

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

TURKS AND CAICOS ISLANDS

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Turks and Caicos 2013

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

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(reflecting the legal and regulatory framework
as at August 2013)

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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 120 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in the Turks and Caicos Islands together with the practical implementation of that framework.
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. The assessment of effectiveness in practice has been performed in relation to a three year period (1 January 2010 to 31 December 2012).
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. 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. To date it has signed bilateral EOI agreements with 16 jurisdictions, of which 14 have been brought into force. The Turks and Caicos Islands has taken all steps for its part which are necessary to bring the two remaining into force, and has notified its EOI partners accordingly. The Turks and Caicos Islands is also negotiating EOI agreements with a number of partners, including its main trading partners. In addition, the territorial extension of the Convention on Mutual Administrative Assistance in Tax Matters to the Turks and Caicos Islands was declared by the United Kingdom in a letter dated 1 August 2013 registered with the Secretary General of the Council of Europe on 20 August 2013. The multilateral Convention will enter into force in the Turks and Caicos Islands on 1 December 2013. In total, the Turks and Caicos Islands has a network of EOI arrangements covering 58 partners.

5. The Turks and Caicos Islands has a network of EOI agreements with relevant partners. These EOI agreements are generally consistent with the international standard and are given full legal effect through the Turks and Caicos Islands' domestic legislation.

6. In terms of access to information, the Tax Information Exchange Ordinance, as amended, expressly empowers the competent authority to obtain, for the purposes of complying with a valid EOI request, any information under the possession or control of any person under the Turks and Caicos Islands' territorial jurisdiction. The rights and safeguards available under the Turks and Caicos Islands' legal framework are compatible with effective exchange of information.

7. Over the 3 years ending 31 December 2012, the Turks and Caicos Islands received four requests for information from three partners. Several partners reported that they had difficulties during the period 2010-12 in making contact with the Turks and Caicos Islands' competent authorities. This, as well as treaty interpretation issues, resulted in delays in the provision of the requested information to the partners. Since November 2012, an EOI Unit staffed with three people has been created and clearly tasked with handling these matters. Contacts have been established with the partners concerned and the requested information provided. The re-submitted requests have now been processed and information collected. The Turks and Caicos Islands' EOI division now closely monitors all incoming cases and provides status updates to its partners throughout the process of provision of information. Since the EOI Unit has been set up, it has been able to collect the requested information in a timely fashion, demonstrating the effective use of its access to information powers in responding to these requests. It is nevertheless recommended that the TCI, building on the contacts established, monitor its relationships with its partners and its handling of incoming EOI requests, in particular given the recent establishment of its EOI Unit.

8. The laws of the Turks and Caicos Islands ensure that ownership and identity information, as well as reliable accounting information, are mostly available for relevant legal entities and arrangements. The remaining gaps pertain to the availability of ownership and accounting information in respect of trusts that are professionally managed by a category of trustees who are exempted from licensing. The legal framework ensures that relevant bank information for all account holders is available to the authorities. In practice, when legal provisions require ownership and banking information to be maintained, this information is available when requested by government authorities. Appropriate supervision measures are in place to make sure that such information can be provided on request of treaty partners. With regard to accounting records, legal obligations to retain this information were introduced in 2011. The Turks and Caicos Islands experience in relation to

the provision of this information is limited and although the FSC has been established as the regulator of such legislative requirements, this body has not for the moment implemented any programme to supervise compliance with these record keeping obligations. It is recommended that the Turks and Caicos Islands authorities implement appropriate measures to ensure that this information is available in all instances.

9. The Turks and Caicos Islands has been assigned a rating¹ for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of the Turks and Caicos Islands' legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, the Turks and Caicos Islands has been assigned the following ratings: Compliant for elements A.1, A.3, B.1, B.2, C.1, C.2, C.3 and C.4, and Largely Compliant for elements A.2 and C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for the Turks and Caicos Islands is Largely Compliant.

10. A follow up report on the steps undertaken by The Turks and Caicos Islands to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.

1. This report reflects the legal and regulatory framework as at the date indicated on page 1 of this publication. Any material changes to the circumstances affecting the ratings may be included in Annex 1 to this report.

Introduction

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

11. The peer review process of the Turks and Caicos Islands has been undertaken across three reports; the 2011 Phase 1 report, a Supplementary Phase 1 report, and a Phase 2 Report. The assessment of the legal and regulatory framework of the Turks and Caicos Islands as well as its practical implementation and effectiveness were 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*.

12. The Phase 1 report of the Turks and Caicos Islands 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.

13. The supplementary peer review report, which followed the original Phase 1 report of the Turks and Caicos Islands, was prepared pursuant to paragraph 58 of the Global Forum's Methodology and was adopted by the Global Forum in October 2011. The supplementary report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at August 2011, and information supplied by The Turks and Caicos Islands.

14. The Phase 2 assessment is based on the laws, regulations, and exchange of information mechanisms in force or effect as at 22 August 2013, the Turks and Caicos Islands' responses to the Phase 2 questionnaire, supplementary questions and other materials supplied, information provided by exchange of information partners, and explanations provided by the Turks and Caicos Islands during the on-site visit that took place from 19-21 March 2013 in Grand Turk and Providenciales, Turks and Caicos Islands. During

the on-site visit, the assessment team met with officials and representatives of the Department of Revenue (including the Exchange of information division), the Turks and Caicos Islands Financial Services Commission (including the Registry), the Attorney-General's office and representatives of service providers and banks (see Annex 4).

15. The following analysis reflects the integrated 2011 Phase 1, Supplementary Phase 1 and Phase 2 assessments of the legal and regulatory framework of the Turks and Caicos Islands as in effect on 22 August 2013 and the practical implementation and effectiveness of this framework in the three-year review period of 1 January 2010 to 31 December 2012.

16. 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 and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding the Turks and Caicos Islands' legal and regulatory framework 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. In addition, to reflect the Phase 2 component, recommendations are made concerning the Turks and Caicos Islands' practical application of each of the essential elements and a rating of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant is assigned to each element. An overall rating is also assigned to reflect the Turks and Caicos Islands' overall level of compliance with the standards.

17. The Phase 1 and supplementary assessments were 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.

18. The Phase 2 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 Mrs. Florence Boisset-Repkat, Manager in the Large Business Audit Branch of the French Revenue Administration; and one representative of the Global Forum

Secretariat, Mr. Rémi Verneau. The assessment team assessed the practical implementation and effectiveness of the legal and regulatory framework for transparency and exchange of information and relevant EOI arrangements in the Turks and Caicos Islands.

19. The ratings assigned in this report were adopted by the Global Forum in November 2013 as part of a comparative exercise designed to ensure the consistency of the results. An expert team of assessors was selected to propose ratings for a representative subset of 50 jurisdictions. Consequently, the assessment teams that carried out the Phase 1 and Phase 2 reviews were not involved in the assignment of ratings. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach.

Overview of the Turks and Caicos Islands

20. 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.

21. The Turks and Caicos Islands economy is based primarily on tourism, fishing, and offshore financial services. It receives more than 300 000 stay-over tourists per year and more than 600 000 cruise visitors, mostly from the United States. The Turks and Caicos Islands' official currency is the United States Dollar (USD). In 2011 its gross domestic product was approximately USD 727 million, translating to a GDP per capita of about USD 22 000.

Legal and taxation system

22. The Turks and Caicos Islands' Constitution Order 2006² 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.

23. The Turks and Caicos Islands' legal system is based on English common law, and relevant legislation is enacted either from the United Kingdom (UK)

2. The 2006 Constitution was replaced by the 2011 Constitution which came into force in October 2012. Although the 2011 Constitution reflects new and significant changes to strengthen provisions related to public financial management and integrity, the legal structure remains as stated in the Report and was the system in place for the majority of the period under review.

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.

24. There are two types of legislation – primary legislation and subordinate legislation 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.

25. 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. In 2012, total revenues amounted to USD 190 million (about USD 130 million in 2010 and USD 164 million in 2011) of which import duties represented 25%, tax on accommodation 16%, stamp and land transactions duties 12% and custom processing fee 10%.

The Turks and Caicos Islands’ commercial laws and financial sector

26. 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 GDP³. As of 2012, there were 7 banks, 15 professional trustees and 37 company managers servicing approximately 9 500 exempt companies registered in the Turks and Caicos Islands.⁴ 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 1.72 billion as of 2012.⁵

27. 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

3. Figure quoted from Turks and Caicos Department of Economic Planning and Statistics.

4. Figures from Turks and Caicos’ 2008 CFATF Mutual Evaluation Report.

5. Figures from the Turks and Caicos’ Financial Services Commission Report 2012.

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.

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

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

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

30. 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.

31. In a letter dated 1 August 2013, the United Kingdom extended the territorial application of the multilateral Convention on Mutual Assistance in Tax Matters (“Multilateral Convention”) to the Turks and Caicos Islands. The Multilateral Convention will enter into force for the Turks and Caicos Islands on 1 December 2013.

32. 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) as amended in 2011, 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.

33. The Turks and Caicos Islands had signed TIEAs with 16 jurisdictions. Fourteen of these TIEAs have been brought into force. The Turks and Caicos Islands has completed all the necessary steps on its part to bring the two remaining 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.⁶

Recent developments

34. In addition to its exchange of information on request programme, the Turks and Caicos Islands also exchange information automatically under the Retention Tax Ordinance 2005 which has given effect to Agreements applying similar measures to the EU Directive 2003/48/EC ("Savings Directive"). Before 2012, the Turks and Caicos Islands opted for the system of withholding tax provided by this Directive but from 1 July 2012, it moved to exchanging information automatically with the 27 EU Member States. Reports from banks, comprising name and address of the account holder and other identifying information, the name and address of the agent making the payment, the account number and details, the amount of the payment and the nature of the payment will be received by the end of each financial year (March). Automatic exchange of information in relation to 2012 will take place with the 27 EU Member States for the first time by the end of September 2013, at the latest.

35. The Revenue Department was restructured in late 2012 as part of the Turks and Caicos Islands tax reform programme with a view to implementing a VAT system and a better control of revenues. The Revenue Department has been restaffed and comprises 23 employees instead of the previous 6 officials. It now has three different sections, a tax and service section, a legal and enforcement section and an audit section. Although the VAT reform has been postponed, a compliance strategy has been developed with a better management and monitoring of the revenue administration generally, including of business licenses and of the tax on tourist accommodation. A programme of audits has also been established.

36. The Turks and Caicos Islands, along with other Overseas Territories and Crown Dependencies of the United Kingdom, has agreed to join the pilot

6. The remaining two are the TIEAs with Ireland and New Zealand.

project to share FATCA-type information as proposed by the G5 (the UK, France, Germany, Italy and Spain). Under this arrangement, much greater levels of information about bank accounts will be exchanged as part of a move to a new single global standard on automatic exchange of information.

37. In a letter dated 1 August 2013, and registered by the Secretary General of the Council of Europe on 20 August 2013, the United Kingdom extended the territorial application of the Convention on Mutual Administrative Assistance in Tax Matters (“Multilateral Convention”) to the Turks and Caicos Islands. The Multilateral Convention will enter into force for the Turks and Caicos Islands on 1 December 2013.

Compliance with the Standards

A. Availability of Information

Overview

38. 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 organisational 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.

39. 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. In practice, the Turks and Caicos Islands' authorities closely monitor the provision of information by all type of entities as well as keeping of records by registered agents. This is mainly done through a system of supervision of the 37 licensed corporate service providers and 15 trust service providers. Off-site and on-site inspections are regularly conducted by the Financial Service Commission (FSC) and compliance with customer due diligence

requirements is found to be high, giving broad assurance that ownership information is available.

40. 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.

41. The requirements under the Turks and Caicos Islands' laws in respect of accounting records generally meet the standard described in element A.2 of the ToR. By virtue of amendments made to the Companies Ordinance and the Limited Partnerships Ordinance in July 2011 and the adoption of a General Partnership Ordinance in October 2011, companies, limited partnerships and general partnerships are required to keep accounting records in compliance with the standard. While, 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. Accordingly, the recommendations made under A.2 are that the element is in place but certain aspects of the legal implementation of the element need improvement. 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. The Turks and Caicos Islands authorities as well as associations of registered agents have informed all relevant professionals of the new accounting requirements. However, it also noted that accounting records do not have to be filed with government authorities. The experience of the Turks and Caicos Islands in relation to the availability of information is also rather limited and that these requirements are new and untested in practice. It is therefore recommended to the Turks and Caicos Islands to take supervisory measures to ensure that in practice exempted companies and limited partnerships comply with their obligations to retain accounting records in all instances.

42. 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. The FSC is also in charge of the supervision of banks and these institutions have several periodical reporting obligations. This is coupled with a system of off-site and on-site inspections during which compliance of financial institutions with their obligations is reviewed. Financial

institutions are found to comply with their obligations, ensuring the availability of banking information in the Turks and Caicos Islands.

43. 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. In practice, aside from the concern noted in relation to the application of sanctions for anti-money laundering (AML) obligations below, these sanctions are adequate to ensure the availability of information. In the field of AML, in instances where deficiencies in complying with AML obligations are detected by the FSC, a timeframe is given for the person concerned to address the situation. The extent to which these deficiencies are remedied will be followed up by the FSC. When the recommendations made are fully implemented in due time, the person concerned will not be sanctioned. To make its supervisory system even more dissuasive, the FSC should, when significant breaches of AML obligations are discovered, also consider applying sanctions.

A.1 Ownership and identity information

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

Companies (ToR 7 A.1.1)

44. 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. There were 4 700 ordinary companies and 9 500 Ecs registered in the Turks and Caicos Islands as at 31 December 2012.

45. 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 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 an office in the Turks and Caicos Islands but otherwise is prohibited from conducting business activities in the Turks and Caicos Islands⁸.

46. 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

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- 7. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.
 - 8. Section 180 of the Companies Ordinance.

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 companies⁹. For example, Ecs are not required to hold annual general meetings.

47. 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. The address of the representative resident of the EC is deemed to be the EC's registered office.

48. 37 corporate service providers are present in the Turks and Caicos Islands, of which 28 incorporate Ecs. Three corporate service providers have had their authorisation revoked since 2010 and the number of registered agents is fairly stable. To be entitled to provide services, registered agent must first be licensed by the FSC (see details below, after section A.1.5).

49. Each registered agent is required to provide, before 31 March of each year, an annual return disclosing all companies, including Ecs, that (s) he manages. When this information is received it is checked against information kept by the FSC and when necessary, information maintained in the FSC's databases is updated. Registered agents are required to retain a large range of information in relation to entities they manage. Consequently it is highly important for the FSC to have updated information on and from them. When errors are detected in the returns provided to the FSC, the practice is to contact first the registered agent concerned to address these shortcomings. In the most serious instances, on-site inspections can be conducted as part of the FSC's annual programme of supervision. This programme of supervision is detailed below, after section A.1.5.

50. An EC may also opt to be registered as a limited life company (LLC)¹⁰. 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. 27 limited life companies were registered in the Turks and Caicos Islands as at 31 December 2012.

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

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

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

51. 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. The Registry of Companies is staffed with 17 members including the Registrar, one Deputy Registrar, one Assistant Registrar, three staff dedicated to registration and three data entry officers.

52. 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		

53. 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 takes¹¹. These details are entered into the register of companies by the Registrar once the memorandum is submitted.

54. In practice, a company wishing to incorporate in the Turks and Caicos Islands must first ask for a name reservation. This has to be done with the FSC. Within one month after this, it has to file its registration application with the Registrar otherwise the registered name is removed and the company has to restart the entire process from the beginning. This is a sufficient incentive to ensure that companies will register with the Registrar in a timely fashion. The Turks and Caicos authorities have also mentioned that it would be unlikely for a company to start its activity without being registered as it

11. Section 11 of the Companies Ordinance.

could not, for instance, open a bank account (providing a certificate of incorporation is a prerequisite to open a bank account) and the bank concerned would have to issue a suspicious transaction report to the Financial Crime Unit (FCU).

55. Upon submission, all documents are checked to ensure that all information required by law to be provided is there. Ownership information is not part of the information to be provided upon registration. However, the name of the subscriber, who is usually a service provider, must be disclosed and this information is kept by the Registry as the registered agent is under the law required to keep a wide range of information (see para 70) and will be a facilitator for the relationships between the Registry and the company. Once all information needed is received, the officer in charge will check whether the business name has been reserved and that this use is not restricted. The file is then transmitted to a senior officer who will check again the accuracy of information provided and the certificate of incorporation is issued. The Turks and Caicos Islands authorities advised that the whole process of incorporation is generally completed within 48 hours. The current register is maintained in electronic format but should be replaced by the end of 2013 by a new system allowing registered agent to submit registration forms on-line.

56. 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 shareholder¹². 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.¹³

57. Companies must under the Companies Ordinance notify the Registry of any change in shareholding or registered office within 30 days of the change, and of any change in directors within 14 days of the change (ss. 9, 46(2) and (3)). The burden of complying with this legal obligation lies with the company and the Registry has no specific on-going procedures to ensure that this information is updated on a timely basis. However, under the law, companies must also provide annual returns and the Registry closely monitors these filing obligations to see whether any change in shareholders has occurred over the past year. All changes in shareholder should be reported to the FSC along with the payment of a fee. Each time an annual return shows that some shareholders have changed and the Registrar has not been advised, the Registrar will ask the company to update the information maintained in the registry and to pay the fee that should come with this update.

12. Section 39 of the Companies Ordinance.

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

58. Each annual return is also checked upon submission. If discrepancies between information on shareholders available to the Registry and information submitted are noticed, the registry will first ask the company to comply with its obligation of notification. If this is not done on time, the annual return will not be accepted which is a ground for striking off the company of the Registry. To be restored to the register, the company concerned will have to file the missing returns, to pay penalties for every year it was delinquent and the unpaid fees. The FSC reported that the level of compliance is high, especially when companies use the services of registered agents. The number of companies in compliance over the three year period are as follows: in 2010, 12 629 companies; in 2011, 11 144 companies and in 2012, 11 992 companies. In 2012, 575 penalties for late filing were imposed on the 4 700 ordinary companies incorporated in the Turks and Caicos Islands showing that the system is enforced in practice by the authorities.

59. Over the period 2010-12 the number of companies struck out from the Registry was the following:

Type of company	2010	2011	2012
Exempt	1 723	699	1 505
Ordinary	1 007	222	592
Foreign	18	5	48
Limited partnership	10	2	10
Limited life companies	12	1	9
TOTAL	2 770	929	2 164

60. Information received from companies is also checked against information provided by registered agent. In case of discrepancy, the registered agent will be notified by the Registry and notices showing the changes identified by the Registry will be submitted.

61. The same requirements generally apply to Ecs with the respective capital structures¹⁴, 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. In practice, in 2012, of the 9 500 exempted companies, 769 were fined for not providing the legally required information on time.

14. Section 182 of the Companies Ordinance.

Foreign companies

62. 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.

63. 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. Of the 4 700 ordinary companies registered as at 31 December 2012, 62 were foreign companies. 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.

64. 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.

65. 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 5 years¹⁵ after it has been struck off creates an implicit obligation for the Registrar to hold information for that period of time.

66. With regard to the practices of the Turks and Caicos Islands in relation to foreign companies, they do not differ to those described above for

15. Section 185 of the Companies Ordinance was amended in 2011 to change the retention period to five years. This change came into effect on 29 July 2011.

domestic ones. Registration, management of files and monitoring of filing obligations are conducted as for domestic companies.

Company ownership and identity information required to be held by companies

67. 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.

68. 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).

69. 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.

70. 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, foreign companies continued as Ecs in the Turks and Caicos Islands, and since amendments made to the Company Ordinance in July 2011, companies that incorporated outside of the Turks and Caicos Islands, but subsequently registered there because they carry on a business there. Previously, these last mentioned companies were not covered by these obligations.

71. In practice, the obligation to keep a share register is not supervised as such by the Turks and Caicos Islands authorities. However, for companies that are required to lodge an annual list of shareholders with the Registry, it would not be possible to provide accurate information without keeping an

up-to-date register of shareholders. As detailed above, information provided by these companies is systematically checked and companies not complying with this obligation are fined.

72. For Ecs, in particular, no information on shareholders has to be periodically reported to government authorities. Nevertheless, these companies are required by law to have a representative resident (whose address is deemed to be the registered office of the EC) in the Turks and Caicos Islands and even though the register of shareholders does not have to be kept on the Islands a certified copy must be maintained there. The Turks and Caicos authorities have reported that in the vast majority of cases, this will be provided by registered agents. This is because under the Company Management (Licensing) Ordinance, all persons providing company agent or company management services (including providing a registered office and/or acting as a representative agent) for reward are required to be licensed, i.e. be a registered agent (ss. 2 and 4). Therefore, only the provision of such services without remuneration or reward would fall outside of the licensing requirement, which is considered to be rare in practice. In fact, the Turks and Caicos Islands authorities confirmed that all Ecs currently registered in TCI maintain their registered office with a registered agent. When asked who would be legally require to maintain information in the event there may be several successive registered agents, the Turks and Caicos Islands replied that each registered agent would have to keep information in relation to the years for which (s)he acted in such capacity. In practice this means that if information on shareholders for a company that had two different registered agents during the period under audit was requested from the Turks and Caicos Islands, the information would have to be retrieved from these two different agents. This would not create any particular difficulty as the FSC maintains up-to-date information on registered agents.

73. As part of its supervision function, the Registry is empowered to conduct on-site inspections (s. 242 of the Companies Ordinance). During these inspections, all types of records kept by companies can be audited whether statutory or not. As noted above, the Turks and Caicos authorities reported that all companies incorporated in the archipelago must have a representative resident (whose address is deemed the registered office of the EC) and this service is typically provided by a registered agent. Consequently, emphasis is put on them rather than on companies themselves. Since 2010, the FSC has conducted 9 on-site examinations to check compliance of registered agents with their AML requirements and obligations to keep information in relation to entities they manage (see *Service Providers* for further details). During these on-site inspections, all documents can be inspected, which includes documents kept in relation to companies managed (see below).

Nominee identity information

74. 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.

75. 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.

76. As with other service providers, nominees are required to carry out relevant customer due diligence measures under the following circumstances¹⁶:

- 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.

77. 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. As persons subject to AML regulations, compliance of professional nominees with these obligations is supervised by the FSC. Supervision measures are described below.

78. 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

16. 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.

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.

79. In practice, neither the FSC nor the FCU has knowledge of matters involving non-professional nominees. No incoming requests in relation to this have been received so far and the Turks and Caicos Islands has no experience in this respect. Its authorities should monitor the availability of this information on an on-going basis.

Conclusion

80. In summary, ownership information in relation to ordinary companies is directly available to registration authorities as these companies need to periodically report this information to the FSC. Both ordinary companies and Ecs must keep a register of shareholders and members. If this information is stored outside the Islands, a certified copy must be kept by the registered agent in the Turks and Caicos.

81. In practice, registration and filing obligations are closely monitored by the FSC and information submitted is always checked. In relation to ordinary companies, the monitoring system put in place by the FSC gives broad assurance that ownership information will be filed by these companies with the FSC. With regard to exempt companies, ownership information must be available at the company's registered office in the Turks and Caicos Islands. Registered office are typically provided by registered agents (and, in fact, currently all registered offices of Ecs are maintained with registered agents) and consequently the FSC concentrates its efforts on them and monitors compliance with legal requirements through a programme of off-site and on-site examinations (see below). There may however be situations where this service is not provided by a registered agent. In these instances, compliance with obligation to maintain ownership information may not be monitored by the FSC. It is therefore recommended that the Turks and Caicos Islands make sure that in practice, ownership information in relation to exempted companies is available in all instances.

82. Over the period 2010-12, the Turks and Caicos Islands received two requests for information pertaining to company ownership information, included beneficial ownership, and information was provided in both instances. In addition, the Registry of Companies was asked to provide information in many instances.¹⁷

17. These statistics may not only cover companies and request for ownership information.

- by the Turks and Caicos Islands government in 45 instances and information was provided in 40 instances;
- under the Mutual Legal Assistance Treaty in 6 instances and answers were always provided;
- from the Special Investigation Prosecution Team (SIPT)¹⁸ in 1 200 instances with positive answers in 840 instances. For the 360 other instances, it appeared that these companies were not TCI registered companies;
- for local and international purposes respectively 65 and 50 instances with answers in 95 cases.

83. The Turks and Caicos Islands authorities reported that instances where information could not be provided were instances where entities were not known by registration authorities.

Bearer shares (ToR A.1.2)

84. The Companies Ordinance allows for the issuance of bearer shares.¹⁹ 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.

85. 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.

86. The general rule is that all bearer share certificates 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:

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18. The SIPT is a special team of attorneys and police officers appointed to look into allegations of corruption. The powers of the SIPT derive from the Constitutional power of the Director of Public Prosecutions and the Police.
 19. The conditions governing the issuance of bearer shares are spelt out in Section 32 to 32F of the Companies Ordinance.

- 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.

87. 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.

88. In practice, and as mentioned above, custodians must be licensed professional service providers. In this capacity, these professionals are subject to AML regulations and are also supervised by the FSC. Furthermore, the Turks and Caicos Islands authorities confirmed that all current custodians of bearer shares are located within the Turks and Caicos Islands. The supervision measures are described below, after section A.1.5 of this report.

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

90. During the on-site visit the Turks and Caicos authorities, as well as representatives of corporate service providers, mentioned that about 10 companies incorporated in the Islands still have bearer shares. Furthermore, the Turks and Caicos Islands' authorities advised that the number of bearer shares certificates in circulation is considered to be less than 30. Following stakeholder consultation, the Government has now announced that it intends to abolish bearer shares and that legislation should be in place by January 2014. It is expected to grant companies a transitional period of 6 months to comply with these new rules. Professionals confirmed during the on-site visit that in practice the list of holders of bearer shares is maintained and available upon request of government authorities. The Turks and Caicos Islands has not received any requests for information that related to bearer shares.

Business Licenses

91. 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 requirement.²⁰

92. At the time of application, businesses must provide the Permanent Secretary, Finance 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.

93. Any changes to the particulars provided at the time of application must be advised to the Permanent Secretary, Finance 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.

94. Once registered with the Registry of Companies, companies (as well as partnerships, see below section A.1.3 and sole traders) doing business within the Turks and Caicos Islands must also apply for a business license from the Permanent Secretary, Finance.²¹ Three persons are tasked with granting these licenses. To this end, an application for business license along with a copy of articles of incorporation, business name registration, certificate of incorporation with the Registry of Companies and elements of categorisation (activity, size of the business and expected gains) must be submitted to the Permanent Secretary, Finance. Information on shareholders and partners is also provided upon licensing and is stored. When received, information is checked against information maintained by the FSC. The business license is usually granted within 7 to 10 days after the application is received.

95. On a quarterly basis, businesses having a license must confirm their existence. An annual registration fee must also be paid otherwise the business license is withdrawn. The Business License Committee closely monitors the renewal of business licenses. When the annual fee has not been paid, a notice is published in local media and an increasing penalty is applied by the Revenue Department (Regulation 7(2)(2) of the Business Licensing Regulations).

20. 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.

21. Which is administered by the Department of Trade although physically situated within the Revenue Department.

96. As part of the restructuring of the Revenue Department, a Compliance Unit has been set up and more emphasis is put on checking the accuracy of information provided upon application for a business license. More in-depth relationships have also been established with the labour, immigration and customs departments with the view of better tackling underground activities and conduct joint audits.

Partnerships (ToR A.1.3)

97. 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

98. GPs are governed by the Partnership Ordinance 2011 (Ordinance 26 of 2011), enacted on 14 October 2011. Under this Ordinance, a partnership is defined as a relation which subsists between persons carrying on a business in common with a view to profit (s. 3(1)). Relations that are registered as companies under the Companies Ordinance cannot be considered as partnerships (s. 3(2)). Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership and the acts of every partner bind the firm and his partners, except otherwise provided by the Ordinance (s. 6). Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner (S.10).

99. The new Partnership Ordinance does not provide any specific rules for registration of partnerships with government authorities. As in the past, partnerships do not have to register with the Registry of Companies but have to with the Business License Committee when a business activity is conducted from the Turks and Caicos Islands.

LPs and ELPs

100. 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.

101. 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.

102. 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.²²

103. 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.²³

Ownership and identity information required to be provided to government authorities

General Partnerships

104. 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.

105. Practices of the Turks and Caicos Islands in respect of business licensing have been described above. These practices apply *ipso facto* to GPs with the exception that partnerships have to produce a partnership agreement rather than articles of incorporation. During the on-site visit business licensing authorities confirmed that the identity of partners must be provided upon registration. Information on partners must be updated in a timely fashion. Compliance with these requirements will be checked by the newly created Compliance Unit of the Revenue Department. Non-compliance with registration requirements can be sanctioned by a fine. This sanction applies automatically and any fine would be collected with the annual fee. No such sanctions have been applied by the Turks and Caicos Islands authorities during the period under review. The Turks and Caicos Islands

22. Section 4 of the Limited Partnerships Ordinance.

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

should monitor the effectiveness of the newly created Compliance Unit of the Revenue Department in ensuring the availability of information for EOI purposes.

LPs and ELPs

106. 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.²⁴

107. 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.²⁵

108. 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.

109. Fifty-five LPs were registered in the Turks and Caicos Islands at the end of 2012. With the exception of documents to provide upon registration, practices of the Registrar of Companies in registering LPs do not differ of these above described under section A.1.1.

24. Section 7 of the Limited Partnerships Ordinance.

25. Section 8 of the Limited Partnerships Ordinance.

*Ownership and identity information required to be held by partnerships***General Partnerships**

110. 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 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

111. 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 partner²⁶.

112. 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.

113. The Turks and Caicos' Islands authorities have no specific programme of monitoring general partners' compliance with their legal obligations. Emphasis is rather put on the registered agents who are typically providing registered offices in the Islands, including to limited partnerships. As part of the supervision of registered agents, the FSC also check whether ownership information in relation to LPs is maintained when a registered agent provides a registered office or acts as a general partner of a LP. Supervision of registered agents is described below after section A.1.5.

114. No EOI requests were received in relation to partnerships during the three-year review period.

Trusts (ToR A.1.4)

115. 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:

26. Section 9 of the Limited Partnerships Ordinance.

- 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;

116. 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.

117. 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.

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

118. 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

119. 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.

120. The rules governing trusts in the Turks and Caicos Islands are based on English common law as a result of the Common Law (Declaration of Application) Act of 1705. This means that for an ordinary trust to be valid, it needs to meet the three certainties: the certainty of intention, the certainty of subject matter and the certainty of object. As a consequence, a trust is only valid if evidenced by a clear intention on behalf of the settlor to create a trust, clarity as to the assets that constitute the trust property and identifiable

beneficiaries (*Knigh v. Knight* (1849) 3 Beav 148). In addition, the trustee has several obligations which all suggest that he/she is required to know who the beneficiaries of the trust are in order to be able to comply with these obligations. Examples are the obligation to avoid conflicts of interests between the trustee's fiduciary duties and their own self-interest (*Bray v Ford* [1896]) and the obligation to familiarise themselves with all information regarding the trust including the trust documents and assets (*Hallows v Lloyd* (1888) 39 Ch D 686, 691). Finally, trustees are under a fiduciary duty to keep accounts of the trust and to allow beneficiaries to inspect them as requested (*Pearse v. Green* (1819) 37 E.R. 327 at 329).

121. In summary, the obligations placed on trustees by English common law, which are applied in the Turks and Caicos Islands, ensure the maintenance of identity information on the settlors and beneficiaries. This means that even where a trustee may not be required under the AML/PFT Regulations to identify the beneficiaries of the trust because the trustee is not defined as a regulated entity under these Regulations, (s)he would still be required to have this information available based on the common law obligations.

122. 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

123. 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.

124. 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”. However these trustees are subject to common law obligations which are sufficient to ensure the availability of information in relation to settlors and beneficiaries of trusts.

125. 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 trust²⁷; 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.

126. Turks and Caicos Islands law requires professional trustees to be specifically licensed to act in such capacity. At the end of 2012, 15 trust service companies were licensed by the FSC to act as professional trustees.

127. A representative of the trust service providers association met during the on-site visit reported that CDD is performed in relation to each settlors and beneficiary of a trust. Proof of identity is required for all persons involved in a trust, specified beneficial owners included. An on-going due diligence is also conducted, requiring new identification document to be submitted when expiring. These rules are followed by all licensed trustees. Quarterly financial statements must also be lodged with the FSC for each trust.

128. The supervision of AML obligations is performed by the FSC, more specifically by the Department in charge of bank and trust regulation. Over the course of on-site inspections, any type of records kept by trust service providers will be audited. This covers identity documents kept for CDD purposes. In relation to trust service providers the FSC will, as a minimum, conduct a representative sample check of their files and records and whether the information necessary to ascertain the identity of customers is present. For trust service providers that manage a relatively small number of trusts, it will check all records and files. The information determined as necessary for ascertaining the identity of customers covers (i) for individuals: the name,

27. Requirement 17 of the AML Code 2007.

address, citizenship, identification document (passport, driving license) professions and (ii) for companies: deed of incorporation, registration document, list of directors, percentage of ownership, beneficial ownership. To this end, and to ensure consistency across auditors, the FSC has developed a check list where all information present in files, in particular information in relation to settlors and beneficiaries, must be reported. During these inspections, the FSC will also check that accounts are correctly segregated so transactions could be correctly tracked. As part of its programme of supervision, the FSC has audited all trust service providers in 2010 and 2011. The Turks and Caicos Islands' authorities have confirmed that they anticipate a new cycle to be launched in 2014.

129. When over the course of an on-site visit deficiencies are noted, a report containing recommendations will be produced. A timeframe will be given to the service provider to address these recommendations. Depending of the seriousness of these deficiencies this timeline can vary from three to twelve months but the usual timeframe given is three months. Upon expiration of this timeframe, the service provider has to report on actions taken and further six-month reports must be filed with the FSC. The FSC mentioned that in relation to CDD the name of the settlor is always present in files but sometime, information on beneficiaries may be missing. This is however not prevalent and all trust service providers are aware of their obligations. In relation to CDD, a three month timeframe will be granted to the service provider concerned to address the recommendations made.

130. No EOI requests were received in relation to trusts during the three-year review period.

Foundations (ToR A.1.5)

131. 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.

Service providers

132. 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 on-going 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.

133. 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 brokers²⁸. 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.

134. 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;
- 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.

28. 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.

135. 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.

136. Financial businesses can choose to rely on an eligible introducer to conduct these measures; this is 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.²⁹

137. 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 on-going 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.

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

139. Before providing services, a corporate service provider (CSP) must be licensed. To this end, an application must be submitted to the FSC along with a detailed business plan and detailed information on directors, officers, shareholders and beneficial owners of the company. CDD is performed by the FSC for each of them. Once all documents are received, the application is processed within two weeks and the license granted. An annual license fee is due and payable to the FSC.

140. Conditions of the CSP license must be met continuously and the FSC is empowered with monitoring compliance with legal requirements. To this end, the Company Management Department checks all documents lodged by its 37 CSP licensees. Emphasis is put on these 37 registered agents as the vast

29. Regulation 14 of the AML regulations.

majority of companies incorporated in the Turks and Caicos Islands, both domestic and exempted companies, use their services.

141. Off-site inspections are performed on the basis of annual returns filed by registered agents. Information provided on that occasion is checked against information already available to the FSC. When a registered agent is found to be non-compliant with its legal obligations, the practice of the Department is to first send a letter. Depending on the answers provided and results of first checks performed, these off-site inspections can lead to an on-site inspection. Nine on-site examinations have been conducted since 2010. In determining which service providers should be audited, the FSC will prioritise licensees that have not been examined for at least three years as well as licensees with a significant portfolio.

142. During on-site examinations, the FSC will check compliance by the registered agent (i.e. CSP licensee) concerned with all relevant laws that apply in the Turks and Caicos Islands. This includes the Company Management (Licensing) Ordinance, the Proceed of Crime Ordinance, the Anti-money Laundering and Prevention of Terrorist Financing Regulations, the Anti-Money Laundering and Prevention of Terrorist Financing Code, and the Financial Services Commission Ordinance. In all cases, clients files will be reviewed during the on-site inspection and the FSC will verify that the licensee has obtained CDD information on every customer, third party and beneficial owner.

143. Results of on-site examinations conducted show some weaknesses in applying CDD requirements, in particular for clients with a longstanding relationship or personally known from the licensee. All deficiencies are included in a report provided to the licensee with a timeframe to act. If all deficiencies are addressed on due time, the registered agent will not be sanctioned. If deficiencies are not properly addressed disciplinary measures will be taken by the FSC. The disciplinary measures that can be taken include revocation or suspension of licence, issuance of a remedial notice, appointment of an examiner to investigate the conduct of the licensee, imposition of financial penalties or the winding up of the licensee company (s. 33, FSC Ordinance).

144. When any licensee does not, for a period of six months, comply with its requirements to file returns with the FSC, it is struck off the register. For the period 2010-12, the FSC has taken enforcement actions in respect of all types of licensees (including banks, CSPs, investment dealers, money transmitters, insurance companies, trust service providers) as shown in the table below.

Type of Enforcement Action	2010 ³⁰	2011	2012
Revocation	51	89	11
Suspension	6	0	0
Directive	2	0	2
Penalty	0	7	12
Total	59	96	25

145. The FSC is empowered to directly apply sanction when a licensee is found to not comply with its legal obligations (s.47 of part VII of the Financial Services Commission Ordinance). In this case, a warranted notice of intention to take disciplinary measures is sent out with a usual 28 days for the matter to be addressed. In many instance, this timeframe is used to remedy the situation. If not remedied, a second notice for application of sanctions is directed to the licensee concerned.

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

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

147. 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.

148. 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. As previously described, compliance with this obligations is audited during on-site inspections. There have been no instances during the period 2010-12 where this sanction has been applied.

30. The total number of licencees registered with the TCI as at 31 March of each year was: for 2010: 5 061 licencees; 2011: 5 453 licencees; 2012: 5 673 licencees.

- 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.³¹ For the year 2012, of the 4 700 ordinary companies registered, 575 were fined for late filing. The usual fine is a fixed USD 350 fine. Ecs also have reporting obligations and sanctions for late filing were applied in 769 instances for the same period. No limited life companies have been sanctioned in 2012.
- 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.³² The Turks and Caicos Islands authorities did not need to apply these sanctions during the period under review.
- 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.³³ This sanction has not been applied by the Turks and Caicos Islands authorities during the period under review.
- 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 continues³⁴. No such failures occurred during the period 2010 – 2012.
- 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.

149. The FSC is specifically empowered to directly apply fines which, since the amendment of the FSC Ordinance with effect from 1 July 2013,

31. Section 40 of the Companies Ordinance.

32. Regulation 11 of the AML regulations.

33. Regulation 21 of the AML regulations.

34. Section 9 of the Limited Partnership Ordinance.

allows for such civil fines to be collected as debt (s. 47A). When it is necessary to sanction a company for non-compliance with its legal obligations, the FSC will first send a warranted notice, detailing the reasons why a sanction will be applied as well as the legal provisions supporting the sanction. The person concerned has then 28 days to address the deficiencies and put the situation in order. When this timeframe has expired and the shortcomings have not been addressed, the FSC will send another notice for payment of the fine. This fine must be paid directly to the FSC. As described above, sanctions have been successfully applied by the Registry of Companies in a number of instances. The process followed would be exactly the same for all other sanctions that can be applied by the FSC.

150. In practice, non-compliance with filing obligations in sanctioned in the Turks and Caicos Islands. To this end, and as previously detailed, a programme of monitoring of filing obligations exists. This make sure that information is provided to the FSC when required and that information that needs to be reported is available.

151. With regard to AML obligations, the Turks and Caicos Islands has a programme of supervision and conduct regular on-site inspections to check compliance of registered agents with their legal obligations. When non-compliance with AML principles is detected during an on-site inspection, recommendations will be made by the FSC in its on-site inspection report and a timeframe will be granted to the registered agent to address these recommendations. The extent to which these deficiencies are remedied will be followed up by the FSC and the person concerned will be sanctioned if (s) he does not implement the recommendations. When the recommendations made are fully implemented in due time, the person concerned will not be sanctioned. When significant breaches of AML obligations are discovered, and even though these gaps may be addressed, the FSC should, to make its supervisory system even more dissuasive, also consider applying sanctions.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Compliant	
Factors underlying Recommendations	Recommendations
In situations where deficiencies in complying with AML obligations are detected by the FSC, the person concerned is asked to address the situation. If these deficiencies are addressed in the timeframe granted by the FSC, even where the breaches are significant, sanctions are not applied.	When significant breaches of AML obligations are discovered, even if the gaps are addressed by the person concerned, the FSC should consider applying sanctions.

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)

152. 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

153. 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.³⁵ 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

35. Section 57 of the Companies Ordinance.

154. The Turks and Caicos Islands amended the Companies Ordinance on 29 July 2011 to include an express requirement for all companies to keep underlying documents such as invoices and contracts, and to keep all accounting records for at least five years from the date they are prepared. A company that does not keep the required accounting records is liable on summary conviction to a fine not exceeding USD 50 000.³⁶

155. Along with the introduction of these new provisions, the Turks and Caicos Islands has put in place an awareness raising process for all registered agents to advise them of the new record keeping requirements that apply to companies. Whilst registered agents are not expressly required to keep this information, Ecs incorporated in the Turks and Caicos Islands must in all instances have a registered office there, a service that is typically provided by a registered agent. The Turks and Caicos Islands have reported that, in practice, it is common for these agents to keep these records. Registered agents confirmed during the on-site visit that they were aware of these new record keeping requirements and that they have informed their clients of their new obligations to keep accounting data.

156. The experience of the Turks and Caicos Islands in relation to the availability of accounting records is however rather limited. These requirements are new and untested in practice as only a limited number of incoming requests has been received so far. It is also noted that there is no obligation to file this information with a government authority and that it can be stored outside the Turks and Caicos Islands. No process of supervision of these obligations has been implemented in practice. Therefore, the availability of accounting information in relation to companies may not be ensured in all instances. In addition to its programme of awareness of registered agents, the Turks and Caicos Islands is recommended to implement supervisory measures to ensure that in practice companies comply with their obligations in all instances.

Accounting records to be kept by service providers/financial businesses

157. The Anti-Money Laundering and Prevention of Terrorist Financing Regulations 2010 require financial businesses³⁷ 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 on-going monitoring;

36. New section 57 of the amended Companies Ordinance.

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

- 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.

158. 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.

159. The FSC is the authority responsible for ensuring that registered agents comply with the requirements to keep accounting records. As described above, under section A.1 of this report, the FSC, in its supervisory functions has a comprehensive programme of on-site and off-site inspections of registered agents. During these inspections, the FSC checks whether the registered agent keeps adequate accounting records for its own business, and transaction records with respect to the transactions of its clients in which (s)he was involved (for AML/CFT purposes). Generally, the FSC found such records to be present and adequate.

160. However, as noted above, records that are being kept under AML/CFT legislation only pertain to transactions and do not enable the financial position of the customer to be determined and allow for financial statements to be prepared. Accounting records to be kept in respect of partnerships.

General Partnerships

161. 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.

162. The Turks and Caicos Islands enacted on 14 October 2011 a Partnership Ordinance. Under s.28(1) of this Ordinance, partners are bound to render true account and full information of all things affecting the partnership to any partner of his agents. A partnership must keep proper books of accounts including day books of accounts and underlying documentation including contracts and invoices with respect to (i) all sum of money received and expended by the partnership and the matter in respect of which the receipt and expenditure take place; (ii) all sales and purchase of goods by the partnership; and (iii) the assets and liabilities of the partnership (s. 28(2)).

163. All books, accounts and underlying documentation must be kept for a minimum period of five years from the date on which they are prepared (s.28(4)). Any partner who contravenes, permits or authorises the

contravention to the keeping of accounts or underlying documentation is liable on summary conviction to a fine not exceeding USD 50 000 (s.28(5)).

164. These obligations are sufficient to meet requirements of ToR A.2 and (i) correctly explain all transaction, (ii) enable the financial position of the partnership to be determined with reasonable accuracy and (iii) allow financial statements to be prepared (although such obligation does not exist *per se* in the Turks and Caicos Islands).

165. To be registered as a general partnership, there is an obligation to have a business activity in the archipelago and to prove this existence and the conduct of business on a quarterly basis. General partnerships are not subject to any income tax but rather to annual registration fees. Consequently, there are no obligations for partnerships to file accounting records with the Business Licensing Committee³⁸ or the Revenue Department. However, along with the restructuring of the Revenue Department, a compliance Unit has specifically been created and is tasked, amongst other things, with checking compliance of general partnerships with their legal obligations, including obligations to keep accounting records.

166. So far, the Turks and Caicos Islands has no experience with the provision of accounting records pertaining to general partnerships for EOI purposes. It cannot be assured that accounting records may be available in all instances. At the same time, general partnerships are usually used by locals to run small businesses and with the restructuring of the Revenue Department, supervisory procedures have now been implemented. It is recommended to the Turks and Caicos Islands, on the basis of measures already taken, to monitor the availability of this information.

LPs and ELPs

167. The amendment made to the Limited Partnerships (amendment) Ordinance on 29 July 2011 requires the general partners of all limited partnerships (including exempted limited partnerships) to keep proper books of accounts including day books of account and underlying documents as to give a true and fair view of the state of the partnership's affairs and to explain its transactions. This 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

38. The Business Licensing Committee is the government authority with which general partnerships are registered.

168. All accounting information must be kept for at least five years, and a general partner that fails to maintain the required accounting records is liable on summary conviction to a fine not exceeding USD 50 000.³⁹

169. As mentioned above the Turks and Caicos Islands has advised registered agents situated in this jurisdictions of these new obligations, when introduced. Although the usefulness of this programme is recognised, it could be reinforced by a programme of supervision of limited partnership's compliance with their obligations, to give broader assurance that accounting records will be kept by these entities in all instances.

Accounting records to be kept in respect of trusts

170. 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”.⁴⁰ Professional trustees are subject to additional obligations under the AML regulations as described above. A draft bill requiring trustees to keep reliable accounting records for at least five years was prepared in July 2011 and this bill is presently out for consultation. So far, this bill has not been enacted and the Turks and Caicos Islands still needs to address the recommendation in relation to trustees that was previously made.

171. The English common law establishes the obligation to avoid conflicts of interests between the trustee's fiduciary duties and their own self-interest (Bray v Ford [1896]) and the obligation to familiarise themselves with all information regarding the trust including the trust documents and assets (Hallows v Lloyd (1888) 39 Ch D 686, 691). Moreover, trustees are under a fiduciary duty to keep accounts of the trust and to allow beneficiaries to inspect them as requested (Pearse v. Green (1819) 37 E.R. 327 at 329).

172. Pursuant to English common law, trustees have a duty to account to the beneficiaries and must be able to provide a beneficiary with information concerning the operation and transactions of the trust. Such information will extend to maintaining accounting information and other trust documents such as the trust deed and documents relating to transfers of property made by the settlor and all other documents required in order to ensure that the trustee's duty to the beneficiaries is carried out. In any event, under the common law all trustees are subject to an obligation to ensure that records and accounts are prepared and maintained for a reasonable period of time to ensure that the trust is properly managed. In the event of non-compliance with these duties by the trustee, beneficiaries have the right to enforce the

39. New section 10A of the Limited Partnerships Ordinance.

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

trust (*Beswick v Beswick* [1968] AC 58) and the settlor or beneficiaries can commence legal proceedings against the trustee.

173. The Turks and Caicos Islands authorities confirmed that the common law requirements are those principles as set out under English common law. It is a well established principle of English common law that it is the “duty of a trustee to keep clear and distinct accounts of the property he administers, and to be constantly ready with his accounts”.⁴¹ However, no further specification of the nature of the accounts is prescribed and it is not clear whether the existing obligations ensure that reliable accounting records are available in all cases in respect of trusts.

Accounting records to be kept by foundations

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

Conclusion

175. As a result of the legal amendments made in July 2011, all companies (ordinary and exempt companies) and limited partnerships that can be created under TCI laws are required to keep reliable accounting records for a period of at least 5 years. The same applies to general partnerships by virtue of amendments taken in October 2011. Although these requirements meet the Terms of Reference, they are recent and largely untested in practice and the Turks and Caicos Islands should put in place arrangements to ensure the keeping of accounting records by companies and by general and limited partnerships. During the review period, no EOI requests were received in relation to accounting records. 177. In relation to trusts, the Trust Ordinance provides that trustees must keep “proper records and accounts of their trusteeship”. Trustees are also covered by common law requirements but it is not clear whether the existing obligations ensure that reliable accounting records are available in all cases in respect of trusts. These obligations are supplemented by AML requirements that apply to the subset of business transactions that are made through regulated entities. When trustees are acting by way of business, they are covered by the AML Ordinance for all their transactions which is sufficient to meet the Terms of Reference. However, trustees that are considered to be exempted trustee companies (see more details under s. A.1.4 of this report), as well as non-professional trustees are not subject to AML regulations because they do not fall under the definition of “financial business”.

41. The Trustee must allow a beneficiary to inspect the trust accounts and all documents relating to the trust. See *Halsburys Laws of England* Vol 48 4th Edition para 961 and 962.

The Turks and Caicos Islands should ensure that trustees are required to keep reliable accounting records in all cases for at least five years.

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
There is no consistent obligation for trusts to keep reliable accounting records for at least five years.	The Turks and Caicos Islands should ensure that trusts are required to keep reliable accounting records in all cases for at least five years.
Phase 2 rating	
Largely Compliant	
Factors underlying Recommendations	Recommendations
Record keeping requirements for exempted companies, general and limited partnerships have been recently introduced and availability of accounting records pertaining to these entities may not be assured in all instances.	In addition to its programme of raising awareness of registered agents, the Turks and Caicos Islands should put in place arrangements to ensure the keeping of accounting records by companies, general and limited partnerships.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

176. 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 Prevention of 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.

177. As previously described, these regulations prohibit all financial businesses, including banks, from setting up or maintaining anonymous or

numbered accounts.⁴² 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.

178. Seven banks are licensed in the Turks and Caicos Islands. Only two private banks are licensed in the Turks and Caicos Islands. One bank surrendered its license for economic reasons.

179. Upon licensing, each bank must provide a number of documents including proposed memorandum and articles of association, a structure chart, questionnaire for institutional shareholder with 5% or more voting power, questionnaire for directors, audited financial statements of institutional shareholders for the previous two years, statement of assets and liabilities of personal shareholders with 5% or more voting power. A business plan covering the business objectives, the management structure, the type of business development, financial projections over three years and internal and administrative controls is also to be filed.

180. Upon receipt, the Bank and Trust Department of the Financial Services Commission will scrutinise the application to ensure that it is complete and will carry out due diligence checks into the application, the directors, controllers, and officers or senior managers. This information is retained for an indefinite period of time. The TCI police will be asked to conduct an enquiry and will usually use Interpol to check information provided upon licensing. Information from the regulator of the country where the bank is incorporated will also be sought.

181. Banks are obliged to keep the following records on customers and transactions⁴³:

- 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;

42. Regulation 16 of the AML Regulations.

43. Regulation 18 of the AML Regulations.

- 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.

182. 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.

183. During the on-site visit, a representative of the banking industry confirmed that banks systematically check identity information upon opening a bank account. Banks have also drafted handbooks and guidelines to help their staff to apply CDD requirements. Checklists have been developed to check that necessary information is provided when a bank account is open. This is done in addition to the training that financial institutions themselves must give to their employees. It was also reported that in practice all records are kept for an indefinite period of time and beyond the five-year retention period provided by law.

184. In the Turks and Caicos Islands, supervision of banks is conducted by the FSC. For this specific purpose, the Banking Department of the FSC is staffed with seven officers, two being in charge of compiling and focusing on statistics, five to conduct off-site and on-site reviews. External consultants can also be hired when necessary. The unit in charge of bank supervision is also responsible for the supervision of trust service providers.

185. Each bank in the TCI must have compliance officers and appointment of these officers must be specifically accepted by the FSC (AML Regulations No21). To ensure a higher level of compliance with AML obligations, the FSC provides annual trainings to compliance officers. These seminars have taken place since 2010 and have resulted in many breaches and deficiencies previously identified during supervision being corrected. Since 2010, the FSC has organised six seminars, either on AML principles (three) or on more targeted topics (i.e. Compliance Seminars, Corporate Governance Seminar and Money Transmitters Seminars).

186. Banks are required to provide monthly, quarterly and annual reports to the FSC. Balance sheets must be provided on a monthly basis, around 50 other reports on a quarterly basis and financial statements are checked every year. Upon receipt these reports are systematically checked. Information received from banks will also be used to fill in a risk matrix which will highlight the level of risks against a number of parameters. When something unusual is detected, the FSC will ask the bank to provide explanations. In the most serious instances, an on-site inspection can be conducted, with the support of an external accountant, when necessary. To determine which banks

will be part of the audit programme, the FSC will also ask the compliance officer in place in each bank to report on the number of suspicious transaction reports they have received and transmitted to the Financial Crime Unit. As banks are also licensed with other committees, the FSC will exchange information with these other authorities. When problems are noted by another government body, a joint on-site inspection can be carried out.

187. Over the course of on-site inspections, all types of records kept by banks will be audited. This includes identity documents kept for CDD purposes. Depending on the size of the bank concerned, the FSC will check all records or ask for the provision of a sample of files. In relation to CDD, the FSC will check whether the information necessary to ascertain the identity of customers is present. This covers (i) for individuals: the name, address, citizenship, identification document (passport, driving license) professions and (ii) for companies: deed of incorporation, registration document, list of directors, percentage of ownership, beneficial ownership. To this end, and to ensure consistency across auditors, the FSC has developed a check list where all information in files must be reported.

188. When over the course of an on-site visit deficiencies are noted, a report containing recommendations will be produced. A timeframe will be given to the financial institution to address these recommendations. Depending of the seriousness of these deficiencies this timeline can vary from three to twelve months but the usual timeframe given is three months. Upon expiration of this timeframe, the bank has to report on actions taken and further six-month reports must be filed with the FSC. The FSC mentioned that in relation to CDD the most common deficiency is the lack of on-going verification (identification documentation is present but in some instances outdated) but that banks are pretty well aware of their obligations.

189. When non-compliance with AML principles is detected during an on-site inspection, recommendations will be made by the FSC in its on-site inspection report and a three-month timeframe will be granted to the financial institution to address these recommendations. The extent to which these deficiencies are remedied will be followed up by the FSC and the financial institution concerned will be sanctioned if it does not implement the recommendations. When the recommendations made are fully implemented on time, the financial institution concerned will not be sanctioned. When significant breaches of AML obligations are discovered, and even if the gaps are addressed, the FSC should, to make its supervisory system even more dissuasive, also consider applying sanctions.

190. Finally, since 1 January 2012, the Turks and Caicos Islands apply measures equivalent to those provided by the EU Directive 2003/48/EC (“Savings Directive”). These require that financial institutions which pay interest to their customers hold information on account holders that are not resident in the Turks and Caicos Islands but are resident in other EU Member

States, or jurisdictions not being EU members but are involved in the automatic exchange of information organised by this Directive. Reports from banks, comprising name and address of the account holder and other identifying information, the name and address of the agent making the payment, the account number and details, the amount of the payment and the nature of the payment will be received by the end of each financial year (March). Automatic exchange of information in relation to 2012 will take place with the 27 EU member states for the first time by the end of September 2013, at the latest.

191. So far, the Turks and Caicos Islands has received two requests for banking information. When the necessary information needed to process the case was received (see below sections B.1 and C.5), the incoming request was directed to the bank concerned and the requested information promptly provided. In both cases, the name of the bank was identified in the EOI request. However, in the situation where the name of the bank is unknown, the Turks and Caicos Islands authorities advised that they will issue notices to all the banks in TCI (if necessary) to locate the requested information. The representative of banks met during the on-site visit mentioned that from the moment a notice for information is received from the Turks and Caicos' competent authority, an answer would be provided without any further queries. He confirmed that a bank could not refuse to provide information upon request and that ultimately, it would be for the Turks and Caicos authorities, and not the bank, to decide which information should be provided to a treaty partner in response to an incoming request.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Phase 2 rating	
Compliant	
Factors underlying Recommendations	Recommendations
In situations where deficiencies in complying with AML obligations are detected by the FSC, the financial institution concerned is asked to address the situation. If these deficiencies are addressed in the timeframe granted by the FSC, and even when these breaches are significant, this financial situation will not be sanctioned.	When significant breaches of AML obligations are noticed, even if they are addressed by the financial institution concerned, the FSC should consider applying sanctions.

B. Access to Information

Overview

192. 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.

193. 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. The competent authority designated the Revenue Controller as contact person in November 2012 and made him head of an Exchange of Information Unit which is set up within the Ministry of Finance and staffed with three persons. This Unit is in charge of collecting information to answer incoming requests.

194. The competent authority's powers to obtain information for EOI purposes were previously not sufficiently comprehensive to meet the full requirements of the international standard. The TIE Ordinance was amended on 15 July 2011 to expressly empower the competent authority to obtain, for the purposes of complying with a valid EOI request, any information under the possession or control of any person under the Turks and Caicos Islands' territorial jurisdiction. Before these amendments, the competent authority only had power to access information when at least one of the following conditions was met: (a) the information was 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 related to the beneficial ownership of a company, partnership or other person.

195. The competent authority's access powers are primarily exercised by the issue of a notice requesting the production of information. These powers have been exercised in four instances over the period 2010-12. 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. For the period under review, there has been no need to use such powers for EOI purposes but they have been tested with success in a number of instances for anti-money laundering purposes.

196. 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.

197. In practice, when the requested information is held in the Turks and Caicos Islands, in order to obtain it, the Turks and Caicos Islands authorities will send a notice in writing to the person holding the information, be it a government authority or a third party. In the four cases received by the Turks and Caicos Islands over the last three years, ownership, accounting and banking information has been promptly collected. Hence, the powers to collect information provided by the TIE Ordinance have been effectively used in responding to these requests.

198. In relation to financial entities, in particular exempt companies, the registered agent is often in possession or control of the relevant information, and when not legally required to maintain information, can easily liaise with the entity concerned to collect the requested information. On this basis, in practice, the registered agent will usually be requested to provide the necessary information. However, where the registered agent does not possess the requested information, the TCI authorities confirmed that they will also request such information from other persons (including the relevant entity itself). At the same time, the EOI Unit will ask the Financial Services Commission (FSC) to provide information it maintains in relation to the entity that is the subject of the request.

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).

199. The competent authority of the Turks and Caicos Islands is the Permanent Secretary, Finance. On 19 November 2012, the competent authority designated the Revenue Controller as delegate in respect of all functions conferred to the Competent Authority under the Tax Information Exchange Ordinance 2009. A dedicated EOI Unit was set up in late November 2012. This unit is tasked with receiving and managing requests for information received from Turks and Caicos Islands' treaty partners. This unit is staffed with three persons.

200. Over the course of the peer review process one peer mentioned that it had been unable to make contact with Turks and Caicos Islands' competent authority to find a person in charge of processing incoming requests for information. Since then, the dedicated EOI Unit has been created. It can be contacted through a new generic account and all these details are made available on the Global Forum EOI portal. In the last quarter of 2012, all Turks and Caicos Islands' TIEA partners were notified of the formal delegation of power and provided with current contact information. The Turks and Caicos Islands has also advised, in response to this peer input, that appropriate answers have now been provided and these cases are now closed.

201. Since taking up its new functions, the EOI Unit has organised several meetings with representatives of service providers (company service providers, trusts service providers, banks and accountants) with the view of reminding them their new obligations under the TIE Ordinance and preparing them to answer requests for information directed by the EOI Unit. Memoranda of understanding have also been signed with other government authorities, in particular, the Attorney General Chamber to design a framework under which exchanges between these different authorities will take place.

202. The organisation of the EOI Unit is further described under section C.5.2.

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

203. 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, and following the amendments made to the TIE Ordinance on 15 July 2011, the competent authority may for the purposes of complying with a request under the Agreement, by notice in writing, require any person to provide such information as may be specified in the notice.

204. This provision expressly empowers the competent authority to obtain, for the purposes of complying with a valid EOI request, any information under the possession or control of any person under the Turks and Caicos Islands' territorial jurisdiction. The application of the scope of this information gathering power is broad, and "any person" includes the FSC, as well as registered agents and any other entities and individuals (s. 5, TIE Ordinance). The power of the competent authority to obtain information for EOI purposes is no longer conditional on the fact that 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.

205. Furthermore, the FSC can use its broad information gathering powers under the FSC Ordinance to assist the Turks and Caicos Islands competent authority to obtain information for EOI purposes. Under the FSC Ordinance, the FSC can issue a notice to request information and/or documents from any licensee (including registered agents), former licensee, any person reasonably believed to be carrying on an unauthorised financial services business, any persons connected to the previously listed and any persons reasonably believed to be in possession of the required documents (s. 23).

206. Any person who: (i) fails to comply with such a notice from the FSC without reasonable excuse; (ii) recklessly provides false or misleading information in response to a notice; or (iii) destroys, hides or removes documents for the purpose of obstructing compliance with a notice, is guilty of an offence (s. 30, FSC Ordinance). A range of sanctions can be taken by the FSC for such an offence, including suspension or revocation of the license, and/or imposition of a financial penalty (s. 33).

Gathering of information in practice

207. The Turks and Caicos Islands has limited experience in the gathering of information for tax purposes as only four requests have been received so far. However, procedures to process incoming requests have been implemented and are followed when an incoming request is received. To this

end, an EOI manual describing the different steps to process incoming requests has been prepared. Contacts with representatives of professional organisations (company service providers, trust service providers, banks and accountants) have also been established. The purpose of these contacts was to present to them the new obligations deriving from the TIE Ordinance and requirements to provide information for EOI purposes on request of Turks and Caicos Islands' authorities.

208. When a request is received, the EOI Unit will first analyse it to determine whether all elements needed to process the request are available, and in particular that the request has been sent by a designated competent authorities and that all conditions provided by article 5(5) of the TIEAs signed by the Turks and Caicos Islands are met, having regard to the commentary to the Model TIEA in relation to this article. The Turks and Caicos Islands' authorities have reported that to the extent that information is sought by a treaty partner, they will consider the incoming request as foreseeably relevant, in accordance with commentaries to article 26 of the *OECD Model Tax Convention*, and will process it.

209. The EOI Unit does not have a wide range of information directly available to answer incoming requests. The Turks and Caicos authorities can directly access information relating to business licensing, however they reported that they would not solely rely upon this source of information to provide responses to treaty partners. In all instances information will also be sought from other persons be they government authorities or third parties.

210. When all information needed to process the incoming request are present, a notice is immediately sent to the FSC. The reason for this is that it is always of interest for the EOI Unit to get all information maintained by the FSC in the event the registered agent would not answer the incoming request and the FSC is in possession of the requested information. This is also a means to ensure the accuracy of information provided by the registered agent and to get other contact details if the registered agent would not answer. The FSC is given one week to provide information to the EOI Unit. The good relationships between all government authorities in the Turks and Caicos Islands give broad assurance that all information available and needed to answer incoming requests will be provided by this authority.

211. At the same time a request is sent out to the FSC, a notice for information is directed by the EOI Unit to the registered agent. The Turks and Caicos Islands' authorities have indicated that this notice will mention the legal basis under which the information is requested (i.e. references to the provisions in the TIE Ordinance) and the list of questions to which answers must be provided. As a matter of practice, the name of the taxpayer under audit in the requesting state will not be disclosed. The service registered agent concerned has two weeks to provide his/her answers. The EOI Unit

has reported that this two-week timeframe has been chosen to give sufficient time to the registered agent to provide information and enough time to EOI Unit to activate other gathering of information measures in the event the registered agent would not answer the notice. In practice, in one case where ownership and accounting records were sought, answers from the service provider were received within 10 days.

212. While not in all situations are registered agents required by law to keep information in relation to entities to which they provide services (e.g. accounting records for companies), the Turks and Caicos Islands' authorities indicated that in practice registered agents are always located in the Turks and Caicos Islands and are the easiest person to contact to gather information. Therefore, they think that requesting information from service providers is in all instances the most suitable means to respond to incoming requests. Registered agents can in particular interact with entities they manage to get the requested information even in situations where this information is not directly kept by them. However, the Turks and Caicos Islands authorities confirmed that this does not preclude them also from contacting other persons (such as the relevant entity itself) to request the information, where the information is found not to be held by the registered agent. Furthermore, it is also possible for the EOI Unit to require the FSC to use its own powers to obtain information for EOI purposes. While it is acknowledged that requesting information from a person under the jurisdiction of the requested party is easier, it is also recommended to the Turks and Caicos Islands to ensure, in all situations, that the most appropriate person will be asked to provide the requested information, in particular when accounting records are sought.

213. The Turks and Caicos Islands' authorities have also mentioned that there is no difference with regard to the process to collect information whether ownership, accounting or banking information is requested. The only difference is that for banking information, identification information will be furnished in the notice otherwise the bank could not clearly determine banking information it has to provide. The Turks and Caicos Islands has confirmed that it has already received a request for banking information where the identity element was an account number. This request was directed to the bank concerned although it could not be successfully processed as this number was not correct. After further information was received from the treaty partner, the requested banking information has been collected from the bank concerned and is in the process of being provided to the treaty partner.

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

214. 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. In practice, there are no direct taxes in the Turks and Caicos Islands, the main revenues being a tax on hotel and restaurants, custom duties and registration fees for businesses. Therefore, in all instances the Turks and Caicos Islands collect information absent a domestic tax interest, which has already been the case in four cases.

Compulsory powers (ToR B.1.4)

215. 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.

216. 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.

217. 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.

218. 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.

219. 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.

220. The Turks and Caicos authorities have reported that as a matter of practice a party that is asked to provide requested information cannot refuse to provide information on the basis that it thinks that the information requested is irrelevant. Where a party does not provide the information as requested, it has to explain why it has not or cannot provide the information. Under such circumstances, the EOI Unit would then contact the person concerned to clarify the reasons as to why information is not provided and remind them of the legal principles applicable in the field of EOI for tax purposes. In the event that a registered agent, after direct contact, still fails to provide the information without good reason, the Turks and Caicos Islands authorities would then ask for a search warrant. The request for a search warrant would be prepared by the Attorney General’s Chamber on the basis of a report provided by the EOI Unit. According to the Turks and Caicos authorities, the timeframe needed by the Attorney General’s Chamber to consider the request would not be longer than two weeks. Then, upon decision of the Court, the police will be asked to collect the requested information.

221. A request for a search warrant has not been tested so far in the field of EOI for tax purposes. The Financial Crime Unit has however reported that such procedure has already been used in several instances to successfully collect information for AML purposes.

Secrecy provisions (ToR B.1.5)

General secrecy provisions

222. 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.

223. 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.

224. 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 work⁴⁴. The duty to maintain confidentiality is lifted when any other law in the Turks and Caicos Islands permits disclosure of such information.

225. 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.

226. 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

44. 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.

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

227. 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;
- 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.

228. This is consistent with the international standard. In practice, no person has ever invoked legal privilege to refuse the production of information for EOI purposes. Also, no issues were raised by peers in this regard. The Financial Crime Unit that has longer experience in collecting information has also reported that legal privilege has never been invoked to refuse to provide information for EOI purposes.

Conclusion

229. In summary, and by virtue of amendments to the TIA Ordinance adopted in July 2011, the Turks and Caicos competent authority’s powers to obtain and provide information to its EOI partners are compliant with the requirements under ToR B.1.1 and B.1.2. In practice, the Turks and Caicos Islands has been able to collect information for EOI purposes.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

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)

230. 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.

231. 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.

232. 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*⁴⁵, 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. In practice, the Turks and Caicos Islands has confirmed that public policy will be interpreted in accordance with the commentary to the OECD Tax Information Exchange Agreement Model (para 94).

233. Considering the limited number of requests for information received so far, the procedure for the competent authority to inform the Attorney General of certain requests has not been tested in practice. The only situation where the Attorney General Chamber was asked to provide advices was in relation to exchange of information in criminal tax matters (see C.1.9 below). In this case, an answer was promptly provided by the Attorney General

45. 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.

Chamber and it is expected that swift answers would also be provided when requests which relate to public policy are received by the Turks and Caicos.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

C. Exchanging Information

Overview

234. 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.

235. At the time of the Phase 1 and supplementary reviews, the Turks and Caicos Islands had 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.⁴⁶ Since then, no new EOI agreements have been signed by the Turks and Caicos Islands but 17 of them are being negotiated, 3 of them being at a late stage of negotiation. 14 of the 16 TIEAs signed are now in force. The Multilateral Convention will also enter into force for the Turks and Caicos Islands on 1 December 2013, extending its EOI network by a further 42 EOI partners.

236. 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. In practice, the Turks and Caicos Islands have put in place measures to ensure the confidentiality of information received and exchanged.

46. The remaining two are France and Portugal.

237. 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 90 days of receipt by providing the information requested or by providing an update on the status of the request.

238. Since the amendments made to the TIE Ordinance in July 2011, the Turks and Caicos islands is in a position to comply fully with the terms of its exchange of information agreements. However, two peers have reported that they were not in a position to get information in relation to criminal tax matters for years preceding the entry into force of their TIEAs with the Turks and Caicos Islands. Since then, the divergence of interpretation has been resolved and the Turks and Caicos Islands has agreed to exchange information in such instances. The two peers concerned have been advised and the information requested was provided.

239. During the three years under review (2010-12), the Turks and Caicos Islands received four requests for information. The provision of information was delayed in these four instances either because of a divergence of interpretation of the applicable treaty, or because the EOI partner was unable to contact the Turks and Caicos Islands. In November 2012, the Competent Authority appointed the Revenue Controller as her designate to perform her functions in respect of such requests and an EOI unit has been set up. Notices providing updated contact information were sent to TIEA partners. This unit has put in place procedures and organisational processes that are adequate to handle incoming request. In particular, and considering the difficulties some partners experienced in the past in contacting the Turks and Caicos Islands, it has been decided to ensure a good level of communication with the partners sending incoming requests, by acknowledging the reception of incoming requests and ensuring a continuous dialogue throughout the process of answering these requests. It is recommended to the Turks and Caicos Islands, based on this experience, to continue ensuring a good level of communication with its partners.

C.1. Exchange of information mechanisms

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

240. The Turks and Caicos Islands has a network of EOI instruments, comprising TIEAs and the Multilateral Convention, which covers 58 jurisdictions. The Turks and Caicos Islands has been entrusted by the United

Kingdom to conclude TIEAs but is not authorised for the moment to conclude Double Taxation Conventions.

241. 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.

242. 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.⁴⁷

243. The competent authority to request and provide information under the Turks and Caicos Islands’ EOI agreements is the Permanent Secretary, Finance. This competent authority has officially been appointed in November 2012 and an EOI Unit subsequently set up.

244. In addition to exchange of information on requests, the Turks and Caicos Islands also exchange information automatically under the Retention Tax Ordinance which has given effect to the EU Directive 2003/48/EC (“Savings Directive”). Before 2012, the Turks and Caicos Islands opted for the system of withholding tax provided by this Directive but from 1 January 2012, it has decided to start exchanging information automatically with the 27 EU Member States. The EOI Unit has also been tasked to handle these exchanges. Reports from banks, comprising name and address of the account holder and other identifying information, the name and address of the agent making the payment, the account number and details, the amount of the payment and the nature of the payment will be received by the end of each financial year (March) Automatic exchange of information in relation to 2012 will take place with the 27 EU member states for the first time by the end of September 2013, at the latest.

Foreseeably relevant standard (ToR C.I.1)

245. 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

47. 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.*

or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance”. It does not allow “fishing expeditions”.

246. All of the Turks and Caicos Islands’ TIEAs provide for the exchange of information that is “foreseeably relevant” to the administration and enforcement 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.

247. 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.

248. 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.*

249. 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.

250. The Turks and Caicos Islands has confirmed that it does not seek clarifications in relation to the foreseeably relevance of incoming requests as long as on the face of the request, it complies with Article 26. Rather, it considers that from the moment a request for information is received, this means that the information requested is foreseeably relevant to the administration and enforcement of the domestic laws of its partners, in accordance with the commentary to Article 26 of the *OECD Model Tax Convention*. This also

confirms that the additional language contained in some of its TIEAs does not effectively restrict exchange of information.

251. Further, the Turks and Caicos Islands has developed a check list to sum up the information received from EOI partners in incoming request. The Turks and Caicos Islands will ask for clarification only when information required to be provided under article 5 (5) of its TIEAs, in particular identification data, is missing or not detailed enough to handle the incoming case. So far, the Turks and Caicos Islands has not declined any requests because they were not foreseeably relevant but its experience in this area is rather limited.

In respect of all persons (ToR C.1.2)

252. 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.

253. All of the Turks and Caicos Islands' TIEAs provide for EOI in respect of all persons. No issues in relation to this have arisen so far.

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

254. 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.

255. 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. The Turks and Caicos Islands has received one request for bank information. Identification data provided by the partner consisted of an account number and this request was processed, although it appeared after further analysis that this account number was erroneous. Upon reception of additional information, the Turks and Caicos Islands was in a position to successfully process this request and to provide the requested information.

Absence of domestic tax interest (ToR C.1.4)

256. 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.

257. All of the Turks and Caicos Islands’ TIEAs contain provisions similar to the Article 5(2) of the OECD Model TIEA⁴⁸, 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. In practice, the Turks and Caicos Islands does not have an income tax system and therefore its access powers are specifically designed for international exchange of information.

Absence of dual criminality principles (ToR C.1.5)

258. 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 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.

259. All of the Turks and Caicos Islands’ TIEAs contain provisions similar to Article 5(1) of the OECD Model TIEA⁴⁹, 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.

48. 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*”.

49. 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*”.

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

260. 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”).

261. All of the Turks and Caicos Islands’ TIEAs provide for exchange of information in both civil and criminal tax matters. In practice, during the three year review period, two requests related to criminal tax matters and two requests related to civil tax matters were received. The Turks and Caicos Islands has provided information in response to EOI requests for both civil and criminal tax matters. An issue regarding the application period of TIEAs to requests concerning criminal tax matters is described under section C.1.9 below.

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

262. 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.

263. In practice, the Turks and Caicos Islands has been able to provide the requested information in the appropriate form.

In force (ToR C.1.8)

264. 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.

265. The process of ratification of a treaty is simple in the Turks and Caicos, partly because the government structure is not complex. Once a TIEA is initialled, it must first be approved by the Government and it is sent out to the Foreign and Commonwealth Office (FCO) in London which will review the treaty to determine whether it complies with the international standard and approve it. If not, the FCO would tell the Turks and Caicos Islands that some aspects of the TIEA should be revised but this has not happened so far. Once approved, the FCO will notify the Turks and Caicos Islands that the signing can

take place. Once the treaty is signed, it is ratified by the Governor and gazetted in the weekly official Gazette along with an Order declaring this TIEA as a scheduled agreement under the TIE Ordinance. Once ratified, the Governor's Office advises the Turks and Caicos Islands' partner within two days. In some instances in the past, this notification was delayed because the ratification note was not directed to the correct office abroad (usually the Ministry of Finance instead of the Ministry of Foreign Affairs). This has been resolved since then.

266. At the time of the Phase 1 and supplementary reviews, the Turks and Caicos Islands has signed 16 TIEAs. Seven of these TIEAs were in force at the time of the Phase 1 review and two additional at the time of the supplementary review (France and Portugal). Since then, five other treaties have been brought into force (Canada, Germany, Faroe Islands, Greenland and Iceland). The Turks and Caicos Islands has issued Orders applying the provisions of the TIE Ordinance to all its TIEAs, thereby completing all the necessary steps on its part to ratify them.⁵⁰ Only the TIEAs with Ireland and New Zealand, still need to be ratified by the treaty partner. The Multilateral Convention will enter into force for the Turks and Caicos Islands on 1 December 2013.

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

267. 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.

268. Two peers have commented that the Turks and Caicos Islands had not provided information following requests that related to a period before the entry into force of the TIEA under which the requests were made. The requests concerned criminal tax matters, and the peers argued that the entry into force provision in the TIEAs obliges the Turks and Caicos Islands to exchange information with respect to criminal tax matters in all cases, whether they relate to a taxable period after or before the entry into force of the TIEA. This interpretation is based on the difference in the TIEA between the effective date for criminal tax matters and other matters. All TIEAs concerned, as well as most other TIEAs concluded by the Turks and Caicos Islands, contain the following entry into force provision or one similar thereto:

“[...] The provisions of this Agreement shall have effect:

- (a) with respect to criminal tax matters upon the entry into force of this Agreement; and

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

- (a) with respect to all other matters covered in Article 1 for taxable periods beginning on or after the date of entry into force of this Agreement.”

269. There is clearly a distinction between the effective dates for criminal tax matters and other matters covered by the Agreement. The interpretation of the peers is that information should be exchanged following any request regarding a criminal tax matter sent after the entry into force date, also where this relates to a taxable period before this date. This is because there is no restriction in the entry into force provision or in any other provision of the TIEA regarding the taxable period in respect of criminal tax matters, while such restriction is clearly made in respect of all other matters.

270. The Turks and Caicos Islands’ interpretation, as explained to its partners, was different. The Turks and Caicos Islands argued that retroactivity is not clearly provided for in the TIEAs concerned, as the language in the entry into force provisions with respect to criminal tax matters is of a general nature and can also be interpreted to mean that information with respect to criminal tax matters only has to be exchanged if it relates to a point in time after the entry into force of the TIEA. Therefore, the Turks and Caicos Islands considered that this provision does not reflect a clear intention of retroactivity and thus no obligation exists to exchange information with respect to criminal tax matters relating to taxable periods before the entry into force of the TIEA. The Turks and Caicos Islands has reported that this question was not discussed during the negotiations.

271. Since then, the Turks and Caicos Islands has indicated that it has been able to discuss this issue with these two partners. It is noted that the international standard provides for exchange of past information which relates to a taxable period following the effective date⁵¹, but the Terms of Reference themselves do not require that information must be provided that relates to a taxable period before the entry into force of an information exchange agreement. Although in the view of the Turks and Caicos Islands, it is not clearly stated in the commentary to the *OECD Model TIEA*, it has accepted the interpretation given by these partners in this respect and is committed to applying the same interpretation in the future. Further, the Turks and Caicos Islands has advised these two partners that these requests will be handled and has provided the requested information. Nevertheless, and based on the now accepted interpretation of the entry into force provision of its TIEAs, the Turks and Caicos Islands should monitor the situation to ensure

51. Information that came into existence before the entry into force of the agreement may be relevant for taxable periods that post-date the coming into force of the agreement and this information should be exchanged in accordance with the international standard.

that in practice it can exchange information in relation to criminal tax matters for periods predating the entry into force of its agreements.

272. The Turks and Caicos Islands has also confirmed that any information predating the entry into force of the TIEA, but relating to a taxable period after that date, will be exchanged in all cases. It has further reported to be in a position to access all type of information legally required to be kept i.e. when the retention period of five years has not expired and all information no longer required to be kept but still available.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

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

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

273. 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.

274. In the Turks and Caicos Islands, a group for the negotiation of EOI agreements co-chaired by the Attorney General and the Permanent Secretary, Finance has been set up since 2008. This group comprise three other members: the Revenue Controller, one representative of the Financial Service Commission and one person of the Governor's Office.

275. The Turks and Caicos Islands has signed TIEAs with 16 jurisdictions, of which 14 are OECD countries⁵². Its network of EOI agreements covers one

52. Australia, Canada, Denmark, Finland, France, Germany, Iceland, Ireland, Netherlands, New Zealand, Norway, Portugal, Sweden, United Kingdom. TIEAs with Ireland and New Zealand are not yet in force.

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 13 jurisdictions to conclude EOI agreements; these include its significant trading partners. With one other jurisdiction, negotiations are at an intermediate stage (late stage of negotiations) and are expected to be completed by September 2013 and with three others at an advanced stage (all points settled and the only the completion of international processes is now required). In a letter dated 1 August 2013, and registered by the Secretary General of the Council of Europe on 20 August 2013, the United Kingdom extended the territorial application of the Multilateral Convention to the Turks and Caicos Islands. This increases the number of jurisdictions with which the Turks and Caicos Islands has an EOI relation by 42, to a total of 58 EOI partners. It will also provide an additional basis for EOI for the 16 partners with which the Turks and Caicos Islands has a bilateral EOI instrument. The Multilateral Convention will enter into force for the Turks and Caicos Islands on 1 December 2013.

276. 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. The Turks and Caicos Islands mentioned that it is currently negotiating an EOI agreement with this partner.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	The Turks and Caicos Islands should continue to develop its EOI network with all relevant partners.
Phase 2 rating	
Compliant	

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)

277. 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.

278. 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.

279. 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.

280. 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.

281. The Public Service Ordinance 2012 also creates a duty on public service officers and employees under section 21 to keep confidential all official information they have received in confidence. Breach of confidentiality can lead to a 2-10 year imprisonment and a fine of USD 50 000 or both, depending of the nature of breach. All officers within the EOI Unit have signed confidentiality agreements.

282. In practice, the offices of the competent authority are located within the Revenue Department with the Permanent Secretary, Finance's designate, the Revenue Controller. Two of people in charge of the EOI Unit also have some responsibility for business licensing. Access to the premises is secured and restricted, and all incoming requests are secured in a locked cabinet. A clean desk policy is also applied. Incoming requests are entered onto the

database maintained by the EOI Unit which is only accessible by the people from this Unit.

283. The notice to produce information only contains the limited information necessary to handle the request. In practice, the legal basis under which the exchange of information will take place (i.e. the provisions in the TIE Ordinance) is always mentioned in this notice. The Turks and Caicos Islands has reported that identification information is mentioned only in situations where this is necessary to enable the third party to process request. Questions that are asked to this third party strictly conform to the questions provided by the treaty partner in its incoming request.

284. When information is provided to EOI partners in response to a request, this is done by e-mail when this contact detail is available to Turks and Caicos' authorities.

All other information exchanged (ToR C.3.2)

285. 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.

286. 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.
Phase 2 rating
Compliant

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.

287. 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.

288. 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)

289. 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.

290. 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 TIEAs⁵³, 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.

291. 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.

292. Three of the Turks and Caicos Islands TIEAs⁵⁴ contain an addition to Article 7(6) of the OECD Model TIEA. These three TIEAs do not only

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

54. The TIEAs with France, Ireland, and Portugal.

allow for declining a request for information where the information would be used to administer or enforce a provision of the requesting jurisdiction's tax law which discriminates against a *national* of the requested party, but also where a provision of the tax law discriminates against a *resident* of the requested party if it is in the same circumstances as a resident of the requesting party. This means that no obligation to exchange information would exist, for example, where the requesting party intends to use this information to administer a withholding tax on a Turks and Caicos Islands resident, while such withholding tax does not exist for residents of the requesting party. For international tax purposes, tax rules that differ only on the basis of residency are universally accepted (see for example Article 24(1) of the OECD Model Tax Convention and its Commentary, and the Commentary on Article 7(6) of the OECD Model TIEA). The Turks and Caicos Islands has never declined an information exchange request because the information would be used to administer or enforce a provision of the requesting jurisdiction's tax law which discriminates against a *resident* of the requested party but as already mentioned, the Turks and Caicos Islands' experience is limited. Although no practical impediment has so far been experienced and the potential for frustration of effective EOI would apply only in certain circumstances, the Turks and Caicos Islands should nevertheless ensure that the identified agreements are brought in line with the standard.

293. In practice, attorney client privilege has never been invoked during the three-year period under review. The Financial Criminal Unit has also reported that for AML purposes, attorney client privilege has never been invoked to refuse to provide the requested information. More broadly, no issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of the Turks and Caicos Islands' exchange of information partners.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

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)

294. 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.

295. Over the 3 years ending 31 December 2012, the Turks and Caicos Islands received four requests for information from three EOI partners. Peer inputs were received in relation to these four requests, showing for two of them notable delays in the provision of information. This was the result of a treaty partner unable to contact the Turks and Caicos Islands (see below C.5.2). For the two other requests, these were request for information in relation to criminal tax matters that were, in a first instance, rejected by the Turks and Caicos Islands (see C.1.9 above).

296. When created in November 2012, the new EOI Unit established contacts with the Competent Authorities of these three countries. All these requests were further resubmitted in early December. Once received by the Turks and Caicos Islands, the collection of information took less than two weeks in the four instances. Information was provided to one partner in early March, less than three months after requests were resubmitted.

297. To ensure timely answers to incoming requests, the Turks and Caicos Islands has put in place four checklists to monitor both the quality and accuracy of information received/exchanged and the timelines. As these processes are pretty new, the Turks and Caicos Islands should monitor the timeliness of answers to its partners on an on-going basis.

298. In addition to this, and in connection with some criticism received, the Turks and Caicos Islands has implemented a thorough system of update of status. Information on the progress of requests is provided at least (i) once the request is received; ii) when information is received from the third party or when it has not been possible to collect information in a timely fashion; and (iii) upon sending of the answer. All of this is done by phone which is an appropriate means to provide these updates considering the limited volume of incoming requests received.

Organisational process and resources (ToR C.5.2)

299. 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 she is supported by the Attorney General in this work. The Permanent Secretary Finance was officially designated as Competent Authority in 2009 in the TIE Ordinance. In November 2012 she designated the Revenue Controller as head of a dedicated EOI Unit created within the Ministry of Finance. This Unit is in charge of processing all incoming requests received from treaty partners.

Organisational process

300. The Turks and Caicos Islands has limited experience of exchange of information: only four requests have been received so far. Nonetheless, and in the view of adequately process incoming requests received, an EOI manual summarising the different steps to process them has been drafted by the EOI Unit. These different steps include:

- (i) an acknowledgement (3 days) at the time an incoming request is passed onto the EOI Unit by the competent authority. The case is then registered in the database maintained by the EOI Unit and given a reference number. The Turks and Caicos Islands has reported that it is easier to receive these requests under an electronic format as it (i) ensure a higher level of protection of data exchanged and (ii) provides more assurance that the incoming request will be received on time by the competent authority in the Turks and Caicos Islands. Only request received in English can be processed, this with the view of avoiding any misunderstanding likely to arise from translation mistakes.
- (ii) a vetting process (7 days) during which clarification from the requesting authority will be sought, if necessary. Once a request is received, it is first checked to see whether it is complete and whether the request has been sent out by a designated competent authority. To this end a “checklist 1” has been developed. It includes all basic information that an incoming request must contain to be processed and a summary of ground information.
- In all instances, the officer processing the request will contact by phone this competent authority to (i) establish a formal contact and make the competent authority of the Turks and Caicos Islands known from treaty partners and (ii) ensure that the request received

is genuine. If important information needed to process the request is missing, the EOI Unit will, during this call, ask for clarification. This request for clarification will thereafter be confirmed by e-mail. Of the four requests received over the last three years, one gave rise to clarifications because after processed by the Turks and Caicos Islands' authorities, it appeared that the account number provided as identification data was erroneous. Upon reception of additional information, the Turks and Caicos Islands was able to successfully process this request and provide a response.

- The Turks and Caicos Islands has advised that in no instances would it reject an incoming request on the basis that some information is missing. Additional information will in all cases be sought from the partner. The Turks and Caicos Islands has no experience of rejecting incoming request so far but people met have mentioned that if answers to the e-mail asking for additional information would not be received within 45 days, the request may be rejected. However, the Turks and Caicos authorities advised that where there is on-going communications with the requesting party, the 45 days timeframe is not strictly applied and assistance will continue to be provided where the additional information is received after that time. The only situations where incoming requests would be rejected upfront are those requests where there is no legal basis to exchange information i.e. the treaty applicable has not entered into force or the tax which is being assessed, collected, recovered, etc. in the case underlying the request is not one that is covered by the applicable EOI arrangement. If an incoming request is finally declined by the Turks and Caicos Islands, the requesting authority will be informed of the grounds for declining so the partner could eventually do a follow up and clarify its request.
- (iii) an internal/external request for information. This process has been described under sections B.1.1 and B.1.2 of the report and would last 22 days at a maximum. This timeframe eventually includes the application of enforcement measures in the event the registered agent concerned would not answer the incoming request. All notices issued to third parties must mention that responses within 15 days are expected. If answers are not received within 15 days, and before using enforcement measures, the EOI Unit will follow-up with the requested jurisdiction and provide an update. To better monitor incoming cases, the Turks and Caicos Islands has developed a “checklist 2” and a “checklist 3” where all steps of the process and due dates of completion must be reported.
- (iv) examining data provided (5 days). Once received, this information is checked by the officer in charge and if some information is

missing, the registered agent concerned will be asked to provide additional information to make its answer complete. If the information received is not complete, the EOI Unit will also follow-up with the requesting jurisdiction and provide an update of status of the request. To make sure that the requesting jurisdiction will receive a proper and comprehensive answer, a “checklist 4” has been created. This checklist is a useful reminder ensuring that all incoming questions have received answers from the third party requested to provide information.

301. With a view to properly managing incoming requests and timelines, the Turks and Caicos Islands has also developed an IT tool where all incoming requests received are registered and given a unique reference number. For the moment, this tool does not allow the storage of electronic copies of documents received and exchanged but this functionality is likely to be developed in the near future.

302. Members of the EOI Unit have acknowledged that their experience in processing incoming requests is limited. However, they explained during the on-site visit that if in connection with an incoming request, questions were to arise, they would look at the OECD EOI manual and the Global Forum handbook to see the extent to which similar situations may be described in these manuals. Material provided to trainees during EOI seminars would also be used. Finally, if not in a position to properly process the incoming request, the Turks and Caicos Islands would contact other jurisdictions in the region to see whether a similar case had already been handled and how it had been processed.

303. Over the course of this review, one jurisdiction reported that it could not establish contact with the Turks and Caicos authorities despite several attempts. The Turks and Caicos authorities have recognised that the competent authority was only officially designated during the last quarter of 2012 and that previously it was complicated to contact someone in charge of EOI within the Turks and Caicos Islands. Since then, an EOI Unit has been set up, a generic e-mail address created, all treaty partners contacted with a list of the person to contact in the Turks and Caicos Islands and this list published on the Global Forum EOI portal. As part of its approach, and as described earlier, the EOI Unit systematically contacts the partner jurisdiction upon receipt of an EOI request to acknowledge receipt of the request and introduce this new authority and also ensure a smooth dialogue with the partner jurisdiction throughout the information gathering process. Recent information received shows that this gap has now been remedied. Nevertheless, based on this, it is recommended that the Turks and Caicos Islands continue to ensure a good level of communication with its treaty partners and that its competent authority can be reached in all instances

Resources

304. The EOI Unit is staffed with three people two of whom have some responsibility in relation to business licensing. Considering the number of requests received, this unit is currently sufficiently staffed to process in an appropriate manner all incoming requests received. These persons have been appointed in the last quarter of 2012 and since then, have attended seminars and other EOI events organised by the Global Forum. They have demonstrated during the on-site visit a high level of knowledge and involvement in EOI.

Conclusion

305. The responsibility of handling incoming requests lies with the EOI Unit since November 2012. This unit is sufficiently staffed considering the few number of requests received so far and the people hired have a high level of knowledge of exchange of information and have attended seminars to improve their skills.

306. Along with the creation of this EOI Unit, adequate procedures and organisational processes have been put in place and would ensure, in the future, adequate answers in appropriate timeframe. This should, notably, address comments from peers about the difficulty to contact Turks and Caicos Islands' competent authority. The importance placed on communication will help improving relationships with treaty partner and it is recommended to the Turks and Caicos Islands, based on practices now implemented, to continue ensuring a good level of communication with its treaty partners and make sure that its competent authority can be reached in all instances.

307. For the period under review, the Turks and Caicos Islands has received four requests for information. Of these, delays did occur because of an inappropriate organisation and a question in relation the interpretation of the applicable treaty. The collection of information process described under section B.1 of this report is not an issue as such and can be done promptly, and the information was provided to the EOI partners after the review period. This process should nevertheless be monitored on an on-going basis considering the recent establishment of the EOI Unit and the limited experience of the Turks and Caicos Islands in this area.

Absence of unreasonable, disproportionate or unduly restrictive conditions on exchange of information (ToR C.5.3)

308. 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	
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.	
Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
A number of peers have been unable to contact the Turks and Caicos’ competent authority and to successfully direct the requests for information.	The Turks and Caicos Islands, on the basis of practices now implemented, should continue to ensure a good level of communication with its treaty partners and make sure that its competent authority can be reached in all instances
For the period under review, the Turks and Caicos Islands has only received four requests for information and its experience in handling these matters remains limited.	It is recommended that the Turks and Caicos Islands continue to monitor the handling of incoming requests to ensure that comprehensive replies are provided in a timely fashion to its partners.

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>)		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant	In situations where deficiencies in complying with AML obligations are detected by the FSC, the person concerned is asked to address the situation. If these deficiencies are addressed in the timeframe granted by the FSC, even where the breaches are significant, sanctions are not applied.	When significant breaches of AML obligations are discovered, even if the gaps are addressed by the person concerned, the FSC should consider applying sanctions.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement.	There is no consistent obligation for trusts to keep reliable accounting records for at least five years.	The Turks and Caicos Islands should ensure that trusts are required to keep reliable accounting records in line with the international standard in all cases for at least five years.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Largely Compliant	Record keeping requirements for exempted companies and limited partnerships have been recently introduced and availability of accounting records pertaining to these entities may not be assured in all instances.	In addition to its programme of raising awareness of registered agents, the Turks and Caicos Islands should put in place arrangements to ensure the keeping of accounting records by companies and limited partnerships.
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant	In situations where deficiencies in complying with AML obligations are detected by the FSC, the financial institution concerned is asked to address the situation. If these deficiencies are addressed in the timeframe granted by the FSC, and even when these breaches are significant, this financial situation will not be sanctioned.	When significant breaches of AML obligations are noticed, even if they are addressed by the financial institution concerned, the FSC should consider applying sanctions.
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>)		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
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>)		
Phase 1 determination: The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>)		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
Phase 1 determination: The element is in place.		The Turks and Caicos Islands should continue to develop its EOI network with all relevant partners.
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Largely Compliant	A number of peers have been unable to contact the Turks and Caicos' competent authority and to successfully direct the requests for information.	The Turks and Caicos Islands, on the basis of practices now implemented, should continue to ensure a good level of communication with its treaty partners and make sure that its competent authority can be reached in all instances
	For the period under review, the Turks and Caicos Islands has only received four requests for information and its experience in handling these matters remains limited.	It is recommended that the Turks and Caicos Islands continue to monitor the handling of incoming requests to ensure that comprehensive replies are provided in a timely fashion to its partners.

Annex 1: Jurisdiction’s Response to the Review Report⁵⁵

The Turks and Caicos Islands appreciates the thorough review made by the assessment teams evaluating the legal and regulatory framework as well as the practical implementation for transparency and exchange of information during our Phase 1 (including supplementary) and Phase 2 assessments.

In this regard, the Turks and Caicos Islands recognizes the valuable contributions of the Expert Team of Assessors and the members of the Peer Review Group as well as the Global Forum’s Secretariat, especially as it relates to the assessment of appropriate ratings following the Phase 2 assessment.

The Report reflects years of hard work and dedication on the part of the Turks and Caicos Islands and we agree with the contents of the report, including the ratings and note the recommendations which we will keep under consideration as we continue to monitor our legislative and regulatory regime and our administrative arrangements.

The Turks and Caicos Islands remains fully committed to the internationally agreed standard for the exchange of information and is pleased to support the work of the Global Forum on implementing the standard internationally.

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

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

Multilateral Instrument

The multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) applies in the Turks and Caicos Islands. The status of the Multilateral Convention and its 2010 amending Protocol, as at 22 August 2013, is set out in the table below. For multilateral instruments, the date of the entry into force shown in the table is the latest of the two dates of entry into force in respect of the two partners. The Multilateral Convention will enter into force in the Turks and Caicos Islands from 1 December 2013.

Bilateral agreements

The Turks and Caicos Islands has signed a number of information exchange agreements (TIEA).

Table of EOI instruments

The table below contains the list of jurisdictions with whom the Turks and Caicos Islands is linked by an EOI instrument as of 22 August 2013. For jurisdictions with which the Turks and Caicos Islands has several agreements, a reference to all those EOI instruments is made.

	Jurisdiction	Type of EOI arrangement	Date signed/extended	Date in force
1	Albania	Multilateral Convention	signed	01-Dec-13*
2	Argentina	Multilateral Convention	signed	01-Dec-13
3	Australia	Taxation information exchange agreement (TIEA)	30-Mar-10	01-Jul-10
		Multilateral Convention	signed	01-Dec-13

	Jurisdiction	Type of EOI arrangement	Date signed/extended	Date in force
4	Austria	Multilateral Convention	signed	
5	Azerbaijan	Multilateral Convention	signed	
6	Belgium	Multilateral Convention	signed	
7	Belize	Multilateral Convention	signed	01-Dec-13
8	Brazil	Multilateral Convention	signed	
9	Canada	TIEA	22-Jun-10	Oct-11
		Multilateral Convention	signed	
10	Colombia	Multilateral Convention	signed	
11	Costa Rica	Multilateral Convention	signed	01-Dec-13
12	Czech Republic	Multilateral Convention	signed	
13	Denmark	TIEA	07-Sep-09	25-Jan-11
		Multilateral Convention	signed	01-Dec-13
14	Estonia	Multilateral Convention	signed	
15	Faroe Islands	TIEA	16-Dec-09	Dec-11
		Multilateral Convention	extended	01-Dec-13
16	Finland	TIEA	16-Dec-09	02-Apr-11
		Multilateral Convention	signed	01-Dec-13
17	France	TIEA	24-Sep-09	15-Jul-11
18	Georgia	Multilateral Convention	signed	01-Dec-13
19	Germany	TIEA	04-Jun-10	Nov-11
		Multilateral Convention	signed	
20	Ghana	Multilateral Convention	signed	01-Dec-13
21	Greece	Multilateral Convention	signed	01-Dec-13
22	Greenland	TIEA	16-Dec-09	Feb-12
		Multilateral Convention	extended	01-Dec-13
23	Guatemala	Multilateral Convention	signed	
24	Iceland	TIEA	16-Dec-09	Apr-12
		Multilateral Convention	signed	01-Dec-13
25	India	Multilateral Convention	signed	01-Dec-13
26	Indonesia	Multilateral Convention	signed	
27	Ireland	TIEA	22-Jul-09	01-Dec-13
		Multilateral Convention	signed	01-Dec-13
28	Italy	Multilateral Convention	signed	01-Dec-13

	Jurisdiction	Type of EOI arrangement	Date signed/ extended	Date in force
29	Japan	Multilateral Convention	signed	01-Dec-13
30	Korea	Multilateral Convention	signed	01-Dec-13
31	Latvia	Multilateral Convention	signed	
32	Lithuania	Multilateral Convention	signed	
33	Luxembourg	Multilateral Convention	signed	
34	Malta	Multilateral Convention	signed	01-Dec-13
35	Mexico	Multilateral Convention	signed	01-Dec-13
36	Moldova	Multilateral Convention	signed	01-Dec-13
37	Montserrat	Multilateral Convention	extended	01-Dec-13
38	Morocco	Multilateral Convention	signed	
39	Netherlands	TIEA	22-Jul-09	01-May-11
		Multilateral Convention	signed	01-Dec-13
40	New Zealand	TIEA	11-Dec-09	
		Multilateral Convention	signed	01-Dec-13
41	Nigeria	Multilateral Convention	signed	
42	Norway	TIEA	16-Dec-09	09-Apr-11
		Multilateral Convention	signed	01-Dec-13
43	Poland	Multilateral Convention	signed	01-Dec-13
44	Portugal	TIEA	20-Dec-10	25 Jul 2011
		Multilateral Convention	signed	
45	Romania	Multilateral Convention	signed	
46	Russia	Multilateral Convention	signed	
47	Saudi Arabia	Multilateral Convention	signed	
48	Singapore	Multilateral Convention	signed	
49	Slovak Republic	Multilateral Convention	signed	
50	Slovenia	Multilateral Convention	signed	01-Dec-13
51	South Africa	Multilateral Convention	signed	
52	Spain	Multilateral Convention	signed	01-Dec-13
53	Sweden	TIEA	16-Dec-09	02-Apr-11
		Multilateral Convention	signed	01-Dec-13
54	Tunisia	Multilateral Convention	signed	
55	Turkey	Multilateral Convention	signed	

	Jurisdiction	Type of EOI arrangement	Date signed/ extended	Date in force
56	Ukraine	Multilateral Convention	signed	01-Dec-13
57	UK	TIEA	23-Jul-09	25-Jan-11
		Multilateral Convention	signed	01-Dec-13
58	United States	Multilateral Convention	signed	

*The entry into force of the Multilateral Convention with respect to the Turks and Caicos Islands on 1 December 2013 is not taken into account in the analysis at C.1.8 of the report.

Annex 3: List of All Laws, Regulations and Other Material Received

Commercial laws

- Banking Ordinance
- Confidential Relationship Ordinance
- Companies Ordinance
- Companies (Amendment) Ordinance 2011
- 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
- Limited Partnerships (Amendment) Ordinance 2011
- 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)\
Financial Services (Amendment) Ordinance, 2013

Other

Tax Information Exchange Ordinance 2009
Tax Information Exchange (Amendment) Ordinance 2011
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

Annex 4: People Interviewed During the On-site Visit

Attorney General's Chamber

Deputy Attorney General

Principal Legislative Drafter

Permanent Secretary, Finance

EOI Unit representatives

Revenue Department

Director of the Department

Revenue Controller

Financial Services Commission

Managing Director

Head of Insurance

Head of Banks and Trusts

Head of Company Management

Registrar of Companies

Legal Counsel

Official in charge of registering companies

Financial Crime Unit

Industry Associations

Trustees

Banks,

Financial Industry

Accountants

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: TURKS AND CAICOS ISLANDS

This report contains a “Phase 2: Implementation of the Standard in Practice” review, as well as revised version of the “Phase 1: Legal and Regulatory Framework” review already released for this country.

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

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

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

All review reports are published once 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 and www.eoi-tax.org.

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