

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

TURKS AND CAICOS ISLANDS



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Turks and Caicos Islands 2011

PHASE 1

August 2011
(reflecting the legal and regulatory framework
as at May 2011)



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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, 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 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 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 refer to www.oecd.org/tax/transparency.

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in the Turks and Caicos Islands.
2. 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 whether that information can be effectively exchanged with its exchange of information (EOI) partners.
3. The Turks and Caicos Islands is a small British Overseas Territory located in the North Atlantic Ocean. Tourism, fishing and offshore financial services are the primary drivers of its economy. Its main trading partners are the United States, United Kingdom and Canada, and its official currency is the US dollar (USD).
4. In 2009, parts of the Turks and Caicos Islands Constitution were suspended by the British government. The power of the Turks and Caicos Government is currently vested in the Governor alone.
5. The Turks and Caicos Islands has worked with the OECD in respect of tax information exchange since 2002 and since 2006 has participated in all of the Global Forum's annual assessments. In 2009 it became a member of the Global Forum and committed to the international standard for transparency and exchange of information for tax purposes. As at 6 May 2011 it has signed EOI agreements with 16 jurisdictions, of which seven have been brought into force. The Turks and Caicos Islands has taken all steps for its part which are necessary to bring another seven into force, and has notified its EOI partners accordingly.
6. The main concerns identified in the report relate to the availability of accounting information and the competent authority's access to information. Legal requirements for relevant entities and arrangements and their service providers to maintain accounting records are not sufficiently comprehensive, especially in respect of underlying documentation such as invoices and contracts and the minimum five year retention period.

7. In terms of access to information, the Tax Information Exchange Ordinance does not authorise the Turks and Caicos Islands' competent authority for international exchange of information in tax matters – the Permanent Secretary, Finance – to obtain information for EOI purposes unless such information is: (a) held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee; or (b) the information relates to the beneficial ownership of a company, partnership or other person. This is a serious shortcoming that restricts the scope of information that may be obtained and exchanged by the Turks and Caicos Islands. It also affects the Turks and Caicos Islands' ability to comply fully with the terms of the EOI agreements that it has entered into. The Turks and Caicos Islands has recently enacted legislation to address this issue. However this cannot be taken into account in this report as it was not in force as of May 2011.

8. With respect to ownership and identity information, the report notes that a category of professional trustees is exempted from licensing requirements and therefore not subject to anti-money laundering regulations. The only obligations to know the identities of the trust beneficiaries and settlors stem from the common law, and it is not clear whether this is sufficient to meet the international standard.

9. As elements which are crucial to achieving effective exchange of information are not yet in place in the Turks and Caicos Islands, it is recommended that the Turks and Caicos Islands 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 and also has a reasonable practical experience of exchange of information under its recently enacted laws. The Turks and Caicos Islands' 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 intermediate report within 6 months of the adoption of this report.

Introduction

Information and methodology used for the peer review of the Turks and Caicos Islands

10. The assessment of the legal and regulatory framework of the Turks and Caicos Islands was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*, 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 May 2011, other materials supplied by the Turks and Caicos Islands, and information supplied by partner jurisdictions.

11. 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 the Turks and Caicos Islands' 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 for improvement where relevant.

12. The assessment was conducted by an assessment team which comprised two expert assessors: Mr Avvari Sreenivasa Rao, Director, Foreign Tax and Tax Research II of the Indian Ministry of Finance; and Mr Philippe Cahanin, Deputy Director in the Large Business Audit Branch of the French Revenue Administration; and one representative of the Global Forum Secretariat, Mr. Guozhi Foo. The assessment team assessed the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in the Turks and Caicos Islands.

Overview of the Turks and Caicos Islands

13. The Turks and Caicos Islands is a British overseas territory comprising two island groups in the Atlantic Ocean; the larger Caicos Islands and the smaller Turks Islands with a total land area of about 430 square kilometres. Eight of its 40 islands are inhabited, with a total population of approximately 32 000. The capital is Cockburn Town, located on the Grand Turk Island.

14. The Turks and Caicos Islands economy is based primarily on tourism, fishing, and offshore financial services. It receives more than 200 000 tourists per year, mostly from the United States. The Turks and Caicos Islands' official currency is the United States Dollar (USD). In 2008 its gross domestic product was approximately USD 860 million, translating to a GDP per capita of about USD 26 000.

Legal and taxation system

15. The Turks and Caicos Islands' Constitution Order 2006 established a parliamentary system of government, which included a Cabinet and House of Assembly. Queen Elizabeth II is the head of state, and the British Crown is represented by a Governor appointed by the Queen.

16. The Turks and Caicos Islands' legal system is based on English common law, and relevant legislation is enacted either from the United Kingdom (UK) legislature, which must be specifically extended to the Turks and Caicos Islands to have effect, or local legislation. There is one national law and there are no political subdivisions within the Turks and Caicos Islands.

17. There are two types of legislation – primary legislation which is currently enacted by the Governor, and subordinate legislation which is made by him or other government bodies under the authority of primary legislation. Subordinate legislation includes Rules, Regulations and Orders. There is a local three tier-court system comprising the Magistrate's Court, Supreme Court and the Court of Appeal, as well as a further right of appeal to the Privy Council in London.

18. In 2009, parts of the Turks and Caicos Islands Constitution were suspended by the British government. The power of the Turks and Caicos Government is currently vested in the Governor alone. The Governor is assisted by an Advisory Council and a Consultative Forum largely made up of Turks and Caicos Islanders, but with the Chief Executive Officer, Attorney General and Permanent Secretary, Finance, as *ex-officio* members.

19. The Turks and Caicos Islands does not impose direct taxes. There are no taxes levied on personal or corporation income; neither are there taxes on profits and gains from investments. There are also no property taxes or inheritance

taxes. Instead, the Turks and Caicos Islands is financed by a consumption-based tax system, focused primarily on customs duty, which is supplemented by taxes and government fees such as stamp duties, passenger fees, accommodation tax and work permit fees.

The Turks and Caicos Islands' commercial laws and financial sector

20. The Turks and Caicos Islands has a small financial services industry offering both resident and non-resident services and which is dominated by the offshore sector. Financial services represent about 10% of the GDP¹. As of 2007, there were 8 banks, 19 professional trustees and 41 company managers servicing approximately 15 000 exempt companies registered in the Turks and Caicos Islands.² Registration fees from the Companies, Patents and Trademarks registry made up about 71% of the total revenue collected by the Financial Services Commission for the financial year 2010. The total assets of the banking sector stood at USD 1.73 billion as of March 2010.³

21. The Turks and Caicos Islands has a single independent financial regulatory authority – the Financial Services Commission (FSC) which was established in 2001. It is governed by a Board of Directors appointed by the Governor and is funded by licence fees generated from regulated financial firms. Its responsibilities include:

- the general administration of the regulatory regime established by various statutes, including licensing and supervising compliance with the laws that apply to banking business, insurance business, mutual funds and administration and investment businesses (securities), trustees and corporate service providers;
- supervision of compliance with the Proceeds of Crime Ordinance requirements as they relate to Non Regulated Financial Businesses (NRFBs), which comprise Real Estate Agents, Jewellers, Lawyers, Accountants and other professionals and Notaries and Justices' of the Peace; and
- registration of companies, trademarks and patents.

22. In the performance of its functions, the FSC conducts both onsite as well as offsite regulatory supervision.

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1. Figure quoted from Turks and Caicos Department of Economic Planning and Statistics.
 2. Figures from Turks and Caicos' 2008 CFATF Mutual Evaluation Report.
 3. Figures from the Turks and Caicos Financial Services Report 2010.

The Turks and Caicos Islands' framework for the exchange of information for tax purposes

23. The Turks and Caicos Islands relies on the UK to extend to it relevant international instruments, including international conventions and UN Security Council Resolutions.

24. With regard to entering into international agreements, specifically TIEAs, the Turks and Caicos Islands is entrusted by the UK Foreign and Commonwealth Office (FCO) to negotiate and conclude agreements that provide for the exchange of information on tax matters, as well as any ancillary agreements. The Turks and Caicos Islands' entrustment is given on the understanding that the UK remains responsible for the international relations of the Turks and Caicos Islands; and on the conditions that:

- the Government of the Turks and Caicos Islands supply evidence to the FCO that the jurisdiction with which the Turks and Caicos Islands is negotiating is content to conclude such an agreement directly with the Government of the Turks and Caicos Islands; and
- the proposed final text of the agreement is submitted to the FCO in London for approval before signature.

25. The main law governing international co-operation for tax matters in the Turks and Caicos Islands is the Turks and Caicos Islands Tax Information Exchange Ordinance 2009 (TIE Ordinance), which gives legal effect to all TIEAs signed by the Turks and Caicos Islands and grants the Turks and Caicos Islands' competent authority the necessary information gathering powers to comply with EOI requests. Pursuant to this Ordinance, the Permanent Secretary, Finance is the competent authority for international exchange of information in tax matters, and he is supported in this by the Attorney General.

26. As at 6 May 2011, the Turks and Caicos Islands had signed TIEAs with 16 jurisdictions. Seven of these TIEAs have been brought into force. The Turks and Caicos Islands has completed all the necessary steps on its part to bring another seven of these agreements into force and is awaiting, in respect of these agreements, its EOI partners' completion of their internal procedures to bring these agreements into force.⁴

4. The remaining two are the TIEAs with France and Portugal.

Recent developments

27. The Turks and Caicos Islands passed the TIE Ordinance on 22 December 2009. In February 2011, the Turks and Caicos Islands decided to progress from the transitional withholding tax arrangement to an automatic exchange of information regime under the European Savings Directive.

28. An amendment to the TIE Ordinance came into force on 15 July 2011. The purpose of this amendment was to address the issue identified under element B.1. Amendments to the Companies Ordinance and the Limited Partnerships Ordinance to meet the recommendations of the assessors under element A.2 will come into force on 29 July 2011. As these amendments were not in force as at May 2011, they have not been assessed in this report.

Compliance with the Standards

A. Availability of information

Overview

29. 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 accounting information on the transactions carried out by entities and other organizational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If information is not kept or the information 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 the Turks and Caicos Islands' legal and regulatory framework on availability of information.

30. Requirements in the Turks and Caicos Islands to retain relevant information in respect of companies, partnerships and trusts arise largely from the laws governing the formation and registration of these entities, and also to a significant extent the Turks and Caicos Islands' Anti-Money Laundering (AML) regime applicable to the financial businesses providing corporate services to them. The obligations imposed by both sets of laws are sufficient to meet most of the requirements under the international standard.

31. Certain categories of professional trustees are exempted from licensing and correspondingly the obligations of the Turks and Caicos AML regime. The only obligations for such trustees to have information on the identity of settlors and beneficiaries stem from common law. It is not clear whether

these obligations meet the ToR A.1 fully. Essential element A.1 is therefore found to be in place, with certain aspects of its legal implementation requiring improvement.

32. The requirements under the Turks and Caicos Islands' laws in respect of accounting records do not meet the standard described in element A.2 of the ToR. While companies, partnerships and trustees are generally required to keep up-to-date records that reflect their financial affairs, these obligations are not sufficiently comprehensive in terms of scope and detail; and do not include underlying documentation. The Turks and Caicos Islands' AML regime requires financial businesses to retain comprehensive transactional information in respect of their corporate clients, but these obligations apply only to the subset of business transactions that are made through regulated entities.⁵

33. In respect of banks and other financial institutions, the application of the AML regime to these entities ensures that all relevant records pertaining to customers' accounts as well as related financial and transaction information are available.

34. In general, where an obligation exists in the Turks and Caicos Islands for relevant records to be kept, there are enforcement provisions such as fines or imprisonment in place to discourage non-compliance. The effectiveness of these enforcement provisions will be considered as part of the Turks and Caicos Islands' Phase 2 review.

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 (ToR⁶ A.1.1)

35. The Turks and Caicos Companies Ordinance allows the incorporation and registration of two primary classes of companies – ordinary companies and Exempted Companies (ECs). Both types of companies may have their liabilities be unlimited, or be limited by shares or guarantee.

36. An ordinary company is a company which conducts a substantial part of its business in the Turks and Caicos Islands and is subject to all of

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5. The Turks and Caicos Islands has amended the Companies Ordinance and the Limited Partnerships Ordinance to meet the recommendations of the assessors under element A.2. These amendments will come into force on 29 July 2011.
 6. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information

the provisions of the laws relating to companies. An EC is a company whose business activities are conducted substantially outside of the Turks and Caicos Islands. It can only essentially hold a bank account or own or lease office in the Turks and Caicos Islands but otherwise is prohibited from conducting business activities in the Turks and Caicos Islands⁷.

37. ECs are exempted from any tax or duty levied on profits or income or on capital assets, gains or appreciations and any such tax in the nature of estate duty or inheritance tax, payable on the shares, debentures or other obligations of a company for a period of 20 years from the date of its incorporation. They are also subject to fewer regulations than ordinary companies⁸. For example, ECs are not required to hold annual general meetings.

38. The option to be registered as an EC is available to both the Turks and Caicos and foreign incorporated companies, as long as they meet the qualifying conditions. All ECs are obliged to appoint a representative resident in the Turks and Caicos for the purpose of accepting a service or process. Such representatives may be natural persons or ordinary companies, and would typically be a Turks and Caicos Islands licensed service provider.

39. An EC may also opt to be registered as a limited life company (LLC)⁹. An LLC combines the corporate characteristics of limited liability with the partnerships characteristics of limited duration, restricted transferability of interest and automatic dissolution. The memorandum of an LLC must limit the life of the company to 50 years but the members may by one or more resolutions passed after incorporation, extend the life of the company to a maximum of 150 years. The record keeping requirements applicable to ECs apply similarly to ECs that are registered as LLCs.

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

40. The Registrar of Companies is part of the Financial Services Commission and is required under the Companies Ordinance to maintain under appropriate conditions all documents and papers lodged with him. This includes a register of all companies registered under the Companies Ordinance. All Turks and Caicos companies must register and provide their memorandum and articles of association to the Registrar at the time of their incorporation.

7. Section 180 of the Companies Ordinance.

8. Section 185 of the Companies Ordinance lists out the provisions of the Ordinance that an EC is exempted from.

9. As provided for under Section 198A of the Companies Ordinance.

41. The memorandum of association must contain details as set out below:

Company limited by shares	Company limited by guarantee	Unlimited company
Name of proposed company	Name of proposed company	Name of proposed company
Statement that the registered office is within the Turks and Caicos Islands, and the address	Statement that the registered office is within the Turks and Caicos Islands, and the address	Address of the registered office
A declaration that the liability of the members is limited	A declaration that each member undertakes to contribute to the assets of the company under relevant circumstances	A declaration that the liability of the members is unlimited
Details on the nominal capital with which the company proposes to be registered		

42. Every memorandum of association must be signed by every subscriber, who is required to indicate his name, address, occupation, and, in the case of a company limited by shares, the amount of shares he takes¹⁰. These details are entered into the register of companies by the Registrar once the memorandum is submitted.

43. After incorporation, a company limited by shares is required to submit to the Registrar on an annual basis an updated list containing the name, address, occupation and shareholding of each shareholder¹¹. In addition, if the company has more than USD 10 000 in registered nominal capital, any change to the shareholdings of the company or of the members during the course of the year must be advised to the Registrar within 30 days of the change happening.¹²

44. The same requirements generally apply to ECs with the respective capital structures¹³, except that ECs are not obliged under the Companies Ordinance to submit or update to the Registrar any information on their shareholders or members, whether at the point of registration or subsequently.

10. Section 11 of the Companies Ordinance.

11. Section 39 of the Companies Ordinance.

12. Section 39(2) of the Companies Ordinance.

13. Section 182 of the Companies Ordinance.

Foreign companies

45. A foreign-incorporated company may apply to be continued as a Turks and Caicos incorporated EC if the laws of the country of its incorporation do not prohibit this. Upon registration as an EC, the company is subject to the same provisions applicable to ECs.

46. Otherwise, a foreign-incorporated company that carries on a business in the Turks and Caicos Islands is defined to be “foreign company” under s207 of the Companies Ordinance and must register with the Registrar of Companies within 30 days of falling under that definition. The Companies Ordinance defines the term “carrying on business” generally and this should cover cases where the business activities of a foreign company are effectively managed from the Turks and Caicos Islands, *and* where these activities are significant enough to give rise to a permanent establishment, had they occurred in a taxing jurisdiction. In order to be registered, the foreign company must file certain information with the Registrar, including:

- copies of its memorandum and articles of association;
- names and addresses of persons resident in the Turks and Caicos authorised to accept on its behalf service of process and any notices required to be served on it; and
- full name, address and occupation of each of the directors of the company.

47. Any changes to the memorandum and articles of association, or the names or addresses of persons authorised to accept service on its behalf must be advised to the Registrar within 21 days of the time at which information of such changes would have been reasonably received in the Turks and Caicos. The foreign company is not required to submit to the Registrar any information relating to its legal or beneficial owners.

48. The Companies Ordinance does not specify a retention period for information submitted to the Companies Registrar. The Turks and Caicos Islands authorities have advised that the possibility of reinstating a company up to 10 years after it has been struck off creates an implicit obligation for the Registrar to hold information for that period of time.

Company ownership and identity information required to be held by companies

49. Sections 38 and 38A of the Companies Ordinance require all companies to maintain an up to date register of shareholders and members. The register must include:

- name, address and occupation of all members;
- the date the person was entered on the register as, or ceased to be, a member; and
- in the case of a company limited by shares, a statement of the number of shares held by each member, distinguishing, save in the case of shares that are fully paid, each share by its number, and of the amount paid, or agreed to be considered paid, on the shares of each member.

50. In the case of bearer shares a company will only need to maintain in the register the number of such shares, the date of their issue, their reference number (if applicable) and the fact that these shares are issued to bearer. Information on their beneficial owners is to be held by the company manager, agent or secretary (see section on bearer shares below).

51. The register must be kept at the company's registered office, save in the case of ECs, which are allowed to keep it at another location as long as a certified true copy of the register is kept in its registered office and changes made to the register are entered on the certified copy not later than one week from the date of the occurrence of the change.

52. The above obligations apply to all "companies", which are defined under Section 2 of the Companies Ordinance to include all companies *formed and registered* under the Companies Ordinance. This would clearly include ordinary companies, ECs and foreign companies continued as ECs in the Turks and Caicos Islands.

53. It is not clear whether this definition covers foreign companies that are initially formed outside of the Turks and Caicos Islands, but subsequently registered there because they carry on a business there. This is a relevant issue because the ownership information of relevant foreign companies (those effectively managed *and* having a permanent establishment in the Turks and Caicos Islands) is made available through this requirement under the Companies Ordinance. The Turks and Caicos Islands authorities have advised that its interpretation of the definition of "companies" includes such foreign companies; therefore such foreign companies are also obliged to maintain a register of their members. According to the Turks and Caicos Islands authorities, this has also been the practice so far.

54. As the law is not fully clear in this regard, it is recommended that the Turks and Caicos Islands amend its legislation to clarify that the obligation to maintain a register of members also applies to foreign companies incorporated outside the Turks and Caicos Islands, but registered there. Whether the current uncertainty has given rise to any practical issues will be examined in the course of the Turks and Caicos Islands' Phase 2 review.

Nominee identity information

55. A nominee that acts as a legal owner of assets by way of business falls within the definition of “business of company management” under the Company Management (Licensing) Ordinance and must be licensed under the Ordinance before it can provide such services on a commercial basis.

56. As holders of regulatory licenses, such nominees are “financial businesses” as defined under Schedule 2 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations 2010 and are subject to the relevant AML regulations that apply to all financial businesses in the Turks and Caicos Islands. Their obligation to obtain identity information of the owners whose behalf on which they act stems from these regulations.

57. As with other service providers, nominees are required to carry out relevant customer due diligence measures under the following circumstances¹⁴:

- before the financial business establishes a business relationship or carries out an occasional transaction;
- where the financial business -
 - Suspects money laundering or terrorist financing; or
 - doubts the veracity or adequacy of documents, data or information previously obtained under its customer due diligence measures or when conducting ongoing monitoring; and
- at other appropriate times to existing customers as determine on a risk-sensitive basis.

58. Where a nominee is required to carry out customer due diligence measures, it will need to obtain identification and beneficial ownership information of its customers and relevant third parties; and update this information whenever there is a change. Such identification information must be verified on the basis of data obtained from a reliable and independent source.

59. A nominee that is not acting by way of business is not subject to the AML regulations. It is not clear whether such nominees, who would comprise primarily of persons performing services gratuitously or in the course of a purely private non-business relationship, are significant in terms of numbers and the assets they hold. The Turks and Caicos Islands authorities have advised that there are no known or reported instances of nominees acting in a private or gratuitous capacity within the Turks and Caicos Islands. The

14. Regulation 11 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations 2010 describes the instances under which financial businesses are required to conduct customer due diligence measures.

materiality of this gap in practice will be further examined in the course of the Turks and Caicos Islands' Phase 2 review.

Bearer shares (ToR A.1.2)

60. The Companies Ordinance allows for the issuance of bearer shares.¹⁵ Such shares however can only be held through licensed professional service providers such as company managers, agents, accountants, attorneys, banks, trustees. Such shares may also be held by the company secretary if the company does not have a licensed company manager or a licensed agent.

61. The company manager, company agent or secretary of the company is obliged to maintain records in respect of each bearer share of its location, ownership and beneficial ownership. Where the bearer shares are held by other service providers such as accountants, attorneys, banks or trustees, these service providers are obliged to notify within seven days any changes in the ownership or beneficial ownership of these shares to the company manager, agent or secretary. If the company manager, agent or secretary are not known or temporarily not available to the service providers, such changes must be reported to the Registrar within 14 days of the change in ownership.

62. The general rule is that all bearer shares must be kept within the Turks and Caicos Islands. They may however be kept offshore if adequate measures are taken to ensure the accountability of such shares. For bearer shares to be held offshore, the following conditions apply:

- the foreign custodian must be subjected to AML/CFT legislation similar to that of the Turks and Caicos Islands; and
- the company manager or its licensed company agent must:
 - produce to the Registrar a certificate issued by a foreign authority corresponding to the Turks and Caicos financial services commission stating that the custodian of the bearer shares is licensed and supervised by the foreign authority; and
 - notify the Registrar when the custodian commences and ceases to hold bearer shares in a company.

63. These prescribed rules are aimed at ensuring that identity of the beneficial owner of each bearer share is available to the Turks and Caicos Islands authorities. The Turks and Caicos Islands authorities have advised that the use of bearer shares is now rare in the Turks and Caicos Islands and that the FSC has recently prepared and issued a consultation paper to the industry

15. The conditions governing the issuance of bearer shares are spelt out in Section 32 to 32F of the Companies Ordinance.

with a view to either enhancing the immobilization regime with respect to bearer shares or prohibiting them altogether.

Business Licenses

64. Any person who carries on a business in or from within the Turks and Caicos Islands for the purpose of gain must apply for a business license under the Business Licensing Ordinance. ECs and businesses that are already licensed under another Ordinance are exempted from this requirement¹⁶.

65. At the time of application, businesses must provide the Business Licensing Committee with the names of the business owners, which in the case of a partnership would comprise the partners. In the case of a company the names of the directors would suffice.

66. Any changes to the particulars provided at the time of application must be advised to the Business Licensing Committee within 30 days of such change occurring. In addition, a company must notify the Committee within 30 days of any change in the persons who have a controlling interest in the company.

Partnerships (ToR A.1.3)

67. Turks and Caicos laws allow the formation of three classes of partnerships – General Partnerships (GPs), Limited Partnerships (LPs) and Exempted Limited Partnerships (ELPs).

General Partnerships

68. There is no specific governing legislation for GPs; they are governed by Common Law and the law of equity. A GP arises when two or more persons form a relationship to carry on a business in common with a view of profit and generally takes on the following characteristics:

- the assets of the business are owned on behalf of the other partners;
- each general partner has an equal right to participate in the management of the business; and
- all the general partners are personally liable for the debts or any legal action the GP may face.

16. These include banking businesses licensed under the Banking Ordinance, insurance businesses licensed under the Insurance Ordinance, Trustees licensed under the Trustees (Licensing) Ordinance and Company Managers licensed under the Company Management (Licensing) Ordinance 1999.

LPs and ELPs

69. LPs and ELPs are governed by the Limited Partnership Ordinance and also the common law applicable to partnerships insofar as it is consistent with the provisions of the Limited Partnerships Ordinance. LPs arise where two or more persons form a relationship to carry on a lawful purpose to be carried out and undertaken either in or from within the Turks and Caicos Islands.

70. An LP must comprise at least one general partner who is responsible for the day to day operations of the LP and who has unlimited liability, and at least one limited partner, who may not take part in the management of the LP. An LP may not have more than 100 partners.

71. The Limited Partnership Ordinance stipulates that at least one of the general partners shall; (a) if an individual, be resident in the Turks and Caicos Islands, (b) if a company, be incorporated or registered under the Companies Ordinance, (c) if a partnership, have at least one of its partners so resident, incorporated or registered.¹⁷

72. ELPs are LPs that undertake not to conduct business with Turks and Caicos residents. They may conduct business with other exempted companies, foreign companies, and general partners of other ELPs in the Turks and Caicos Islands, but only insofar as may be necessary for the carrying on of its business outside the Turks and Caicos Islands. Under the Limited Partnership Ordinance, ELPs and their partners may enjoy a defined scope of tax exemption in the Turks and Caicos Islands for up to 50 years.¹⁸

Ownership and identity information required to be provided to government authorities

General Partnerships

73. GPs are not under any statutory obligation to register or file ownership or identity information with the FSC but they may only carry on business in the Turks and Caicos Islands if they obtain the necessary business license under the Business Licensing Ordinance. To do so they have to supply the Business Licensing Committee with the names of all the partners and the address of its registered office, as well as information regarding the nature of the business. A GP is obliged to report any subsequent changes in the above information to the Business Licensing Committee within 30 days of the change occurring.

17. Section 4 of the Limited Partnerships Ordinance.

18. As defined under Section 15 of the Limited Partnerships Ordinance.

LPs and ELPs

74. All LPs, including ELPs, must register themselves with the Registrar of Companies and at the point of registration provide particulars of the LP, stipulating:

- the firm name;
- the general nature of the firm’s business;
- address in the Turks and Caicos Islands of its registered office;
- the term, if any, for which the LP is entered into, or if for an unlimited duration, a statement to that effect and the date of commencement; and
- the full name and address of each general partner.¹⁹

75. If a general partner is a corporate entity, a certification of its incorporation or registration under the Companies Ordinance must also be provided to the Registrar. The LP is not required to submit to the Registrar of Companies information on the identity of the limited partners. Any changes in the above particulars must be advised to the Registrar within 15 days of the change. If a general partner ceases to be a general partner, this notification period is shortened to seven days.²⁰

76. The Registrar is required to maintain information on each limited partnership and such records are open to public inspection during office hours. The Limited Partnership Act does not stipulate how long these records must be kept by the Registrar, but the Turks and Caicos Islands authorities have advised that all corporate filings are maintained for 10 years after the date that an entity is struck or removed from the register.

Ownership and identity information required to be held by partnerships

General Partnerships

77. There is no explicit legal obligation for GPs to maintain ownership and identity information of its partners. However, the obligation for GPs that carry on a business in the Turks and Caicos Islands to register and supply the Business Licensing Committee with the names of all the partners, as well as to report any subsequent changes in this information to the Business

19. Section 7 of the Limited Partnerships Ordinance.

20. Section 8 of the Limited Partnerships Ordinance.

Licensing Committee within 30 days of the change occurring (see above), creates an implicit obligation for a GP to have the identities of all the partners.

LPs and ELPs

78. The Limited Partnership Ordinance requires all general partners to maintain in the registered office of the LP or ELP a register containing the name and address, amount and date of contribution of each partner, and the amount and date of any payment representing a return of any part of the contribution of any partner²¹.

79. This register must be updated within 21 business days of any changes in the particulars entered therein, and must be open to public inspection during business hours. The Limited Partnership Ordinance is silent on the retention period applicable to information held in the register.

Trusts (ToR A.1.4)

80. Having adopted the principles of English Common Law as part of its laws since 1799, Turks and Caicos laws recognise and provide for the creation of trusts. The Turks and Caicos Islands Trusts Ordinance supplements the Common Law applicable to trusts by:

- setting out the essential characteristics of trusts;
- settling and clarifying some of the international conflict rules relating to trusts;
- making more flexible rules relating to trust administration;

81. A trust exists where a trustee holds or has vested in him property which does not form part of his own estate, for the benefit of any person, or for any purposes which is not for the benefit only of the trustee. A trust can be created in any manner, including through oral declaration, an instrument in writing, or through conduct. A unit trust which is created for the purposes of collective investment may only be created through an instrument in writing.

82. A Turks and Caicos trust is defined as a trust whose validity is governed by Turks and Caicos laws. Trusts whose validities are governed by a foreign jurisdiction's laws are known as foreign trusts. Trusts are not further distinguished by the location of the trust assets, settlors, beneficiaries or trustees.

21. Section 9 of the Limited Partnerships Ordinance.

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

83. There is no obligation for trusts to be registered with any government authority in the Turks and Caicos Islands.

Trust ownership and identity information required to be held by the trust

84. In the Turks and Caicos Islands, the obligations of a trustee to maintain ownership and identity information differ depending on whether the trustee is acting in a professional capacity (*i.e.* by way of business) or otherwise. For non-professional trustees, these obligations arise only from the requirements of common law. The common law places obligations on trustees to have a full knowledge of all the trust documents, to act in the best interests of the beneficiaries and to only distribute assets to the right persons. These obligations implicitly require all trustees to identify all the beneficiaries of the trust since this is the only way the trustee can carry out his duties properly. If the trustees fail to meet their common law obligations they are liable to being sued. The full extent of these common law obligations could not be ascertained during the phase 1 review. An in-depth assessment of the effectiveness of this common law regime will be conducted as part of the Turks and Caicos Islands' Phase 2 review

85. Additional requirements to keep ownership and identity information apply to licensed professional trustees that provide trustee services such as trust formation and stewardship. These are spelt out in the Trustees Licensing Ordinance and the AML regulations as detailed below.

Trust ownership and identity information required to be held by regulated trust companies

86. Professional trustees are defined to include all trustees that receive remuneration for their trustee services and must be licensed under the Trustees Licensing Ordinance unless they meet the conditions for exemption. The Trustees Licensing (Exemption) Order (1992) exempts trustee companies which:

- are trustee of a single trust only, and
 - where the only shareholders comprise the trust beneficiaries or settlors, or
 - its registered office or principal place of business is outside the Turks and Caicos Islands, in a jurisdiction that the Permanent

Secretary, Finance approves to be a jurisdiction that adequately regulates and supervises trust companies,

- or
 - a company which acts as a bare trustee only, that is which merely holds property on trust with no interest in or duty as to trust property, except to convey it when directed by the beneficial owner.

87. Exempted trustee companies are not subject to the regulations applicable to licensees under the Trustees Licensing Ordinance. They are also not subject to AML regulations because they do not fall under the definition of “financial business”. While such exempted trustee companies continue to be subject to common law obligations as described above, it is not clear whether these obligations are sufficient for the Turks and Caicos Islands to engage in effective EOI.

88. All other professional trustees must be licensed and are therefore subject to the regulations under the Trustees Licensing Ordinance and the Turks and Caicos Islands AML regime. Together, these laws impose obligations for the trustee to:

- apply appropriate risk-based customer due diligence measures to identify the beneficial owners of their new and existing customers and third parties. This would include the settlors and beneficiaries of the trust²²; and
- notify the FSC if he has cause to believe that the affairs of any trust of which he is trustee are being conducted illegally or in a manner which may be detrimental to the reputation of the trustee or to the Turks and Caicos Islands.

Foundations (ToR A.1.5)

89. Under Turks and Caicos Islands law, foundations in the sense of a legal arrangement or relationship are not recognised. While there may be persons created in or carrying on business in the Turks and Caicos Islands who use the term “foundation” in their name, this does not refer to a foundation in the sense of a legal arrangement or relationship. Rather, it refers to its ordinary meaning, being an institution supported by endowments. These “foundations” are predominantly used for charitable purposes and usually take the legal form of a company limited by guarantee.

22. Requirement 17 of the AML Code 2007.

Service providers

90. The AML regime applicable to service providers is an important element in the Turks and Caicos Islands’ ability to ensure the availability of information concerning the identity and beneficial ownership of legal persons and arrangements. Although it is not obligatory for legal persons and arrangements in the Turks and Caicos Islands to engage the services of a licensed service provider, most persons conducting business in or from within the Turks and Caicos Islands will have some involvement with a service provider through either a one-off transaction or an ongoing business relationship. Examples would include an EC that engages the services of a company manager to provide a registered office in the Turks and Caicos Islands, a company that employs a licensed agent for company formation services, or a trust that engages the services of a Turks and Caicos professional trustee. It is through these instances that the customer due diligence measures under the AML regime will be triggered and the ownership information of relevant entities be made available.

91. The Anti-Money Laundering and Prevention of Terrorist financing Regulations 2010, issued under the Proceeds of Crime Ordinance 2007, is the relevant legislation regulating the AML obligations of service providers in the Turks and Caicos Islands. It is applicable to a comprehensive range of “financial businesses” within the Turks and Caicos Islands, which includes regulated licensees such as banks, professional trustees, fund managers, company managers, investment dealers, insurers, money transmitters, as well as service providers that do not require a regulatory license, such as accountants and money brokers²³. The Regulations are supplemented by the Anti-Money Laundering and Prevention of Terrorist Financing Code 2007 (“Code”), which sets out in detail the scope and type of measures financial businesses are required to undertake in order to meet their AML obligations.

92. Under the Regulations, financial businesses are prohibited from setting up or maintaining any anonymous accounts (Regulation 16). Additionally, they are obliged to conduct appropriate customer due diligence measures under the following circumstances:

- before commencing a business relationship with a new client;
- before carrying out an occasional transaction (defined as a transaction or a series of linked transactions that involve at least USD 1 000 in the case of a money services business, or USD 15 000 in other cases) where the transaction is not carried out as part of an existing business relationship;

23. The businesses covered by the AML regulations are listed in Schedules 1 and 2 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations 2010.

- where the financial business suspects money laundering or terrorist financing, or doubts the veracity of documents earlier obtained; and
- for existing clients, at appropriate times using a risk-based approach.

93. Customer due diligence measures include obtaining information on the beneficial owners of clients and any third parties, and verifying such information on the basis of documents, data or information obtained from a reliable and independent source.

94. Financial businesses can choose to rely on an eligible introducer to conduct these measures; this contingent on such introducers being AML-regulated entities themselves. To do so financial businesses must obtain a statement from such introducers that the introducer itself has applied the relevant customer due diligence measures and will transmit identity information on the clients to the financial business upon request. The financial business remains liable for any failure to apply these measures.²⁴

95. When service providers are required to conduct customer due diligence measures, they are obliged to keep the following information for a minimum period of five years from the date on which the transaction is completed or when the business relationship ends:

- supporting documents, data or information that have been obtained in respect of a business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring;
- a record containing details relating to each transaction carried out by the financial business in the course of any business relationship or occasional transaction; and
- all account files; and all business correspondence relating to a business relationship or an occasional transaction.

96. The FSC or Reporting Authority established under the Regulations may at their discretion specify a longer information retention period.

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

97. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information. Non-compliance affects whether the information is available to the Turks and Caicos Islands

24. Regulation 14 of the AML regulations.

to respond to a request for information by its EOI partners in accordance with the international standard.

98. In the Turks and Caicos Islands, in general where an obligation to retain relevant information exists, it is supported by an enforcement provision to address the risk of non-compliance.

99. The relevant enforcement provisions are set out below:

- a company that fails to maintain a register of its shareholders/members pursuant to Section 38 of the Companies Ordinance is liable to a penalty of USD 25 for every day during which the default continues;
- a company that fails to forward an annual list of its shareholders the Registrar is liable to a fine of USD 350 for every day the default continues; with the fine also applicable to every officer, director or secretary of the company who wilfully authorises such a default;²⁵
- a financial business that fails to undertake appropriate customer due diligence measures is liable to a fine of up to USD 50 000 upon summary conviction for a regulated financial business and USD 5 000 for a non-regulated financial business;²⁶
- every financial business is obliged to appoint a money laundering compliance officer approved by the relevant supervisory authority, whose role is to oversee and ensure the financial business' compliance with the AML requirements. Failure to comply attracts a fine of up to USD 25 000 upon summary conviction;²⁷
- failure by the general partner(s) of a LP or ELP to maintain a register of the name and address, amount and date of contribution/return of contribution of each partner carries a fine of USD 500 upon conviction for each general partner, and a further fine of USD 50 for each day the default continues; and²⁸
- significant penalties apply for company managers or agents who hold bearer shares outside the Turks and Caicos Islands without meeting the prescribed conditions. Upon summary conviction the manager or agent is liable to a fine of USD 20 000 and on conviction on indictment to a fine of USD 20 000 and/or imprisonment for a period not exceeding 12 months.

25. Section 40 of the Companies Ordinance.

26. Regulation 11 of the AML regulations.

27. Regulation 21 of the AML regulations.

28. Section 9 of the Limited Partnership Ordinance.

100. The effectiveness of the enforcement provisions which are in place in the Turks and Caicos Islands will be examined as part of its Phase 2 review.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
It is not clear that the obligation to maintain a register of shareholders applies to all relevant foreign companies that are effectively managed and have a permanent establishment in the Turks and Caicos Islands.	The Turks and Caicos Islands should amend its legislation to clarify that the obligation to maintain a register of members also applies all relevant foreign companies that are effectively managed and have a permanent establishment in the Turks and Caicos Islands.
Professional trustees that meet the conditions for licensing exemption do not have clear obligations to maintain the identity of the settlors and beneficiaries of the trusts for whom they act as trustee. They are only subject to common law requirements and it is not clear that such requirements ensure identity information on the settlors and beneficiaries is available to the competent authorities.	The Turks and Caicos Islands should ensure that all professional trustees know the identity of the settlors and beneficiaries of the trusts for whom they provide services to.

A.2. Accounting records

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

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

101. There are no obligations for entities and arrangements to maintain accounting records for tax purposes as there is no income tax regime in the Turks and Caicos Islands. Entities and arrangements are only required to keep accounting records to the extent provided for in their respective regulating Ordinances. This is supplemented by the record keeping requirements imposed by the AML regulations on relevant service providers.

Accounting records to be kept in respect of companies

102. All companies registered under the Companies Ordinance, including ECs and foreign companies, must keep proper books of accounts including day books of account as to give a true and fair view of the state of the company's affairs and to explain its transactions.²⁹ Such information includes:

- all sums of money received and expended by the company and the matter in respect of which the receipt and expenditure take place;
- all sales and purchases of goods by the company; and
- the assets and liabilities of the company

103. It is not clear whether these obligations include maintaining underlying documentation pertaining to the company's transactions such as contracts and invoices.

104. The Companies Ordinance does not specify any time period for the retention of accounting records.

Accounting records to be kept by service providers/financial businesses

105. The Anti-Money Laundering and Prevention of Terrorist Financing Regulations 2010 requires financial businesses³⁰ to keep in respect of every transaction conducted through them:

- supporting documents, data or information that have been obtained in respect of a business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring;
- a record containing details relating to each transaction carried out by the financial business in the course of any business relationship or occasional transaction; and
- all account files; and all business correspondence relating to a business relationship or an occasional transaction.

106. Such records must include sufficient information to enable the reconstruction of individual transactions, and must be kept for a minimum period of 5 years. Failure to comply attracts a fine of up to USD 50 000 upon summary conviction.

29. Section 57 of the Companies Ordinance

30. The record retention obligations of financial businesses is covered under Regulation 18.

107. While comprehensive, it should be noted that these requirements apply only to the subset of business transactions that are made through regulated entities. Since legal persons and arrangements in the Turks and Caicos are under no obligation to engage the services of regulated entities for all their transactions, the record retention requirements under the Turks and Caicos Islands' AML regime will not be sufficient to cover all relevant legal persons and arrangements and therefore the requirements of ToR A.1.2.

Accounting records to be kept in respect of partnerships

General Partnerships

108. The Turks and Caicos Islands has advised that under the common law applicable to GPs, GPs are fiduciary arrangements and every partner is expected to produce accounts for the benefit of all partners. It is not clear whether this obligation is sufficient to meet the requirements under ToR A.1.2.

LPs and ELPs

109. Subject to any term of the partnership agreement to the contrary, LPs and ELPs are required to maintain sufficient information to provide, on demand by any limited partner, "true and full information regarding the state of the business and financial condition of the LP or ELP".³¹ These obligations do not include the need to maintain underlying documentation; neither is there a specific document retention period.

Accounting records to be kept in respect of trusts

110. The Trusts Ordinance requires all trustees of trusts whose validity is governed by Turks and Caicos laws to keep "proper records and accounts of their trusteeship".³² Professional trustees are subject to additional obligations under the AML regulations as described above.

Accounting records to be kept by foundations

111. Turks and Caicos Islands laws do not recognise foundations as legal persons or arrangements.

31. Section 10 of the Limited Partnerships Ordinance.

32. These obligations are spelt out in Section 20 of the Trusts Ordinance.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Companies are not obliged to keep accounting records for at least five years, nor are they required to maintain underlying documentation.	The Turks and Caicos Islands should ensure that companies maintain relevant underlying documentation, and keep such documentation as well as other accounting records in line with the international standard for at least five years.
There is no consistent obligation for partnerships and trusts to keep reliable accounting records for at least five years.	The Turks and Caicos Islands should ensure that partnerships and trusts are required to keep reliable accounting records in all cases for at least five years.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

112. Persons carrying on banking business from or within the Turks and Caicos Islands must be licensed by the Governor and as with other financial businesses, are subject to the Turks and Caicos Islands' AML regulations. The Anti Money Laundering and Terrorist Financing Regulations 2010 is the sole piece of legislation governing the record keeping requirements of banks operating from or within the Turks and Caicos Islands in respect of their clients and customers.

113. As previously described, these regulations prohibit all financial businesses, including banks, from setting up or maintaining anonymous accounts.³³ In addition, banks are prohibited from entering into or continuing correspondent banking relationship with a shell bank (defined under the regulations as an institution carrying on banking activities which are unregulated and has no meaningful physical presence in the jurisdiction of its incorporation); and are obliged to take appropriate measures to ensure that it does not enter into, or continue, a correspondent banking relationship with a bank that is known to permit its accounts to be used by a shell bank.

33. Regulation 16 of the AML Regulations

114. Banks are obliged to keep the following records on customers and transactions³⁴:

- a copy of the evidence of identity obtained pursuant to the application of customer due diligence measures or ongoing monitoring, or information that enables a copy of such evidence to be obtained;
- the support documents, data or information that have been obtained in respect of a business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring;
- a record containing details relating to each transaction carried out by the financial business in the course of any business relationship or occasional transaction; and
- all account files; and all business correspondence relating to a business relationship or an occasional transaction.

115. Such records must be kept for a minimum five years from the date the transaction is completed or the business relationship ends. Failure to do so attracts a fine of up to USD 50 000 upon summary conviction.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

34. Regulation 18 of the AML Regulations

B. Access to Information

Overview

116. A variety of information may be needed in respect of the administration and enforcement of relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities. This section of the report examines whether the Turks and Caicos Islands' legal and regulatory framework gives to its competent authority access powers that cover all relevant persons and information, and whether the rights and safeguards that are in place are compatible with effective exchange of information.

117. The Turks and Caicos Islands' Permanent Secretary, Finance is the competent authority for Turks and Caicos' TIEAs, and has the relevant information gathering powers under the Tax Information Exchange Ordinance (TIE Ordinance). He may exercise these powers himself or designate another person to do so on his behalf.

118. The competent authority's powers to obtain information for EOI purposes are not sufficiently comprehensive to meet the full requirements of the international standard. Under the TIE Ordinance, the competent authority only has power to access information when at least one of the following conditions is met: (a) the information is held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee; or (b) the information relates to the beneficial ownership of a company, partnership or other person. This may result in the Turks and Caicos Islands not being able to comply fully with the terms of its TIEAs.

119. The competent authority's access powers are primarily exercised by the issue of a notice requesting the production of information. Non-compliance of a notice is an offence and carries upon summary conviction significant penalties. With the oversight of a Court, the competent authority also has the power to search premises and seize information where there is a reasonable doubt that the production of relevant information will be endangered.

120. While confidentiality rules apply to information obtained by professional persons in the course of their business relationships, these rules generally do not prevent effective EOI. Relevant exceptions are available for the competent authority to exercise his information gathering powers to comply with an EOI request. In addition, the TIE Ordinance provides that any person providing confidential information for the purposes of a request shall have absolute defence to any confidentiality obligation.

B.1. Competent authority’s ability to obtain and provide information

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

Ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2.)

121. The competent authority’s powers to access ownership and identity information are found in the Turks and Caicos TIE Ordinance. For the purposes of complying with an EOI request, the competent authority may, by notice in writing, require any person to provide such information as may be specified in the notice. This is subject to two conditions [*emphasis added*], which are that:

- the person is reasonably believed to *have* the information to which the notice relates; *and*
- the information request is -
 - Information held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee; or
 - Information regarding the beneficial ownership of a company, partnership or other person.

122. These powers are potentially deficient in two areas; the first in that they appear to only allow the competent authority to obtain information that is held by a person within the Turks and Caicos Islands and not information which is controlled but not held by a person within Turks and Caicos’ territorial jurisdiction. The international standard requires jurisdictions to obtain and exchange information in the latter scenario as well. This is spelt out in Paragraph 7 of the Commentary to the OECD Model TIEA, which only relieves a requested State’s obligation to obtain and exchange information

which is neither held by its authorities nor is in the possession or control of person within its territorial jurisdiction.

123. The Turks and Caicos Islands authorities have advised that the term ‘have’ does not have a restricted meaning and according to its interpretation would include a person who has control of information held extra-territorially. No recommendation has been given in view of this clarification. Whether this has been an issue in practice will be examined in the course of the Turks and Caicos Islands’ Phase 2 review.

124. The second and more important deficiency lies in the fact that on the face of it the legislation appears to allow the competent authority to only request information that is held by certain defined entities (banks, fiduciaries, etc.) or which relates to the beneficial ownership of a company, partnership or other person.

125. This would not be consistent with the international standard, which requires the exchange of all information foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. This is not limited to beneficial ownership of legal persons and arrangements. This is clarified in Paragraph 47 of the Commentary to the OECD Model TIEA, which explains in respect of Article 5 (parenthesis added) that: *Sub-paragraph a)* (which refers to a jurisdiction’s obligation to exchange ownership and identity information) *should not be taken to suggest that a competent authority is obliged only to have the authority to obtain and provide information from the persons mentioned.*

126. The Turks and Caicos Islands authorities take the view that they have full access powers to obtain full information from all entities on the following basis:

- the purpose of enacting the TIE Ordinance was to comply with the terms of the Turks and Caicos Islands’ TIEAs;
- all TIEAs are implemented by way of a schedule to the TIE Ordinance and therefore become law. The TIEAs themselves oblige the Turks and Caicos Islands to exchange all information foreseeably relevant to the enforcement of the domestic tax laws of the requesting party. The access powers are not restricted³⁵; and
- the words “fiduciary” and “agent” encompass the duties of a director to a company³⁶, and a general partner to a partnership.

127. In general, the TIEAs themselves do not contain a provision empowering a contracting party to obtain information. It merely puts the obligation

35. R v Chief Immigration Officer, Heathrow Airport & Anor, ex parte Salamat Bibi.

36. Regal (Hastings) Limited v. Gulliver and Others HL/PO/JU/4/3/973.

on the contracting parties to obtain and exchange the information, but does not provide any access powers to the Turks and Caicos authorities. The latter needs to be provided for separately, which is in fact what the Turks and Caicos Islands has done through section 5(1) of the TIE Ordinance.

128. It is recommended that the Turks and Caicos Islands amend its legislation to expressly empower the Turks and Caicos Islands authorities to access all relevant information from all entities for EOI purposes.³⁷

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

129. The information gathering powers of the competent authority are not subject to the Turks and Caicos Islands' requiring such information for its own tax purposes. The competent authority is authorised to exercise these powers solely for the purpose of complying with an EOI request.

Compulsory powers (ToR B.1.4)

130. The TIE Ordinance contains relevant enforcement provisions to compel the production of information to its competent authority for EOI purposes. These include significant penalties for non-compliance of notices to produce information and the availability of search warrants.

131. Once a valid request is received by the Turks and Caicos Islands, the competent authority may issue a notice under Section 5 of the TIE Ordinance requiring a person to produce the specified relevant information. The notice will specify the timeframe for compliance (usually 28 days), and if necessary, the form in which the information is to be produced as well as the manner in which it is to be verified or authenticated. Failure to comply with the notice for information carries upon summary conviction a fine not exceeding USD 10 000 and/or imprisonment for a term not exceeding two years.

132. The competent authority may apply to a Magistrate for a search warrant if:

- a recipient of a notice fails to comply or only partly complies with the notice; or
- the competent authority is of the opinion that the notice for information will not be complied with or its issuance will cause the documents or information to which the notice relates to be removed, tampered with or destroyed.

37. The Turks and Caicos Islands has amended the TIE Ordinance 2009 to meet the recommendations of the assessors concerning restrictions on the ability of the competent authority to access information for EOI purposes. The amendment came into force on 15 July 2011.

133. A certificate given by the competent authority that the issue of a search warrant is required for the purposes of complying with a request is sufficient authority for the issue of the search warrant without further inquiry.

134. A search warrant authorises a competent authority’s representative, together with a police officer, to:

- enter the premises specified in the warrant at any time within one month from the date of the warrant;
- search the premises and take possession of any information appearing to be information of a type in respect of which the warrant was issued or to take in relation to such information, any other steps which appear to be necessary for preserving or preventing interference with them;
- take copies of, or extracts from, any information appearing to be information of a type in respect of which the warrant was issued;
- require any person on the premises to provide an explanation of any information appearing to be information of a type of which the warrant was issued or to state where such information may be found; and
- use such force as may be reasonably necessary to execute the warrant.

Secrecy provisions (ToR B.1.5)

General secrecy provisions

135. The Confidential Relationships Ordinance (CRO) is the general law governing the disclosure of confidential information acquired by “professional persons” in the course of their business. Confidential information is broadly defined and includes all information concerning any property and commercial transactions which have taken or may take place, which the recipient is not, otherwise than in the normal course of business or professional practice, authorised by the principal to divulge. The professional persons covered include accountants, attorneys, brokers, commercial agents, banks, and government officials.

136. The CRO makes it an offence for holders of confidential information to disclose or threaten to disclose such information to unauthorised persons. It does however provide exceptions to this rule under certain circumstances, such as when relevant government authorities require the information for the purposes of conducting investigations, or when another Ordinance expressly permits such disclosure. This exception is relevant and allows the competent authority to exercise his information gathering powers for EOI purposes under the TIE Ordinance.

137. Aside from the CRO, confidentiality provisions also apply to the government regulators of mutual funds, trustees businesses, banks and company managers. These requirements can be found in the respective ordinances regulating these service providers, and impose an obligation upon the regulators to maintain confidentiality of the information they obtain in the course of their regulatory work³⁸. The duty to maintain confidentiality is lifted when any other law in the Turks and Caicos Islands permits disclosure of such information.

138. General secrecy provisions therefore do not provide a basis for the Turks and Caicos competent authority to decline to exchange information. Under the TIE Ordinance, the competent authority has broad powers to obtain all types of information for EOI purposes, the only exceptions being information subject to legal privilege and information the provision of which would be contrary to public policy. In addition, the competent authority is under no obligation to obtain and exchange any trade, business, industrial, commercial or professional secret; though this exception is spelt out in its TIEAs rather than through domestic legislation.

139. The competent authority's powers to obtain and exchange confidential information are reinforced by Section 9 of the TIE Ordinance, which states:

A person who divulges any confidential information or makes any statement for the purposes of a request shall be deemed not to commit any offence under any law by reason only of such disclosure or the making of such statement, and such disclosure or statement shall be deemed not to be a breach of any confidential relationship between that person and any other person.

Legal professional privilege

140. The TIE Ordinance does not authorise the competent authority to obtain information subject to legal privilege. The scope of information subject to legal privilege is not defined under the TIE Ordinance and must be referenced from the Proceeds of Crime Ordinance. Section 126 of the Ordinance states that "privileged material" means:

- communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

38. The relevant provisions are Section 23 of the Mutual Funds Ordinance, Section 8 of the Trustees (Licensing) Ordinance, Section 28 of the Banking Ordinance and Section 21 of Company Management (Licensing) Ordinance.

- communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- material enclosed with or referred to in such communications and made
 - in connection with the giving of legal advice, or
 - in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.

141. This is consistent with the international standard.

Conclusion

142. In summary, the Turks and Caicos competent authority's powers to obtain and provide information to its EOI partners are compliant with some of the requirements under ToR B.1.1 and B.1.2. However, shortcomings in the Turks and Caicos Islands' legislation limit the scope of information the competent authority is authorised to obtain; this may restrict its ability to meet the terms of its TIEAs under certain circumstances.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
The powers of the Turks and Caicos Islands competent authorities to obtain and exchange information under an information exchange agreement apply only to (a) information held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee, or (b) information that relates to the beneficial ownership of a company, partnership or other person.	The Turks and Caicos Islands should ensure that its competent authority has the power, for the purposes of tax information exchange, to obtain information from any person that may be in possession or control of information that is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction.

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)

143. There is no requirement in the Turks and Caicos Islands' domestic legislation that the taxpayer under investigation or examination must be given prior notification of a request.

144. The competent authority may at its discretion notify the Attorney General of any request; this notification process becomes obligatory when the competent authority is of the view that requested information concerns issues of public policy.

145. In cases where the competent authority notifies the Attorney General of any request, the Attorney General shall be entitled, in a manner analogous to *amicus curiae*³⁹, to appear or to take part in any proceedings in the Turks and Caicos Islands, whether judicial or administrative, arising directly or indirectly from the request. The competent authority shall deny a request where the Attorney General has issued a certificate to the effect that the execution of the request is contrary to the public policy of the Turks and Caicos Islands.

146. Whether the administrative procedure for the competent authority to inform the Attorney General of certain requests has an impact on effective EOI should be examined in closer detail during the Turks and Caicos Islands' Phase 2 review.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

39. Latin for «friend of the court.» It is advice formally offered to the court in a brief filed by an entity interested in, but not a party to, the case.

C. Exchanging Information

Overview

147. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In the Turks and Caicos Islands, the legal authority to exchange information is derived from Tax Information Exchange Agreements (TIEAs) as well as from domestic law. This section examines whether the Turks and Caicos Islands has a network of information exchange that would allow it to achieve effective EOI in practice.

148. As of 6 May 2011, the Turks and Caicos Islands has signed 16 TIEAs, of which seven have been brought into force. The Turks and Caicos Islands has taken all the steps that are necessary on its part to bring another seven TIEAs into force, and have notified their EOI partners accordingly.⁴⁰ These agreements will be brought into force in accordance with the respective entry into force articles once the Turks and Caicos Islands' EOI partners complete their internal procedures.

149. All EOI articles in the Turks and Caicos Islands' TIEAs contain confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the TIEAs. While the articles in these TIEAs might vary slightly in wording, these provisions generally contain all of the essential aspects of Article 8 of the OECD Model TIEA. These requirements are reinforced by relevant confidentiality provisions under the Turks and Caicos Islands' domestic laws.

150. The Turks and Caicos Islands' TIEAs ensure that the contracting parties are not obliged to provide information which would disclose trade, business, industrial, commercial or professional secrets, information which is the subject of attorney-client privilege or to make disclosures which would be contrary to public policy. There are no legal restrictions on the ability of the Turks and Caicos Islands' competent authority to respond to requests within

40. The remaining two are France and Portugal.

90 days of receipt by providing the information requested or by providing an update on the status of the request.

151. While the Turks and Caicos Islands' EOI agreements generally meet the international standard, shortcomings identified in Section B of this report mean that the Turks and Caicos Islands is not able to comply fully with the terms of these agreements.

C.1. Exchange of information mechanisms

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

152. The Turks and Caicos' TIEAs are given the force of law in the Turks and Caicos Islands through the TIE Ordinance. For a TIEA to be given legal effect, two conditions must be met:

- the TIEA must be brought into force in accordance with the terms of the TIEA by both contracting jurisdictions; and
- the Governor must provide, by Order under the TIE Ordinance, that the TIE Ordinance shall apply to the TIEA.

153. A TIEA which is made effective by an Order under the TIE Ordinance would form part of subsidiary legislation and would have the force of law, and has equal authority to all other laws made in the Turks and Caicos Islands. Any conflict between two laws would have to be resolved based on the rules of statutory interpretation.⁴¹

154. The competent authority to request and provide information under the Turks and Caicos Islands' EOI agreements is the Permanent Secretary, Finance.

Foreseeably relevant standard (ToR C.1.1)

155. The international standard for exchange of information envisages information exchange to the widest possible extent, but does not allow 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". It does not allow "fishing expeditions".

156. All of the Turks and Caicos Islands' TIEAs provide for the exchange of information that is "foreseeably relevant" to the administration and enforcement

41. This would include a determination of the purpose of the provision, which provision was later in time, the meaning of the provision in its context, etc.

of the domestic laws of the Contracting Parties concerning taxes covered in the TIEAs. This scope is set out in Article 1 of all of the Turks and Caicos Islands' TIEAs.

157. There are however limitations on the exchange of personal data in two of the Turks and Caicos Islands' TIEAs. The Turks and Caicos Islands' Protocols to its TIEAs with the Netherlands (Paragraph 1(d)) and Germany (Paragraph 2(d)) contain provisions restricting the exchange of personal data. Under these provisions, any bans on the supply of personal data prescribed under the law of the supplying Contracting Party "shall" be observed, meaning that such data may not be exchanged under any circumstances. The Turks and Caicos Islands authorities have advised that no existing ban is applicable in this regard.

158. In addition, the Protocol to the Turks and Caicos Islands' TIEA with Germany narrows the scope of personal data that would be considered 'foreseeably relevant' for the purposes of the Turks and Caicos Islands – Germany TIEA. Paragraph 2(d) of the Protocol states that personal data is only "foreseeably relevant" if *in the concrete case at hand there is the serious possibility that the other Contracting Party has a right to tax and there is nothing to indicate that the data are already known to the competent authority of the other Contracting Party or that the competent authority of the other Contracting Party would learn of the taxable object without the information.*

159. The requirements that a case must be "concrete" and that there must be a "serious possibility" appear to be more stringent than the standard of foreseeably relevance envisaged under the international standard. Indeed, Paragraph 4 of the commentary to the OECD Model TIEA states that the standard of foreseeable relevance is meant to ensure that information requests may not be declined in cases where a definite assessment of the pertinence of the information to an on-going investigation can only be made following the receipt of the information.

160. Whether the above restrictions have any practical impact on EOI will be examined in the course of the Turks and Caicos Islands' Phase 2 review.

In respect of all persons (ToR C.1.2)

161. 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 EOI mechanisms will provide for exchange of information in respect of all persons.

162. All of the Turks and Caicos Islands' TIEAs provide for EOI in respect of all persons.

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

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

164. All of the Turks and Caicos Islands' TIEAs provide for the exchange of information held by financial institutions, nominees, agents; and ownership and identity information.

Absence of domestic tax interest (ToR C.1.4)

165. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

166. All of the Turks and Caicos Islands' TIEAs contain provisions similar to the Article 5(2) of the OECD Model TIEA⁴², which obliges the Contracting Parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested Party does not have a domestic interest in the requested information.

Absence of dual criminality principles (ToR C.1.5)

167. 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 jurisdiction

42. Article 5(2) of the 2002 Model Agreement reads “*If the information in possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes*”

if it had occurred in the requested jurisdiction. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

168. All of the Turks and Caicos Islands' TIEAs contain provisions similar to Article 5(1) of the OECD Model TIEA⁴³, which obliges Contracting Parties to exchange information without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Contracting Party.

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

169. 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; it also includes information requested for tax administration purposes (also referred to as “civil tax matters”).

170. All of the Turks and Caicos Islands' TIEAs provide for exchange of information in both civil and criminal tax matters.

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

171. There are no restrictions in the Turks and Caicos Islands' domestic laws that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices. This is reinforced in all of the Turks and Caicos Islands' TIEAs, which contain provisions similar to Article 5(3) of the OECD Model TIEA. Article 5(3) obliges Contracting Parties to provide, on request, information in the form of dispositions of witnesses and authenticated copies of original records to the extent allowable under domestic law.

In force (ToR C.1.8)

172. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. The international standard requires that jurisdictions take all steps necessary to bring information arrangements that have been signed into force expeditiously.

43. Article 5(1) of the 2002 Model Agreement reads “*The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party*”

173. As of 6 May 2011, the Turks and Caicos Islands has signed 16 TIEAs. Seven of these TIEAs have been brought into force. The Turks and Caicos Islands has issued Orders applying the provisions of the TIE Ordinance to another seven TIEAs, thereby completing all the necessary steps on its part to ratify them.⁴⁴ These seven agreements will be brought into force in accordance with the respective entry into force articles once the Turks and Caicos Islands' EOI partners complete their internal procedures.

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

174. For information exchange to be effective the parties to an EOI arrangement need to enact legislation necessary to comply with the terms of the arrangement. The Turks and Caicos Islands' TIEAs are given the force of law through the Governor issuing an Order under the TIE Ordinance. However, as highlighted in Part B of this report, the provisions governing the competent authority's powers to access information do not sufficiently enable the Turks and Caicos competent authority to meet all its obligations under the TIEAs.

175. It is recommended that the Turks and Caicos Islands amend its domestic legislation so that it can obtain and exchange all relevant information under its TIEAs.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
The Turks and Caicos Islands' arrangements providing for international exchange of information have not been given full effect through domestic law as there are limitations on the authorities' powers to obtain necessary information for the purpose of international information exchange.	The Turks and Caicos Islands should amend its domestic legislation so that it can give full effect to the terms of its EOI agreements.

44. These seven agreements are the agreements with Australia, Denmark, Finland, Netherlands, Norway, Sweden, the United Kingdom

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

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

176. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those 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.

177. The Turks and Caicos Islands has signed TIEAs with 16 jurisdictions, of which 14 are OECD countries⁴⁵. Its network of EOI agreements covers one of its key trading partners, the United Kingdom, but not the other key trading partner, which is the United States. The Turks and Caicos Islands authorities have advised that they are in negotiations with a number of other jurisdictions to conclude EOI agreements; these include its significant trading partners.

178. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and no jurisdiction, including the Turks and Caicos Islands' key trading partners, advised the assessment team that the Turks and Caicos Islands had refused to negotiate or conclude an EOI agreement with it. One jurisdiction indicated that it had approached the Turks and Caicos Islands in 2009 to negotiate a TIEA but had not received a response as of January 2011.

45. Australia, Canada, Denmark, Finland, France, Germany, Iceland, Ireland, Netherlands, New Zealand, Norway, Portugal, Sweden, United Kingdom

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain legal aspects of the legal implementation of the element require improvement.	
Factors underlying recommendations	Recommendations
The Turks and Caicos Islands has a network of EOI arrangements with relevant partners but they have not been given full effect through domestic law.	The Turks and Caicos Islands should ensure it gives full effect to the terms of its EOI arrangements in order to allow for full exchange of information to the standard with all its relevant partners.
	The Turks and Caicos Islands 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)

179. 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.

180. All of the Turks and Caicos Islands' TIEAs have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the TIEAs. While each of the articles might vary slightly in wording, these provisions generally contain all of the essential aspects of Article 8 of the OECD Model TIEA.

181. These confidentiality requirements are reinforced in its domestic laws, firstly through the CRO, which obliges government officials to maintain the confidentiality of information they obtain in the course of their professional business, and secondly through the provisions of the TIE Ordinance, section 10 of which states:

The particulars of and all matters relating to a request shall be treated as confidential, and no person who is notified of a

request, or is required to take any action, or supply any information in response to or in relation to any matters to which a request relates, shall disclose the fact of the receipt of such request or any other particulars required or information supplied to any other person except in accordance with the Agreement.

182. Breach of the confidentiality provisions laid down in the TIE Ordinance carries upon summary conviction a fine not exceeding USD 10 000 and/or imprisonment for a term not exceeding two years.

All other information exchanged (ToR C.3.2)

183. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

184. All of the Turks and Caicos Islands' TIEAs contain confidentiality provisions similar to Article 8 of the OECD Model TIEA, which specifies that the confidentiality rules spelt out in the TIEA apply to all information received under the agreement. This is reinforced in the TIE Ordinance as described above.

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.

185. 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 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.

186. 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, EOI resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

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

187. All of the Turks and Caicos Islands’ TIEAs ensure that the Contracting Parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret, information which is subject to attorney-client privilege, or information the disclosure of which would be contrary to public policy.

188. These exceptions are reinforced in the TIE Ordinance. Section 5(2) specifies that the competent authority does not have powers to obtain information that is subject to legal privilege. The scope of legal privilege is defined in 10 of the Turks and Caicos Islands’ 16 TIEAs⁴⁶, and conforms to the international standard. For the six TIEAs that do not explicitly define the scope of legal privilege, the definition would follow that of the Turks and Caicos Islands’ domestic laws. As described in Section B, the domestic scope of attorney-client privilege is consistent with the international standard.

189. With regard to information the disclosure of which would be contrary to public policy, section 6 of the TIE Ordinance obliges the competent authority to notify the Attorney General whenever it is of the view that complying with a request would be contrary to the Turks and Caicos Islands’ public policy, and to decline the request where the Attorney General expresses the same view.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

46. Legal privilege is not defined in the TIEAs with France, Germany, Portugal, Ireland, Netherlands and UK.

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)

190. All of the Turks and Caicos Islands' TIEAs contain provisions similar to Article 5(6) of the OECD Model TIEA, which obliges Contracting Parties to forward the requested information as promptly as possible to the applicant Party. In particular, Contracting Parties are required to confirm receipt of a request in writing to the applicant Party and notify the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request. The requested Party is also required to inform the applicant Party if it is unable to obtain and provide the information within 90 days of receipt of the request, and explain the reasons behind the delay.

191. The Turks and Caicos Islands' practical implementation of this provision will be reviewed in Phase 2.

Organisational process and resources (ToR C.5.2)

192. The Tax Information Exchange Ordinance 2009 (TIE Ordinance) gives legal effect to all TIEAs signed by the Turks and Caicos Islands and grants the Turks and Caicos Islands' competent authority the necessary information gathering powers to comply with EOI requests. Pursuant to this Ordinance, the Permanent Secretary, Finance is the competent authority for international exchange of information in tax matters, and he is supported by the Attorney General in this work.

193. A review of the Turks and Caicos Islands' organisational process and resources will be conducted in the context of its Phase 2 review.

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

194. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. As noted in Part B of this Report, there are no aspects of the Turks and Caicos Islands' domestic laws that appear to impose additional restrictive conditions on exchange of information.

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 in place, but certain aspects of the legal implementation of the element need improvement.	It is not clear that the obligation to maintain a register of shareholders applies to all relevant foreign companies that are effectively managed and have a permanent establishment in the Turks and Caicos Islands.	The Turks and Caicos Islands should amend its legislation to clarify that the obligation to maintain a register of members also applies all relevant foreign companies that are effectively managed and have a permanent establishment in the Turks and Caicos Islands.
	Professional trustees that meet the conditions for licensing exemption do not have clear obligations to maintain the identity of the settlors and beneficiaries of the trusts for whom they act as trustee. They are only subject to common law requirements and it is not clear that such requirements ensure identity information on the settlors and beneficiaries is available to the competent authorities.	The Turks and Caicos Islands should ensure that all professional trustees know the identity of the settlors and beneficiaries of the trusts for whom they provide services to.

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.	Companies are not obliged to keep accounting records for at least five years, nor are they required to maintain underlying documentation.	The Turks and Caicos Islands should ensure that companies maintain relevant underlying documentation, and keep such documentation as well as accounting records for at least five years.
	There is no consistent obligation for partnerships and trusts to keep reliable accounting records for at least five years.	The Turks and Caicos Islands should ensure that partnerships and trusts are required to keep reliable accounting records in line with the international standard in all cases for at least 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 not in place.	The powers of the Turks and Caicos Islands competent authorities to obtain and exchange information under an information exchange agreement apply only to (a) information held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee, or (b) information that relates to the beneficial ownership of a company, partnership or other person.	The Turks and Caicos Islands should ensure that its competent authority has the power, for the purposes of tax information exchange, to obtain information from any person that may be possession or control of information that is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction.

Determination	Factors underlying recommendations	Recommendations
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 not in place.	The Turks and Caicos Islands' arrangements providing for international exchange of information have not been given full effect through domestic law as there are limitations on the authorities' powers to obtain necessary information for the purpose of international information exchange.	The Turks and Caicos Islands should amend its domestic legislation so that it can give full effect to the terms of its EOI agreements.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The Turks and Caicos Islands has a network of EOI arrangements with relevant partners but they have not been given full effect through domestic law.	The Turks and Caicos Islands should ensure it gives full effect to the terms of its EOI arrangements in order to allow for full exchange of information to the standard with all its relevant partners.
		The Turks and Caicos Islands 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.		

Determination	Factors underlying recommendations	Recommendations
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 Report⁴⁷

The Turks and Caicos Islands remains fully committed to the international standard for transparency and exchange of tax information and has considered the recommendations made in the Peer Review report carefully and has moved swiftly to address the concerns of the assessors.

The Turks and Caicos Islands wishes to record the following comments with regard to the findings of the report:

The Turks and Caicos Islands wishes to clarify that its legislation has been purposefully drafted in a good faith attempt to ensure the enforcement of the terms of the treaties entered into for the exchange of tax information.

Whilst the assessment has determined that the element is not in place for accounting records due to the absence of express provisions in the law regarding each enumerated aspect of element A.2, the Turks and Caicos Islands wishes to re-emphasise that the general requirements of element A.2 have been partially met by the existence of various positive obligations to maintain accounting records. This has been recognised throughout the report in respect of several entities. In recognition of this gap in the legislation, the Turks and Caicos Islands acted promptly and made relevant adjustments to the legislative framework to ensure that the requirements of element A.2 are met in full.

As a result, the Companies (Amendment) Ordinance 2011 and the Limited Partnerships (Amendment) Ordinance 2011 amended the Companies Ordinance and the Limited Partnerships Ordinance respectively, to meet the recommendations of the assessors under elements A.1 and A.2 and will come into force on 29 July 2011. Additionally draft amendments to the Trusts Ordinance are being considered to address the assessors’ concerns under elements A.1 and A.2.

Additionally, the assessment team has determined that the element is not in place in respect of the powers of the Turks and Caicos Islands competent authorities to obtain and exchange information under an information

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

exchange agreement because the powers apply only to (a) information held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee, or (b) information that relates to the beneficial ownership of a company, partnership or other person. An amendment to the Tax Information Exchange Ordinance came into force on 15 July 2011. The purpose of the amendment was to address the issue identified under element B.1 and consequently C.1 and C.2.

The Turks and Caicos Islands is grateful to the assessment team and representatives of the Global Forum Secretariat for their thorough work on the report, which has highlighted the aspects of legislation that could benefit from clarification and improvement. The Turks and Caicos Islands has acted swiftly to address the areas of concern raised in the report.

In relation to exchange of information mechanisms, the Turks and Caicos Islands wishes to provide the following update:

The Turks and Caicos Islands is making constant efforts to establish a broad and effective tax treaty network. The treaty with France was brought into force on 15 July 2011. Discussions with four other Global Forum member countries, including OECD member states, are well advanced and TIEAs with all these nations are expected to be concluded shortly, and subsequently brought into force as soon as practicable.

The Turks and Caicos Islands is exchanging bank information with member states of the European Union and certain third countries or territories in compliance with the European Union Savings Directive. In February 2011, the Turks and Caicos Islands committed to progression from the transitional withholding tax arrangement to an automatic exchange of information regime under the European Savings Directive by the end of 2011.

These developments address the assessors' recommendation under C.2.

Annex 2: List of all Exchange-of-Information Mechanisms in Force

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
1	Australia	Taxation information exchange agreement (TIEA)	30-Mar-10	01-Jul-10
2	Canada	TIEA	22-Jun-10	
3	Denmark	TIEA	07-Sep-09	25-Jan-11
4	Faroe Islands	TIEA	16-Dec-09	
5	Finland	TIEA	16-Dec-09	02-Apr-11
6	France	TIEA	24-Sep-09	
7	Germany	TIEA	04-Jun-10	
8	Greenland	TIEA	16-Dec-09	
9	Iceland	TIEA	16-Dec-09	
10	Ireland	TIEA	22-Jul-09	
11	Netherlands	TIEA	22-Jul-09	01-May-11
12	New Zealand	TIEA	11-Dec-09	
13	Norway	TIEA	16-Dec-09	09-Apr-11
14	Portugal	TIEA	20-Dec-10	
15	Sweden	TIEA	16-Dec-09	02-Apr-11
16	UK	TIEA	23-Jul-09	25-Jan-11

Annex 3: List of all Laws, Regulations and Other Relevant Material

Commercial laws

Banking Ordinance
Confidential Relationship Ordinance
Companies Ordinance
Company Management (Licensing) Ordinance
Trustees (Licensing) Ordinance
Trust Ordinance
Insurance Ordinance
Mutual Funds Ordinance
Investment Dealers (Licensing) Ordinance
Money Transmitters Ordinance
Limited Partnerships Ordinance 1992
Casinos Ordinance

AML and Regulatory Laws

Proceeds of Crime Ordinance, 1998
Proceeds of Crime Regulations
Proceed of Crime Ordinance, 2007 (as amended)
Proceeds of Crime (Designated Countries and Territories) Order, 2001
Police Force Ordinance
AML/CFT Regulations 2009
Financial Services Commission Ordinance, 2007 (as amended)

Other

Tax Information Exchange Ordinance 2009

Tax Information Exchange Orders, 2010

Customs Ordinance (Cap. 135)

The General Orders of the Turks and Caicos Islands Public Service –
1998 Edition (General Orders)

Criminal Justice (International Cooperation) Ordinance

Mutual Legal Assistance Ordinance

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: TURKS AND CAICOS ISLANDS

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.

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