GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

SAMOA

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Samoa 2012

PHASE 1

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About the Global Forum

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

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

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

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

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

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

Executive Summary

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

2. Samoa is an independent state located in the South Pacific Ocean, approximately 3 300 kilometers Northeast of New Zealand. Its economy is traditionally based on agriculture with a high dependence on external personal remittances and external development aid. With modernisation, Samoa has diversified its economic base, with the manufacturing and service sectors becoming significant contributors to Gross Domestic Product (GDP), driven mainly by commerce (20.6%), transport and communication (14%), construction (13.7%), and financial sectors (9.1%).

3. Relevant entities and arrangements comprise companies, partnerships, trusts, and special purpose international companies (analogous to foundations), which are generally divided into domestic and international entities and arrangements. Commercial and tax legislation is in general sufficient to ensure the availability of ownership and identity information concerning both domestic and international entities and arrangements. Anti-money laundering legislation is also sufficient to ensure ownership information with regard to all international entities and arrangements, except for beneficiaries of international trusts whose vested interest is less than 10% of the value of the trust. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance.

4. Samoa's commercial and tax laws ensure that reliable accounting records and underlying documentation are maintained with regards to domestic and foreign entities and arrangements, with the exception of liquidated companies. However, legal requirements for international entities and arrangements to maintain accounting records do not appear to be sufficiently comprehensive to meet the international standard. Financial institutions in Samoa are required to keep all records pertaining to the accounts held by them, as well as related financial and transactional information.

5. Samoa's competent authority has broad powers to gather the information relevant to exchange of information. These powers are exercised predominantly by issuance of notice to the person(s) required to produce the information and are complemented by powers to inspect premises and seize the information as well as to compel oral testimony. Secrecy provisions found in domestic legislations are generally overridden for exchange of information purposes, and no domestic tax interest in the information sought is needed. These access powers are not restricted by prior notification requirements.

6. Since 2009, Samoa has concluded tax information exchange agreements with 14 jurisdictions, including with its two main trading partners. All these agreements follow closely the OECD Model TIEA and allow for exchange of information to the standard with relevant partners. The Tax Information Exchange Act 2012 ensures that Samoa's agreements become effective in domestic legislation. Negotiations are currently underway with six jurisdictions.

7. Samoa's response to the recommendations in this report, as well as the application of the legal framework to the practices of its competent authority will be considered in detail in the Phase 2 Peer Review of Samoa which is scheduled for the first half of 2013.

Introduction

Information and methodology used for the peer review of Samoa

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

9. The Terms of Reference break down the standards of transparency and exchange of information into ten 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 Samoa's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element, a determination is made that either (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations on how certain aspects of the system could be strengthened. A summary of the findings against those elements is set out on pages 77-79 of this report.

10. The assessment was conducted by a team which consisted of four assessors: Ms. Ingeborg Granig-Sinz, tax expert/legal officer, International Department, Fiscal Authority, Liechtenstein; and Mr. Carlo A. Carag, undersecretary, Revenue Operations and Legal Affairs Group, Department of Finance, Philippines; and two representatives of the Global Forum Secretariat: Mrs. Renata Fontana and Mr. Franceso Positano. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Samoa.

Overview of Samoa

Governance, economic context and legal system

11. Samoa is an independent state located in the South Pacific Ocean, approximately 3 300 kilometers Northeast of New Zealand. The capital city is Apia. The total land area of Samoa is approximately 3 000 km^2, consisting of the two main islands of Savai'i and Upolu, which account for 99% of the total land area, and eight small islets. Samoa has a population of approximately 188 000 inhabitants and a zero annual population growth rate. The official languages are Samoan and English. The currency is the Samoan Tala (WST) and its exchange rate as of 31 July 2012 is WST 1 = USD 0.43 and USD 1 = WST 2.36.[1]

12. The Samoan economy is traditionally based on agriculture with a high dependence on external personal remittances and external development aid. Nevertheless, the economy has seen some real growth in the last decade. With modernisation, Samoa has diversified its economic base, with the manufacturing and service sectors becoming significant contributors to Gross Domestic Product (GDP), driven mainly by commerce (20.6%), transport and communication (14%), construction (13.7%), and financial sectors (9.1%). Significant changes to the structure of GDP in the late 1990s have been registered with the decline of agriculture and emergence of the fisheries, and tourism sectors. The expanding tourism sector and diversification of exports have improved the balance of payments outlook significantly. In 2011, the estimated GDP amounted to USD 1 122 billion.[2] Samoa's main trading partners are, by order of relevance: Australia, New Zealand, the United States, Japan, and China.[3]

13. Formerly a German colony, Samoa was under New Zealand's control from 1914 until it gained independence in 1962. Its political stability is largely attributable to a combination of selected elements of Samoa's traditional *matai* (chiefly) system and elements of liberal democracy. Samoa is a Parliamentary democracy and its written Constitution of 1960 provides for a Head of State, a Prime Minister and Cabinet of Ministers, and a Legislative Assembly. The Village Fono Act 1990 gives village councils authority over village law and order, health and social issues.

14. Samoa's court system is made up of two District Courts and a Supreme Court manned by six local judges, and an Appeal Court that sits once or twice a year and is overseen by overseas judges. There is a separate Land

1. Central Bank of Samoa: *www.cbs.gov.ws*.
2. CIA, Fact book. *https://www.cia.gov/library/publications/the-world-factbook/geos/ws.html*. The estimated GDP is expressed in US dollars and is calculated at purchasing power parity.
3. Statistical Department, Ministry of Finance of Samoa. *www.sbs.gov.ws/Statistics/Economic/tabid/3283/language/en-NZ/Default.aspx*.

and Titles Court that deals with matters relating to customary land ownership and *matai* (chief) titles.

15. As with many Commonwealth jurisdictions, Samoa has a Westminster style legal system based on the English legal system and common law. The hierarchy of Samoan laws is, in decreasing order of rank: (i) the Constitution, (ii) legislation (Acts of Parliament, Ordinances continued from pre-independence, International Agreements), (iii) subsidiary legislation (Regulations, Orders, By-laws, Notices, etc.), (iv) common law and equity, and (v) Samoan custom and usage.

16. Samoa is a member of the Commonwealth, the United Nations (UN), the International Monetary Fund (IMF), and the Asian Development Bank (ADB). In 2003, Samoa signed the "Cotonou Agreement", thus joining the group of African, Caribbean and Pacific countries in partnership with the European Union. Samoa committed to the international standard of transparency and exchange of information for tax purposes in 2002, co-chaired the Sub-Group on Level Playing Field, and participated in the development of the Joint Ad Hoc Group on Accounts Report. Samoa is a member jurisdiction of the Global Forum on Transparency and Exchange of Information for Tax Purposes and its Peer Review Group. Samoa has recently become a fully fledged member of the World Trade Organisation (WTO).

Overview of commercial laws

17. The domestic sector comprises companies, partnerships, and trusts. Domestic companies are formed and governed under the Companies Act 2001 (CA), as amended in 2006, which provides for the incorporation of private and public companies. Domestic partnerships are regulated under the Partnerships Act 1975 (PA). Rules applicable to domestic trusts are primarily contained in common law and certain statutory rules applicable to trustees are established by the Trustee Act 1975. These entities and arrangements are subject to Samoan tax laws (income tax and other taxes).

18. The international sector is monitored and supervised by the Samoa International Financial Authority (SIFA), established under the Samoa International Finance Authority Act 2005. International companies are incorporated under the International Companies Act 1988 (ICA), and segregated fund international companies are formed under the Segregated Fund International Companies Act 1988 (SFICA). International insurance companies are licensed under the International Insurance Act 1987 (IIA), but are governed by the provisions of the ICA with respect to the availability of ownership and accounting information (IIA, ss.2, 5(1) and 14). International partnerships and limited partnerships are governed by the International Partnerships and Limited Partnerships Act 1988 (IPLPA). In addition, international trusts can be

established under the International Trust Act 1988 (ITA) and unit trusts can be established under the Unit Trust Act 2008 (UTA).

19. International entities and arrangements must be established by trustee companies governed by the Trustee Companies Act 1988 (TCA), which are licensed by SIFA and subject to the anti-money laundering legislation. International entities and arrangements are not subject to direct or indirect taxes or duties in Samoa, nor are they subject to currency or exchange control regulations with respect to transfer of foreign currency.

Overview of the financial sector and relevant professions

20. The Central Bank of Samoa (CBS) is established under the Central Bank Act 1984. Under the provisions of the Financial Institutions Act 1996 (FIA), the CBS is responsible for licensing and prudential supervision of all domestic financial institutions in Samoa (FIA, s. 28). Samoa's domestic financial sector encompasses a range of financial institutions governed by the Financial Institution Act 1996, including four commercial banks, four general insurance companies, three life insurance companies, four insurance brokers and nine insurance agents (both corporate and individual), fifteen credit unions, sixteen money transfer and money changer operations and five money lending institutions.

21. Samoa's international financial sector is monitored and supervised by the SIFA. International banks are licensed under the International Banking Act 2005 (IBA) and international mutual funds are governed by the International Mutual Funds Act 2008 (IMFA). International mutual funds may take the form of international companies, international and limited partnerships, or unit trusts, and the respective legislation with regards to ownership and accounting information will be applicable. As of 30 March 2012, there were eight international banks registered with SIFA under the IBA.

22. The Money Laundering Prevention Act 2007 (MLPA) applies to all domestic and international financial institutions, as well as to service providers and other relevant professionals, such as trustee companies, lawyers and accountants (collectively referred to as "financial institutions"). The Financial Intelligence Unit (FIU) has wide supervision and information gathering powers in relation to financial institutions, which are required to furnish suspicious transaction reports and conduct regular customer due diligence checks, in accordance with guidelines issued by the Money Laundering Prevention Authority.

General information on the taxation system

23. Samoa's tax system consists of both direct and indirect taxes. Direct taxes comprise income tax, capital gains tax and provisional tax. Indirect taxes comprise value added tax (Value Added Goods and Services Tax Act 1992 (VAGST)), excise tax and customs duties.

24. The Income Tax Act 1974 (IT Act), the Income Tax Administration Act 1974 (ITA Act) and the Income Tax Rates Act 1974 provide for direct taxes to be paid directly to the Government through annual income tax returns (for all businesses) and final tax deductions withheld at source by employers and remitted to the Inland Revenue Service. A natural person is considered a Samoan tax resident if he/she has a home in Samoa at any time during a tax year (IT Act, s. 48). However, a foreign national residing in Samoa for more than six months and less than three years, for employment purposes, may elect to be treated as a non-resident for the duration of his/her employment. A company is considered a Samoan tax resident if: (i) it is incorporated in Samoa; or (ii) it has its centre of administrative management located in Samoa (IT Act, s. 48(3-4)).

25. For income tax purposes, individuals are taxed progressively and the nominal tax rate ranges from 0% to 27%, whereas companies are taxed at a 27% flat rate. Capital gains tax is levied at a rate of 27%. Withholding tax on dividends is levied at a 15% rate for non-residents and 10% for residents. Non-residents (both natural and legal persons) are taxed for the following types of income: (i) income derived from the provision of overseas freight and passage services (*i.e.* shipping companies), (ii) business income earned from activities in Samoa, (iii) income derived by a non-resident beneficiary to a trust settled in Samoa, (iv) income subject to withholding tax, comprising professional services rendered to the Government if funded under an aid agreement, consultancy services rendered by a non-resident in Samoa, and royalties derived in Samoa (IT Act, s. 49).

26. Value added tax on the supply of goods and services is imposed under the VAGST Act 1992/1993. Any person (natural or legal) who carries on a taxable activity in Samoa is required to register for VAGST. However, VAGST registration is optional for a person whose annual profit from their taxable activity is less than WST 78 000/USD 33 150 per year. VAGST is levied at 15% rate.

27. Excise tax is levied on imports as well as on domestic manufacture of excisable goods (tobacco products, alcohol, soft drinks, passenger vehicles, petrol, kerosene and aviation gas) in Samoa. Rates of excise vary according the classification of goods, but rates on import and domestic manufacture are identical. The relevant laws on excise tax are the Excise Tax (Domestic Administration) Act 1984, the Excise Tax (Import Administration) Act 1984 and the Excise Tax Rates Act 1984.

28. Custom duties are imposed at *ad valorem* rates based on the Harmonised System of Tariffs. The valuation of goods for the purpose of determining the applicable duties is done in accordance with the WTO Agreement on Customs Valuation. Customs duties are levied in accordance with the Customs Act 1977 and the Customs Valuation Regulations 2011.

29. Except for trustee companies, all entities and arrangements registered under the international financial services legislation benefit from tax exemptions. Accordingly, international companies, segregated fund international companies, international insurance companies, international partnerships and limited partnerships, international trusts, international banks, and international mutual funds are not subject to any taxes or duties (whether direct or indirect) on their profits or gains, or upon transactions and contracts.

Other relevant factors for exchange of information

30. The core legislation for exchange of information for tax purposes in Samoa is the Tax Information Exchange Act 2012 (TIE Act), which was enacted in March 2012. Under the TIE Act, Samoa's Minister for Revenue is authorised to enter into tax information exchange agreements (TIEAs), as well as double taxation agreements (DTCs). Samoa's Commissioner of Inland Revenue is the competent authority for EOI purposes.

31. The MLPA contains specific provisions allowing for exchange information on money laundering, and terrorist financing offences, as well as serious criminal offences, including tax offences. Specifically, the FIU may, with the approval of the Money Laundering Prevention Authority, enter into an agreement for information exchange with foreign authorities regarding money laundering and the financing of terrorism.

32. Under Samoan law, there are potentially two other streams for information exchange in criminal (tax) matters:

- under mutual cooperation arrangements in criminal tax matters other than money laundering or terrorism offenses, as provided for under the Mutual Assistance in Criminal Matters Act 2007, for which the competent authorities are the Attorney General and the Ministry of Foreign Affairs; or
- under mutual cooperation agreements relating to money laundering, terrorist financing, and serious offences, including tax offences, as stipulated under the MLPA, for which the competent authority is the FIU.

33. The competent authority and timelines applicable to an EOI request on criminal (tax) matters will depend on the legislation under which the requesting authority chooses to seek assistance.

Recent developments

34. Samoa's competent authority is currently implementing a modernisation project under which the existing income tax laws will be replaced by the Income Tax Act 2012/2013 and the Tax Administration Act 2012/2013. Both acts are currently in Bill form and have been introduced in Parliament with a view to passage by the end of 2012. Both are expected to commence on 1 January 2013.

Compliance with the Standards

A. Availability of Information

Overview

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

36. Samoa's legislation imposes comprehensive obligations to ensure that up-to-date ownership and identity information is available for all domestic, international, and foreign entities and arrangements. This information is either in the hands of public authorities (Registrar of Companies, Minister for Inland Revenue, Commissioner, etc.) or in the hands of the entity itself. Tax requirements also help to ensure the availability of this information with regard to domestic and foreign entities and arrangements. Anti-money laundering obligations apply with regard to all international entities and arrangements via their connection with trustee companies, or by way of direct obligations imposed on trustees and fiduciaries. However, a narrow gap has been identified with respect to the identification of beneficiaries of international trusts whose vested interest is less than 10% of the value of the trust.

37. Bearer shares are expressly permitted for international companies and sufficient mechanisms are available under the statute law to ensure that the beneficial owner of such shares be identified. Domestic companies, international banks, and segregated fund international companies cannot issue bearer shares. Enforcement provisions are in place to ensure the availability of ownership and identity information and their effectiveness will be considered as part of the Phase 2 peer review of Samoa. For the reasons highlighted above, element A.1 was found to be in place, but needing improvement.

38. As far as accounting information is concerned, an obligation to keep reliable accounting records, including underlying documentation, for a period of at least five years is not in place in all circumstances. Samoa's commercial and tax law generally imposes sufficient record keeping requirements on domestic and foreign entities and arrangements. However, shortcomings were identified with respect to liquidated domestic and foreign companies, international companies, segregated fund international companies, international partnerships, limited partnerships, international trusts, unit trusts and special purpose international companies. The commercial laws governing these entities and arrangements are generally deficient. For these reasons, element A.2 was found not to be in place.

39. As to bank information, banks and other financial institutions have to comply with detailed customer due diligence obligations and must keep all records pertaining their customers' identity, as well as the nature and amount of financial transactions of account holders, for at least five years. Element A.3 was therefore found to be in place.

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.

40. The relevant entities and arrangements of Samoa are companies (*ToR A.1.1*), some of which may issue bearer shares (*ToR A.1.2*), partnerships (*ToR A.1.3*), trusts (*ToR A.1.4*) and special purpose international companies which are analogous to foundations (*ToR A.1.5*). This section also deals with enforcement provisions to ensure compliance with the laws on the ownership of relevant entities (*ToR A.1.6*).

Companies (ToR A.1.1)

41. As further detailed in this section, the following types of companies may be formed in Samoa: (i) domestic companies; (ii) international companies; and (iii) segregated fund international companies. In addition, this section also

covers regulated activities performed by international banks and international insurance companies, as well as foreign companies and nominees.

Domestic companies

42. Under the Companies Act 2001 (CA), as amended in 2006, domestic companies may be incorporated as private or public companies. Private companies are prohibited from offering securities to the public and the number of shareholders is limited to 100. A private company with one single shareholder is a single shareholder company, which has the same basic characteristics of a private company. A company that is not registered as a private company is a public company. As at April 2012, there were four public companies, 349 private companies, and 54 single shareholder companies established in Samoa.

43. Domestic private and public companies are required to maintain a share register that records for the last seven years: (i) the shares issued by the company, (ii) the name and last known address of each shareholder, (iii) the number of shares held by each shareholder, (iv) the date of any issue of shares to, repurchase or redemption of shares from each shareholder, and (v) transfer of shares by or to each shareholder, and in relation to the transfer, the name of the person to or from whom the shares were transferred (CA, s. 40(1)).

44. The share register must be kept at the registered office of the company in Samoa (CA, s. 40(2)(b)) or in other places as notified to the Registrar of Companies (CA, s. 119(4)(a)). Where the rules of the company so permit, the share register can be divided into two or more registers kept in different places, even outside Samoa (CA, s. 119(2) and (3)), provided that the principal register is in Samoa and that an updated copy of the other registers are kept at the same place as the principal register (CA, s. 119(2) and (4)).

45. Persons wishing to incorporate a domestic private or public company must submit an application to the Registrar of Companies, which is part of the Ministry of Commerce, Industry and Labour. Such an application must specify the full name and address of each shareholder as well as the number of shares to be issued to each shareholder (CA, s. 6(e)).

46. The directors must submit an annual return to the Registrar (CA, s. 124), disclosing any changes to shareholding that have occurred during the year.[4] When a company issues new shares, acquires its own shares or redeems any shares, it must send a notice of the share transaction to the Registrar within ten working days of the transaction taking place (CA, ss.26(2), 31(3) and 35(5)).

4. *www.mcil.gov.ws/rcip/forms/FORM%2012.pdf.*

47. Companies incorporated before the CA was amended in 2006 had to re-register with the Registrar on their own volition, or after receiving a notice from the Registrar. Under section 335 of the CA, the application for re-registration includes, in the case of a private company, the full name of every shareholder of the company and the class of shares held by each shareholder (CA, s. 335(2)(d)). If an existing company fails to reregister before the expiry of the transition period (i.e. which expired two years after the commencement of the CA), it may not carry on business until it is reregistered (CA, s. 338(d)). In any event, existing companies are required to maintain a share register that records ownership and identity information concerning their shareholders (CA, s. 40(1)).

48. Under the Business Licence Act 1998 (BLA), any person (natural or legal) carrying on economic activity in Samoa has to obtain a business license from the Commissioner of Inland Revenue (BLA, ss.5 and 6). The Commissioner maintains a register of licences recording the name of the owners and the address or location of the place of business (BLA, s. 9(1) (b-c)). A licensee has to report to the Commissioner any change occurring to the information filed in such register within 30 days (BLA, s. 9(4)).

49. In addition, the Income Tax Administration Act 1974 (ITA Act) provides that every company and every person engaging in business during the income year, whether or not a taxpayer, must file each year a return with the Commissioner (ITA Act, s. 15(2)). The directors are required to disclose in the annual return the current shareholders of the company and their shareholdings, as well as any changes to shareholding that might have occurred during the year covered by the annual return.

50. Furthermore, domestic companies with foreign shareholding are required to obtain a Foreign Investment Registration certificate, in accordance with the section 6 of the Foreign Investment Act 2000 (FI Act). In the application form to the Ministry of Commerce, Industry, and Labour, the company must disclose detailed ownership information concerning each shareholder.[5]

International companies

51. Under the International Company Act 1988 (ICA), international companies may only be owned by non-residents of Samoa, with the exception of trustee companies (ICA, s. 6(1)). They may carry on any business which may lawfully be carried on by an individual but cannot carry on banking or insurance business (see section on *Regulated activities* below), or act as a trustee

5. *www.mcil.gov.ws/idipd/forms/FIC%20Application%20Form%20(Final%20 15-09-2011).pdf.*

company unless licensed or permitted to do so under Samoan laws (ICA, s. 7(1)). As of 30 March 2012, there were 29 123 international companies registered in Samoa. Sections 13(3) and 13(4) of the ICA provide for the incorporation of the following types of international companies:

- a company limited by shares: a company having the liability of its members (shareholders) limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them;
- a company limited by guarantee: a company having the liability to its members (guarantee members) limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up;
- a company limited by both shares and guarantee: a company having the liability of its members limited by the memorandum, in the case of members who have given a guarantee, to such amount as they have respectively undertaken to contribute to the assets of the company in the event of it being wound up, and in the case of members who are shareholders, to the amount, if any, unpaid on the shares respectively held by them;
- a limited life international company: which must be incorporated as a company limited by shares and is subject to specific provisions under sections 30A to 30M of the ICA.

52. In addition, segregated fund international companies may be incorporated under the Segregated Fund International Companies Act 2000 (SFICA). These companies can separate or quarantine their assets and liabilities among individual ownership units known as segregated funds or cells. Incorporation of these companies follows the same rules as applicable to international companies. Like other international companies, ownership interests in these companies are restricted to non-residents of Samoa with the exception of trustee companies. As of 30 March 2012, Samoan authorities indicated that there are four segregated fund international companies and 19 segregated cells in operation.

53. International companies are required to keep a register of all members, including changes in ownership, and persons who ceased to be a member during the last seven years (except in relation to bearer shares), including names, addresses, and details of the shares held by each member (ICA, ss. 30G(3) and 105). The register must be kept in Samoa, generally at the registered office of the company which is also the principal office of a trustee company (ICA, ss. 81 and 106).

54. International companies cannot register a transfer of shares or debentures unless a proper instrument of transfer has been delivered to the company (ICA, s. 66). The register of members is prima facie evidence of any matter inserted therein as required or authorised by the ICA (ICA, s. 105(2)). If default is made or unnecessary delay takes place in entering in the register any change in ownership, or if the name of any person is, without sufficient cause, entered in or omitted from the register, the person aggrieved or any member of the company may lodge an application with the Registrar of International and Foreign Companies for rectification of the register (ICA, s. 109). International companies, except limited life international companies, may also register shares in their register at the request of the transferor in the event the transferee fails to notify the company (ICA, s. 68).

55. There is no general requirement for international companies to appoint a resident director but, if one is appointed, that resident director must be a trustee company (ICA, ss.30H(1) and 83). International companies (other than a limited life international company) must have a resident secretary, which must be a trustee company (ICA, s. 90). Limited life international companies must appoint a resident agent, which must be a trustee company and which is responsible for maintaining the company's records in Samoa (ICA, s. 30J(1) and (3)).

56. Every segregated fund international company must have at all times a trustee company as registered segregated fund manager in Samoa, who must "keep records and accounts which shall identify shares or membership interests of shareholders or other members in respect of each segregated fund" (SFICA, ss.21(1) and 21(2)(c)). In addition, all international companies and segregated fund international companies must be incorporated and registered through a trustee company, which must lodge the memorandum and any changes thereto with the Registrar of International and Foreign Companies (ICA, ss.9(1), 14(1) and 30A(1) and SFICA, s. 6(1) and 6(5)(a)).

57. Pursuant to the Money Laundering Prevention Act 2007 (MLPA), trustee companies are service providers covered under the definition of "financial institution" (MLPA, s. 2(1) and Schedule 1(19)). As such, trustee companies are subject to general customer due diligence requirements. Section 16(1) of the MLPA requires a financial institution to identify, and verify the identity of, a customer and obtain satisfactory evidence of identity when:

- establishing a business relationship, meaning an arrangement between a financial institution and *any person*, the purpose of which is to facilitate the carrying out of financial business on a regular basis; or
- conducting any transaction, including when entering into any fiduciary relationship; or
- there is a suspicion of a money laundering offence or the financing of terrorism; or

- there are doubts about the veracity or adequacy of the customer identification or verification documentation or information it had previously obtained.

58. The Money Laundering Prevention Regulation 2009 (MLPR) further prescribes a comprehensive range of documentation for identification and verification, including information concerning natural persons (name and address) and legal entities (name, legal form, directors and control structure) (MLPR, ss.5 and 6). In relation to legal persons, a trustee company is required to take reasonable steps to understand and document the ownership and control structure of the customer (MLPR s. 6(2)). A trustee company is required to maintain updated customer information and to monitor transactions on an ongoing basis, as well as to retain records for at least five years (MLPA, s. 18(3) and MLPR, s. 12(1)).

59. All international companies and segregated fund international companies, as well as all special purposes international companies are exempt from income tax and from the payment of any other direct or indirect tax or import or stamp duty upon its transactions, contracts, securities and other dealings and upon its profits and gains, except where the income is derived by such companies in carrying on business in Samoa (ICA, s. 249(2)(a), SFICA, s. 5 and SPICA, s. 154(2)). Therefore, these entities are not required to file any tax return.

Regulated activities

60. Under section 4 of the International Banking Act 2005 (IBA), "no person shall transact any international banking business from within Samoa, whether or not such business is carried on in Samoa, unless the person is the holder of a valid international banking licence." Under section 13 of the IBA, every application for a licence must be submitted to the Inspector of International Banks and must be accompanied by a certified copy of the act, charter, memorandum of association and articles of association of the company, or other document or documents by which the company is constituted, as well as evidence of the ultimate beneficial ownership of the company. No shares or beneficial interest in shares or other securities of any licensee can be issued and transferred or disposed of in any manner without the prior written approval of the Inspector of International Banks (IBA, s. 18). Any changes to ownership information must be reported to the Inspector of International Banks forthwith (IBA, s. 25). As of 30 March 2012, there were eight international banks registered with the Samoa International Financial Authority (SIFA).

61. Similarly, the International Insurance Act 1988 (IIA) prohibits any person to carry on or transact any international insurance business in or from within Samoa without a valid a valid certificate of registration (IIA, s. 4). Applications for registration with SIFA must be accompanied by: (i) a certified

copy of the act, charter, deed of settlement, memorandum of association and articles of association of the body corporate, or other document or documents by which the body corporate is constituted, (ii) evidence that the applicant has complied with its obligations under the IIA, (iii) evidence of the shareholding and management of the applicant, (iv) evidence of the ultimate beneficial ownership of the stocks or shares of the applicant, and (v) the address of its registered office in Samoa (IIA, s. 5). Any modification to information described above must be promptly reported to the SIFA (IIA, s. 12). As of 30 March 2012, there were four international insurances registered with SIFA.

62. Persons carrying on international banking business and international insurance business are exempt from income tax and from the payment of any other direct or indirect tax or import or stamp duty upon its transactions, contracts, securities and other dealings and upon its profits and gains, except where the income is derived by such companies in carrying on business in Samoa (IBA, s. 40 and IIA, s. 34). Therefore, these entities are not required to file any tax return.

Foreign companies

63. A company is considered a Samoan tax resident if: (i) it is incorporated in Samoa; or (ii) it has its centre of administrative management located in Samoa (IT Act, s. 48(3-4)). Like domestic companies, foreign companies which are tax residents of Samoa, as well as foreign companies deriving income in Samoa, whether or not taxpayers, must be registered with and submit an annual income tax return to the Commissioner of Inland Revenue (ITA Act, s. 15(1-2)). As such, the current shareholders of the company and their shareholdings, as well as any changes to shareholding that might have occurred during the fiscal year must be disclosed in the annual return.

64. In addition, under the BLA, any (domestic or foreign) person carrying on economic activity in Samoa has to obtain a business license from the Commissioner of Inland Revenue (BLA, s. 5). The Commissioner maintains a register of licences recording the name of all owners, as well as their address or location of the place of business (BLA, s. 9(1)(b-c)). Any change to information maintained in such a register must be reported by the licensee within 30 days from its occurrence (BLA, s. 9(4)). Foreign investors conducting business in Samoa must also obtain a Foreign Investment Registration certificate and disclose detailed ownership information in the application form to the Ministry of Commerce, Industry, and Labour (FI Act, s. 6).[6] As of July 2012, there were 14 foreign companies registered with the Ministry of Commerce, Industry, and Labour.

6. *www.mcil.gov.ws/idipd/forms/FIC%20Application%20Form%20(Final%20 15-09-2011).pdf.*

65. A foreign company can also apply for registration under the ICA when it: (i) has a permanent establishment; or (ii) is carrying on business within Samoa, and it is not registered under the CA (ICA, s. 200(1)). Foreign companies registered under the ICA are tax exempt. The legislation governing the availability of ownership and identity information of international companies equally applies to foreign companies registered under the ICA (ICA, s. 2) (see section *International companies* above).

Nominees

66. The *Terms of Reference* requires that jurisdictions ensure that information is available to their competent authorities that identify the owners of companies and any bodies corporate. Owners include legal owners, and, in any case where a legal owner acts on behalf of another person as a nominee or under a similar arrangement, that other person, as well as persons in an ownership chain, to the extent that it is held by the jurisdiction's authorities or is within the possession or control of persons within the jurisdiction's territorial jurisdiction.

67. Although nominee shareholding is not regulated under Samoa's commercial laws, shares may be held by a nominee. There is no requirement under the ICA or the SFICA for a person acting as a nominee to maintain information in respect of the person on whose behalf he or she holds shares. Nevertheless, international companies and segregated fund international companies need to resort to a trustee company in all cases – whether for incorporation, designating a resident agent, or simply as offering a registered office (ICA, ss.9(1), 30H, 30J, 83 and 90 and SPICA, ss.6(1) and 21(1)) (see section on International companies above). The trustee company is under an obligation to take reasonable measures to determine if a customer is acting on behalf of any other persons including on behalf of a beneficial owner or a controller (MLPR, s. 9(1)). Where the trustee company has reasonable grounds to believe that a person (e.g. acting as a nominee) is undertaking a transaction on behalf of any other person (i.e. the beneficial owner), the trustee company must verify the identity of both persons (MLPA, s. 16(3) and MLPR, s. 9(2)).

68. The MLPA applies to a number of financial institutions which act as, or arrange for another person to act as, a nominee shareholder for another person (Guidelines for the Financial Sector, April 2012, Part 4). These include trusts and corporate service providers, trustee companies, persons trading for their own account or the account of customers in transferable or negotiable instruments, investment business including portfolio management and advice, safekeeping and administration of securities, safe custody services and acting as a securities dealer or futures broker; and lawyers (barristers and solicitors) when managing client money, securities or other assets (MLPA Schedule 1). Such service providers are required to keep identification

records concerning their customers and beneficial owners. Therefore, service providers who would be expected to act professionally as a nominee shareholder are generally covered by the obligations under the MLPA to identify the person they are acting for (MLPA, s. 16(1) and Schedule 1(18), and MLPR, s. 5(1-3)). This information must be kept up to date and maintained for at least five years (MLPA, s. 18(3) and MLPR, s. 12).

69. Nominee shareholders, other than service providers covered by the MLPA, do not have a specific legal obligation to retain identity information on the person for whom they act as the legal owner. Nevertheless, it may be expected that such nominees do know who their client is in order to correctly perform their duties as a nominee. In addition, these nominees might establish a relationship with a financial institution in Samoa (e.g. opening a bank account to receive dividends on the shares they hold), in which case the financial institution is required to perform customer due diligence measures with respect to the person acting as nominee and the beneficial owner, as in the preceding paragraph. In any event, the group of nominee shareholders not covered by the MLPA would primarily consist of persons performing services gratuitously or in the course of a purely private non-business relationship and is therefore likely to be limited. This matter will be further considered as part of Samoa's Phase 2 review.

Conclusions

70. Domestic companies are required to keep an updated shareholder register in Samoa and to disclose updated ownership information to the Registrar of Companies upon registration and then on an annual basis. Domestic companies and foreign companies that are resident in Samoa for tax purposes by virtue of their centre of administrative management are annually required to disclose to the tax authorities identity information concerning their shareholders. Under the MLPA, persons acting professionally as a nominee shareholder must identify the person who they are acting for as a nominee.

71. International companies and segregated fund international companies must keep at their registered office a list containing current ownership information concerning all their members, except in relation to bearer shares. In addition, these entities must be established through and registered by a trustee company, which is subject to comprehensive obligations under the MLPA, including customer due diligence requirements. Trustee companies are required to identify the person for whom, or for whose ultimate benefit, a transaction (other than a one-off transaction) is being conducted, as well as the person undertaking a transaction on behalf of another person, *i.e.* acting as a nominee. Persons carrying on international banking business or international insurance business are required to disclose updated ownership information as part of the licensing or registration process, respectively with the Inspector of International Banks or SIFA.

Bearer shares *(ToR A.1.2)*

Domestic companies

72. The CA does not contain any specific reference to bearer shares. Nonetheless, the issuance of bearer shares under the CA is implicitly precluded by the requirements concerning the issue and transfer of shares. In particular, "a share is issued when the name of the holder is entered on the share register" and "a share is transferred by entry [*of the name of the shareholder*] in the share register in accordance with section 40" (CA, ss.27 and 38(2)) [*language added*]. Companies are required to maintain a share register that records the name and last known address of each person who has been a shareholder in the last seven years (CA, s. 40(1)). Entry of the name of a person in the share register as holder of a share is evidence that legal title to the share vests in that person (CA, s. 41). Therefore, domestic companies are not permitted to issue bearer shares.

International companies

73. International banks, limited life international companies and segregated fund international companies are forbidden from issuing bearer shares or shares warrants to bearer. Instead, shares issued by such companies must be registered shares (IBA, s. 18, ICA, s. 30E(g) and SFICA, s. 6(3)).

74. International companies (other than limited life international companies and segregated fund international companies) may issue bearer shares and share warrants to bearer under the ICA (ICA, ss.35 and 36). The ICA provides that all bearer shares and share warrants to bearer issued by an international company have to be physically lodged with the trustee company (acting as a custodian for the beneficial owner) which provides the registered office for the international company (ICA, s. 39(1)). The registered office of the international company, which is also the principal office of a trustee company, must be in Samoa (ICA, s. 81). The trustee company then acts as a custodian of the original bearer instruments for the beneficial owners.

75. Custodians are forbidden from releasing the bearer shares or share warrants to bearer to the beneficial owner or to part with the physical possession of these documents, unless the bearer shares are to be cancelled by the international company or converted into registered shares (ICA, s. 39(2)). Where the beneficial owner of a bearer share or share warrant to bearer requires that such bearer instrument be converted to registered shares, cancelled or transferred, the custodian must first receive satisfactory evidence of the identity of the person making the request and of any other person who, as a result of the request, will become a registered shareholder or become the holder of a beneficial interest in the bearer share or share warrant to bearer

(ICA, s. 39(3)). Samoan authorities have indicated that "satisfactory evidence" means the documentation related to customer due diligence, as provided under sections 5 and 6 of the MLPR.

76. Trustee companies are service providers covered under the definition of "financial institution" (MLPA, s. 2(1) and Schedule 1(19) and Trustee Companies Act 1988, s. 2). As such, trustee companies are subject to general customer due diligence requirements and required to keep identification records concerning their customers and beneficial owners. The MLPR further prescribes a comprehensive range of documentation for identification and verification, including information concerning natural persons (name and address) and legal entities (name, legal form, directors and control structure) (MLPR, ss.5 and 6). The trustee company must identify each natural person who owns directly or indirectly 10% or more of the vote or value of an equity interest in the company (MLPR s. 6(3)). These records must be kept up to date and maintained for at least five years (MLPA, s. 18(3) and MLPR, s. 12).

Conclusions

77. With regard to domestic companies, the CA ensures that ownership of each share issued by a company is known. International banks, limited life international companies and segregated fund international companies cannot issue bearer instruments. While international companies may issue bearer instruments, appropriate immobilisation mechanisms are in place to ensure the identification of the beneficial owners of such instruments. Samoan trustee companies must act as custodians and keep identity information concerning such beneficial owners.

Partnerships *(ToR A.1.3)*

78. As further described in this section, the laws of Samoa allows for the establishment of the following types of partnership: (i) domestic partnership, (ii) international partnership, and (iii) limited partnership. In addition, this section also covers foreign partnerships.

Domestic partnerships

79. The Partnerships Act 1975 (PA) governs the formation of domestic partnerships. Limited partnerships may not be established under the PA. Every partner is liable jointly with his or her co-partners and severally for the liabilities of the partnerships. A formal agreement is not necessary to determine the existence of a partnership. Where such a written contract exists, it is required that a copy be submitted for the records of the Ministry of Justice

and Courts Administration. As at April 2012, there were 35 domestic partnerships established in Samoa.

80. Under the PA, partnerships are defined as "the relation which subsists between persons carrying on a business in common with a view to profit" (PA, s. 4(1)). Under the BLA, any person (including partnerships) carrying on economic activity in Samoa has to register for a business licence (BLA, s. 5). In addition, where two or more persons are operating as a partnership, they must obtain one licence in respect of each business or economic activity conducted by the partnership (BLA, s. 10). Information on the identity of the partners of the partnership must be filed with the Commissioner of Inland Revenue and any change must be reported within 30 days (BLA, s. 9(1)(b-c) and 9(4)).

81. Under the ITA Act, partnerships fall under the definition of "persons" and "taxpayers", and are, consequently, obliged to file an annual return (ITA Act, ss.2(1) and 15(1)). Specifically in relation to partnerships, the ITA Act requires that when income is derived by two or more persons jointly as partners, they must make a joint return of the income of the partnership, setting forth the amount of that income and the shares of the several partners therein (ITA Act, s. 18(b)(i)). In addition, each partner must be separately assessed and liable for the tax payable on his or her total income, including the share of the income of any partnership (ITA Act, s. 18(b)(iii)).

International partnerships and limited partnerships

82. The International Partnership and Limited Partnership Act 1988 (IPLPA) provides for the creation of two types of partnerships:

- an international partnership: every partner is jointly and severally liable for the liabilities of the partnership; or
- a limited partnership: every general partner is jointly and severally liable for all liabilities of the limited partnership, while every limited partner is generally only liable to contribute in money or money's worth to the common stock, as capital (IPLPA, s. 16(1)).

83. International partnerships and limited partnerships cannot carry out business nor engage in trade in Samoa, but can hold shares, debentures and other securities in international companies and foreign companies registered under the ICA (IPLPA, s. 5). As of July 2012, no international partnership or limited partnership has been established or registered in Samoa.

84. International partnerships and limited partnerships must apply for registration with the Registrar of International Partnerships through a trustee company (IPLPA, ss.6(1), 9 and 20). A partnership agreement is required as the means by which an international partnership or limited partnership is evidenced (IPLPA, s. 2(1)). There is no prescribed form for a partnership

agreement, but such agreement would as a matter of course contain details of the partners. The partnership agreement or any amendment thereto *may* be provided to the Registrar as part of the registration requirements (IPLPA, ss.11 and 22). The wording of this provision appears to suggest that the submission of the partnership agreement to the Registrar is left to the trustee company's discretion. Under the IPLPA, limited partnerships must complete, after registration and before commencing any business, a certificate disclosing the names and addresses of all partners distinguishing the general partners from the limited partners (IPLPA, s. 23(1)). This certificate may also be filed with the Registrar (IPLPA, s. 23(2)).

85. Registration of international partnerships and limited partnerships is submitted by a trustee company to the Registrar of International Partnerships, part of the SIFA. These partnerships cannot be registered with the SIFA unless the trustee company has provided the Registrar with a certificate attesting that one of the partner is a trustee company, an international company, or a foreign company registered under the ICA, and that each of the partner is non-resident of Samoa (IPLPA, ss.2(1), 10 and 21). For an international partnership or limited partnership to exist, there must be certainty that these conditions are met at all times (IPLPA, s. 2). As a consequence, the registering trustee company must have knowledge of the identity of the partners of such partnerships.

86. Trustee companies involved in the registration of these entities are required to identify and verify the identity of the customer when establishing any business relationship (MLPA, s. 16). The MLPR prescribes a comprehensive range of documentation for identification and verification, including information concerning natural persons (name and address) and legal entities (name, legal form, directors and control structure) (MLPR, ss.5 and 6). Moreover, the MLPR requires trustee companies to take reasonable measures to understand the ownership and control structure of the customer (MLPR, s. 6(2)). These records must be kept up to date and maintained for at least five years (MLPA, s. 18(3) and MLPR, s. 12).

87. In addition, the MLPR specifically requires the trustee company to take reasonable steps to understand and record the ownership and control structure of the customer, including the identification of the principal owner of a limited partnership, as well as of each natural person who owns directly or indirectly 10% or more of the value of an equity interest in the limited partnership and any person exercising effective control (MLPR, s. 6(2-3)). Nevertheless, according to Samoa, information on all the partners of international partnerships and limited partnerships will be available in the partnership agreement, which must be kept by the trustee company (MLPR, s. 6(1)(d)).

88. International partnerships and limited partnerships are tax exempt and are therefore not required to file any tax return (IPLPA, s. 36(1)).

Foreign partnerships

89. Under the BLA, any person (including foreign partnerships) carrying on economic activity in Samoa has to obtain a business license from the Commissioner of Inland Revenue (BLA, s. 5). The Commissioner maintains a register of licences recording the name of the owners, as well as their address or location of the place of business (BLA, s. 9(1)(b-c)). Pursuant to section 9(4) of the BLA, any changes in ownership must be disclosed to the Commissioner within 30 days. Any person who acquires a business licence under the BLA is automatically registered for income tax purposes.

90. The ITA Act provides that every person (including foreign partnerships) engaging in business during the income year, whether or not a taxpayer, must file each year a return with the Commissioner (ITA Act, s. 15(2)). In addition, the individual partners will also be required to file annual tax returns, as the partners are taxed individually on their share of the foreign partnership's income (ITA Act, ss.18).

Conclusions

91. Domestic and foreign partnerships carrying on economic activity in Samoa must obtain a business licence from the Minister of Inland Revenue and, consequently, are registered for income tax purposes. The obligations imposed on domestic and foreign partnerships under the BLA and the ITA Act ensure that ownership information of domestic partnerships is available. International partnerships and limited partnerships must maintain information on the identity of their partners and be registered through a Samoan trustee company, which is subject to comprehensive customer due diligence requirements under the MPLA and the MLPR.

Trusts *(ToR A.1.4)*

92. The following types of trusts may be created in Samoa: (i) domestic trusts; (ii) international trusts; and (iii) unit trusts. In addition, this section also deals with foreign trusts.

Domestic trusts

93. Trusts in Samoa include express, implied, and other forms of trusts (including discretionary trusts). A trust is not a separate legal entity. Rather, it is a (fiduciary) relationship between the trustee and beneficiary. As a common law jurisdiction, Samoa inherited and applies the common law concept of trusts and the Constitution explicitly provides that "law" includes the English common law and equity for the time being in so far as they are not excluded by other laws in force in Samoa (Samoa Act 1921 (NZ), s. 349 and Constitution, Arts. 111 and 114).

94. Pursuant to the Samoan Supreme Court's judgement in the *Opeloge Olo v Police* [unreported, M5092/80], the principles of common law and equity that are applicable in Samoa are not necessarily the same principles as are applied by the courts in England, but they may be principles of common law that are applied elsewhere in the Commonwealth. In Samoa, there is a long line of common law authorities that have established a set of rules that govern common law trusts. For a trust to subsist, there must be certainty in the identity of the trustee, the beneficiaries and the trust property (*Knight v Knight* [1840] 3 Beav. 148). This decision establishes that for a trust to be valid, the trust needs to meet three certainties, *i.e.* the certainty of intention, the certainty of subject matter and the certainty of object. This means that 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 (*Knight v. Knight* [1840] 3 Beav 148). This duty on the trustees is implicitly averred by statutes of Samoa (Trustee Act, ss.35 and 49, and International Trusts Act, s. 2).

95. Samoan authorities are of the view that such general duties imposed on trustees by common law authorities are enough to ensure that reliable ownership and identity information is available in Samoa. As a matter of course, a trustee cannot perform its fiduciary duties if the identities of the settlor, beneficiaries and other trustees are unknown. An in-depth assessment of the effectiveness of the common law authorities with respect to availability of identity information pertaining to settlors, trustees and beneficiaries of trusts will be considered as part of Samoa's Phase 2 review.

96. While trusts law is primarily contained in common law authorities, certain statutory rules applicable to trustees are established by the Trustee Act 1975. The Trustee Act does not require a written instrument in order to establish an express trust. Samoan authorities have, however, indicated that it is normal practice for trusts to be established through written agreements in order to prevent fraud. Under the Trustee Act, there are no requirements concerning registration, verification or retention of information pertaining to the identity of settlors, beneficiaries and other trustees. However, charitable trusts are registered pursuant to section 11 of the Charitable Trusts Act 1965. As of July 2012, there were 193 charitable trusts in Samoa.

97. Trustees are assessable and liable for income derived by the trust (IT Act, s. 36), unless the Commissioner is satisfied that a beneficiary has an indefeasibly vested interest in the income derived by the trust and that such income is not within the possession or control of the trustee. In such a case, the Commissioner may assess the trustee in respect of such income as agent for the beneficiary (IT Act, s. 37). Trustees are required to file an annual tax return concerning the income derived by the trust (ITA Act, s. 15). In addition, co-trustees must make a return of the income jointly derived, are jointly

assessable thereon and are jointly and severally liable for the tax so assessed (ITA Act, s. 18(a)). Samoa has not developed a separate tax return for trusts and trustees, and currently use the individual taxpayer form, which nonetheless requires the identification of the beneficiaries.

98. Under section 119(1) of the ITA Act, every person (including trustees) carrying on business or deriving income (other than salary or wage) is required to keep sufficient records to enable his or her exempt income, assessable income and allowable deductions to be readily ascertained by the Commissioner. This implies that the trustee holds all the records concerning the identity of settlors, beneficiaries and other trustees, as well as the assets, income and allowable deductions pertaining to the trust. This information must be retained for 12 years, except when the Commissioner has notified the trustee that retention is not required (ITA Act, s. 119(1-2)).

99. There is no legal requirement for the establishment of a domestic trust through a service provider or a legal practitioner. Nevertheless, express trusts may be established through a person who qualifies as a "financial institution", as broadly defined under the MLPA under section 2(1) and Schedule 1(16). In such cases, trustees of express trusts are subject to customer due diligence requirements when establishing a business relationship or entering into any fiduciary relationship (see more details on section International trusts below).

International trusts

100. International trusts are formed and regulated under the International Trusts Act 1988 (ITA) and the provisions of the Trustee Act do not apply to such international trusts (ITA, s. 33). English common law and equity for the time being in force in Samoa apply to international trusts in so far as they are not excluded by the ITA (ITA, s. 4(3)(b)). According to Samoa, this implies that trustees of international trusts are required to identify all beneficiaries in accordance with common law authorities. An international trust must have non-resident beneficiaries at all times (ITA, ss.2 and 28(1)(b)). In addition, at least one of the trustees, donors or holders of a power of advancement must be either: (i) a trustee company, (ii) an international company, or (iii) a foreign company registered under the ICA.

101. A trust (whether settled in Samoa or elsewhere) becomes subject to the provision of the ITA upon registration with the Registrar of International Trusts, which is part of the SIFA (ITA, s. 16). Pursuant to section 18 of the ITA, any person can apply for registration by submitting an application which must include, *inter alia*, a notice indicating the office of the representative trustee which will be the registered office of the international trust in Samoa (ITA, ss.18(f) and 22). Upon acceptance of an application, the Registrar issues

a certificate of registration, which needs to be renewed annually (ITA, ss.19 and 20). As of May 2012, there were 16 international trusts registered with SIFA.

102. A trustee of an international trust *may* file with the Registrar a copy of the trust instrument and of any amendment thereto (ITA, s. 19(4)). The wording of this provision suggests that the submission of the trust deed to the Registrar is left to the trustee's discretion. Nevertheless, the Samoan authorities have indicated that trustees of international trusts have, under common law, a general duty to maintain proper records of the trust property and to have knowledge of the identity of settlors, beneficiaries and other trustees. The matter will be considered as part of Samoa's Phase 2 review.

103. Section 25 of the ITA provides that all banking business carried out in Samoa, under or in connection with an international trust in Samoa, must be carried out either through a trustee company or by an international bank licensed under the IBA. International trusts, including each trustee, and each beneficiary, are tax exempt, and are therefore under no general requirement to furnish returns of income (ITA, s. $^{2}4^{(1\text{-}2)}$).

104. The customer due diligence requirements provided under the MLPA apply to "financial institutions", as broadly defined in section 2(1) to cover any person whose regular occupation or business is the carrying out of any activity listed in Schedule 1. The activities listed in Schedule 1 include trustees and trust administrators, trustee and corporate service providers, trustee companies and lawyers when acting on the creation, operation or management of trusts (MLPA, Schedule 1(14, 16, 18, 19 and 20)).

105. Under the MLPA, persons providing services to trusts created under the laws of Samoa or administered in Samoa (including international companies and foreign companies formed under the ICA) are required to obtain satisfactory evidence of identity in relation to all customers when establishing a business relationship or entering into a fiduciary relationship (MLPA, ss.2(1) and 16(1)). As such, a financial institution must obtain and verify the trust instrument of customers who are entities resulting from legal arrangements (MLPR, s. 6(1)(a)(ii)).

106. In particular, when the customer is a trust or a similar arrangement, a financial institution must identify and verify the settlor, trustees and beneficiaries whose vested interest is more than 10% of the value of the trust (MLPR, s. 6(4)). The threshold of 10% is however not sufficient to ensure the availability of information with regard to all beneficiaries. It is, therefore, recommended that Samoa ensure that ownership information is available with respect to all beneficiaries of international trusts.

Unit trusts

107. Unit trusts can be created under the Unit Trust Act 2008 (UTA). Unit trusts are schemes made for the purpose of providing facilities for the participation, by subscribers as beneficiaries under a trust (unit holders), in income and gains arising from the money, investments and other property that are subject to the trust (UTA, s. 2). They are therefore a form of collective investment fund and regulated accordingly. Every unit trust is subject to approval by the Ministry for Finance and must have a manager and a trustee (UTA, ss.3 and 4(1)). Pursuant to section 4(3) of the UTA, a trustee must hold the register of unit holders and make it available for inspection at all reasonable times on payment of the approved fee.

108. The manager, who must be a trustee company or a company approved by the Minister for Finance, is vested with the powers of day-to-day management of the investments and can be compared to a trust administrator (UTA, s. 5). The manager must lodge with the Registrar of Companies an authenticated copy of the trust deed, signed by a director or authorised officer of the trustee of the unit trust, and must communicate any amendment thereto to the Registrar within 14 days (UTA, s. 10). Moreover, a unit trust cannot operate unless a statement or prospectus has been lodged with the Registrar of Companies (UTA, s. 8). The particulars that are required to be disclosed in the prospectus include details of all the parties in the trust, including the settlors and other trustees (UTA, Schedule).

109. Every year, the manager must also file with the Registrar a list of name and address of each person who, in the preceding year, was a unit holder of the unit trust, including the extent of the interests held by each unit holder, as well as a statement setting out the number, amount and dates of each distributions during the previous five years (UTA, s. 21(1)). Furthermore, under the MLPA, trustees, managers or administrators of unit trusts are subject to customer due diligence requirements (MLPA, ss.2(1) and 16(1) and Schedule 1(16)).

Foreign trusts

110. Under Samoan law, there are no obstacles that prevent a Samoan resident from acting as a trustee or administrator of a trust governed by foreign law. However, the Samoan authorities have indicated that they have no experience with foreign trusts which are administered in Samoa or in respect of which a trustee is resident therein. Foreign trusts will be typically governed by foreign law, so it is unclear whether and which common law duties would apply with respect to these arrangements.

111. Under section 5 of the BLA, any person (including a trustee of a foreign trust) carrying on any economic activity in Samoa has to obtain a business license from the Commissioner of Inland Revenue. Any person

who acquires such a business licence is automatically registered for income tax purposes. The ITA Act provides that every taxpayer (including a trustee) must file each year a return with the Commissioner (ITA Act, s. 15(1)). In addition, resident trustees of foreign trusts are subject to the same general tax requirements applicable to domestic trusts (ITA Act, s. 119(1-2)).

112. Furthermore, resident trustees of foreign trusts who qualify as "financial institutions" under section 2(1) and Schedule 1 of the MLPA will also be subject to the customer due diligence requirements provided for under the MPLA (see more details on section *International trusts* above).

Conclusions

113. Under the common law, trustees of domestic and international trusts are subject to a general duty to maintain proper accounts of the trust property and to have knowledge of all documents pertaining to the formation and management of a trust. However, it is unclear whether these documents include identity information concerning settlors, beneficiaries and other trustees. Nevertheless, general tax requirements and anti-money laundering obligations applicable to domestic and foreign trusts also ensure the availability of ownership and identity information in a number of cases, except when the trustee is not carrying on business or deriving income.

114. The trustees of unit trusts and international trusts qualify as "financial institutions" and are subject to customer due diligence requirements under the MLPA. This means that they are required to obtain satisfactory evidence of identity in relation to settlors, trustees and beneficiaries whose vested interest is more than 10% of the value of the trust. In addition, trustees of unit trusts must keep a register of unit holders and file with the Registrar, on an annual basis, detailed updated identity information concerning the unit holder.

115. It is also conceivable that a trust could be created which has no connection with Samoa other than that the settlor chooses that the trust will be governed by the laws of Samoa. In that event, there may be no information about the trust available in Samoa. Any potential gaps are likely to be narrow and not considered to be material in view of the small number of domestic and foreign trusts administered in Samoa. A practical assessment of the matter and its impact on effective exchange of information will take place in the Phase 2 peer review of Samoa.

Foundations (ToR A.1.5)

116. The Special Purpose International Companies Act 2012 (SPICA) provides for the formation of special purpose international companies which operate like foundations in Samoa. They are hybrid entities with corporate form but no shareholders. According to the SPICA, these companies are established and administered for the ultimate benefit of charity and cannot distribute contributions or surplus other than for charity or for charitable purposes. Nevertheless, Samoa has indicated that special purpose international companies can also be used for private wealth management.

117. Special purpose international companies must be incorporated and registered through a trustee company, which must lodge the memorandum and any changes thereto with the Registrar of Special Purpose International Companies, which is part of the SIFA (SPICA, ss.15(2) and 17(10)). All special purpose international companies must keep at their registered office in Samoa a register containing the names and addresses of its directors, secretaries and resident agents (SPICA, s. 52(2)(3)). This information must be lodged with the Registrar and updated in the event of any changes (SPICA, s. 52(5)). As of July 2012, no special purpose international company has registered with SIFA.

118. Special purposes international companies may carry on any business, except for banking, insurance or acting as a trustee company, unless it is licensed or otherwise permitted so to do under the laws currently in force in Samoa (SPICA, s. 6(1)). They may also issue founder's rights certificate, which entitles the holder to exercise all rights granted by the SPICA and the articles of the company, including determining specific charities to benefit from the distribution of the company's final surplus upon liquidation (SPICA, s. 16 and Schedule 2(B)). The beneficiaries of special purpose international companies are only charities or general charity purposes.

119. The SPICA provides for appropriate immobilisation mechanisms concerning the founder's rights certificates. Founder's rights certificate must be physically lodged with the trustee company whose office provides the registered office of the company (SPICA, ss.16(2) and 53(1)). The trustee company must not release the founder's rights certificate or part with the physical possession of the said document, unless the founder's rights certificate is to be cancelled by the company. Trustee companies must also maintain records concerning the identity of the holders of founder's rights certificate issued by special purposes international companies. Pursuant to section 136(2) of the SPICA, a trustee company must retain records of a company for seven years from the date the company was struck off the Registrar (SPICA, s. 136(2)).

Conclusions

120. Special purpose international companies are established for charity or for charitable purposes, but operate like foundations in Samoa and can also be used for private wealth management. These entities must be established and registered with the Registrar of Special Purpose International Companies through a trustee company, which is subject to comprehensive obligations under the MLPA, including customer due diligence requirements. Special purpose international companies may issue founder's rights certificate, but appropriate immobilisation mechanisms are in place, in addition to anti-money laundering obligations applicable to trustee companies holding such certificates.

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

121. Jurisdictions should have in place effective enforcement provisions to ensure the availability of ownership and identity information, including sufficiently strong compulsory powers to access the information. This section of the report assesses whether the provisions requiring the availability of information with the public authorities or within the corporate entities reviewed in section A.1 are enforceable and failures are punishable. Questions linked to access are dealt with in Part B of this report.

122. Under section 40 of the CA, domestic companies are required to maintain a share register that records the details of the shareholders and of their shares. When companies keep the register in two separate places, a copy of all entries must be kept in the principal register in Samoa (CA, s. 119(2) and (4)). If a company fails to comply with these provisions, the company and each director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units (WST 5 000/USD 2 125) (CA, ss.40(4) and 119(8)).[7]

123. Domestic and overseas companies registered at the Registrar of Companies are required to furnish an annual return, disclosing any changes to shareholding that might have occurred during the year (CA, s. 124).[8] In addition, when a company issues new shares, acquires its own shares or redeems any shares, it must send a notice of the share transaction to the Registrar within ten working days of the transaction taking place (CA, ss.26(2), 31(3), and 35(5)). If a company fails to comply with these provisions, the company and each director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units (WST 5 000/USD 2 125) (CA, ss.26(4), 31(5) and

7. In Samoa, 1 penalty unit equals WST 100.
8. *www.mcil.gov.ws/rcip/forms/FORM%2012.pdf.*

124) or ten penalty units (WST 1 000/USD 425) in the case of redemption of shares (CA, s. 35(6)).

124. International companies and foreign companies registered under the ICA are required to keep a register and index of members of an international company, generally at the registered office of the company (ICA, ss. 30G(3),105 and 106). If an international company fails to comply with this obligation, the company and each officer thereof who is in default commits an offence. The general penalty for non-compliance is 50 penalty units (WST 5 000/ USD 2 125) on a first offence and 100 penalty units (WST 10 000/USD 4 250) for a second or subsequent offence (ICA, s. 219(1)). Violation of section 106 of the ICA – prescribing the location of the register of members – is punished upon conviction with a fine not exceeding 100 penalty units (WST 10 000/ USD 4 250) or to imprisonment for a term not exceeding three months or both (ICA, s. 219(2)).

125. Under the SFICA, the fund manager of a segregated fund international company is required to keep the records and accounts which identify shares or membership interests of shareholders or other members in respect of each segregated fund (SFICA, s. 21(2)(c)). The penalty for non-compliance is 50 penalty units on a first offence and 100 penalty units (WST 10 000/ USD 4 250) for a second or subsequent offence (SFICA, s. 30(1)).

126. In order to obtain and keep a valid licence, international banks are required to disclose to the Inspector of International Banks updated ownership information (IBA, ss.13 and 25). Bearer shares are prohibited and shares can be issued or transferred only after approval of the Inspector of International Banks (IBA, s. 18). Under sections 33 and 49 of the IBA, providing false information is an offence, punishable upon conviction with imprisonment for a term not exceeding one year or to a fine not exceeding USD 10 000 or to both, and, if the offence is a continuing one, to a further fine not exceeding USD 500 for every day on which the offence has continued. In addition, every person who fails to update information provided upon registration commits an offence and is liable on conviction to a fine not exceeding USD 1 000 for every day during which the offence continues (IBA, s. 25(7)).

127. Persons carrying on international insurance business must disclose ownership information upon registration with SIFA, and must update this information (IIA, ss.5 and 12). Providing false statements to SIFA and failure to update ownership information are punished upon conviction with a fine ranging from 200 to 500 penalty units (WST 20 000 and WST 50 000/USD 8 500 and USD 21 250) and/or imprisonment from one to two years (IIA, s. 40).

128. The ICA expressly permits international companies (other than limited life international companies and segregated fund international companies) to issue bearer shares and share warrants to bearer, but these bearer

instruments must be held by a licensed custodian who, in turn, must hold identity information on the bearer (ICA, s. 39). The violation of this provision is punished upon conviction with a fine not exceeding 100 penalty units (WST 10 000/USD 4 250) or to imprisonment for a term not exceeding three months or both (ICA, s. 219(2)).

129. The articles of organisations of a limited life international company must include a statement prohibiting such company from issuing shares to bearer or shares warrants to bearer (ICA, s. 30(E)(g)). The violation of this provision violation is subject to a fine of 50 penalty units (WST 5 000/ USD 2 125) and in the case of second or subsequent offence to a fine not exceeding 100 penalty units (WST 10 000/USD 4 250) (ICA, s. 219(1)).

130. Section 6(3) of the SFICA prohibits segregated fund international companies from issuing bearer shares. Any violation of this provision is subject to a fine of 5 penalty units (WST 500/USD 213) and in the case of a second or subsequent offence, to a fine not exceeding 10 penalty units (WST 1 000/USD 425) (SFICA, s. 30(1)). In addition, if an international company or a segregated fund international company violates any legal restriction, the SIFA is vested with the absolute right to direct such an entity to cease to carry on its business or part thereof either immediately or within such time as indicated by the SIFA (SFICA, s. 5 and ICA, s. 225).

131. A partnership agreement containing details of the partner is required as the means by which an international partnership or limited partnership is evidenced (IPLPA, s. 2(1)). Under the IPLPA, limited partnerships must complete, after registration and before commencing any business, a certificate disclosing the names and addresses of all partners distinguishing the general partners from the limited partners (IPLPA, s. 23(1)). Each general partner in default commits an offence and upon summary conviction incurs a fine of 2.5 penalty units (WST 250/107) for each day during which such offence continues (IPLPA, s. 29(3)). The general penalty on any person committing an offence against the IPLPA is imprisonment for a term not exceeding 1 year or a fine not exceeding 100 penalty units (WST 10 000/USD 4 250) or both, and, if the offence is a continuing one, a further fine not exceeding 5 penalty units (WST 500/USD 213) for every day during which the offence has continued (IPLPA, s. 42).

132. International trusts must register with the Registrar of International Trusts and become subject to the provisions of the ITA (ITA, s. 16). The general penalty for every person committing an offence against the ITA is liable upon conviction to imprisonment for a term not exceeding one year and/or to a fine not exceeding 100 penalty units (WST 10 000/USD 4 250). If the offence is a continuing one, such person is liable to a further fine not exceeding 5 penalty units (WST 500/USD 213) for every day during which the offence has continued (ITA, s. 30).

133. Pursuant to section 10 of the UTA, the manager of unit trusts must file with the Registrar of Companies an authenticated copy of the trust deed, and must communicate any amendment to the Registrar within 14 days (UTA, s. 10). Every person who fails to comply with this provision is guilty of an offence and liable, upon conviction, to a fine not exceeding 10 penalty units (WST 1 000/USD 425) and/or imprisonment for a term not exceeding three months (UTA, s. 26(2)).

134. With regard to special purpose international companies, at least one resident director must be an officer or wholly-owned subsidiary of the trustee company holding the founder's rights certificate (SPICA, s. 43(2)). The founder's rights certificate must be physically lodged with the trustee company whose office serves as the registered office of the company (SPICA, s. 16(2)). A trustee company and every officer of the trustee company who is knowingly in default commits an offence and is liable, upon conviction, to a fine not exceeding 50 penalty units (WST 5 000/USD 2 125), and in the case of a second or subsequent offence, to a fine not exceeding 100 penalty units (WST 10 000/USD 4 250). In addition, the Registrar may strike off from the register the name of a entity if it ceases to comply with any of the requirements of section 16 or 43(2) of the SPICA.

135. MLPA obligations, such as customer due diligence requirements, apply in the case of all international entities and arrangements (companies, partnerships, trusts, special purposes companies), since they must be established through and registered by a trustee company, or because a trustee company provides a resident director, officer, agent or a registered office. All these services provided by trustee companies are defined as "carrying on business" under the TCA (TCA, s. 2), and, consequently, are subject to the MLPA. Any financial institution or any person contravening the requirements and provisions of the MLPA is liable upon conviction to a fine not exceeding 500 penalty units (WST 50 000/USD 21 250), imprisonment for a term not exceeding five years or both (MLPA, s. 22).

136. The MLPR requires financial institutions to obtain a comprehensive range of documentation when conducting customer due diligence in relation to both natural and legal persons (MLPR, ss.5 and 6) as well as to maintain update such information and transactions on an ongoing basis (MLPR, s. 12). Specific identification minimum requirements apply respect to limited partnerships (MLPR, s. 6(3)), and in relation to any type of trusts (MLPR, ss.6(1-3)). Any person or financial institution who contravenes or fails to comply with any provision of the MLPR is liable to a fine not exceeding 100 penalty units (WST 10 000/USD 4 250) and/or imprisonment for a term not exceeding one year (MLPR, s. 22).

137. Domestic companies and foreign companies deriving income in Samoa or having their effective management in Samoa are required to furnish an

annual return of income (ITA Act, s. 15(2)). In relation to domestic and foreign partnerships, the ITA Act requires that when income is derived by two or more persons jointly as partners, they must make a joint return of the income of the partnership, setting forth the amount of that income and the shares of the several partners therein (ITA Act, s. 18(b)(i)). In addition, each partner must be separately assessed and liable for the tax payable on his or her total income, including the share of the income of any partnership (ITA Act, s. 18(b)(iii)).

138. Trustees of domestic and foreign trusts are assessable and liable for income derived by the trust (IT Act, s. 36) and, as such, they are required to file an annual tax return (ITA Act, s. 15). In addition, co-trustees must make a return of the income jointly derived, are jointly assessable thereon and are jointly and severally liable for the tax so assessed (ITA Act, s. 18(a)). Under the ITA Act, a taxpayer who fails to lodge a return on time, or makes any false returns, is guilty of an offence and liable to a fine not exceeding five penalty units (WST 500/USD 213) and/or imprisonment for a term not exceeding one year (ITA Act, s. 106(1)). Under section 119(1) of the ITA Act, every person (including trustees) carrying on business or deriving income (other than salary or wage) is required to keep sufficient records to enable his or her exempt income, assessable income and allowable deductions to be readily ascertained by the Commissioner, thus ensuring that the trustee of a domestic or a foreign trust maintains all the records concerning the identity of settlors, beneficiaries and other trustees. Every person who fails to comply with this section commits an offence punished with a fine not exceeding five penalty units (WST 500/USD 213) and/or imprisonment for a term not exceeding one year (ITA Act, s. 119(6)).

139. Any person (natural or legal) carrying on economic activity in Samoa has to obtain a business license from the Commissioner of Inland Revenue (BLA, s. 5). This obligation applies to domestic and foreign companies, partnerships and trusts, while international entities and arrangements are not subject to the BLA. The holder of a business license has to inform the Commissioner of any changes to the information maintained by the Commissioner in the Licence Register within 30 days of its occurrence (BLA, s. 9). If the holder fails to do so, its license will be cancelled, suspended, or he or she will be subject to a fine of 20 penalty units (WST 2 000/USD 850) (BLA, s. 9(5)). In addition, upon conviction for the breach any provision of any law relating to foreign investment, the Supreme Court will seize all assets of every description held by the licence holder (BLA, s. 18(3)).

Conclusion

140. Enforcement provisions are in place in respect of the relevant obligations to maintain ownership and identity information for all relevant entities and arrangements. The effectiveness of the enforcement provisions which are in place in Samoa will be considered as part of its Phase 2 Peer review.

Determination and factors underlying recommendations

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 obligation requiring identification of beneficiaries with less than a 10% interest in international trusts.	Samoa should establish clear provisions in its laws to ensure availability of information on all beneficiaries of international trusts.

A.2. Accounting records

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

141. A condition for exchange of information for tax purposes to be effective, is that reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting records. The *Terms of Reference* set out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements.

142. To be reliable, accounting records should (i) correctly explain all transactions, (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time, and (iii) allow financial statements to be prepared (*ToR A.2.1*). In addition, accounting records should include underlying documentation, such as invoices, contracts, etc. (*ToR A.2.2*) and they must be kept for a minimum period of five years (*ToR A.2.3*).

General requirements *(ToR A.2.1),* ***Underlying documentation*** *(ToR A.2.2),* ***Document retention*** *(ToR A.2.3)*

Domestic companies

143. Section 129 of the CA provides that reliable accounting records must be kept that: (i) correctly record and explain all transactions; (ii) enable the financial position of the company to be determined with reasonable accuracy at any time; (iii) allow financial statements to be prepared in accordance with section 130 of the CA and any related regulations; and (iv) enable financial

statements to be readily and properly audited (CA, s. 129(1)). If the directors fail to comply with these record-keeping requirements, each director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units (WST 5 000/USD 2 125) (CA, s. 129(5)).

144. Pursuant to section 119 of the CA, these accounting records may be kept in Samoa or abroad. However, if the records are kept outside of Samoa, there must be in Samoa, accounts and returns that disclose with reasonable accuracy the financial position of the company at intervals not exceeding six months and that enable financial statements or any other document to be prepared (CA, s119(6)). A company that chooses to keep its accounting records overseas must give the Registrar notice of the place where the accounting records, accounts and returns are kept, within ten days of them being kept elsewhere or moved (CA, ss.119(6)(a) and 119(7)). If a company fails to comply with these requirements, the company and every director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units (WST 5 000/USD 2 125) (CA, s. 119(8)).

145. In accordance with section 129 of the CA, the accounting records must contain:

- entries of money received and spent each day and the matters to which it relates;
- a record of the assets and liabilities of the company;
- if the company's business involves dealing in goods: (i) a record of goods bought and sold and relevant invoices; and (ii) a record of stock held at the end of the financial year together with records of any stock takings during the year; and
- if the company's business involves providing services, a record of services provided and relevant invoices.

146. Retail businesses that operate on a cash system, however, do not need to keep invoices for every transaction. It is sufficient if a retail business keeps a record of the total amount of money received each day (CA, s. 129(3)).

147. Pursuant to section 117(1)(f) of the CA, a company is required to keep the accounting records required under section 129 of the CA (which also covers underlying documents, such as invoices) for the current accounting period and for the last seven completed accounting periods of the company. If a company fails to comply with the requirements of section 117 of the CA, the company and every director commits an offence and is liable on conviction to a fine not exceeding 50 penalty units (WST 5 000/USD 2 125) (CA, s. 117(3)). However, a company can seek written approval from the Registrar to reduce the retention period (CA, s. 117(2)). It is unclear under the current law whether subsequent events, such as the liquidation of the company or the termination of a business relationship, will have an impact upon the minimum retention period.

148. In addition, all domestic companies are required to keep accounting records under the Income Tax Administration Act (ITA Act). As further detailed below (see further details on Tax law below), domestic companies are required to keep reliable accounting records, including underlying documents, for at least 12 years (ITA Act, s. 119). It is noted, however, that the retention of records is not required for a company which has been wound up and finally dissolved (ITA Act, s. 119(2)). Furthermore, certain domestic companies that fall within the scope of the FTRA are also subject to the record keeping obligations imposed by that Act, as explained below (see section on Anti-money laundering law).

149. Therefore, a combination of obligations established under Samoa's commercial and tax laws is sufficient to ensure the availability of reliable accounting information concerning domestic companies. However, it is noted that domestic companies which have been wound up and finally dissolved are not required to keep reliable accounting records, including underlying documents, for at least five years. It is recommended that Samoa introduce legal requirements to ensure the availability of reliable accounting information (including underlying documentation) in respect of domestic liquidated companies for at least five years.

International companies

150. Section 113 of the ICA requires an international company, or a foreign company registered under the ICA, to "keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company" (ICA, s. 113(1)). In addition, when a member so requires, the directors must present at any meeting a profit and loss account and a balance sheet prepared no more than 12 months before the date of the meeting (ICA, s. 114(1)). As to segregated fund international companies, a registered segregated fund manager is required to keep records and accounts identifying all creditors, liabilities and assets of each segregated fund (SFICA, s. 21(1)(d)).

151. Such obligations, however, fail to meet the international standard as they do not clearly require international companies to keep accounting records that (i) correctly explain all transactions, (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time and (iii) allow financial statements to be prepared. In addition, the ICA and the SFICA do not specify the type of underlying documentation to be kept in relation to accounting records and the minimum retention period. It is, therefore, recommended that Samoa amend its legislation to ensure that reliable accounting records, including underlying documentation, are kept by international companies and segregated fund international companies, for at least five years.

Foreign companies

152. If a foreign company is resident in Samoa for tax purposes by virtue of its centre administrative management, it is subject to the same general tax requirement imposed on resident domestic companies. Therefore, such foreign companies are required to keep reliable accounting records (including underlying documents) for at least 12 years, under Section 119 of the ITA Act (see *Domestic companies* above). However, like domestic companies, foreign companies which have been wound up and finally dissolved are not required to keep reliable accounting records, including underlying documents, for at least five years. It is therefore recommended that Samoa introduce legal requirements to ensure the availability of reliable accounting information (including underlying documentation) in respect of foreign liquidated companies for at least five years.

Domestic partnerships

153. Under the PA, there is an obligation on partners of domestic partnerships to render true accounts and full information of all things affecting the partnership to any partner or the legal representatives (PA, s. 29). The PA does not specify which accounting documents should be kept with respect to true accounts and full information of all things affecting the partnership.

154. Nevertheless, domestic partnerships and its partners are subject, under section 119 the ITA Act, to general tax requirements to keep accounting records and underlying documentation for a period of at least 12 years (see further details on *Tax law* below).

International partnerships and limited partnerships

155. No obligations are found in the IPLPA requiring international partnerships or limited partnerships to keep records. Accounting information would be partly available through the MPLA, which is insufficient to comply with the standard (see section on *Anti-money laundering law* below). It is, therefore, recommended that Samoa amend its legislation to ensure that international partnerships and limited partnerships are required to maintain reliable accounting records (including underlying documentation) for a minimum of period of five years.

Domestic trusts

156. The Trustee Act does not explicitly require the keeping of accounting records. Nevertheless, under section 119 of the ITA Act, trustees are required to keep reliable accounting records and underlying documents regarding the trust, for at least 12 years, for income tax purposes (see section on *Tax law* below). It is also established case law that a trustee has a duty to render accounts under a trust and that the beneficiary may bring an action in

equity for account against the trustee. This duty arises from the judgement in *Tillott v Wilson* [1892] 1 Ch 86, applied in *Peter Meredith Co. Ltd. v Drake Solicitors Nominee Company Ltd.* [2001] WSSC 32.

International trusts

157. Pursuant to section 24(3) of the ITA, international trusts are relieved of any obligation to file any accounts, returns, reports and records. Some accounting information would, however, be available as a consequence of the general fiduciary obligation under common law on the trustee to keep accounting records. These common law duties, however, are not specific enough to ensure that accounting records are kept to the international standard. Trust service providers are also required to keep certain accounting records under the MLPA, which are insufficient to comply with the standard (see section on *AML law* below). Samoa is, therefore, recommended to amend its legislation to ensure that international trusts are required to keep reliable accounting records (including underlying documentation) for a minimum of period of five years.

Unit trusts

158. Under section 12 of the UTA, a trustee or the manager of unit trusts is compelled to keep proper books of account (UTA, s. 12(a)). Every person who fails to comply with this section commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units (WST 1 000/USD 425) or to imprisonment for a term not exceeding three months or both (UTA, s. 26(2)). In addition, every year, the manager of a unit trust is obliged to file with the Registrar an audited statement of the accounts of the trust and a summary of purchases and sales of property under the unit trusts, and a list of all the investments of the unit trusts as at the end of the period to which the accounts relate (UTA, s. 21(2)).

159. However, the UTA does not specifically require unit trusts to keep underlying documentation, nor does it mention for how long accounting records need to be maintained. It is, therefore, recommended that Samoa amend its legislation to ensure that unit trusts are required to keep and maintain reliable accounting records, including underlying documentation, for a minimum of period of five years.

Foreign trusts

160. Under section 119 of the ITA Act, resident trustees of foreign trusts are required to keep accounting records and underlying documentation, for at least 12 years (see section on *Tax law* below).

Special purposes international companies

161. Special purposes international companies are required to keep "such accounts and records necessary to reflect accurately the financial position of the company" (SPICA, s. 58(1)). In addition, the directors of a company are required to deliver once a year, to the holders of the founder's rights certificates, an audited balance sheet and profit and loss account of the company (SPICA, s. 59). Any director of the company who fails to take all reasonable steps to secure compliance with the requirements to keep accounting records commits an offence for which upon conviction is liable to a fine not exceeding 100 penalty units (WST 10 000/ USD 4 250) and in the case of a second or subsequent offence to a fine not exceeding 100 penalty units (WST 10 000/USD 4 250) (SPICA, s. 58(4) and s. 138(1)).

162. However, the SPICA does not specify the type of underlying documentation to be kept in relation to accounting records or the minimum retention period. It is, therefore, recommended that Samoa amend its legislation to ensure that reliable accounting records, including underlying documentation, are kept by special purposes international companies, for at least five years.

Tax laws

163. Section 119(1) of the ITA Act requires every person carrying on business or deriving income to keep sufficient records to enable his or her exempt income, assessable income and allowable deductions to be readily ascertained by the Commissioner. Nevertheless, records need not be maintained when a company has been wound up and dissolved (ITA Act, s. 119(2)).

164. For the purposes of the ITA Act, the term "records" includes books of account, recording receipts or payments or income or expenditure or purchases or sales, and also includes vouchers, invoices, receipts, and such other documents as are necessary to verify the entries in any such books of account and, in the case of an agent, records of all transactions carried out on behalf of his or her principal (ITA Act, s. 119(5)).

165. Under the ITA Act, every person carrying on business or deriving income must retain all records (including underlying documentation) for a period of at least 12 years after the completion of the transactions, acts, or operations to which they relate. Every person who fails to comply with this section commits an offence punished with a fine not exceeding five penalty units (WST 500/USD 213) and/or imprisonment for a term not exceeding one year (ITA Act, s. 119(6)).

Anti-money laundering laws

166. The MLPA requires financial institutions, including trustee companies, to maintain all business transaction records and correspondence relating to the transactions with the appropriate backup or recovery, in such a manner as will enable them to be retrieved or reproduced in legible and usable form within a reasonable period of time (MLPA, s. 18(1)(a)). The records must enable the transaction to be readily reconstructed at any time by the FIU or by a law enforcement agency (MLPA, s. 18(2)). Non-compliance with the obligation to maintain records is an offence punished upon conviction with a fine not exceeding 500 penalty units (WST 50 000/USD 21 250), imprisonment for a term not exceeding five years, or both (MLPA, s. 22).

Conclusion

167. Under their respective governing laws or tax laws, domestic and foreign companies, partnerships and trusts must keep reliable accounting records (including underlying documentation) for at least five years. In addition, unit trusts and special purpose international companies are required to keep reliable and audited accounting records. Enforcement provisions are in place in respect of these obligations to maintain accounting information. The effectiveness of the enforcement provisions which are in place in Samoa will be considered as part of its Phase 2 Peer review.

168. Conversely, international companies, international partnerships, limited partnerships and international trusts are not subject to clear obligations to keep accounting records, as provided under the international standard. In addition, unit trusts and special purpose international companies are not required to keep underlying account documents or subject to an express requirement concerning the minimum retention period of five years.

Determination and factors underlying recommendations

Determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
International companies, segregated fund international companies, international partnerships, limited partnerships and international trusts are not explicitly required to keep records that (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared.	Samoa should require all relevant entities and arrangements to keep records that (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared.
International companies, segregated fund international companies, special purpose international companies, international partnerships, limited partnerships, international trusts and unit trusts are not explicitly required to keep underlying documentation.	Samoa should require all relevant entities and arrangements to keep underlying documentation in respect of all transactions.
Liquidated domestic and foreign companies, international companies, segregated fund international companies, special purpose international companies, international partnerships, limited partnerships, international trusts and unit trusts are not explicitly required to maintain their accounting records, including underlying documentation, for a minimum of five years.	Samoa should require all relevant entities and arrangements to keep reliable accounting records, including underlying documentation, for a minimum of five years.

A.3. Banking information

Banking information should be available for all account-holders.

169. Access to banking information is of interest to the tax administration only if the bank has useful and reliable information about its customers' identity and the nature and amount of financial transactions.

Record-keeping requirements (ToR A.3.1)

170. The MLPA applies to financial institutions, including persons carrying on banking business, as defined in the Central Bank of Samoa Act 1984 and the Financial Institutions Act 1996, as well as persons carrying on international banking business as defined by the IBA (MLPA, s. 2(1)).

171. Financial institutions are required to identify customers when establishing a business relationship and when conducting any transaction, and to verify their identity on the basis of reliable, independent source documents, data or information or other evidence of identity as may be prescribed (MLPA, s. 16(1)). A financial institution is also obliged to take all reasonable measures to ascertain the purpose of any transaction and the origin and ultimate destination of the funds involved in the transaction (MLPA, s. 16(2)).

172. These identification obligations do not apply in case of a one-off transaction not exceeding WST 50 000/USD 21 250, unless there are reasonable grounds for believing that there are linked transactions exceeding WST 50 000/USD 21 250 in total or that the transaction is suspicious or unusual (MLPA, s. 16(4)(b)). If the reporting institution has reasonable grounds to believe that a person is undertaking a transaction on behalf of another person, then it must also verify the identity of the other person for whom, or for whose ultimate benefit, the transaction is being conducted (MLPA, s. 16(3)).

173. A financial institution is also obliged to establish and maintain, with the appropriate backup or recovery all "business transaction records" and correspondence relating to the transactions and records of the person's identity obtained under section 16 of the MLPA (MLPA, s. 18(1)(a-b)). These records must be kept for a minimum of five years from the date of any transaction or correspondence, or when the evidence of the person's identity was obtained, or when the account has been closed or business relationships has ceased, whichever is the later (MLPA, s. 18(3)).

174. Under section 2 of the MLPA, a "business transaction" includes any arrangement or attempted arrangement, including opening an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and includes any related transaction between any of the persons concerned and another person and a one-off transaction. "Business transaction records" are those records as are reasonably necessary to enable the transaction to be readily reconstructed at any time by the FIU or a law enforcement agency (MLPA, s. 18(2)).

175. A financial institution is under obligation to maintain accounts in the true name of the account holder and cannot open, operate or maintain any anonymous or numbered account or any account which is in a fictitious, false or incorrect name (MLPA, s. 19). Banks and money transmission service providers must also include accurate originator information and other related

messages on electronic funds transfers and other forms of funds transfers and such information shall remain with the transfer (MLPA, s. 21).

176. Any financial institution or any person who contravenes any of the provisions described above commits an offence and is liable upon conviction to a fine not exceeding 500 penalty units (WST 50 000/USD 21 250) or imprisonment for a term not exceeding five years, or both (MLPA, s. 22).

Determination and factors underlying recommendations

Determination
The element is in place.

B. Access to Information

Overview

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

178. Samoa's Commissioner of Inland Revenue is the competent authority for Samoa's EOI agreements and draws its relevant information gathering powers from the Tax Information Exchange Act 2012 (TIE Act) and the Income Tax Administration Act 1974 (ITA Act). Under these acts, the Commissioner can access and collect a broad range of information for the EOI purposes, which includes ownership, identity, accounting, and banking information. Where necessary, the Commissioner also has means to compel the production of information sought.

179. The Commissioner's access powers apply regardless from whom the information is sought (e.g. from a government authority, bank, company, trustee, or individual) and whether or not the information is required for domestic tax purposes. The Commissioner has a variety of means to access and produce such information, including full and free access to all lands, buildings and places. Even though secrecy provisions apply to international entities and arrangements, the TIE Act overrides any obligation as to confidentiality found in other laws. For the reasons above, element B.1 was found to be in place.

180. A prior notification requirement applies when an EOI request relates to information protected from unauthorised disclosure. Nevertheless, exceptions are provided in urgent cases or when the notification is likely to

undermine the provision of the requested information, making this safeguard compatible with the international standard. Therefore, element B.2 was found to be in place.

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

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

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

181. The competent authority's powers to access ownership and accounting information are found in the Tax Information Exchange Act 2012 (TIE Act) and in the Income Tax Administration Act 1974 (ITA Act). The TIE Act provides that, for the purpose of complying with an EOI request, the competent authority may, by notice, require one or more of the following persons to provide relevant information: "(i) a regulated person, including a person who ceased to be a regulated person, under an international financial services legislation (ii) a person carrying on international financial services, (iii) a financial institution under the Financial Institution Act 1996 (FIA), (iv) a person acting in an agency or fiduciary capacity including nominees and trustee, and (v) a person reasonably believed to have the information" (TIE Act, s. 7(1)). A "person reasonably believed to have the information" covers both the person under investigation and third parties.

182. According to section 2 of the FIA, a "financial institution" is any person licensed under the Central Bank Act 1984 for doing banking business. Under section 2 of the Samoa International Finance Authority Act 2005, "international financial services" includes the carrying on of and the provision of services in relation to the businesses of trustee companies, banking, insurance, investment, asset management, trusteeship or company administration or the provision and administration of corporate and other business structures and any matters ancillary to such businesses or structures, pursuant to any international financial services legislation.[9]

9. Financial services legislation includes the International Companies Act 1988, the Trustee Companies Act 1988, the International Banking Act 2003, the International Trusts Act 1988, the International Insurance Act 1988, the International Partnership and Limited Partnership Act 1998, the Segregated Fund International Companies Act 2000 and any successor legislation to those Acts or any other legislation as may,

183. When a person has failed to furnish the requested information, or when the information requested may be removed, tampered or destroyed, the TIE Act provides the competent authority with the powers of inspections as outlined in section 9 of the ITA Act. Such powers include full and free access to all lands, buildings and places and all books and documents, the ability to make extracts or copies of, or to seize, such books and documents, and the ability to interrogate either orally, in writing, or by statutory declaration the owner or the manager of any property or business (ITA Act, s. 9). These powers apply regardless of the type of information needed to be collected.

184. Under section 9 of the ITA Act, the Commissioner may also, for the purpose of any investigation under this section, require the owner or the manager of any property or business to give him or her all reasonable assistance in the investigation, and to answer all proper questions relating to any such investigation either orally, or, if the Commissioner so requires, in writing, or by statutory declaration (ITA Act, s. 9(2)). The Commissioner may take possession of any document when he or she considers that the inspection, copying or making an extract of the document cannot reasonably be performed without taking possession, or the document may be interfered with or destroyed if possession is not taken (ITA Act, s. 9(3)).

185. The above access powers are supplemented by other powers found in the ITA Act, which may be exercised by the Commissioner, for the purposes of administering or enforcing *any of the tax acts*. The TIE Act is one of the Inland Revenue Acts within the meaning of section 2(1) of the ITA Act and it is listed in Schedule 1 thereof along with other Inland Revenue Acts (TIE Act, ss.2(2) and 16). Under the ITA Act, the Commissioner may:

- approach every person to furnish in writing any information and produce any documents or books which may be in the knowledge, possession, or control of that person (ITA Act, s. 10(1));
- apply to a Judge of the Supreme Court to hold an inquiry for the purpose of obtaining any information (ITA Act, s. 11(1)), and, for the purpose of such inquiry, the Judge may summon all persons whom the Commissioner requires to be so examined (ITA Act, s. 11(2)); and
- require any person to attend and give evidence before the Commissioner and to produce all books and documents in the custody or under the control of that person which contain or which the Commissioner considers likely to contain any such information (ITA Act, s. 12(1)), and for that purpose the Commissioner may require any such evidence to be given on oath and either orally or in writing (ITA Act, s. 12(2)).

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from time to time, be designated by the Minister as being international financial services legislation under this Act.

186. Section 4 of the TIE Act prescribes that, "upon receipt of a request for assistance, the Commissioner must provide a copy of the request to the Attorney General before acting on the request". Under section 11(1)(c) of the TIE Act, information provided to the Attorney General by the Commissioner must be treated as confidential and section 12(1)(a) of the same Act provides for sanctions for non-authorised disclosure (see further details on section C.3. Confidentiality below).

187. The Attorney General will advise whether the request is contrary to public interest or public order (Constitution of the Independent State of Samoa, article 41(2)). The TIE Act does not specify timelines under which the Attorney General would provide this advice, but the Samoan authorities have indicated that this procedural step does not cause an undue delay to effective EOI. The matter will be subject to further scrutiny under the Phase 2 review of Samoa.

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

188. 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. The TIE Act provides the Commissioner with broad access powers for international co-operation with foreign competent authorities under EOI agreements. In addition, the ITA Act grants access powers to information related to the administration of enforcement of all Inland Revenue Acts, which include the TIE Act (ITA Act, Schedule 1, and TIE Act, ss.2(2) and 16). Therefore, Samoan authorities have access to information for EOI purposes, regardless of the existence of a domestic interest in the information sought.

Compulsory powers (ToR B.1.4)

189. Upon approval by the Attorney General of a valid request as to whether such request is contrary to public interest or public order, the Commissioner will send a notice in writing to the person believed to have the information asking him or her to provide such information. The Commissioner has discretion to specify the deadlines before which the information is to be provided or produced (TIE Act, s. 7(1)(b)).

190. When a person fails to comply with a notice issued under section 7(1) of the TIE Act, or when it provides false statements in responding to the notice, that person commits an offence and is liable upon conviction to a fine not exceeding WST 25 000/USD 10 625, to imprisonment for a maximum of five years, or both (TIE Act, s. 12(1)(b-c)). The same penalties apply to persons who intentionally remove, tamper or destroy information requested under the TIE Act, or intentionally prevent or impede submission of that information (TIE Act, s. 12(1)(d-e)).

191. If a person fails to comply or only partly complies with a notice issued under the TIE Act, the competent authority may decide to exercise its inspection powers under the ITA Act (TIE Act, s. 9(a)). As noted above, the Commissioner and his or her duly-authorised representative has, at all times, full and free access to all lands, buildings and places and all books and documents, whether in the custody or under the control of a public officer or a body corporate or any other person whomsoever, and may, without fee or reward, make extracts from or copies of any such books and documents (ITA Act, s. 9(1)).

Secrecy provisions *(ToR B.1.5)*

192. A range of confidentiality and secrecy provisions apply to entities and arrangements in Samoa. These provisions are, nevertheless, overridden for EOI purposes. Section 10(1) of the TIE Act states that the provisions allowing for the collection of information have effect "despite an obligation as to secrecy, confidentiality or other restriction upon the disclosure of information imposed by *any law or otherwise* on the persons referred to in section 7(1)(a)" (*emphasis added*). The TIE Act also states that "a lawful obligation as to secrecy, confidentiality or other restriction on the disclosure of information does not prevent the Commissioner from disclosing information required to be disclosed under an agreement to an authorised officer of a competent authority" (TIE Act, s. 3(2)). As outlined below, the only exception to this rule concerns the disclosure or production of information that is protected by legal professional privilege (TIE Act, s. 10(2)).

Banking secrecy

193. There are no specific secrecy provisions found in the Banking Act 1960 and the Bank of Samoa Act 1990 that apply to commercial banks in Samoa. Nonetheless, section 5 of the Banking Act allows officers of a bank not to disclose or produce any book, nor to be witness on the content therein, when a bank is not a party to a legal proceeding. Moreover, examiners, advisors or Court-Appointed Managers are forbidden from disclosing any information obtained from a licensed institution, except where disclosure is required by a Court or is permitted by the Act or by other laws, for the purpose of financial supervision (FIA, s. 24). As explained above, however, the TIE Act specifically provides the Commissioner with powers to require, by notice, a financial institution under the FIA to provide information needed to comply with an EOI request (TIE Act, s. 7(1)(a)(iii)). Therefore, the Commissioner has direct access to information held by commercial banks.

194. With regard to international banks, sections 37-39 of the International Banking Act 2005 (IBA) forbid every person who, in its capacity as an officer,

employee, authorised agent, or auditor, has become aware of information related to international business banking to divulge such information, except when as required by or provided for under the laws of Samoa (IBA, s. 38(1)). Moreover, the TIE Act makes explicit reference to the collection of information from regulated persons registered or licensed under any international financial services legislation (TIE Act, ss.2(1) and 7(1)(a)(i)), or persons carrying on international financial services (TIE Act, s. 7(1)(a)(ii)). Accordingly, the Commissioner can directly access information held by international banks.

Corporate secrecy (international entities and arrangements)

195. A number of secrecy provisions apply to regulated persons registered under an international financial services legislation or person carrying on international financial services. Nevertheless, these confidentiality duties are lifted by the TIE Act where such information is sought in response to a valid EOI request (TIE Act, ss.7 and 10). As confirmed by a legal opinion provided by Samoa's Attorney General, the fact that the TIE Act postdates the acts described below and that it deals specifically with information which is relevant for tax matters ensures that secrecy provisions found in these other acts are overridden. Moreover, the TIE Act has been deliberately included in the list of Inland Revenue Acts (ITA Act, First Schedule, TIEA Act, s. 16) in order to ensure that the Commissioner be granted with all access powers that he or she enjoys under the ITA Act also when collecting information for EOI purposes.

196. The Trustee Companies Act 1988 (TCA) prohibits any public officer, trustee companies and every persons appointed to examine the books from disclosing any information concerning the existence of any particular trust or estate or the identity of any executor, settlor, appointer, guardian, trustee or beneficiary, except when required by the Court or *under the provisions of any law in force in Samoa* (TCA, s. 31(1-2)). The International Trusts Act 1988 (ITA) and the International Partnership and Limited Partnership Act 1988 (IPLPA) establish secrecy provisions for information concerning the establishment, constitution business undertaking or affairs of an international trust, international partnership or limited partnership, unless when allowed by these acts (ITA, s. 27 and IPLPA, s. 39(1)). The International Insurance Act 1988 (IIA) and the International Mutual Funds Act 2008 (IMFA) establish provisions prohibiting any person in the Ministry, the Attorney General, or in the Samoa International Financial Authority (SIFA) to disclose information except for the purposes of exercising their duties under these acts, or when required to do so by any court of Samoa (IIA, s. 26(1) and IMFA, s. 41(1)). Despite these secrecy measures, the Samoan authorities have indicated that these confidentiality duties are lifted by section 10 of the TIE Act where such information is sought to respond to a valid EOI request.

197. Under the International Company Act 1988 (ICA), certain information regarding international companies and foreign companies must be kept confidential. This includes ownership and identity information concerning any members, or the legal or beneficial interest of any members, as well as the company's business, financial or other affairs or transactions, assets or liabilities, or the contents of any register maintained by such a company (ICA, s. 227(1)). While the ICA does not explicitly allow for disclosure for EOI purposes and indicates that in case of inconsistency between the ICA and other laws the provisions of the ICA would prevail (ICA, s. 2(5)), the TIE Act specifically grants powers to the Commissioner to require information from a person carrying on international financial services (TIE Act, s. 7(1)(a)(ii)). Moreover, the fact that the TIE Act was enacted after the ICA ensures that the Commissioner can access information that is confidential under the ICA for EOI purposes. The Samoan authorities have provided a legal opinion from the Attorney General confirming that the provisions of the TIE Act would override those of the ICA.

198. It remains, however, unclear whether secrecy provisions introduced after the enactment of the TIE Act are overridden by section 10 thereof. The Special Purposes International Companies Act 2012 (SPICA), which was enacted subsequently to the TIE Act, establishes confidentiality provisions in relation to special purpose international companies established in Samoa. Certain information must be kept confidential, including ownership and identity information concerning the entity's founders, managers and officers, as well as its business, financial or other affairs or transactions, assets or liabilities, or the contents of any register maintained by such an entity (SPICA, s. 147(1)). While the SPICA enumerates a number of exceptions for the disclosure of confidential information (SPICA, s. 147(3)(a-m)), it does not provide for an exception with respect to information requested for EOI purposes, under the TIE Act. On the contrary, the SPICA expressly states that "where the provisions of this Act are inconsistent with the provisions of any other act, other than the Constitution of the Independent State of Samoa, the provisions of this Act prevail" (SPICA, s. 2(5)). It is therefore recommended that Samoa amend its legislation to clarify that confidentiality information under the SPICA be accessible for EOI purposes.

Professional secrecy and legal privilege

199. Under the TIE Act, the Commissioner may decline to provide assistance if he or she is satisfied that the EOI request "may impose an obligation to disclose trade, business, industrial, commercial or professional secrets or trade process, provided that information held by a person referred to in Section 7(1)(a) is not treated as a secret merely because it is held by such person" (TIE Act, s. 6). In addition, a person may refuse to furnish the

information to the Commissioner on the grounds of legal professional privilege (TIE Act, s. 10(2)). Legal practitioners may nonetheless be required to provide the name and address of their client regardless of any professional secret (*ib.*).

200. The IIA and IMFA provide for professional secrecy obligations, except in certain circumstances provided under these acts which do not include EOI for tax purposes (IIA, s. 32 and IMFA, s. 42). Section 42(1) of the IMFA provides for an exception allowing disclosure of such information when required by any other laws of Samoa, which includes the TIE Act. Even if no similar provision is found in the IIA, Samoan authorities have indicated that the TIE Act prevails over the professional secrecy provisions mentioned above, since it postdates these acts and it deals specifically with information which is relevant for tax matters.

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

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

203. Section 1.07 of the Rules of Professional Conduct for Barristers and Solicitors of Samoa, issued by Samoa Law Society pursuant to the Law Practitioners Act 1976, provides for indications concerning attorney-client privilege in respect of facts and information gathered or learned by attorneys or legal advisers in connection with providing services to their clients. These stipulate that a practitioner has a duty to "hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship".

204. Although the Rules of Professional Conduct for Barristers and Solicitors of Samoa do not establish any restriction as to the communication protected under the attorney-client privilege, these provisions concerning legal professional privilege are overridden by the Income Tax Act and the TIEAs in force in Samoa (Income Tax Act, ss.52(1)(5) and 53(1-2)). Samoan authorities have also indicated that although the Rules are for the purpose of regulating the conduct of the legal profession, they merely provide an instructive and educational

dimension for the profession rather than a disciplinary threshold. The limits on information which must be exchanged under Samoa's TIEAs mirror those provided for in the OECD Model TIEA. Accordingly, communications between a client and an attorney or other admitted legal representative are only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Therefore, the attorney-client privilege in Samoa meets the international standard.

Determination and factors underlying recommendations

Determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
The confidentiality measures found under the SPICA do not expressly provide for an exception for information sought by the Commissioner for EOI purposes.	Samoa should amend its laws to ensure that all confidential information be accessible for EOI purposes.

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)*

205. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

206. When an EOI request relates to information protected from unauthorised disclosure, the Commissioner is obliged to serve a notice to the person to whom the EOI request relates (TIE Act, s. 8(1)). Section 8(1) of the TIE Act also provides that service of a notice is effected by physically lodging a written notice on the person in question and no right of appeal is available to the person receiving the notice. As to the information to be included in such a notice, this issue will be nonetheless followed-up in the Phase 2 review of Samoa.

207. Under section 8(2) of the TIE Act, the Commissioner can decline to serve the notice in three cases, if he or she: "(a) does not have any information of the person referred to in subsection 1 [to whom the EOI request relates]; (b) is of the opinion that [a notice] is likely to prevent or unduly delay the effective exchange of information under an agreement; or (c) is of the opinion that [a notice] is likely to prejudice an investigation into an alleged breach of any law relating to tax of the country whose government the exchange of information agreement was made." Accordingly, the prior notification requirements and respective exceptions provided under the TIE Act are consistent with the international standard.

Determination and factors underlying recommendations

Determination
The element is in place.

C. Exchanging Information

Overview

208. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. A jurisdiction's practical capacity to effectively exchange information relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report examines whether Samoa has a network of information exchange that would allow it to achieve effective exchange of information (EOI) in practice.

209. Samoa's network for exchange of information comprises tax information exchange agreements (TIEAs) with 14 jurisdictions. Discussions or negotiations are also under way with an additional six jurisdictions. All of the TIEAs concluded so far by Samoa meet the international standard. Among these 14 TIEAs, nine have already entered into force. With one exception (Mexico), these TIEAs have been incorporated into the domestic laws of Samoa by the Tax Information Exchange Act 2012 (TIE Act). Samoa has notified all its existing treaty partners of the enactment of the TIE Act. For these reasons, element C.1 was found to be in place.

210. The treaty network covers Samoa's two main trading partners. Comments were sought from Global Forum members in the course of the preparation of this report, and no jurisdiction advised that Samoa had refused to negotiate or conclude such an arrangement. Accordingly, element C.2 was found to be in place.

211. All TIEAs concluded by Samoa contain confidentiality provisions which meet the international standard. Samoa's legislation also includes relevant confidentiality provisions, supported by sanctions for non-compliance. Consequently, element C.3 was found to be in place.

212. Samoa's EOI agreements ensure that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be

contrary to public policy. Samoa's domestic legislation ensures that the rights and safeguards are protected in accordance with the standard. Element C.4 was thus found to be in place.

213. There appears to be no legal restrictions on the ability of Samoa's 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. The present report does not address element C.5, as this involves issues of practice that will be dealt with in the Phase 2 review (see section C.5 below).

C.1. Exchange of information mechanisms

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

214. Since 2002, Samoa has been committed to implementing the international standard on transparency and exchange of information for tax purposes. The EOI network of Samoa comprises TIEAs with 14 jurisdictions: Australia, Denmark, Faroe Islands, Finland, Greenland, Iceland, Ireland, Mexico, Monaco, the Netherlands, New Zealand, Norway, San Marino, and Sweden. Of these, nine TIEAs with Australia, Denmark, Finland, Ireland, Monaco, the Netherlands, New Zealand, Norway and San Marino have already entered into force. All the other TIEAs, except for the one with Mexico, have been incorporated into the domestic laws of Samoa by the Tax Information Exchange Act 2012 (TIE Act), with effect since March 2012. Samoa has notified all its existing treaty partners of the enactment of the TIE Act. Therefore, Samoa has taken all necessary steps to bring its treaties into force, with the exception of the TIEA recently signed with Mexico.

215. Under the TIE Act, Samoa's Minister of Revenue can explicitly enter into EOI agreements both under the form of TIEAs and double tax conventions (DTCs) containing an EOI provision (TIE Act, ss.2(1) and 3(1)). Samoa's Commissioner of Inland Revenue is the competent authority for EOI purposes (TIE Act, s. 5).

Foreseeably relevant standard (ToR C.1.1)

216. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless, it does not allow "fishing expeditions", *i.e.* speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of

"foreseeable relevance" which is included in Article 1 of the OECD Model TIEA, set out below:[10]

> "The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters".

217. All the TIEAs concluded by Samoa meet the "foreseeably relevant" standard set out above and described further in the Commentary to Article 1 of the OECD Model TIEA.

218. Samoa's legislation governing the approval of information requests mirrors its TIEAs. Section 5(c) of the TIE Act establishes that a request for assistance is approved when the competent authority of the requesting jurisdiction supplies information prescribed in Schedule 2 of the TIE Act. This includes the identity of the person under examination or investigation and, to the extent known, the name and address of any person believed to be in possession or control of the requested information (TIE Act, ss.5(1)(c) and Schedule 2, items 3 and 5). If the information provided by the requesting competent authority does not satisfy all the requirements expressed in Schedule 2 of the TIE Act, the Commissioner may request further information from that competent authority (TIE Act, s. 5(2)).

In respect of all persons *(ToR C.1.2)*

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

220. None of Samoa's TIEAs is restricted to certain persons such as those considered resident in or nationals of one of the contracting jurisdictions, or precludes the application of EOI provisions in respect to certain types of entities or arrangements. Under the TIEA concluded with Monaco, the requested party is under no obligation to provide information "which is neither held by the authorities nor in the possession or control by persons within its territorial

10. Article 26(1) of the Model Tax Convention contains a similar provision.

jurisdiction, or which is not obtainable by persons within its territorial jurisdictions." Article 2 of the OECD Model TIEA uses, instead, the expression "in control of". The interpretation and implementation of this TIEA provision will be monitored in the Phase 2 of the review process.

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

221. 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 Convention and the OECD Model TIEA, which are primary authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

222. All TIEAs concluded by Samoa include a provision that mirrors Article 5(4) of the OECD Model TIEA, providing for the exchange of information held by banks, other financial institutions, nominees, agents, fiduciaries, as well as ownership and identity information. Section 3(2) of Part I of the TIE Act makes clear that any secrecy, confidentiality, or other restriction on disclosure of information does not prevent Samoa's competent authority from disclosing information required under an EOI agreement to the competent authority.

223. This is further reinforced by Section 10(1) of the TIE Act, pursuant to which "any obligation as to secrecy, confidentiality or other restriction upon the disclosure of information imposed by any law or otherwise on the persons referred to in section 7(1)(a)" is overridden when collecting information for EOI purposes. Section 7(1)(a) of the TIE Act covers "(i) a regulated person, including a person who ceased to be a regulated person, under an international financial services legislation (ii) a person carrying on international financial services, (iii) a financial institution under the Financial Institution Act 1996, (iv) a person acting in an agency or fiduciary capacity including nominees and trustee, and (v) a person reasonably believed to have the information".

Absence of domestic tax interest (ToR C.1.4)

224. 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.

225. All of Samoa's TIEAs contain a provision similar to the Article 5(2) of the OECD Model TIEA, which obliges the contracting parties to use their information gathering measures to obtain and provide information to the requesting jurisdictions even in cases where the requested party does not have a domestic interest in the requested information. The Income Tax Administration Act 1974 (ITA Act) grants access powers to information related to the administration of enforcement of all Inland Revenue Acts, which include the TIE Act (ITA Act, Schedule 1). Therefore, Samoan authorities have access to information for EOI purposes, regardless of the existence of a domestic interest in the information sought.

Absence of dual criminality principles (ToR C.1.5)

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

227. All of Samoa's TIEAs explicitly exclude that the dual criminality principle may restrict the exchange of information.

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

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

229. All of the TIEAs concluded by Samoa provide for the exchange of information in both civil and criminal matters. Samoa's domestic legislation allowing for the exchange of information does not differentiate between information needed for civil or criminal purposes.

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

230. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies

of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

231. All of the TIEAs concluded by Samoa expressly allow for information to be provided in the specific form requested, to the extent allowable under the domestic laws of the requested party. Section 7(2) of the TIE Act specifically empowers the Samoa's competent authority to require that information be provided in the form approved by it.

In force (ToR C.1.8)

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

233. In Samoa, EOI agreements entered into by the Minister for Revenue are given effect through the TIE Act. EOI agreements included into Schedule 2 of the TIE Act are incorporated into domestic law, and this is equivalent to their ratification. All the TIEAs concluded by Samoa, except for the one with Mexico, have been incorporated into domestic law when the TIE Act was given effect in March 2012. Samoa's EOI partners have been notified of the enactment of the TIE Act. To date, the TIEAs concluded with Australia, Denmark, Finland, Ireland, Monaco, the Netherlands, New Zealand, Norway, and San Marino have entered into force. Nevertheless, Samoa has taken all necessary steps to bring its treaties into force, with the exception of the TIEA recently signed with Mexico.

234. In order for a new EOI agreement to be incorporated into domestic law, the Cabinet has to endorse a Regulation, which includes that EOI agreement into Schedule 2 of the TIE Act. On the same day of the commencement of the Regulation, the EOI agreement becomes effective. Samoa has also indicated that the TIEA with Mexico will be included in Schedule 2 in due course.

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

235. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement. In March 2012, Samoa has enacted the legislation necessary to comply with the terms of its EOI agreements.

Notably, the TIE Act is a comprehensive act providing for international co-operation with competent authorities under agreements facilitating exchange of information, and for related purposes.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

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

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

236. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. EOI agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into EOI 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.

237. Under the TIE Act, Samoa can explicitly enter EOI agreements both under the form of TIEAs and DTCs (TIE Act, ss.2(1) and 3(1)). The network of Samoa's EOI agreements is relatively new as its first TIEA was signed in September 2009 with San Marino, while its most recent TIEA was concluded in November 2011 with Mexico. Thus far, Samoa has signed TIEAs with 14 jurisdictions, including with 12 Global Forum members, out of which 10 are also OECD countries and one is simultaneously a G20 country. Samoa is willing to conclude EOI agreements with all its trading partners and has already signed TIEAs with its two major partners, *i.e.* Australia and New Zealand. All of these meet the international standard.

238. Samoa indicated that TIEA negotiations are in an advanced stage with an additional six jurisdictions, all of which are Global Forum members. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and no jurisdiction advised the assessment team that Samoa had refused to negotiate or conclude EOI agreements with it.

Determination and factors underlying recommendations

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

C.3. Confidentiality

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

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

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

240. All TIEAs concluded by Samoa contain a provision similar to the Article 8 of the OECD Model TIEA, ensuring the confidentiality of information exchanged and limiting the disclosure and use of information received, which has to be respected by Samoa as a party to these EOI agreements.

241. These confidentiality provisions are also reflected in specific domestic law provisions, notably the ITA Act and the TIE Act. The ITA Act requires every member of the Inland Revenue Department to maintain and aid in maintaining the secrecy of all matters relating to the Inland Revenue Acts which come to his or her knowledge, and not to communicate any such matters to any person, except for the purpose of carrying into effect the Inland Revenue Acts (ITA Act, s. 8(1)). Members of the Inland Revenue Department are also not required to produce in any Court any book or document or to divulge or communicate to any Court any matter or thing coming under his or her notice in the performance of his or her duties as a member of the Department, except when it is necessary to do so for the purpose of carrying into effect any provision of the Inland Revenue Acts (ITA Act, s. 8(2)). The TIE Act is one of the

Inland Revenue Acts within the meaning of section 2(1) of the ITA Act and it is listed in Schedule 1 thereof along with other Inland Revenue Acts (TIE Act, ss.2(2) and 16). Persons contravening the duty to maintain secrecy commit an offence and are liable to a fine not exceeding 2 penalty unit (WST 200/ USD 85) or imprisonment not exceeding six months or both (ITA Act, s. 8(5)).

242. Section 11(1) of the TIE Act establishes that the following information be treated as confidential: "(a) information that is supplied by a competent authority in connection with a request for assistance; (b) information that is obtained by virtue of the exercise of the powers under this Act; (c) information that is provided by the Commissioner to the Attorney General under section 4 [of the TIE Act]." As explained in Part B above, upon receipt of the request for assistance, the Commissioner must send a copy of the request to the Attorney-General, who provides an assessment as to whether the request for assistance is contrary to public interest or public security. Nevertheless, section 11 of the TIE Act explicitly extends the same confidentiality provisions to information transmitted to the Attorney General, and confidentiality is thus ensured.

243. According to section 11(2) of the TIE Act, confidential information can be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the EOI agreement under which the EOI request is made. Confidential information can also be disclosed to other person, entity, authority, or jurisdiction for the purpose of administration of the TIE Act, with the express consent of the competent authority of the requesting jurisdiction. This wording mirrors Article 8 of the OECD Model TIEA and reflects Samoa's obligations assume under the TIEAs signed to date.

244. A person contravening the confidentiality obligations imposed by the TIE Act commits an offence and is liable upon conviction to a fine not exceeding 250 penalty units (WST 2 500/USD 1 063) or to imprisonment for a term not exceeding five years, or both (TIE Act, s. 12).

All other information exchanged (ToR C.3.2)

245. 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.

246. The confidentiality provisions in the EOI agreements and in Samoa's domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information,

including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdictions.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

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

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

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

247. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other listed secret may arise. 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 jurisdictions. 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.

248. Where attorney-client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. 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, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

249. In respect of the taxpayers' rights and safeguards, the OECD Model TIEA provides that they remain applicable "to the extent that they do not unduly prevent of delay effective exchange of information". The TIEAs with Australia and New Zealand provide that a requested party "shall use its best endeavours" to ensure that their application does not so unduly prevent or delay effective EOI. It is unlikely, however, that this variation will materially affect the effectiveness of EOI, and this feature will be tested in the Phase 2 Review of Samoa. All other TIEAs concluded by Samoa contain the wording of Article 7 of the OECD Model TIEA.

250. Section 6 of the TIEA Act indicates that a request can be declined where it may impose the disclosure of trade, business, industrial, commercial, or professional secrets or trade process (TIE Act, s. 6(a)), or where the information disclosed would be contrary to public policy (TIE Act, s. 6(c)). Nevertheless, the TIE Act expressly provides that information may not be treated as a secret or trade process merely because it is held by a person who is "a regulated person", "a person carrying on international financial services", "a financial institution under the Financial Institutions Act 1996", "a person acting in an agency or fiduciary capacity including nominees and trustee", and "to a person reasonably believed to have the information to which the notice relates" (TIE Act, s. 7(1)(a)).

251. The TIE Act also states that "a lawful obligation as to secrecy, confidentiality or other restriction on the disclosure of information does not prevent the Commissioner from disclosing information required to be disclosed under an agreement to an authorised officer of a competent authority" (TIE Act, s. 3(2)). As such, the Commissioner is able to obtain and provide information requested by foreign competent authorities and the rights and safeguards establish under Samoan domestic law do not prevent of delay effective EOI.

252. Section 10(1) of the TIE Act establishes that a person is not required to disclose or produce information that he or she would be entitled to refuse to disclose or produce on the grounds of legal professional privilege. A legal practitioner may nonetheless be required to provide the name and address of the client. As noted above under Part B, domestic law provisions concerning legal professional privilege are overridden by the Income Tax Act and the TIEAs in force in Samoa (Income Tax Act, ss.52(1)(5) and 53(1-2)). The limits on information which must be exchanged under Samoa's TIEAs generally mirror those provided for in the OECD Model TIEA. Accordingly, communications between a client and an attorney or other admitted legal representative are only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Therefore, the attorney-client privilege in Samoa meets the international standard.

253. As also mentioned in Part B above, the Commissioner may not act on an EOI request before obtaining approval from the Attorney General, who advises on whether the request is contrary to public interest or public order (TIE Act, s. 4 and Constitution, s. 41(2)). The Samoan authorities have indicated that this procedural step does not cause an undue delay to effective EOI. The matter will be subject to further scrutiny under the Phase 2 review of Samoa.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

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

255. Samoa's TIEAs require the provision of request confirmations, status updates and the provision of the requested information, within the timeframes foreshadowed in Article 5(6)(b) of the OECD Model TIEA. These compel the competent authority of the requested party to immediately inform the applicant party when it has been unable to obtain or provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish this information.

Organisational process and resources (ToR C.5.2)

256. A review of Samoa's organisational process and resources will be conducted in the context of its Phase 2 review. Under the TIEAs concluded by Samoa, the competent authority is the Minister of Revenue or an authorised representative of the Minister of Revenue. Pursuant to the TIE Act, Samoa's Minister of Revenue can explicitly enter into EOI agreements both under the form of TIEAs and DTCs containing an EOI provision (TIE Act, ss.2(1) and 3(1)). Samoa's Commissioner of Inland Revenue is the competent authority for EOI purposes (TIE Act, s. 5).

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

257. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

258. As noted above in Part B above, one condition is posed on the ability of the Commissioner to exercise its powers to obtain and exchange information for tax purpose. The TIE Act prescribes that, upon receipt of a request for assistance, the Commissioner must submit a copy of the request to the Attorney General and that, before acting on the request, the Commissioner has to get approval from the Attorney General. Whether additional procedural step this causes an impediment to the effective exchange of information will be the subject of the Phase 2 review of Samoa.

Determination and factors underlying recommendations

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	There is no obligation requiring identification of beneficiaries with less than a 10% interest in international trusts.	Samoa should establish clear provisions in its laws to ensure availability of information on all beneficiaries of international trusts.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The element is not in place.	International companies, segregated fund international companies, international partnerships, limited partnerships and international trusts are not explicitly required to keep records that (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared.	Samoa should require all relevant entities and arrangements to keep records that (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared.

Determination	Factors underlying recommendations	Recommendations
The element is not in place. *(continued)*	International companies, segregated fund international companies, special purpose international companies, international partnerships, limited partnerships, international trusts and unit trusts are not explicitly required to keep underlying documentation.	Samoa should require all relevant entities and arrangements to keep underlying documentation in respect of all transactions.
	Liquidated domestic and foreign companies, international companies, segregated fund international companies, special purpose international companies, international partnerships, limited partnerships, international trusts and unit trusts are not explicitly required to maintain their accounting records, including underlying documentation, for a minimum of five years.	Samoa should require all relevant entities and arrangements to keep reliable accounting records, including underlying documentation, for a minimum of five years.
Banking information should be available for all account-holders *(ToR A.3)*		
The element is in place.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The element is in place.	The confidentiality measures found under the SPICA do not expressly provide for an exception for information sought by the Commissioner for EOI purposes.	Samoa should amend its laws to ensure that all confidential information be accessible for EOI purposes.
The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*		
The element is in place.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The element is in place.		Samoa should continue to develop its EOI network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction's Response to the Review Report[11]

Samoa's Phase I Report was approved by the PRG at its meeting held in Paris from 17 – 20 September 2012. Although some minor changes needed to be made to the Report throughout the course of the meeting, the Report remained largely unchanged. Samoa was satisfied that the Report was reflective of Samoa's legislative and regulatory framework and accepted the Report and recommendations of the assessors. Admittedly, the Report highlights certain areas of Samoa's framework where improvements are necessary. However, Samoa is of the view that the shortfalls are manageable and can be addressed expeditiously.

Samoa was pleased to note that the Report that was ultimately approved by the PRG was fair and consistent with reports of other jurisdictions, particularly those jurisdictions with similar legal and regulatory frameworks.

Samoa is committed to the international standards for exchange of tax information and to working with the Global Forum with a view to fully implementing the standards within its jurisdiction. To this end, Samoa is preparing for Phase 2 and the assessment of its effective implementation of these standards.

Finally, Samoa would like to record its thanks to the Assessment Team of Ms. Ingeborg Granig-Sinz, Mr. Carlo A. Carag, Mrs. Renata Fontana and Mr. Franceso Positano for their efforts in compiling this report. The members of the Assessment Team displayed a high level of professionalism, expertise and dedication in the conduct of this assessment, which resulted in a complete and accurate report.

11. 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

Bilateral agreements

List of Tax Information Exchange Agreements (TIEAs) signed by Samoa as at August 2012.

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
1	Australia	TIEA	20 Mar 2010	24 Feb 2012
2	Denmark	TIEA	16 Dec 2009	22 Mar 2012
3	Faroe Islands	TIEA	16 Dec 2009	not yet in force
4	Finland	TIEA	16 Dec 2009	24 Mar 2012
5	Greenland	TIEA	16 Dec 2009	not yet in force
6	Iceland	TIEA	16 Dec 2009	not yet in force
7	Ireland	TIEA	8 Dec 2009	21 Feb 2012
8	Mexico	TIEA	30 Nov 2011	not yet in force
9	Monaco	TIEA	7 Sep 2009	12 Mar 2012
10	Netherlands	TIEA	14 Sep 2009	2 Mar 2012
11	New Zealand	TIEA	24 Aug 2010	26 Mar 2012
12	Norway	TIEA	16 Dec 2009	30 Mar 2012
13	San Marino	TIEA	1 Sep 2009	21 Mar 2012
14	Sweden	TIEA	16 Dec 2009	not yet in force

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

Constitution

Constitution of the Independent State of Samoa 1960

Civil and Commercial laws

Charitable Trusts Act 1965
Partnership Act 1975
Trustee Act 1975
Business Licenses Act 1988
International Companies Act 1988
International Insurance Act 1988
International Partnership and Limited Partnership Act 1988
International Trusts Act 1988
Trustee Companies Act 1988
Foreign Investment Act 2000
Segregated Fund International Companies Act 2000
Companies Act 2001
Insurance Act 2007
International Mutual Funds Act 2008
Unit Trusts Act 2008
Special Purpose International Companies Act 2012
Tax Information Exchange Act 2012

Regulated activities and AML/CFT laws

Central Bank of Samoa Act 1984

Financial Institutions Act 1996

Samoa International Finance Authority Act 2005

Money Laundering Prevention Act 2007

International Banking Act 2005

Guidelines for the Financial Sector, April 2012

Tax laws

Income Tax Act 1974

Income Tax Administration Act 1974

Income Tax Rates Act 1974

Value Added Goods and Services Tax Act 1992

Annex 4: Overview of Laws and Other Relevant Factors for Exchange of Information

Primary legislation

Tax Information Exchange Act 2012

Income Tax Administration Act 1974

Mutual Assistance in Criminal Matters Act 2007

Primary government authorities

Ministry for Inland Revenue

Samoa International Financial Authority

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: SAMOA

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

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

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

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

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

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

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