supplied by partner jurisdictions.

10. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Liberia’s legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element, a determination is made that either (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations on how certain aspects of the system could be strengthened (see where relevant).

11. The assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Ms. Sylvia C. Moses Commissioner Inland Revenue Department for British Virgin Islands; Mr. Numan Emre Ergin, Senior Tax Auditor, Turkish Ministry of Finance for Turkey; and Ms. Amy O’Donnell and Ms. Laura Hershey of the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange-of-information mechanisms in Liberia.

Overview of Liberia

12. Liberia is a country of approximately 112 000 square kilometres situated on the Western coast of Africa, bordering the Atlantic Ocean, Sierra Leone, Guinea and Cote D'Ivoire. Its population is approximately 3.8 million and is made up of 16 different indigenous ethnic groups as well as Lebanese, Indians and other West African nationals. English is the official language, although there are 16 other indigenous languages spoken.

13. Liberia was founded by free African-Americans and freed slaves from the United States in 1820. The True Whig Party ruled Liberia from independence in 1876 until 1980, when the president was removed in a coup. From 1989 until 1996, civil war ensued. In 1999, civil war was re-ignited and continued through to October 2003, when a transitional government was again formed to restore peace. That Government ruled Liberia until January 2006, following presidential and legislative general elections in late 2005. Since 2004, the political situation has remained stable.

14. The Liberian dollar (LRD) has been the currency of Liberia since 1943. However, United States dollars (USD) are used along with the LRD and are even used for penalties in some of Liberia's laws. One hundred LRDs are equal to USD 1.37 as at January 2012.

15. Liberia's government structure is based on that of the United States. Its government has three branches: executive, legislative and judiciary. It has a bicameral legislature with 73 representatives and 30 senators. Members of the House of Representatives are elected for six year terms, whilst Members of the Senate have staggered terms in which the first term of the Junior Senators is six years and the Senior Senators is nine years.

16. Liberia's judiciary is divided into three levels: justices of the peace and magisterial courts (Courts of Non Records), Circuit and Specialty Courts (which have both appellate and original jurisdiction), and the Supreme Court. Traditional or Customary Courts also exist.

17. Liberia has a hierarchy of law at six levels: the Constitution, which is the highest law of the land; statutes, which are acts passed by the legislature; case law (and common law of the US and England where no statutory or other law of Liberia applies); executive orders, which are orders issued by the President and carry the force of law; administrative regulations, which have legal effect and are issued by various agencies for the proper management and functioning of the agency in implementing and executing provisions of a statute under the guidance and within the powers conferred by the statute. International treaties and conventions, once ratified by the legislature have the force of statutory law.

18. Liberia's legal system is a common law one. Where there is no statute enacted to govern a particular situation, a court may refer to the common law for guidance. Section 40 of the General Construction Law of Liberia (Liberian Code of Laws, Title 15) provides that in the absence of any statutory laws or other laws (including case law), and where there is no Liberian precedent on point, the common laws of England and the United States may be drawn upon.

The Liberian Economy

19. Historically, Liberia's economy has relied heavily on iron mining, natural rubber, timber and diamond mining. However, political upheavals beginning in the 1980s largely destroyed the economy and brought a steep decline in the standard of living. During the civil war, most businesses were destroyed or heavily damaged and most foreign investors and businesses left the country. Iron ore production stopped completely and the United Nations banned timber and diamond exports. The UN removed sanctions on timber in 2006 and on diamonds in 2007.

20. Today, Liberia's GDP is USD 986 201 594.¹ The GDP was comprised in 2010 of mining and panning, forestry, agriculture and fisheries, services, and manufacturing. Agriculture and fisheries comprised the largest sectoral contribution to real GDP at 42.34% in 2009/10. Financial institutions' contribution to real GDP in 2009/2010 was 2.66%.²

21. The growth of the Liberian economy was estimated at 6.9% in 2011, 1.4 percentage points higher than the revised rate of 5.5% in 2010.³ Liberia is open to foreign investment and has recently undertaken reforms to its laws to encourage investment. Thirty-nine such reforms were announced in 2008 and 2009 and the country attracted over USD 100 million in new investment in the first half of 2009. In addition, in 2010, the government enacted legislation to modernise commercial transactions and expand commercial activities.

22. Although Liberia's economy is experiencing some growth, the primary challenge is restoring Liberia's infrastructure to full capacity. Strides have been made in healthcare, with the building of several new clinics throughout the country and the revamping of its major medical centres in both Monrovia and Tappita. Life expectancy rates have risen from 52 years in 2005 to 55 years in 2009, and mortality rates for those under 5 (per 1 000) have fallen from 131.8 in 2005 to 102.6 in 2010. Adult literacy rates have

1. <http://data.worldbank.org/country/liberia>.

2. Republic of Liberia Abridged Budget Framework Paper, Ministry of Finance, March 2011.

3. Central Bank of Liberia Annual Report 2011.

improved, rising from 43% in 1994 to 59% in 2009. Liberia’s vulnerable employment rate remains high at 77.9%.⁴ This informal sector of the labour force is in petty trading, rubber and transportation, with farming gradually evolving into a major element as the government increasingly makes agriculture a major focus. A new network of roads is under construction or has been contracted, although the lack of adequate roads continues to remain a major impediment to the national economy. Grants revenue has decreased by 44.7% from USD 23.5 million in 2008/09 to USD 13.0 million in 2009/10⁵.

Companies and Shipping Registry

23. The Liberian shipping registry was formed almost 60 years ago and is now the second largest shipping registry in the world. It includes more than 3 700 ships, which amounts to 11% of the world’s fleet. Owners of ships in the registry come from more than 50 countries.

24. The Ship Registry falls under the Liberian Maritime Authority. The Commissioner of Maritime Affairs has direct oversight of the Ship Register. The Ship Registry consists of a Domestic Watercraft Registry and an International Ship Registry. The Government of Liberia has entrusted the Administration of the International Ship Registry to a privately-owned US organisation, the Liberian International Ship and Corporate Registry LLC⁶ (LISCR), which is under the direct oversight of the Liberian Maritime Authority. The Commissioner also administers the Domestic Watercraft Registry.

25. The due diligence requirement of the Registrar of Companies mandates that only an attorney or service provider who is subject to regulation in the jurisdiction where s/he does business can incorporate a company or register a foreign maritime entity. In order to enter the shipping registry, a vessel must be owned by a Liberian legal entity. Where a vessel is owned by a non-Liberian entity, that entity can be registered as a “foreign maritime entity” under Liberian law. A foreign maritime entity is not a Liberian company but it is an entity that exists solely to register a vessel.

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4. Cited from the Report on the Liberia Labour Force Survey 2010. Vulnerable employment rate considers those working for themselves or unpaid for their own household. This population may have occasional work and be considered as employed for statistical purposes, but in fact not enjoy the benefits of assured salary, pension, sickness benefits or job security.
 5. Republic of Liberia Abridged Budget Framework Paper, Ministry of Finance, March 2011.
 6. LISCR is a US owned LLC and an agreement between the Liberian Government and LISCR to operate the Registry is ratified by the Liberian Legislature. LISCR is headquartered in Virginia, USA and also has offices in New York, Athens, Hamburg, Hong Kong, London, Monrovia, Zurich and Tokyo.

26. The Corporate Registry falls under the Ministry of Foreign Affairs. The Minister of Foreign Affairs acts as the Registrar of Corporations. The Corporate Register consists of resident and non-resident entities. The Registrar administers the Resident Corporate Registry.

27. All Liberian Corporations, including LLCs and Partnerships, are formed by registering with the Ministry of Foreign Affairs through the Registrar. A corporation may be formed by one or more individual or legal entities and in the case of an LLC, with one member and the law allows the appointment of one director. There are currently approximately 55 000 companies registered in Liberia, the majority of which are corporations limited by shares. Liberia advises that approximately 5% are partnerships, limited partnerships and LLCs.

Financial Services

28. Liberia's financial services sector is made up of 9 banks and 23 non-banking (insurance companies) financial institutions. There is no offshore financial sector in Liberia.

29. The Financial Institutions Act of 1999 and the Central Bank of Liberia Act of 1999 govern and regulate the activities of persons and institutions engaged in banking and financial undertakings. The Central Bank of Liberia is the superintendent and administrator of the FIA and the bank acts to regulate the activities of banking and financial related institutions, as defined by the act.

30. Accountants are regulated persons and are governed by the Liberian Institute of Certified Public Accountants Act, which was enacted in 2011. Attorneys in Liberia are governed by the Judiciary Law and a Code of Conduct, the latter of which is essentially a set of rules of procedure and ethical prescriptions issued by the Supreme Court. The Judiciary law of Liberia sets out criteria for access to the bar. Attorneys must register and get a license every year from the Minister of Finance to be allowed to engage in the practice of law. There is also a Liberian National Bar Association of which all Liberian lawyers are required to be members. A Grievance and Ethics Committee appointed by the Supreme Court is empowered to investigate the ethical conduct of lawyers and there is a Judicial Commission which investigates the conduct of Judges.

Taxation

31. Liberia's tax system is governed by the Revenue Code of Liberia, Act of 2000, as amended in 2011. The Executive Law (Chapter 21) creates the Ministry of Finance and vests in it the authority to administer the Revenue Code. The Minister of Finance, vested to administer the Tax Code (Revenue Code, s. 56), is Liberia's Tax Authority.

32. Corporate income tax in Liberia is calculated on the taxable income of all domestic corporations and foreign corporations operating in Liberia. Liberian resident companies are subject to corporate income tax on a worldwide basis. Income is deemed to be Liberian source income if it is: derived from an activity within Liberia, from real property located in Liberia, from the disposal of the interest of a shareholder, partner, or beneficiary in a company, partnership or trust resident in Liberia, from the rental of personal property used in Liberia, a dividend, management or director's fee paid by a company resident in Liberia; or interest where the debt is secured by real or personal property in Liberia, the borrower is resident in Liberia or the borrowing relates to a business carried on in Liberia.

33. Non-resident companies are liable to withholding taxes on all Liberian-source income (*i.e.* payments made to them by residents) and are taxable on a territorial basis. Resident payers must withhold taxes due on payments to non-residents. The taxable income of a non-resident company with a permanent establishment in Liberia is computed in the same manner as that of a resident company: a corporate tax rate of 25% applies and deductions and exemptions apply as well. The profits of a permanent establishment are further subject to a branch profits tax at a rate of 15%. Income of a non-resident company earned from shipping or air transport is tax exempt on a reciprocity basis.

34. A permanent establishment is defined in Liberia as the establishment through which a person carries out business activity, in full or in part, for a period of 90 days during the tax year, including through an agent, and includes: a branch office, construction sites and a place used by non-resident natural persons for business activity. A non-resident must file a corporate tax return if there is a permanent establishment of the non-resident in Liberia.

International Cooperation

35. Liberia has signed 16 tax information exchange agreements to date: one Double Tax Convention (DTC) with Germany, and 15 Tax Information Exchange Agreements (TIEAs), with Australia, Ghana, France, the Netherlands, the United Kingdom, Portugal and the Nordic Group (Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway, and Sweden), India and South Africa.

Recent developments

36. Liberian authorities report that they are developing a new strategic approach of strengthening the existing AML and are finalizing proposed legislation to amend its AML Law. The new AML/CFT strategy stipulates

specific areas of priority in the development and implementation of AML/CFT policies, including establishment of a Financial Intelligence Unit (FIU), national coordination, and international cooperation and ML/TF risk assessment. The implementation strategy spans a 4-year period from 2011-2014 and is developed against the backdrop of the emerging global trends of ensuring that the financial system of Liberia is not left to the vagaries of money laundering and terrorist financing. The Ministry of Finance and the Central Bank are coordinating the preparation, implementation and monitoring of the Strategy.

Compliance with the Standards

A. Availability of Information

Overview

37. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If the information is not kept or it is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of Liberia's legal and regulatory framework on availability of information.

38. Ownership and identity information is generally available in the case of all persons conducting or carrying on a business in Liberia, including partnerships, associations or corporations, and penalties are available to enforce these obligations. This information is required to be maintained and updated under the Business Registration Act, subject to the direction and control of the Minister of Commerce and Industry. Penalties are prescribed for those failing to do so. There are exceptions to the requirements under the General Business Law for those who practice a profession, meaning that professional trustors and professional partnerships are not covered under this requirement.

39. For persons that are not carrying on business in Liberia, the rules do not always ensure the maintenance of ownership and identity information. Ownership and identity information is required to be maintained in the case of Registered Business Companies (RBCs), though sufficient penalties

are not provided for. Furthermore, corporations may issue bearer shares in Liberia and RBCs may issue share warrants to bearer. In both cases, no mechanisms exist to ensure that the owner of the bearer shares or share warrants to bearer are known, therefore this information may not be available.

40. Ownership and identity information on partnerships is available for all partnerships formed under Liberian law as these must be formed by a written agreement signed by each of the partners. Furthermore, if the partnership has income for tax purposes in Liberia then it must file an income tax return containing identity information on all of the partners. This would generally be the case for general partnerships carrying on business in Liberia.

41. Trusts can be formed in Liberia pursuant to the common law which imposes a sufficient duty on a trustee to know the identity of the beneficiaries and the settlor of the trust. Information on the trustees and beneficiaries is also required under the Revenue Code for all trusts with taxable income in Liberia. There are limited provisions for the provision of ownership information derived from AML laws for trusts; however these are not applicable if the trustee is not a relevant financial business.

42. There are no provisions for nominee ownership or requirements for a nominee to maintain information on the person for whom s/he holds the shares, therefore this information may not be available. AML laws are not applicable to nominees unless the nominee is a relevant financial business. Liberian authorities indicate that the definition of “relevant financial business” is very broad and would cover trustees and nominees. However, the language of the statute is not at all clear in this regard.

43. Private foundations may be formed in Liberia, and ownership and identity information is available, as it is required to be provided to the government and maintained by the foundation itself. Penalties to the standards are not included in the Foundations Act save for remedies ordered by the Court and dissolution of the foundation.

44. Accounting records are required to be kept in Liberia for all domestic corporations under the Associations Law; however, the content of these records is not entirely clear, and express penalty provisions are not in place, which is not to the standard. Under this legislation, limited liability companies must also provide accounting information, though again, it is not to the standard, and no penalties are provided. Accounting records are required for RBCs, though no penalties are in place. Accounting information is not required for trusts under statute law; however, under common law, trustees have a fiduciary duty to keep accounts of the trusts and to allow the beneficiaries to inspect them as requested. Requirements to retain underlying documents to the standard and to retain records for a minimum of five years applies for all entities with a Liberian tax liability, with adequate penalty provisions in place for failure to do so under Liberia’s Revenue Code.

45. Banking information, including records of all transactions, is available for all account holders in Liberia pursuant to the AML law.

A.1. Ownership and identity information

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

Companies (ToR A.1.1)

46. The Associations Law of Liberia (Part 1 of Title 5 of the Association Law known as the Business Corporation Act, Part III as the Partnership Act, and Part VII as the Registered Business Company Law) allows for the formation of the following types of companies:

- Corporations: can be either public or private either doing business in Liberia or overseas (non-resident companies); directors may be of any nationality and do not need to be residents of Liberia or shareholders of the corporation and can be a corporation or other legal entity (Business Corporation Act, s. 6.2).
- Limited Liability Companies (LLCs): can consist of a single member (Business Corporation Act, s. 14.10.1);
- Registered Business Companies (RBCs): Registered business companies are private companies either limited by shares or guarantee or unlimited companies that restrict the right to transfer shares, limit the number of members to 50 and prohibit any invitation to the public to subscribe for any shares or debentures of the company (RBC Law, s. 70.2.7).

47. Every domestic or foreign corporation that wishes to do business in Liberia must register and file articles of incorporation with the Ministry of Finance. Every domestic or foreign corporation authorised to do business in Liberia must have a registered agent in Liberia upon whom process can be served. For a corporation having a place of business in Liberia, the registered agent must be a resident domestic corporation or a natural person who is resident in and has a business address in Liberia. For a domestic or foreign company not having a place of business in Liberia or a foreign maritime entity (see *Other Relevant Entities* section below), the registered agent must be a licensed domestic bank or trust company authorised by the Legislature to act as such.

Company ownership and identity information required to be provided to government authorities

Corporations

48. Liberian corporations are required to file articles of incorporation with the Registrar and upon filing the Registrar will indicate whether the company is resident or non-resident (Business Corporation Act, s.4.6). A resident company is one that does business in Liberia, whereas a non-resident company does not do business in Liberia. The articles of incorporation must contain the name, purpose and registered address of the corporation as well as the number of directors and the name and address of each incorporator. For a corporation with share capital, the articles must also contain the aggregate number of shares, including number of registered and bearer shares. For registered shares, the share itself must state the name of the person to whom the share is issued (Business Corporation Act, s.5.8.4). Any amendment to the articles of incorporation must be filed with the Ministry of Foreign Affairs as Registrar of Corporations (Business Corporation Act, s.9.5). The Minister of Foreign Affairs must maintain an index of corporations registered under the Act together with a register of all documents required to be filed.

49. In addition, the Business Registration Act, which is part of the General Business Law, provides that no person shall conduct or carry on a business in Liberia unless the business is registered with the Assistant Minister of Trade and Commerce. This applies to any business involving trade or commerce, including but not limited to the business of transportation, the rendering of services for compensation and the sale of goods and merchandise. It does not apply to any banking or insurance business, the practice of a profession, the practice of any occupation which the law requires to be licensed by a board or other body passing on the qualifications of the applicant, the production or sale of agricultural products (Business Registration Act, s.4.1).

50. Persons registering under the Business Registration Act must complete the Enterprise Application Form for Registration issued by the Liberia Business Registry. This document includes comprehensive ownership and identity information for corporations (including business corporations, foreign corporations, and not for profit corporations), LLCs, partnerships, limited partnerships, trusts, and foundations, as well as foreign maritime entities (under the terms specified above). It requires identifying information on owners, registered agents, directors, incorporators, shares and share holders, trustees, donors, foundation assets, secretary and auditor, and partners. The form must be accompanied by evidentiary documents including, for instance, articles or certificate of incorporations, notary certificates, articles or instruments of amendment, dissolution, and merger or consolidation. Where there

are changes to the information provided in the form, this information must be updated with the Business Registry within 30 days (Business Registration Act, s.4.6). Therefore, for all entities for which this application is required under the Business Registration Act, ownership and identity information must be maintained.

51. The above requirements do not ensure the maintenance of ownership information in all cases; however, corporations are required to maintain a share register (as described below under *Company ownership and identity information required to be held by companies*). The existence of bearer shares and the absence of penalties for failure to maintain a share register are also described below.

LLCs

52. Limited liability companies (LLCs) are formed when one or more persons execute a certificate of formation with the Registrar which sets forth the name of the LLC, name and address of its registered agent, and any other matters members determine to include (Business Corporations Act, s. 14.2.1).

53. Any amendment to the certificate of formation must be filed with the Registrar. The manager of the LLC (or if there is no manager, then any member) must promptly amend the certificate of formation if s/he becomes aware that any statement in the certificate is false (Business Corporations Act, s. 14.2.2.2).

54. An LLC doing business in Liberia is also required to register with the Ministry of Commerce and Industry pursuant to the Business Registration Act (as described for corporations).

Registered Business Companies (RBCs)

55. The Registered Business Company Law (RBC Law) is part of the Associations Law. It provides that any two or more persons can form an RBC by signing a memorandum of association and registering with the Registrar (RBC Law, s. 70.3.1). An RBC may either be limited by shares, limited by guarantee or unlimited. An RBC can either have share capital or not. An RBC without shares is a registered business company limited by guarantee, whereby the liability of its members is limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the RBC in the event of it being wound up (RBC Law, s. 70.3.2.b).

56. The memorandum of an RBC must state the name of the RBC, its objects, and if it is limited (Sec. 70.4, RBC Law). If the RBC has share capital, the memorandum must also state the amount of share capital and each subscriber must write the number of shares s/he takes next to his/her

name and sign the memorandum. The memorandum can be altered by special resolution which must be registered one month after the date on which the alteration was passed (RBC Law, s. 70.7). Therefore, information on the identity of the owners of an RBC with share capital would be available from the Registrar.

57. The Articles of Association must be signed by the subscribers to the memorandum and must specify the location of the principal office in Liberia, which is its registered office (RBC Law, s. 70.8). Where the RBC does not have a place of business in Liberia, the Articles must state who the registered agent is and the address of the registered agent shall be the address of the registered office of the RBC and the name of the registered agent must be included in the Articles (RBC Law, s. 70.8). For an RBC limited by guarantee and an unlimited RBC, the articles must state the number of members (RBC Law, s. 70.9.1). For an RBC not having share capital that has increased the number of its members beyond the registered number it must record the increase with the registrar within one month (RBC Law, s. 70.9). Notice of any change in the name or address of the registered agent must be provided to the Registrar within one month of such change.

58. An RBC must register the memorandum and articles with the Registrar along with a statement containing: the name, address and nationality of the first director(s) of the RBC (or the name and the address of the entity if the director is an entity) and the address of the principal office of the RBC in Liberia (RBC Law, s. 70.14). If the RBC does not have a place of business in Liberia, then it must include the name and address of the registered agent in Liberia. The effect of such registration is that the RBC will have limited liability (RBC Law, s. 70.15).

59. In addition, every RBC having share capital must file annual returns with the Registrar (RBC Law, s. 70.110). The return must state the names and addresses of all of the past and present members of the RBC and the number of shares held by each existing member. If a RBC has converted any of its shares into stock, the list must state the amount of stock held by each of the existing members. It must also specify which shares have been transferred since the date of the last return. The name and address of the registered agent must also be included on the return. An RBC that does not have share capital has to file an annual return including the name and address of the registered agent and the director and secretary (RBC Law, s. 70.111). The form prescribed for filing an annual return, the Certificate of Annual Return of a Registered Business Company, requires that a current list of the names and addresses of all past and present members and a copy of the share register, in the case of a company having a share capital. Therefore, an RBC that does not have share capital meets the same requirements as a company having share capital.

Information filed with Tax Authority

60. The following companies must file tax returns with the Liberian Revenue Agency: all resident corporations with taxable income regardless of source and all non-resident corporations having taxable income as its source in Liberia (Revenue Code, s. 201.c and s. 901.c). Different residence rules apply in respect of different entities. A company formed under Liberia's laws is resident for tax purposes in Liberia if it is managed and controlled in Liberia and if it undertakes the majority of its operations in Liberia. A company that is not formed under Liberia's laws is resident for tax purposes in Liberia if it undertakes some business activity in Liberia and has a majority (by vote or value) of direct or indirect shareholders, members, beneficiaries, or unit holders resident in Liberia (Revenue Code, s. 801.a). In both cases, exceptions are made for companies whose sole activities are related to owning and operating a vessel (Revenue Code, s. 801.b) and for companies that undertake specific, limited activities in Liberia *e.g.* maintaining a bank account or investing in stocks) (Revenue Code, s. 801.c and s. 801.e). A non-resident corporation, on the other hand, is any corporation that does not meet the residency tests described above during the tax year (Revenue Code, s. 802). A taxpayer is defined as a person subject to a tax imposed by the Revenue Code, or subject to a related obligation to pay interest, penalties or fees (Revenue Code, s. 10). Such return does not include ownership or identity information on the owners of the corporation.

61. In addition, every resident natural or legal person having a tax obligation in Liberia is required to obtain a Tax Identification Number (TIN) (Revenue Code, s. 53.a.).

*Company ownership and identity information required to be held by companies***Corporations**

62. Every domestic corporation is required to keep minutes of all meetings of all shareholders and the board of directors (Business Corporations Act, s. 8.1.1). For a domestic corporation with its principal place of business in Liberia, such records must be kept in Liberia. A domestic corporation is defined in the Act as one formed either under the Act, re-registered under the provisions of the Act, or under the laws of a foreign jurisdiction and domiciled into Liberia.

63. In addition, every domestic corporation must keep a record containing the names and addresses of all registered shareholders, the number and class of shares held by each and the dates when they respectively became the owner of the share (Business Corporation Act, s. 8.1.2). Any such corporation

that issues bearer shares must also maintain a record of all shares issued in bearer form, including the number, class and dates of issuance of the certificates (see *Bearer Shares* section below). Any shareholder has the right to inspect these books. In addition, any shareholder of record for at least six months preceding the request with the consent of at least 5% holders of shares may request an annual balance sheet and profit and loss statement (Business Corporation Act, s.8.6). However, there is no penalty in the Business Corporation Act for failure to keep a share register (see Section A.1.6 below).

LLCs

64. Although LLCs are not expressly required to keep a share register, this duty can be implied from the fact that each member of an LLC has the right (subject to reasonable standards that can be set forth by the manager or the members) to obtain from the LLC true and full information regarding the status of the business and the financial condition. In addition, each member has a right to the following:

- a copy of the LLC's tax returns for each year;
- a current list of the name and last known address of each member and manager;
- a copy of any written agreement and certificate of formation and amendments thereto;
- true and full information regarding the amount of cash;
- a description and statement of the agreed value of any other property or service contributed by each member and which each member has agreed to contribute in the future along with the date on which each became a member; and
- “other information regarding the affairs of the LLC as is just and reasonable” (Business Corporations Act, s. 14.3.5.1).

65. However, this requirement in the Business Corporations Act falls short of an express requirement to keep a register of members. As discussed above, LLCs that are doing business in Liberia (subject to the exceptions described above) are required to maintain updated ownership information but this will not cover all LLCs.

RBCs

66. An RBC must keep a register of members at its principal office. The register must include the names and addresses of the members (for an RBC with share capital this must include a statement of the shares held by each),

the date at which each person was entered into the register and/or ceased to be a member (RBC Law, s. 70.103). An RBC may also have share warrants to bearer in which case it must keep a separate register of share warrants (see *Bearer Shares* section below).

67. In addition, every RBC must have a secretary and at least one director (who cannot be the same person) (RBC Law, s. 70.137.1 and s. 70.139.1). Every RBC must keep at its principal office two additional registers: a register of company secretaries and company directors. For each, it must include the following: for an individual, the name (and former name), address, nationality (as well as nationality of origin); in the case of a legal entity, its registered name and the address of its registered or principal office (RBC Law, s. 70.144 and s. 70.145). Both registers must be kept open for inspection by members. In both cases, the RBC must send the information kept in the register to the Registrar within one month of any change.

Foreign corporations

68. As described above, a company, including a foreign company, that wishes to do business in Liberia must register with the Ministry of Commerce and Industry (see *Company ownership and identity information required to be provided to government authorities*). The registration procedure requires the company to provide detailed information on its shareholders and to update such information when it changes. However, this application procedure does not apply to any banking or insurance business, the practice of a profession, the practice of any occupation which the law requires to be licensed by a board or other body passing on the qualifications of the applicant, or the production or sale of agricultural products (Business Registration Act, s. 4.1).

69. A foreign financial institution must obtain a license granted by the Central Bank in order to do banking business or provide non-bank financial services as a business in Liberia (New Financial Institutions Act, Part II, s. 3(1)). This license application must include, amongst other requirements, authenticated copies of the instrument under which the entity to operate such a business, a statement of the address of the head office of the entity to operate such a business, the name and address of every member of its board and the name and address of its principal officers, financial statements and projections for five years, name and description of the location of the principal and other places of business in Liberia where it proposes to do business, and in the case of a mobile agency, the area to be served, sufficient and detailed information on the backgrounds, qualifications, experience and financial means of each shareholder holding at least five (5%) of the capital stock of the proposed financial establishment (New Financial Institutions Act, Part II, s. 4(1)). Financial institutions are subject to annual audits and must continuously establish that they fulfil the licensing requirements under

the act (New Financial Institutions Act, Part IV), including the requirements on the qualifications of shareholders. Foreign financial institutions licensed under the New Financial Institutions Act must receive the approval of the Central Bank of Liberia before transferring substantial parts of its assets or liabilities in Liberia, reducing its assigned capital in Liberia, altering its name as set out in its license, or undertaking banking operations other than the operation it is authorised to do so in its license. (New Financial Institutions Act, Part II, s. 10(1)). A penalty of LRD 500 000 and the closing down of the business, or the dismissal and removal of the offending officers of the business may be issued by the Central Bank if any requirement for banking or foreign exchange businesses without a license (New Financial Institutions Act, Part II, s. 13(1)).

70. Alien insurers (insurers formed under the laws of any country other than Liberia, not including those alien insurers writing or placing insurance policies on vessels documented under the provisions of the Maritime Law which are not exclusively engaged in coastwise Liberian trade, their liability, claims or cargos) which wish to do business in Liberia, must be approved by the Commissioner of Insurance (acting as the Chief Executive Officer of the Bureau of Insurance within the Ministry of Commerce and Industry) (Insurance Law, s. 2.1 and s. 2.3). The alien insurer must apply for an original certificate of authority to the Commissioner, setting out the name, location of home office, its principal office in Liberia, the kind(s) of insurance to be transacted, date of organisation or incorporation, country or state in which it was formed or organised, and be accompanied by a certified copy of its certificate to do business in Liberia, its corporate charter or articles of incorporation, its current bylaws, its principal officer or agent in Liberia, its financial statement as of the preceding December 31, documentary evidence that the insurer has the required minimum capital and surplus, and a cash deposit and/or bank guarantee (Insurance Law, s. 4.4). An annual report must be submitted by 31st March, and an annual independent audit is required (Insurance Law, s. 5.10). Penalty for violation of these terms is a fine of not less than LSD 500 nor more than LSD 2 500 (Insurance Law, s. 4.10). There is therefore a slight gap in availability of ownership information for foreign insurance companies that have a sufficient nexus to Liberia and the materiality of this gap should be examined in the Phase 2 review of Liberia.

71. Foreign corporations also cannot do business in Liberia without being authorised to do so under the Business Corporations Act. In order to be authorised, a foreign corporation must make an application to the Minister of Foreign Affairs as Registrar of Corporations setting forth the name of the corporation, the jurisdiction and date of its incorporation, the address of its principal office in the place under the laws of which it is incorporated, a statement of the business it proposes to do in Liberia, the city or town in Liberia where its office is to be located, the name and address within Liberia

of its registered agent and a statement that the registered agent is authorised to accept service of process, among other things (Business Corporations Act, s.12.3.1). This application, together with a copy of its Articles of Incorporation must be filed with the Minister (Business Corporations Act, s.12.4). To change any of the facts in the application or its Articles of Incorporation, the foreign corporation must file with the Minister within 30 days (Business Corporations Act, s.12.5.1).

Nominees

72. The Liberian authorities advise that nominee ownership is a common practice in Liberia. However, Liberia’s laws do not impose requirements either on entities or on the nominees themselves to know the identity of the owners of the shares. The AML law does not impose requirements on nominees directly. Rather, Section 15.107 of the Prevention of Money Laundering Law defines relevant financial business being carried on for the purposes of this legislation as deposit-taking business, investment business, insurance business, or any other financial business regulated by the Government of Liberia. This definition does not appear to cover persons by virtue of the fact that they provide nominee services. Where the nominee is otherwise a “relevant financial business” then they will generally be subject to customer due diligence rules (Prevention of Money Laundering Law, s.15.107) and would be required to maintain information on the person for whom they hold the shares. Where the nominee is not a “relevant financial business” then no such due diligence rules would apply. This represents a gap in the availability of ownership and identity information. It is noted that, Liberian authorities indicate that the definition of “relevant financial business” is very broad and would cover nominees (and trustees). However, the language of the statute is not at all clear in this regard.

Conclusion

73. All domestic corporations and RBCs must maintain a register of members. In addition, companies doing business in Liberia (whether domestic or foreign with the exception of foreign insurance companies) must generally, pursuant to the General Business Law, provide and update ownership information. LLCs that do not do business in Liberia are not subject to an express requirement to maintain ownership information. Finally, there is no clear requirement for a nominee to maintain information on the owner for whom s/he holds the share, therefore information on the owners of shares held by nominees may not be available. In addition, the issuance of bearer shares and share warrants to bearer are permitted and appropriate penalties for failure to maintain information do not apply in all cases (see sections A.1.6 and A.1.2, below).

Bearer shares (ToR A.1.2)

74. Shares may be issued by a corporation in bearer form, provided that the articles of incorporation prescribe the manner in which any required notice is to be given to holders of bearer shares (Business Corporation Act, s. 5.8.). However, there is no mechanism to ensure that information on the owners of bearer shares is available. This represents a significant gap in the availability of information on bearer shares.

75. Additionally, an RBC may issue share warrants to bearer if it is authorised by its articles to do so. The bearer of such a warrant is entitled to the shares specified in the warrant and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant. A share warrant entitles its bearer to the shares specified on the warrant. It may be transferred by delivery of the warrant (RBC Law, s. 70.82).

76. An RBC that issues share warrants to bearer must keep a register of share warrants, which must include a statement of the shares represented by each warrant, with the number of each share, the date each warrant was entered into the register and the date the warrant was cancelled (RBC Law, s. 70.104). When the bearer of the share warrant surrenders the warrant, s/he is entitled to have his/her name entered into the register of members. There is no mechanism to ensure that the RBC would have knowledge of the owners of share warrants until the warrant is cancelled. This represents a gap in the availability of information on the owners of RBCs with share warrants to bearer.

77. The Business Corporation Act permits corporations to issue bearer shares only if the corporation's Articles of Incorporation permit issuance. As many corporations include the right to issue both Registered and/or Bearer shares, it is not known how many bearer shares have been issued. Liberian authorities indicate that a number of corporations have amended their Articles of Incorporation to remove the right to issue bearer shares, often citing the inability to open or maintain a bank account. In addition, Liberian authorities indicate that there are no Registered Business Companies authorised to issue share warrants to bearer.

Partnerships (ToR A.1.3)

78. The chapter in the Associations Laws regarding partnerships is referred to as the Partnership Act. The law provides for the formation of both general and limited partnerships (LPs). According to this Act, a partnership is an association of two or more persons to carry on as co-owners a business for profit. With a limited partnership, membership of the partnership is one or more general partners and one or more limited partners (Partnership Act, s. 31.1). All partnerships must be formed by written agreement signed by each partner (Partnership Act, s. 30.49).

Ownership and identity information required to be provided to government authorities

79. In order to form a general partnership, either the partnership agreement or a memorandum of partnership stating the name of the partnership and the character of the business it will undertake must be filed with the Registrar of Deeds of the county in which the principal office of the partnership or its registered agent is located within 90 days of its formation (Partnership Act, s. 30.49).

80. An LP is formed when two or more persons sign and acknowledge a certificate containing the limited partnership agreement and file it with the Registrar of Deeds in the county where the principal office of the LP or registered agent is located (Partnership Act, s. 31.2). The certificate must contain the following, among other things: the name and address of the LP, the character of the business, the name and place of residence of each partner, designating general and limited partners, and the amount of cash and a description and agreed value of other property contributed by each partner (Partnership Act, s. 31.2).

81. Additional limited partners may be added by filing an amendment to the original certificate with the Registrar (Partnership Act, s. 31.8.). In addition, the partnership certificate must be amended when there is a change in the name of the partnership or in the amount or character of the contribution of any limited partner, when a limited partner is substituted or admitted or when a general partner is admitted, retires, dies or becomes disabled as well as if there is any change in the character or business of the partnership or the location of the principal place of business. The certificate must also be amended if there is a false or erroneous statement in it (Partnership Act, s. 31.24.2). Failure to comply with these rules may render the partners liable to third parties for damages in a civil action; however there is no express penalty for failure to register or to update such information (see Section A.1.6 below).

82. Every partnership (both general and limited) must have a registered agent for service of process, and the registered agent's name and address must be designated in the partnership agreement or memorandum of partnership. For a partnership with a place of business in Liberia, the registered agent must be a resident domestic corporation having a place of business in Liberia or a natural person who is a Liberian resident with a business address in Liberia. For a partnership that does not have a place of business in Liberia, the registered agent must be a domestic bank or trust company (Partnership Act, s. 30.49.4 and s. 31.2.4).

83. Further, the Revenue Code requires that every resident partnership must file an income tax return, and the information provided in the return must

include the name, address and telephone number of each partner, as well as a statement of each partner's share of the partnership income. For all resident partners it must also include the TIN of each partner (Revenue Code, s. 901.b).

84. Partnerships carrying on business in Liberia are also subject to the General Business Law, with the explicit exception of certain agricultural partnerships and professional partnerships (as per above, the General Business law also provides exceptions for banking or insurance business and those practicing an occupation which must be licensed by a board or other body passing on the qualification of the applicant) (Business Registration Act, s.4.1). Such partnerships that wish to do business in Liberia, whether formed under the laws of Liberia or not, must be registered with the Ministry of Commerce and Industry before beginning business operations in Liberia. The application must include a copy of the partnership agreement and a statement of the nature and business to be conducted, which should be executed and acknowledged by all the partners (Business Registration Act, s.4.3). Under Section 4.6, notification of changes must be given within 30 days. Further, the legislation provides that no person may conduct business under assumed name (Business Registration Act, s.5.1).

Ownership and identity information held by the partnership

85. Under the Associations law, partnerships formed under Liberian law must have a written partnership agreement signed by all partners (Partnerships Act, s.30.49). Where this rule is not complied with, a partnership does not exist under Liberian law (Partnerships Act, s.30.6.2). In addition, general and limited partners have a “right to” have the partnership books kept at the principal place of business of the partnership and to inspect and copy the books. They also have a right to have on demand “true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable” (Partnership Act, s.31.10.1). The names of all partners would be included in a formal account of the partnership affairs. As described above, an LP is also required to file a certificate to the Registrar.

Conclusion

86. All partnerships formed under Liberian law must have a written partnership agreement signed by each partner. All partnerships doing business in Liberia are required to register pursuant to the General Business Law. The registration form includes the signatures of all of the partners; therefore the names of all partners would be available and this information must be amended when there is a change in ownership. In addition, all partnerships with taxable income in Liberia must file an income tax return containing

identity information on all of the partners. Finally, an LP must register pursuant to the Partnership Act and provide the Registrar with the name and address of each partner. This information must be amended when there is any change in ownership. Therefore, ownership and identity information would be available.

Trusts (ToR A.1.4)

87. Trusts can be formed under Liberian law and there is nothing to prevent a person in Liberia from acting as a trustee for a foreign trust.

88. Liberia's General Construction Law, 1956 Code 15:40 provides that, except as modified by laws in force, the common law and usages of the courts of England and of the United States, as set forth in case law and in authoritative treatises, apply and are deemed as Liberian law. Liberian courts have consistently held that where Liberian statutes are silent, the common law is controlling (*Gio et al. v. Republic*, 17 LLR 681 (1966) and *Arnous v. Firestone Plantations Company*, 37 LLR 785 (1995)).

89. The Registered Trust Law provides for the process and mechanism for the registration of a trust. Where a trust is registered, the law imposes duties upon the trustees and others associated with the trust. While Liberia has not enacted a law that sets out a uniform trust formation process, there are various laws in Liberia which deal with and allude to the formation and operation of trusts (including Decedents Estates Law, Civil Procedure Law, the Business Corporation Act and the Revenue Code).

Information provided to government authorities

90. The Registered Trust Law provides that a deed of trust is to be registered when it is required by the deed by which it is established or where in the opinion of the trustee it is in the best interest of the trust or settlor to do so and the terms of the deed of trust do not preclude registration (Sec. 50.3, Registered Trust Act). The Liberian authorities advise that although the trust law does not mandatorily require the registration of trust, the common practice in Liberia historically has been that once a trust was formed under the laws of Liberia it subjected itself to registration. In choosing to register, a trust officialises the trust and provides the necessary protection and added legitimacy in the event of a dispute, litigation or query by public officials. The practical implication of the jurisdiction's reliance on common practice for a trust to subject itself to registration on effective EOI should be closely monitored in the Phase 2 review of Liberia.

91. If a trustee chooses to register a trust pursuant to the Registered Trust Law, s/he does so by filing an application with the Registrar which must

include the name of the trust, the date of its creation, amount of the initial settlement, names of the trustees, name and address of the registered agent in Liberia and the date of its registration (Registered Trust Act, s. 50.5). This information will be kept by the Registrar. In addition to the application, a confirmation in writing that the person making the application is the trustee must be included, with a specimen of the signature of each trustee as well as the name and address of the registered agent appointed in respect of the trust (Registered Trust Act, s. 50.3). The trustee has a duty to register any change to the application with the Registrar within one month after the date upon which the change is made (Registered Trust Act, s. 50.6).

92. If a trustee chooses to register a foreign trust in Liberia, such registration, without more, does not change the fact that the trust is domiciled in or subject to the laws of a jurisdiction other than Liberia (Registered Trust Act, s. 50.3.3). However, once registered, the trust is obligated to adhere to all relevant Liberian laws if its activities fall within the ambit of Liberia's characterisation of conducting or doing business or any conduct or income generated by it which is subject to taxation by the Liberian authority.

93. A trust that is registered in Liberia must file annual returns with the Registrar on the anniversary of registration (Registered Trust Act, s. 50.7). The annual return must contain all of the application information, kept up to date, and be signed by the trustee.

94. Further, the Revenue Code requires that every trust that has taxable income in Liberia must file an income tax return for the taxable period (Revenue Code, s. 901(a)). A trust that is resident in Liberia is taxable on income from whatever source derived whether within or without Liberia, whereas a non-resident trust is only taxable on income from sources within Liberia (Revenue Code, s. 201(c)). A trust is resident in Liberia if (a) one of its trustees is resident in Liberia or if (b) the trust undertakes some activity in Liberia and a majority of the beneficiaries of the trust are resident in Liberia (Revenue Code, s. 801(a)). The income tax return for the trust must include the name, address and phone number of each beneficiary as well as a statement of each beneficiary's attributable income. If any beneficiary is resident in Liberia it must also include the TIN of the beneficiary (Revenue Code, s. 901(a)). This return would not include the identity information settlor of the trust.

95. Therefore, the Revenue Code requires a trust with taxable income in Liberia to file a tax return including identity information on the beneficiaries, and the identity of the trustee(s) is also relevant in order to fulfil Liberian tax obligations. However, this would not include similar information on the settlor. Where the trust is not resident in Liberia and the trust has no Liberian source income, ownership and identity information on a trust would not be required to be maintained under the tax law.

Information kept by the trust itself

96. As indicated above, all common laws of the US and England are deemed Liberian Law where there does not exist any statutory or other law of Liberia to the contrary. Therefore, as Liberian law is silent on many of the issues regarding trusts, the common law is applicable.

97. Under the common law of the United States, in order to fulfil a fiduciary duty, a trustee must generally know the identity of any other trustee, the settlor(s) and the beneficiaries. A trustee may be liable for damages for a breach of his/her fiduciary obligation if, for example, the lack of information hinders the trustee's ability to make appropriate decisions and/or provide required communications to beneficiaries (United States Restatement of Third, Trusts, s.32). A trustee also has an inherent duty of loyalty to the beneficiaries under the common law, which can only be discharged if the beneficiaries are known to the trustee (United States Restatement of Third, Trusts, s. 78).

98. The Liberian Supreme Court has also referred to treatises on American law regarding the principle that for a trust to be valid, the beneficiary or beneficiaries must be sufficiently identifiable, definite, or ascertainable so that the trust may be enforced, and a trust will fail whenever the designation of the beneficiaries named in the trust instrument is too vague and indefinite (76 American Jurisprudence 2d, Chapter II(C)(2), s. 53).

99. In addition, pursuant to UK common law, trustees are under a fiduciary duty to keep accounts of the trusts and to allow the beneficiaries to inspect them as requested (*Pearse v. Green* (1819) 1 Jac & W 135). Further, trustees should obtain “good receipt” from beneficiaries when they distribute trust property (*Evans v. Hickson* (1861) 30 Beav 136 and *Re Hulkes* (1886) 33 Ch D 552). In summary, there are a number of obligations that apply under the trust law of the United States and the United Kingdom that ensure the maintenance of identity information concerning trustees, settlors and beneficiaries of a trust. The applicability of these obligations under Liberian law is clear given both the statutory rules and the practice of the courts in relying on US and UK precedent.

Information held by service providers

100. Trust service providers are not specifically covered by Liberia's AML law. Rather, Section 15.107 of the Prevention of Money Laundering Law defines relevant financial business being carried on for the purposes of this legislation as deposit-taking business, investment business, insurance business, or any other financial business regulated by the Government of Liberia. Liberian authorities indicate that the definition of “relevant financial business” is very broad and would cover trustees. However, the language of

the statute is not at all clear in this regard. This definition does not appear to cover persons by virtue of the fact that they provide trust services. Where the trustee is otherwise a “relevant financial business” then they will generally be subject to customer due diligence rules (Prevention of Money Laundering Law, s. 15.107) and would be required to maintain information on their customer. However, the AML law does not specify what information a trustee must obtain in relation to a trust to satisfy the service provider’s customer due diligence obligations.

Foreign Trusts

101. A foreign trust that has a trustee resident in Liberia is resident for Liberian tax purposes (Revenue Code, s. 801(a)(3)) and must file a tax return if the trust has taxable income from any source (section 901(a)). The return includes the name, address and phone number of each beneficiary as well as a statement of each beneficiary’s attributable income. If any beneficiary is resident in Liberia it must also include the TIN of the beneficiary (Revenue Code, s. 901(a)). Therefore, the identity of the trustees and the beneficiaries must be maintained in order to fulfil the trust’s Liberian tax obligations. However, there are no particular rules regarding the maintenance of information on the identity of the settlor of the trust.

Conclusion

102. Generally, the common law of the United States and England relating to trusts apply in Liberia, and there are a number of common law rules that require the trustee of a trust to maintain information regarding the identity of the settlors, trustees and beneficiaries. The Revenue Code requires a trust with taxable income in Liberia to file a tax return including identity information on the beneficiaries, and the identity of the trustee(s) is also relevant in order to fulfil Liberian tax obligations. Where the trust is not resident in Liberia and the trust has no Liberian source income, ownership and identity information on a trust would not be required to be maintained under the tax law. While domestic trusts would be covered by Liberian trust law, foreign law trusts would not necessarily be subject to similar requirements and it is not clear whether the AML laws treat a trustee as a relevant financial business in Liberia and, even then, the law does not expressly require a relevant financial business to know the identity of the settlor or beneficiaries of a trust. This is a gap in the availability of information on trusts and Liberia should amend its law accordingly. Finally, it is conceivable that a trust could be created under the laws of Liberia which has no other connection with Liberia. In that event, there may be no information about the trust available in Liberia.

Foundations (ToR A.1.5)

103. The Private Foundations Law is contained within Section 60 of the Associations Law. Private foundations in Liberia are legal entities. Assets in a private foundation cease to be the assets of the donor, and belong to the foundation itself, and are not assets of the beneficiaries unless distributed pursuant to the Memorandum of Endowment of the foundation.

104. The object of a private foundation is not limited to charitable purposes. However, a private foundation is prohibited from carrying on a trade or business, being a partner in either a general or limited partnership, a shareholder or member in a company other than a limited company, a director of a company, carrying on banking or insurance business, or carrying on any activity in Liberia which requires a license or authorisation under the laws of Liberia in the absence of such license. In the course of management of its assets, a private foundation may do such things as are necessary for their proper administration, including buying and selling assets (Private Foundation Law, s. 60.4).

Information provided to the Registrar

105. A private foundation is created either by will or by executing a memorandum of endowment (Private Foundation Law, s. 60.5). Creation of a private foundation is not complete until the memorandum is filed with the Registrar and a registered agent is named. Similarly, in the case of a will, until the will has been read, accepted, probated and registered as prescribed by law to be legally acceptable. This means that a private foundation created under a will could only be completed, where there are no objections to the will, after the mentioned steps have been completed (the Decedents Estates Law provides for the probation and registration of wills).

106. The memorandum of endowment must include: the name of the foundation, name and address of the founder (where the founder is a legal person, the number and place of registration of the legal person), registered address of the foundation in Liberia and the name and address of the registered agent, the purpose of the foundation, a statement of the assets of the foundation, the designation of a beneficiary or a body by which the beneficiary is to be ascertained, and the name and address of the secretary of the foundation, among other things (Private Foundation Law, s. 60.6).

107. A private foundation must have at least three officers whom the donor appoints (Private Foundation Law, s. 60.10). A beneficiary cannot be an officer. The name and address of the officers must also be included at registration. An officer is responsible for notifying the Registrar as to any change in status within 7 days of any such change. The secretary of the foundation has an obligation to do so as well. A duty of the secretary is to accept

service of process for the foundation. Therefore, the secretary must have an address of record for the foundation to which all communications may be sent and process may be served. Notice of any change in address must be given within 28 days of the date of any change and the Registrar must enter this into the Index (Private Foundation Law, s. 60.13). A foundation may also have a supervisory board, but it is not required to do so.

108. Every foundation must make an annual return to the Registrar on the anniversary of its registration date. The annual return must restate and confirm the information provided in the original application (Private Foundation Law, s. 60.56).

Information kept by the foundation itself

109. Private foundations are required to keep minutes of all meetings (Private Foundation Law, s. 60.38). Such books must be kept at the office of the secretary of the foundation and may be inspected by donors and officers at any time.

110. The beneficiaries of a private foundation have a right, amongst other things, to certain information, which includes information on the fulfilment of the objects of the foundation as well as a copy of the memorandum of endowment, any management articles and any audit report or books of account (Private Foundation Law, s. 60.41).

111. The foundation is required to keep at its registered address records of all of the information that was provided to the Registrar, and must ensure that within 7 days of any change to any of this information, the change is recorded in the foundation's register and then within 28 days will ensure that the change is provided to the Registrar (Private Foundation Law, s. 60.55).

Conclusion

112. Ownership and identity information on the beneficiaries, secretary, founder and officers of a private foundation is available, as it is required to be provided upon registration and updated within 28 days of any change. The foundation itself is also required to maintain this information.

Other relevant entities and arrangements

Foreign Maritime Entities

113. Only Liberian companies can register a vessel in the Liberian shipping registry. One exception to this is that a foreign company can register as a foreign maritime entity. Any foreign entity or arrangement (including a trust,

partnership, or corporation) whose formative documents grant it the power to own or operate vessels and has the capacity under the law of the jurisdiction of creation to sue and be sued in the name of the entity or its legal representative may apply to the Registrar, which is the Ministry for Foreign Affairs, for registration as a foreign maritime entity in Liberia (Business Corporation Act, s. 13.1.1). Registration grants the entity the power to own and operate vessels registered under the laws of Liberia and to do all things necessary to conduct the business of ownership and operation of Liberian-flag vessels, to have one or more offices in Liberia for that purpose, and to hold, purchase, lease, mortgage and convey real and personal property in Liberia, subject to the organic laws of Liberia (Business Corporation Act, s. 13.2). However, the foreign maritime entity cannot conduct any other business except in furtherance of the conduct, ownership and operation of the vessel.

114. The application as a foreign maritime entity must include the name of the entity, its legal character, the jurisdiction and date of its creation, whether it has the power to own or operate vessels, whether it has the capacity to sue or be sued, the address of the principal place of business of the entity (if not in the jurisdiction of its creation, either the address of its place of business or the name and address of its representative within that jurisdiction); the name and address of the persons currently vested with management of the entity; name and address within Liberia of the registered agent; and the title of the person authorised to execute the document. Along with this application, the entity must include a copy of its articles of formation. Where the articles of formation include identity information of its owners, that information will be available to the Ministry of Foreign Affairs and the Liberian Maritime Authority (Business Corporation Act, s. 13.1).

115. If there is any change in the address of the place of business of the entity or its legal representative included in the application, written notice of such change must be filed with the registered agent (Business Corporation Act, s. 13.3.1). Additionally, if any instrument creating the entity is amended, a copy of such amendment must be filed with the registrar.

116. A foreign maritime entity is not resident for tax purposes in Liberia if it carries on no activities in Liberia other than: securing or maintaining registry of a ship, owning a Liberian flag vessel, or conducting activities in Liberia solely related to the operation, chartering or disposition of a ship other than for transportation exclusively within Liberia (Revenue Code, s. 801(b)) A foreign maritime entity that engages in conduct which could be considered as doing business in Liberia will be deemed to be subject to the relevant provisions of the Revenue Code, but otherwise there are no filing or registration requirements under the Revenue Code.

Conclusion

117. Ownership and identity information on a foreign maritime entity would not be available in Liberia unless the laws of the foreign jurisdiction where it is formed require that its articles of incorporation or formation include such ownership information.

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

118. Jurisdictions should have in place effective enforcement provisions to ensure the availability of information, one such possibility among others being sufficiently strong compulsory powers. All entities and arrangements carrying on business in Liberia must register and provide ownership information to the Ministry of Commerce and Industry (Business Registration Act, s.4.2). Any person violating this rule is subject to a fine of not less than USD 10.00 and not more than USD 1 000.00 or imprisonment not less than one month and not more than one year or both (Business Registration Act, s.4.2). The Assistant Minister may also deny registration or renewal of registration to any business if the application contains false or fraudulent information (Business Registration Act, s.4.10). For entities and arrangements not carrying on business in Liberia the existence of penalties for failure to maintain ownership and identity information do not in all cases ensure the availability of information.

Corporations

119. There is no penalty pursuant to the Associations Law for failure of a corporation to keep a share register. However, shareholders have a right to inspect the books or records, including the share register. If the company refuses a valid request to inspect the books, the shareholder can use the courts to compel the company to comply (Business Corporation Act, s. 8.2.3). The same is true for a director or other officer of the corporations. A foreign corporation doing business in Liberia has the same requirement to disclose information (Business Corporation Act, s. 12.11). However, this is not the equivalent of an express penalty for failure to keep a share register and may lead to a gap in the availability of this information.

120. Although not expressly stated as a penalty for the failure of a corporation to register with the Registrar, a corporation is not a legal entity with limited liability until it does so.

LLCs

121. As described above, there is no express requirement under the Associations Law for an LLC to maintain a register of members. However, each member has a right to a current list of the name and last known address of each member and manager (Business Corporation Act, s. 14.3.5.1). Where the LLC fails to provide the list, the member would have a cause of action before the courts. An LLC is formed at the time of filing of the certificate of formation or at a later date specified in the certificate of formation and where there has been a substantial compliance with the requirements of the law (Business Corporation Act s. 14.2.1). There is no express penalty for failure to register an LLC.

122. If an LLC fails to pay the annual registration fee or to maintain a registered agent for a period of one year, the Registrar will notify the LLC that its certificate of formation will be revoked unless this has been remedied within 90 days (Business Corporation Act, s. 14.8.2). If this has not been remedied, the Minister of Foreign Affairs will issue a proclamation declaring that the certificate of formation of the LLC has been revoked and the company is dissolved as of the date stated in the proclamation.

RBCs

123. RBCs are required to keep a register of members as well as a register of secretaries and directors (RBC Law, s. 70.103, s. 70.144, and s. 70.145); and members are vested with the right to inspect and require copies of all such registers. However, there is no express penalty for failure to do so.

124. RBCs are required to have a registered agent at all times. An RBC that fails to maintain a registered agent will be compulsorily dissolved or its authority to do business revoked (Business Corporation Act, s. 3.1.1(c)). An RBC is also required to register with the Registrar, and provide ownership information.

125. RBCs must register their memorandum and articles with the Registrar. The effect of this registration is limited liability for the company. RBCs with share capital are also required to file an annual return which includes ownership information. If an RBC fails to comply with the annual return requirement, the Register may regard such failure as reasonable cause to believe that the RBC is not carrying on business or in operation (RBC Law, s. 70.112.3).

126. The RBC Law also vests in the members the right, on a failure or refusal by the RBC to furnish such information, including because there is no register, to seek court intervention (RBC Law, s. 70.145). Where there is such court intervention the statute empowers the court to enforce compliance with the request and where there is error to order the rectification of the

errors and to award any damages suffered by the requesting parties as a result of the default or error by the RBC in maintaining an accurate register of the members, secretaries and directors (RBC Law, s. 70.107 and s. 70.288). There is a penalty in the RBC Law where an RBC knowingly and with an intent to deceive either falsely represents the financial position of the company, withholds information relating to the financial position of the company or falsifies any document to be delivered to the Registrar or required by law (RBC Law, s. 70.287).

Partnerships

127. Under the Associations law, Partnerships formed under Liberian law must have a written partnership agreement signed by all partners (Partnership Act, s.30.49). Where this rule is not complied with, a partnership does not exist under Liberian law (Partnership Act, s. 30.6.2).

128. Every Liberian partnership is required to have a registered agent. Where the partnership does not have a place of business in Liberia, then the registered agent must be a bank or trust company. Failure to maintain a registered agent can result in the partnership being dissolved or its authority to do business or registration may be revoked (Partnership Act, s. 30.49.4(b)).

129. Limited partnerships are formed by agreeing to a partnership certificate and registering it with the Registrar. If the certificate of partnership contains a false statement, one who suffers loss by reliance on the statement may hold any party liable who knew the statement to be false, however there is no express penalty for failure to register such statement (Partnership Act, s. 31.6). While there is a requirement to update this information, there is no penalty for failure to do so.

130. With respect to those partnerships carrying on a business in Liberia, it is required under Section 4.2 of the Business Registration Act to be registered with the Ministry of Commerce and Industry before beginning business operations in Liberia, and any person violating the provisions of Chapter 4 of the Business Registration Act would be subject to a fine of not less than LRD 10.00 and not more than LRD 1 000.00 or imprisonment not less than one month and not more than one year or both (Section 4.2, Business Registration Act).

Trusts

131. Trusts are not required to be registered in Liberia, however, when they do register, certain requirements attach. For example, if the trustees of a registered trust fail to file the annual return, pay the registration fee or maintain a registered agent, the Registrar will send notice that the trust will be revoked unless this is remedied within 90 days (Registered Trust Law,

s. 50.8). If this is not remedied, the Registrar will issue a notice specifying the date of revocation. Further, a trustee may be liable for damages for a breach of his/her fiduciary obligation if, for example, the lack of information hinders the trustee's ability to make appropriate decisions and/or provide required communications to beneficiaries (see Restatement Third, Trusts s. 32).

Private Foundations

132. Private foundations are required to register and to file an annual return. In addition, a foundation is required to have a registered agent at all times. If a foundation fails to make the annual filing or maintain a registered agent for a period of two years, the Registrar will send notification to the foundation that its registration will be revoked unless this is remedied within 90 days (Private Foundation Law, s. 60.54).

133. In addition, if an officer, member of the supervisory board (if it has one), other supervisory person or an auditor of a private foundation knowingly and with intent to deceive either: falsely represents the financial position of the foundation to any person, withholds information relating to the financial position of the foundation or any matter regulated by the Law from any person or falsifies any document required to be prepared or delivered to the Registrar s/he is guilty of a felony of the second degree as defined in Chapter 50 of the New Penal Code (Private Foundation Law, s. 60.64).

Revenue Code

134. The Revenue Code contains requirements for partnerships, trusts and foundations to file an annual return that includes ownership information on the entity. In addition, companies with tax liability are required to file an annual return and pay the tax due, although they are not required to provide any additional ownership information along with the return.

135. A person who wilfully evades or attempts to evade tax under the Revenue Code (this including filing or causing the filing of a tax return or declaration that is false in a material way) commits a felony and is punishable upon conviction to a fine of up to LRD 200 000 and/or imprisonment for up to 5 years (Revenue Code, s. 90). A person who is required to withhold, collect, segregate, account for or pay any tax or other revenues and who knowingly fails to do so is guilty of a misdemeanour punishable upon conviction by a fine of up to LRD 50 000 and/or imprisonment for up to one year. (Revenue Code, s. 91(a)). In addition, the Revenue Code stipulates that a person who carries on business for which registration is required without having obtained the required license commits a misdemeanour, which upon conviction, and in addition other sanctions, that may be provide by law, is subject to a fine of not more than LRD 25 000, imprisonment for not more

than 30 days, or both, upon conviction (Revenue Code, s. 92). Consequently, where an entity or arrangement carries on a business in Liberia and fails to register under the Business Registration Act, a penalty may be imposed under the Revenue Code as well as the applicable penalties under the Business Registration Act.

AML laws

136. A person who carries on a relevant financial business without putting in place systems for identification and record-keeping, is guilty of an offense and liable on conviction to a penalty of: a first-degree felony, seizure of the proceeds and imprisonment for a period of not less than five years and not more than 10 years (Prevention of Money Laundering Law, s. 15.108.2)

Determination and factors underlying recommendations

Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Identity information on the owners of bearer shares and share warrants to bearer may not be available in relation to corporations and RBCs.	Liberia should take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares and share warrants to bearer in relation to corporations and RBCs.
There are no penalties for failure to maintain ownership information for corporations, LLCs, RBCs, or partnerships.	Liberia should introduce sanctions to ensure ownership information is introduced and maintained in relation to corporations, LLCs, RBCs or partnerships.
Ownership information on LLCs that are not doing business in Liberia and foreign maritime entities may not be available in all instances.	Liberia should introduce appropriate mechanisms to ensure ownership information on LLCs and foreign maritime entities is maintained and updated.
Nominees that are not financial services institutions are not required to maintain ownership and identity information in respect of all persons for whom they act as legal owners.	An obligation should be established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person.

A.2. Accounting records

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

General requirements (ToR A.2.1)

137. The *Terms of Reference* sets out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should; (i) correctly explain all transactions, (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, *etc.* and need to be kept for a minimum of five years.

138. The Revenue Code requires that every person with a tax obligation must maintain “books and records adequate to substantiate the tax due” (Revenue Code, s. 55). These books and records include a copy of all goods and services tax invoices, purchase orders, sales receipts, sales logs, invoices, bank statements (from Liberian and foreign banks, whether resident or nonresident), credit notes, and debit notes issued by the person, and accounting and other financial and related records specified in regulations (Revenue Code, s. 55(a) (2)). These invoices, receipts or notes a person generates must be serialised and created using a method that allows for production in duplicate, or in the case of a Goods and Services Tax invoice, in triplicate (Revenue Code, s. 55(a)(4)).

139. The Revenue Code sets the retention period for all books and records required to be maintained under Section 55 for 7 years after the end of the tax period to which they relate, regardless of the expiry of any limitation period for assessment (Revenue Code, s. 55(b)).

140. The penalty for failure to maintain adequate records is equal to 150 percent of any underpayment of tax that may have resulted from the lack of adequate recordkeeping (Revenue Code, s. 55(4)(e)). A person subject to the penalty for inadequate recordkeeping for three or more years within a five-year period or whose total understatement of tax for any year an amount equal to more than 50 percent of the tax due, shall, on conviction, be subject to a term of imprisonment for up to 4 years. Further, a person who refuses to cooperate with the Minister’s request for records, to inspect the person’s business premises, or to examine records at the business premise, is subject to a civil tax penalty of USD 50 000 per day of refusal, and a criminal penalty for non-cooperation.

141. However, the Revenue Code only applies to those persons having a tax obligation in Liberia. As described above under section A.1, non-resident

persons are generally only taxable on Liberian-source income. Moreover, the rules governing residence for tax purposes provide a number of exceptions that limit the scope of persons (whether formed under Liberian laws or foreign laws) that would be considered resident.

142. Therefore, the Revenue Code will not apply in many relevant circumstances, for example, where a Liberian company does not carry on activities in Liberia or have any Liberian source income. One example of this would be the case where a Liberian company is formed specifically in order to own a ship registered with the Liberian ship registry and otherwise does not have any connection with Liberia. These companies, and others that do not have tax obligations under Liberian law, will not be required to maintain records under section 55.

Corporations

143. Domestic corporations are required to “keep correct and complete books and records of account” (Business Corporation Act, s. 8.1). In addition, every domestic corporation shall keep minutes of all meetings of shareholders, of actions taken on consent by shareholders, of all meetings of the board of directors, of actions taken on consent by directors and of meetings of the executive committee, if any. A domestic corporation having its principal place of business in Liberia shall keep such books and records in Liberia. It is not entirely clear that this obligation would require the maintenance of accounting records to the standard and may represent a gap in the availability of accounting information to the international standard. There is no similar requirement for foreign corporations or for foreign maritime entities.

RBCs

144. RBCs are required to keep “proper books of account with respect to all sums of money received and expended by the RBC and the matters in respect of which the receipt and expenditure takes place, all sales and purchases of goods by the RBC and the assets and liabilities of the RBC” (RBC Law, s. 70.125). These records must be kept at the principal office of the RBC or at another place determined by the directors, but must be kept open to inspection by the directors at all times. RBCs must prepare a balance sheet and profit and loss account annually. Accounting records on RBCs would therefore be available to the standard. However, the Registered Business Company Law does not provide for penalties. With respect to an RBC’s making annual returns, the failure to do so would compel the Registrar’s office to believe that the registered business company is not carrying on business or is in operation (RBC Law, s. 70.112).

LLCs

145. Because each member of an LLC has a right to “true and full information regarding the status of the business and financial condition of the limited liability company” at any time, it is reasonable to assume that the LLC would be required to keep such records in preparation for such a request. Additionally, any member can ask for a copy of the LLC’s tax returns, true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member. However, this falls short of an express requirement to retain accounting records to the international standard.

Foreign Maritime Entities

146. There are no accounting record requirements for foreign maritime entities.

Partnerships

147. There is no express requirement in the Associations Laws for a general partnership to keep accounting records, however in some circumstances, including “whenever other circumstances render it just and reasonable” a partner has a right to a formal account as to the partnerships affairs (Partnership Act, s. 30.24). While this means that the partnership would likely have to keep accounting records in order to comply with such a request, this is not the same as an express requirement to keep accounting records in line with the international standard. Similarly, there is no express requirement for LPs to keep records of account, however a partner has the right to “have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable” (Partnership Act, s. 31.10). Again, this falls short of an express requirement to keep records to the international standard.

148. However, general partnerships that are carrying on business in Liberia are required to keep accounting records in accordance with the standards as stipulated by the Revenue Code.

Trusts

149. As per above, Liberia’s AML law, the Prevention of Money Laundering Act, applies to banks and “any other financial business regulated by the Government of the Republic of Liberia”, therefore the requirements of this law would apply to a relevant financial businesses (defined as a deposit-taking business, investment business, insurance business, or any other financial business regulated by the government of the Republic of Liberia) acting as a trustee in

Liberia for a resident or foreign trust (Prevention of Money Laundering Law, s. 15.107).

150. The law provides that covered entities must maintain record-keeping procedures in accordance with the AML Law; these include a record containing details relating to all transactions carried out by that person in the course of relevant financial business (Section 15.115, Prevention of Money Laundering Act). However, this does not meet the standards particularly as concerns the requirement to maintain records showing the financial position of the trust to be determined with reasonable accuracy, nor is there a clear requirement in Liberian law that a trustee be a financial business as defined by the AML Law.

151. Under common law, trustees are under a fiduciary duty to keep accounts of the trust and to allow the beneficiaries to inspect them as required (Pearse v. Green (1819) 1 Jac & W 135). Further, trustees should obtain “good receipt from beneficiaries when they distribute trust property (Evans v Hickson (1861) 30 Beav 136 and Re Hulkes (1886) 33 Ch D 552). These requirements are not specific enough as required by the standards.

Private Foundations

152. The Private Foundations Law requires that the officers of a private foundation hold a meeting within 18 months of registration and at least once per year wherein they present an income and expenditure account for the period (Private Foundations Law, s. 60.43). The officers of the foundation must also present an annual balance sheet that details “the state of the foundation’s affairs in relation to the achievement of the objects of the foundation.” The balance sheet must contain a summary of the assets and liabilities of the foundation together with “such particulars as are necessary to disclose the general nature of the liabilities and the assets of the foundation and shall state how the assets have been arrived at”. An officer who fails to comply with the provisions of this section is in default. However, it is not clear that such records would correctly explain all transactions in line with the international standard.

Underlying documentation (ToR A.2.2)

153. The Revenue Code requires entities with a tax obligation to retain the following: a copy of all goods and services tax invoices, purchase orders, sales receipts, sales logs, invoices, bank statements, credit and debit notes as well as customs documentation relating to imports or exports. This is consistent with the underlying documentation requirement in the international standard. Therefore, for entities with a tax liability in Liberia, underlying documents would be available.

154. There are no requirements to retain underlying documents in the Associations Laws with regard to any entity (corporations, RBCs, LLCs, foreign maritime entities, partnerships or private foundations); therefore any entity without a tax obligation would not be requirement to maintain underlying documents at all. This falls short of the international standard in this regard.

Document retention (ToR A.2.3)

155. The Revenue Code requires that books and records that must be maintained must be kept for 7 years from the end of the tax period to which they relate. This is consistent with the international standard; however, as discussed above, this would only apply to entities with a tax liability in Liberia.

156. There is no document retention requirement in the Associations Law. Liberia advises that the duty for some entities to produce a full accounting of the state of the business to a member or partner is ongoing; however there should be an express requirement in the law to retain accounting information.

Determination and factors underlying recommendations

Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Requirements for entities to maintain accounting records are not consistent with the international standard.	Liberia should ensure that all relevant entities and arrangements keep records that correctly explain all transactions, enable the financial position of the entity to be determined with reasonable accuracy at any time and allow financial statements to be prepared.
Requirements to maintain underlying documents to the standard are not in place for entities without Liberian tax liability.	Liberia should require all relevant entities and arrangements to keep underlying documentation in respect of all transactions.
Requirements to maintain accounting records for a minimum of 5 years are not in place for entities without Liberian tax liability.	Liberia should impose clear requirements for all relevant entities and arrangements to keep records for a minimum of five years.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

157. Banking information should be available for all account holders and should include all records pertaining to the accounts as well as to related financial and transactional information.

158. The AML laws apply to all deposit-taking, investment and insurance businesses as well as any other financial business regulated by the Liberian Government or prescribed by the Minister of Finance (Prevention of Money Laundering Act, s. 15.107).

159. The law requires that a covered entity keep a record “containing details relating to all transactions carried out” in relation to a person for whom evidence of identity was obtained because a business relationship was formed (Prevention of Money Laundering Act, s. 15.115).

160. The covered entity must also keep the evidence of that person’s identity, indicating the nature of the evidence. These records must be maintained for a period of at least five years from the date on which the activities taking place in the course of the transaction were completed.

Determination and factors underlying recommendations

Determination
The element is in place.

B. Access to Information

Overview

161. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Liberia's legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information.

162. The Liberian authorities have clear powers to access information, including bank and accounting information, pursuant to the Revenue Code. It also has sufficient compulsory powers to ensure that the information is provided, including search and seizure authority in some cases. There are no rights and safeguards in place that would unduly delay access to information.

163. Liberia's access powers are not restricted by any bank secrecy provisions; however, there is a secrecy provision in the Private Foundations Act that may serve to restrict access to ownership, identity or accounting information on a private foundation which should be remedied by Liberia.

164. The attorney-client privilege standard in Liberia is overbroad and covers more than just communications produced for purposes of seeking or providing legal advice or for use in existing or contemplated legal proceedings.

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).

Bank, ownership and identity information (ToR B.1.1) and accounting records (ToR B.1.2)

165. Competent authorities should have the power to obtain and provide information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees, as well as information regarding the ownership of companies, partnerships, trusts, foundations, and other relevant entities including, to the extent that it is held by the jurisdiction’s authorities or is within the possession or control of persons within the jurisdiction’s territorial jurisdiction, ownership information on all such persons in an ownership chain.⁷ Competent authorities should also have the power to obtain and provide accounting records for all relevant entities and arrangements.⁸

166. The Liberian authority’s powers to access ownership and identity information comes from Section 55(d) of the Revenue Code, which provides that the Minister may request, demand and collect “from any person, natural or legal, within the Republic of Liberia or from the head of an agency of the Government, all information necessary to enable the Ministry to effectively carry out its lawful function”. Any person who is required to keep records pursuant to the Revenue Code must make such records as well as the business premises of the person available and open to inspection by the Ministry upon request (Revenue Code, s. 55(d)(2)).

167. The Minister of Finance is the Competent Authority pursuant to Liberia’s treaties. In addition, the Executive Law sets out the duties of the Minister of Finance, which include: to effectively and efficiently manage the financial resources of the Republic; to administer the revenue program of the government, including supervision of the collection of revenues; and “generally to perform all such services relating to the government finances as are imposed by law”, among other things (Executive Law, s. 21.2). Further, the Revenue Code provides that an officer, agent or employee of the Ministry of Finance may disclose information in a tax return in certain enumerated circumstances, including to the tax authorities of a foreign country in

7. See OECD Model TIEA Article 5(4).

8. See JAHGA Report paragraphs 6 and 22.

accordance with an international treaty (Revenue Code, s. 54(b)(4)). Finally, Section 3(e) of the Revenue Code says that “[w]here an international agreement ratified by the Legislature has entered into force and establishes rules inconsistent with those provided by this Code, the international agreement takes priority over and supersedes this Code to the extent of the inconsistency.” It is therefore clear that a “lawful function” of the Ministry of Finance is exchange of information pursuant to its international treaties; therefore the Minister can exercise the Section 55 powers to obtain information upon request of a treaty partner.

168. As the access powers in the Revenue Code do not distinguish between ownership and identity information and accounting information, the authorities would also have access to accounting information to the same extent as ownership and identity information. The authorities could also use the Revenue Code to access bank information and there do not seem to be any limitations on this power (see Section B.1.5, *Bank Secrecy* below).

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

169. The Liberian authorities are able to access information without regard to whether they need the information for their own purposes. Pursuant to the Revenue Code, as long as the Minister seeks information in furtherance of a “lawful function” of the Ministry, the information can be obtained (see Section B.1.1. above). As discussed above, a lawful function includes carrying out treaty obligations. Therefore, the authorities could access information regardless of the fact that they do not need the information for their own purposes.

Compulsory powers (ToR B.1.4)

170. Pursuant to the Revenue Code, any person who refuses to cooperate with the Minister’s request for records, request to inspect the person’s business premises, or request to examine records at the business premises is subject to a civil tax penalty of LRD 50 000 per day of refusal (Section 55(f), Revenue Code).

171. If a person refuses to cooperate with the Minister’s request for records or request to inspect the person’s business premises, the Minister may obtain the assistance of the Ministry of Justice to enter the premises or seize the records (Revenue Code, Sec. 55(g)).

172. If information requested is not supplied, the defaulting institution is liable to a fine of at least LRD 100 000 for each day the default continues. If any information supplied is found to be false in any material way, the

institution is liable to a fine of LRD 200 000 for each day the violation continues. In addition, the Central Bank may close down or revoke the license of the institution if it refuses to correct a default or pay any fine (New Financial Institutions Act, s. 23(2)).

Secrecy provisions (ToR B.1.5)

173. Jurisdictions should not decline on the basis of its secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism.

Professional Secrecy

174. The Private Foundations Act contains provisions that may restrict access to information. Specifically it provides that the Registrar and every person having any official duty in the administration of the Law must regard and handle all documents not retained by the Registrar (and therefore publicly available) under the provisions of this Law as confidential. Further, Section 60.64.4 says:

“ No person employed in carrying out the Act shall be required to produce in any court or before any authority or person for any purpose whatsoever any document made in pursuance of this Law or to divulge or communicate to any court any matter or thing coming to his notice in the performance of his duties under this Law.”

175. The only exceptions are when the information is necessary to carry out the Private Foundations Act, for a criminal proceeding, or if it is required by the provision of the Prevention of Money Laundering Law. It is not clear to whom this provision of the law applies. If it applies only to the Registrar and its employees, this would not necessarily impede access to information about private foundations because the authorities could go to the foundation directly. However, if it applies to the foundations’ officers as well, this could restrict access to information. Liberia should clarify the application of this provision and ensure that it does not prevent effective exchange of information. The practical implications of the provisions of the Private Foundations Act on effective EOI should be closely monitored in the Phase 2 review of Liberia.

Bank secrecy

176. The Liberian Ministry of Finance clearly has the power pursuant to the Revenue Code to access information from banks pursuant to a request from a treaty partner. There is no statutory bank secrecy rule and any common law duty of confidentiality would be overridden by the statutory access powers.

177. The Central Bank governs financial institutions in Liberia, which are also subject to the New Financial Institutions Act (NFI Act). Liberia advises that the general practice in obtaining bank information is that the authorities will first ask the Central Bank to obtain the information from the bank and that the Central Bank will comply.

178. If the Central Bank does not comply with such a request, the Ministry of Finance will seek a court order to obtain this information from the bank directly, pursuant to its powers under the Revenue Code. As established in Section B.1.1, the authorities have sufficient powers under this Act and could therefore access the information directly. Whether the practice of obtaining the information through the Central Bank and alternatively by means of a court order leads to impediments to access to information in practice should be the subject of further review in the Phase 2 Peer Review of Liberia.

Attorney-client privilege

179. With regard to attorney-client privilege, the standard in Liberia is found in the Code of Conduct for Attorneys. It provides that a lawyer has a duty to “preserve his client’s confidences” (Rule 35). The duty extends beyond the time of his/her employment and also applies to his/her employees. A lawyer cannot accept employment that could involve the disclosure of confidences, whether for private advantage or not, to the disadvantage of his client. If the lawyer discovers that an obligation to a client prevents the performance of his/her full duty to the former or new client, s/he must discontinue employment.

180. The OECD Model provides that a jurisdiction can decline a request for information which “would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are: (a) produced for the purposes of seeking or providing legal advice or (b) produced for the purposes of use in existing or contemplated legal proceedings.” By contrast, the Liberian standard is not limited to communications between the attorney and his client and does not contemplate the purpose for which the communication takes place. While this is overbroad and may restrict access to information that is protected by attorney-client privilege, as noted in section C.4., Liberia’s TIEAs each contain a definition of “items subject to legal privilege” that meets the international standard. As per above (para 16 of this report), explaining the hierarchy of laws, these TIEAs have the force of statutory law and this definition of privilege would override the rules in the Code of Conduct. More generally, the statutory access powers in the Revenue Code override the rules in the Code of Conduct, and these latter rules could not be opposed to prevent access to information for exchange purposes.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
There is some uncertainty as to whether the provisions of the Private Foundations Act might impact access to EOI.	Liberia should clarify its legislation to ensure that it does not prevent effective exchange of information in relation to private foundations.

B.2. Notification requirements and rights and safeguards

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

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

181. Rights and safeguards should not unduly prevent or delay effective exchange of information.⁹ 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).

182. The Ministry of Finance is under no obligation to notify the person who is the object of a request for information. Therefore, there are no applicable rights and safeguards in Liberian law that would unduly delay or restrict access to information. Nonetheless, every taxpayer has the right to object to a decision made by the Minister of Finance and may appeal the Minister's decision to the Tax Appeal Section at the Ministry of Finance and if he/she still disagrees with the decision rendered, he/she may appeal the decision to the Board of Tax Appeal which is an independent body set up to hear tax appeals (Revenue Code, s. 61). An emergency hearing is possible if a person objects to seizure of records or entry into premises as described in Section 55 (Revenue Code, s. 61(b)). The Board of Tax Appeal is the final administrative remedy available to taxpayers; however, taxpayers have the right to appeal decisions of the Board to the Tax Court and eventually to the Supreme Court (Revenue Code, s. 60(g)). It should be noted that, even where the person who is the subject of a request to provide information appeals the order to provide, the penalty outlined in section 55(f) would continue to apply. However, as there is no notification process, this appeal procedure is not of practical significance to exchange of information.

9. See OECD Model TIEA Article 1.

Determination and factors underlying recommendations

Determination
The element is in place.

C. Exchanging Information

Overview

183. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. The legal authority to exchange information may be derived from bilateral or multi-lateral mechanisms (e.g. double tax conventions, tax information exchange agreements, the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters) or arise from domestic law. Within particular regional groupings information exchange may take place pursuant to exchange instruments applicable to that grouping (e.g. within the EU, the directives and regulations on mutual assistance).

184. Liberia has been a member of the Global Forum since 2009. It has signed Tax Information Exchange Agreements (TIEAs) with 15 jurisdictions; namely, Australia, Ghana, France, the Netherlands, the United Kingdom, Portugal, the Nordic Group (Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway, and Sweden), India and South Africa. Liberia has taken all steps necessary to bring all of these agreements into force.

185. Liberia has signed one Double Tax Convention (DTC) with Germany which has been in force since 1975. However, exchange of information under this agreement is limited to the purposes of the application of the convention and to cases of fiscal fraud, and therefore does not allow for the exchange of information to the international standard.

186. Liberia's network of information exchange mechanisms covers all relevant partners. Liberia has not refused to negotiate or enter into an agreement with any jurisdiction when requested to do so.

187. Liberia's treaties are based on the OECD Model Tax Information Exchange Agreement and UN *Model Tax Conventions*, and protect from disclosure any trade, business, industrial, commercial or professional secret or information which is the subject of attorney client privilege or information the disclosure of which would be contrary to public policy.

C.1. Exchange-of-information mechanisms

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

Foreseeably relevant standard (ToR C.1.1)

188. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow “fishing expeditions,” *i.e.* speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in paragraph 1 of Article 26 of the *OECD Model Taxation Convention* set out below:

“The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out of the provisions this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.”

189. Liberia has exchange of information agreements with 16 jurisdictions, namely: one Double Tax Convention (DTC) with Germany, and 15 Tax Information Exchange Agreements (TIEAs) with Australia, Ghana, France, the Netherlands, the United Kingdom, Portugal, the Nordic Group (Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway, and Sweden), India and South Africa. Liberia’s agreements with its TIEA partners all use the term “foreseeably relevant”.

190. Liberia’s agreement with Germany provides the Contracting States will exchange such information that is “necessary for carrying out the provision of this Agreement or for the prevention of fiscal fraud.” This is a limitation on Liberia’s ability to exchange all foreseeably relevant information with Germany and therefore this treaty is not consistent with the international standard. It is recommended that Liberia update this treaty to ensure that it provides for the exchange of all foreseeably relevant information.

In respect of all persons (ToR C.1.2)

191. For exchange of information to be effective it is necessary that a jurisdiction’s obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard for exchange of

information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.” Article 26(1) of the OECD Model Tax Convention indicates that “The exchange of information is not restricted by Article 1”, which defines the personal scope of application of the Convention.

192. Liberia’s DTC with Germany does not provide for the exchange of information for the purpose of enforcing the domestic law of the other contracting state. Thus, this treaty does not provide for EOI on persons who are not residents in one of the contracting states. This treaty was signed prior to 1997 when the personal scope provision was added to the Model.

193. All of the TIEAs signed by Liberia contain a provision concerning a jurisdiction’s scope which is equivalent to Article 2 of the OECD Model TIEA and which conforms to the international standard. Liberia’s agreement with France contains additional language regarding citizenship and nationality; specifically, that the agreement will be applied whether or not the information relates to a resident, national or citizen of a Contracting Party, or is maintained or not by this resident, national or citizen”. This is additive and not restrictive.

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

194. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The *OECD Model Taxation Convention*, which is an authoritative source of the standards, stipulates 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.

195. As Liberia’s DTC with Germany was concluded before the update of the OECD Model Tax Convention in 2005, it does not contain a provision corresponding to Article 26(5), which was introduced at that update. However, the absence of this provision does not automatically create restrictions on the exchange of information held by banks, other financial institutions, nominees, agents and fiduciaries, as well as ownership information. The Commentary to Article 26(5) indicates that while paragraph 5 represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information. Both Liberia’s and Germany’s domestic laws allow them to access and exchange the information covered by Article 26(5) even in the absence of such provision in the DTC.

196. All the TIEAs signed by Liberia contain Article 5(4) of the OECD Model TIEA, and thus the requested jurisdiction may not decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person. Therefore, the TIEAs are consistent with the international standard.

Absence of domestic tax interest (ToR C.1.4)

197. 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. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

198. Liberia’s DTC with Germany does not include a provision similar to Article 26(4) of the *OECD Model Tax Convention*, which provides that a contracting state may not decline to supply information solely because it has no interest in obtaining the information for its own tax purposes. However, neither Germany nor Liberia have a domestic tax interest requirement to access information pursuant to their domestic laws, therefore this treaty is not limited by a domestic tax interest requirement despite the absence of a provision similar to Article 26(4) of the Model.

199. All of the TIEAs concluded by Liberia contain Article 5(2) of the Model TIEA which provides that information requested be exchanged notwithstanding that the Requested Party may not need such information for its own taxes purposes.

Absence of dual criminality principles (ToR C.1.5)

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

201. There are no dual criminality requirements in Liberia’s exchange of information agreements.

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

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

203. All of Liberia’s exchange of information agreements provide for the exchange of information in both civil and criminal tax matters.

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

204. There are no restrictions in Liberia’s exchange of information agreements that would prevent Liberia from providing information in a specific form, as long as this is consistent with Liberia’s own administrative practices. All of Liberia’s TIEAs include Article 5(3) from the Model TIEA, which requires that information be provided in the form of depositions of witnesses and authenticated copies of original records, to the extent allowable under the requested jurisdiction’s domestic laws. Nothing in Liberia’s domestic laws would prevent the provision of information in this form.

In force (ToR C.1.8)

205. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where exchange of information agreements have been signed, the international standard requires that jurisdictions take all steps necessary to bring them into force expeditiously.

206. When a TIEA has been agreed by Liberia, the procedure for bringing it into force is that it is submitted to the President, who in turn submits a letter formally to the legislature for ratification. Once ratified by the legislature, it is sent back to the President for signature who sends it to the Minister of Foreign Affairs and it is published. The Minister will then notify the treaty partner of its ratification.

207. Liberia has taken all steps necessary to bring all of its TIEAs into force and has notified its partners of this fact. As per the terms of the TIEAs, the TIEAs will enter into force once Liberia receives notification that its counterparts have completed the respective steps necessary.

Be given effect through domestic law (ToR C.1.9)

208. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement. As discussed in section B, Liberia currently has the legislative and regulatory framework in place to give effect to its agreements.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

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

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

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

210. Liberia currently has signed 16 agreements providing for exchange of information, including one DTC and 15 TIEAs. Its agreements with counterparties represent the following:

- 14 Global Forum member jurisdictions;
- 11 OECD member economies;
- 6 G20 members;
- 12 partners in Europe, 1 in Asia, and 2 in Africa.

211. All of Liberia's agreements have been ratified by Liberia and Liberia has taken all the necessary steps to bring all of its TIEAs into force and has notified its partners of this fact. As per the terms of the TIEAs, the TIEAs will enter into force once Liberia receives notification that its counterparts have completed the respective steps necessary.

212. Liberia's greatest export partners for 2010 were South Africa, the US, Spain, Denmark, Venezuela and Malaysia, with its main imports coming

from South Korea, China, Singapore and Japan. Liberia lists its main trading partners as the United States, China, the European Union, members of ECOWAS The Economic Commission of West African States (ECOWAS) is made up of 15 West African States¹⁰, including Liberia, which work together to achieve economic integration

213. Comments were sought from the jurisdictions participating in the Global Forum, and in the course of preparation of this report, no jurisdiction advised that Liberia had refused to negotiate or enter into an agreement.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place	
Factors underlying recommendations	Recommendations
	Liberia should continue to develop its EOI network with all relevant partners.

C.3. Confidentiality

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

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

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

215. All of Liberia's treaties contain confidentiality provisions, including limitations on disclosure of information received, and use of the information exchanged, modeled on Article 26(2) of the *OECD Model Tax Convention* and Article 8 of the *OECD Model TIEA*

10. Members include: Benin, Burkina Faso, Cabo Verde, Cote D'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and the Togolese Republic.

216. Liberia’s domestic legislation also contains relevant confidentiality provisions. Importantly, Section 54 of the Revenue Code provides that “No officer, agent, or employee of the Ministry of Finance and the Ministry is permitted to disclose confidential information received in an official capacity.” Section 54(b) provides for a limited number of exceptions to this rule, including allowing for disclosure to the tax authorities of a foreign country in accordance with international treaties or agreements.

217. Section 54(c) of the Revenue Code further provides that persons who receive information from a treaty partner under an exchange of information agreement shall maintain secrecy regarding that information, “except to the minimum extent necessary to achieve the object for which disclosure is permitted.”

218. Any person who discloses confidential information in violation of the confidentiality provisions of the Revenue Code is guilty of a criminal offense and, if convicted, is subject to a penalty of up to LRD 800 000 and/or imprisonment of up to one year. This serves to provide adequate protection for confidentiality of information received pursuant to an exchange of information agreement (Revenue Code, s. 54(d)).

219. Further, under the Executive Law, all information provided to an officer or employee of the Government authorised by law to collect, request, or demand such information shall be confidential and shall be divulged or published only to the extent necessary for such agency effectively to carry out its functions. A person who violates the provisions of this section is subject to a fine of not more than LRD 500 or imprisonment of not more than six months, or both (Executive Law, s. 83.2).

All other information exchanged (ToR C.3.2)

220. The confidentiality provisions in Liberia’s exchange of information agreements and domestic law do not draw a distinction between information received in response to requests or information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

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

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

221. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other legitimate 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. Attorney-client privilege is a feature of the legal systems of many countries.

222. However, communications between a client and an attorney or other admitted legal representative are, generally, 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. Where attorney-client privilege is more broadly defined it does not provide valid grounds on which to decline a request for EOI. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, information resulting from and relating to any such activity cannot be declined to be exchanged because of the attorney-client privilege rule.

223. Liberia's TIEAs provide for the possibility of declining a request for information where the information would reveal a confidential communication between a client and an attorney, solicitor or other admitted legal representative where such communications are (a) produced for the purposes of seeking or providing legal advice or (b) produced for the purposes of use in existing or contemplated legal proceedings. This is consistent with the international standard.

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

224. Each of Liberia's TIEAs ensure that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of professional privilege or information the disclosure of which would be contrary to public policy. Specifically, they contain an Article 7 provision that is identical to the Model TIEA.

225. Liberia's DTC with Germany does not provide a definition of legal privilege. However, in this case, one would look to Liberia's domestic laws. As discussed in section B.1.5 of this report, the access powers available to Liberia's competent authority would override the domestic rules protecting attorney-client confidentiality.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

226. In order for exchange of information to be effective it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

227. There are no specific legal or regulatory requirements in place which would prevent Liberia responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

Organisational process and resources (ToR C.5.2)

228. Liberia's competent authority under its DTC is the Secretary of the Treasury (now Minister of Finance)¹¹ and for its TIEAs the Minister of Finance or his authorised representative. As per above (para 31 of this report), the Minister of Finance, vested to administer the Tax Code (Revenue Code, s. 56), is Liberia's Tax Authority. A review of Liberia's organisational process and resources will be conducted in the context of its Phase 2 review.

11. Liberia's DTC with Germany was signed on 25 November 1970. Departments with Heads as Secretaries were changed to Ministries and Ministers by Constitutional Amendment approved on 31 December 1971, and adopted on 4 April 1972. Therefore, the Department of the Treasury was amended to the Ministry of Finance.

***Absence of restrictive conditions on exchange of information
(ToR C.5.3)***

229. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no aspects of Liberia’s exchange of information agreements that appear to impose restrictive conditions on exchange of information. Liberia’s domestic laws have generally been aligned to allow for the exchange of information without restrictive conditions, with exceptions noted throughout this report. Whether these actually restrict exchange of information in practice is an issue more appropriately considered in a Phase 2 review of Liberia.

Determination and factors underlying recommendations

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
The element is not in place.	Identity information on the owners of bearer shares and share warrants to bearer may not be available in relation to corporations and RBCs.	Liberia should take necessary measures to ensure that robust mechanisms are in place to identify the owners of bearer shares and share warrants to bearer in relation to corporations and RBCs.
	There are no penalties for failure to maintain ownership information for corporations, LLCs, RBCs, or partnerships.	Liberia should introduce sanctions to ensure ownership information is introduced and maintained in relation to corporations, LLCs, RBCs or partnerships.
	Ownership information on LLCs that are not doing business in Liberia and foreign maritime entities may not be available in all instances.	Liberia should introduce appropriate mechanisms to ensure ownership information on LLCs and foreign maritime entities is maintained and updated.
	Nominees that are not financial services institutions are not required to maintain ownership and identity information in respect of all persons for whom they act as legal owners.	An obligation should be established for all nominees to maintain relevant ownership information where they act as the legal owners on behalf of any other person.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The element is not in place.	Requirements for entities to maintain accounting records are not consistent with the international standard.	Liberia should ensure that all relevant entities and arrangements keep records that correctly explain all transactions, enable the financial position of the entity to be determined with reasonable accuracy at any time and allow financial statements to be prepared.
	Requirements to maintain underlying documents to the standard are not in place for entities without Liberian tax liability.	Liberia should require all relevant entities and arrangements to keep underlying documentation in respect of all transactions.
	Requirements to maintain accounting records for a minimum of 5 years are not in place for entities without Liberian tax liability.	Liberia should impose clear requirements for all relevant entities and arrangements to keep records for a minimum of five years.
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
The element is in place.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)		
The element is in place.		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
The element is in place.		
Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
The element is in place.		Liberia should continue to develop its EOI network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
The assessment team is not in a position to evaluate whether this element is in place as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction’s Response to the Review Report*

Liberia would like, firstly, to extend its thanks and appreciation to the assessment team and the Peer Review Group (PRG) for the cordiality and the professionalism with which they carried out the work on reviewing and evaluating Liberia’s legal and regulatory framework on the exchange of information for tax purposes. We are particularly heartened by the cooperative spirit and friendliness which the assessment team showed towards Liberia, and the enormous amount of time and effort it dedicated to studying, reviewing and addressing issues in the Liberian legal and regulatory framework. The exchanges that occurred enable Liberia to better understand the wider expectations of the Global Forum on Transparency and Exchange of Information and the additional efforts expected of Liberia in building upon its achievements and meeting the full elements of the international standards set by the Global Forum.

Liberia takes great pride in the accomplishments it has made in meeting many of the international standards in the a short period following more than twenty years of instability and war that saw the almost complete devastation of its entire legal and regulatory framework, and the loss of hundreds of thousands of Liberian lives and the displacement of more than one-half of its 3.5 million people. Much of those achievements were recognized in the Phase 1 Report, including the Elements of B and C being in place, and only a small portion of the Elements of A1 and A2 not being fully in place. Building on those achievements, Liberia reiterates its full commitment to enhancing and implementing the international standards on exchange of information in tax matters in the shortest time, treating those endeavors as a priority.

Liberia was already making strides in this manner prior to joining the Global Forum. Liberia enacted the Liberia Extractive Industry Transparency Initiative Act for the purpose of ensuring transparency disclosure in the Liberia extractive industry and for the prevention of illegal logging; the Voluntary Partnership Act for the purpose of accountability of revenue generated; it fulfilled the HIPC Initiatives that resulted into the waiver of

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

practically all of its bilateral and international debts; it was removed from the French Government's "Blacklist" of countries deemed to be "uncooperative" in tax matters and is no longer listed as a jurisdiction of primary concern for money laundering by the United States Department of State, nor listed in the Stop Tax Haven Abuse Act currently before the United States Senate.

Moving forward, Liberia will continue to expand its network of agreements, believing that it is in the best interest of Liberia and all Global Forum members to develop such relationships not only with other African nations with whom Liberia already has a network of cooperative agreements, but with the entire global nationhood, necessary for an effective impact on curbing the global ills which the Forum seeks to address. Liberia has long assisted foreign nations and international institutions in gaining access to ownership information, on request, even before being admitted into membership of the Global Forum. Liberia is committed to retaining and even enhancing that process as it moves forward. Since becoming a member of the Global Forum, Liberia has already concluded fifteen (15) TIEAs, in addition to a pre-existing DTC with Germany.

Further, Liberia shall act on the several recommendations contained in the report, and gives the assurance that the issues identified by the assessment team and adopted by the PRG will be fully attended to. New regulations are being issued to address bearer shares issued to non-resident entities, to be custodialized in a manner that meets international expectations and the accepted standard of the Global Forum. Further, a new AML Law has already been drafted and will, shortly be presented to the Legislature for enactment into law. The proposed new law is designed to fully address the concerns and the stated gaps in the existing AML Law, as identified by the assessment team. Indeed, the proposed new Law will establish a special unit to regulate, monitor, and enforce the provisions of the Law as far as money laundering and terroristic crimes are concerned and prosecute such crimes as well as stipulate penalties for the violation of any provisions of the Law or the failure to comply with any of the obligations imposed thereunder. The Government will also bring together all of the fragmented trust laws into a single body of laws for greater understanding, and as necessary, will seek amendments to address issues of concern (such as trustees, settlors and beneficiaries). Finally, a new proposed Insurance Act and a new proposed Insurance Commission Act have been drafted and are awaiting submission by the President of Liberia to the Legislature for passage into law. Like the new proposed AML Law, the new proposed Insurance Act and Insurance Commission Act address the several concerns and deficiencies identified by the assessment team.

Nonetheless, Liberia must emphasize that while accepting the Report and conclusions or recommendations stated therein, and re-affirming its

commitment to maintain the standards set by the Global Forum, it believes strongly and sincerely that each nation must be judged on its particular circumstances and the extraordinary challenges far beyond the ordinary course of transactional activities. Liberia cannot be viewed similarly as a country that has never been subjected to a war or which, even it had been exposed to a war, did so almost a century ago or more than a century ago. A review of progress made by Liberia and any other jurisdiction which might face such tragedy must therefore necessarily deal with the reality and take into consideration the war from whence Liberia's has only recently emerged, all of its social, political and legal structures and frameworks so recently destroyed.

In just four years following the installation of a new democratically elected government, not only was Liberia able to restore and maintain the new-found peace and reconcile the nation's various diverse peoples, a task that required great efforts by the new government, but it was also able to begin the herculean undertaking of rebuilding its infrastructures and legal and regulatory framework and restore the rule of law. Several amendments were made to its tax law to bring to international standard; revisions were made to its penal law to meet international standards and take into account problems that were the outgrowth of the war; instill more fiscal discipline and provide for greater business regulatory framework; establish institutions (such as the Law Reform Commission, the Liberia Anti-Corruption Commission, LEITI) to ensure greater transparency and accountability, and reduce avenues for corruption and tax evasion, etc. New statutory and regulatory frameworks continue to be put into place, especially a new tax framework, that includes a new tax regime, that will ensure not only that appropriate records are kept (both with regards to both ownership and accounting and accountability).

Again, Liberia reiterates its expression of thanks and appreciation to the PRG and to the Global Forum for the opportunity to be a member of the Global Forum and for enabling it to focus on certain aspects of its legal and regulatory framework which could be of immense benefit to Liberia and to the international community.

Annex 2: List of All Exchange-of-Information Mechanisms Signed

	Jurisdiction	Type of Eol Arrangement	Date Signed	Date Entered Into Force
1	Australia	TIEA	03-10-2010	Not yet in force
2	Denmark	TIEA	11-10-2010	05-18-2012
3	Faroe Islands	TIEA	11-10-2010	05-23-2012
4	Finland	TIEA	11-10-2010	Not yet in force
5	France	TIEA	10-12-2010	12-30-2011
6	Germany	DTC	11-25-1970	04-24-1975
7	Ghana	TIEA	02-24-2011	Not yet in force
8	Greenland	TIEA	11-10-2010	Not yet in force
9	Iceland	TIEA	11-10-2010	Not yet in force
10	India	TIEA	10-03-2011	Not yet in force
11	Netherlands	TIEA	05-27-2010	05-17-2012
12	United Kingdom	TIEA	10-26-2010	Not yet in force
13	Norway	TIEA	11-10-2010	05-17-2012
14	Sweden	TIEA	11-10-2010	Not yet in force
15	South Africa	TIEA	02-07-2012	Not yet in force
16	Portugal	TIEA	01-14-2011	Not yet in force

Annex 4: List of all Laws, Regulations and Other Material Received

Civil and Commercial Laws

Executive Law
General Construction Law
Judiciary Law
Freedom of Information Act
General Business law
Insurance law
Labor Law
Act to Create a Commercial Court
Code of Conduct Lawyers 1999
Title 5, Associations Law (Business Corporation Act, BCA)
Chapter 50, Associations Law, Registered Trusts
Chapter 60, Associations Law, Private Foundations
Chapter 70, Associations Law, Registered Business Companies
Commercial Code as amended
The Commercial Court, 2010
Decedents Estates Law
Sections 32 and 78, Restatement Third, Trusts
Uniform Trust Code, 2005

Taxation Laws

Revenue Code of Liberia Act of 2000, as amended

Banking Laws

Central Bank of Liberia Act

New Financial Institutions Act

Anti-Money Laundering

Prevention of Money Laundering Law

Forms

Liberia Business Registry Enterprise Application Form for Registration
(RF-001)

Certificate of Annual Return of a Registered Business Company

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: THE REPUBLIC OF LIBERIA

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

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

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

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

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

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