GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

BERMUDA

2017 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Bermuda 2017 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

August 2017
(reflecting the legal and regulatory framework as at May 2017)

Please cite this publication as:
OECD (2017), *Global Forum on Transparency and Exchange of Information for Tax Purposes: Bermuda 2017 (Second Round): Peer Review Report on the Exchange of Information on Request*, OECD Publishing, Paris.
http://dx.doi.org/10.1787/9789264280083-en

ISBN 978-92-64-28007-6 (print)
ISBN 978-92-64-28008-3 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 140 jurisdictions participate on an equal footing.

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

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

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

List of abbrevations and acronyms

General terms

2010 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum in 2009.
2016 Assessment Criteria Note	Assessment Criteria Note, as approved by the Global Forum on 29-30 October 2015.
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference	Terms of Reference related to EOIR, as approved by the Global Forum on 29-30 October 2015.
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
CAA	Competent Authority Agreement
CDD	Customer Due Diligence
DTC	Double Tax Convention
EOIR	Exchange of information on request
FATF	Financial Action Task Force
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
Multilateral Convention	Convention on Mutual Administrative Assistance in Tax Matters, as amended in 2010
PRG	Peer Review Group of the Global Forum
TIEA	Tax Information Exchange Agreement
VAT	Value Added Tax

Terms specific to Bermuda

AML/ATF Regulations	Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008
BMA	Bermuda Monetary Authority
BSX	Bermuda Stock Exchange
CSP	Corporate Services Provider
FCO	Foreign Commonwealth Office
LLC	Limited Liability Company
PTC	Private Trust Company

Executive summary

1. During the first round of reviews, the Global Forum evaluated Bermuda against the 2010 Terms of Reference through three assessments: the 2010 Phase 1 Report, the 2012 Supplementary Phase 1 Report and the 2013 Phase 2 Report (the 2013 Report). The 2013 Report assigned an overall rating of Largely Compliant to Bermuda. This report analyses the implementation of the EOIR standard by Bermuda against the 2016 Terms of Reference. For purposes of assessing Bermuda's practical implementation of the standard, this report reviews Bermuda's practices in respect of EOI requests processed during the three-year period from 1 April 2013 to 31 March 2016. This report concludes that Bermuda continues to be rated Largely Compliant overall.

2. The following table shows the comparison with the results from Bermuda's most recent peer review report:

Table 1. **Comparison of ratings for the Phase 2 Review (2013) and Current EOIR Review (2017)**

Element		Phase 2 Report (2013)	EOIR Report (2017)
A.1	Availability of ownership and identity information	LC	PC
A.2	Availability of accounting information	LC	LC
A.3	Availability of banking information	C	C
B.1	Access to information	C	C
B.2	Rights and Safeguards	C	C
C.1	EOIR Mechanisms	C	C
C.2	Network of EOIR Mechanisms	C	C
C.3	Confidentiality	LC	LC
C.4	Rights and Safeguards	C	C
C.5	Quality and timeliness of requests and responses	C	C
	OVERALL RATING	LC	LC

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

Progress made since previous review

3. The 2013 Report only made recommendations in respect of three essential elements. Under elements A.1 and A.2, Bermuda was recommended to exercise its monitoring and enforcement powers to support legal requirements for the maintenance of ownership, identity and accounting information. Under element A.1, a recommendation was also given to Bermuda to monitor the practical implementation of the licensed corporate service provider regime that had, at that time, been recently introduced. Finally, under element C.3, Bermuda was recommended to monitor the implementation of the revised policy on disclosure of information on EOI notices to ensure confidentiality of the information received from its treaty partners.

4. Bermuda is still in the process of addressing most of the recommendations highlighted above, with the exception to the recommendation previously made under element C.3 which has been completely addressed. Moreover, this report identified some additional work required to be done by Bermuda to fully incorporate the new standard on beneficial ownership to its legal framework and practice.

5. Over the period under review (1 April 2013-31 March 2016), Bermuda received 77 requests from 12 jurisdictions. This represented an increase of more than 400% in the number of requests in relation to the previous review period. Requests have been responded in a timely manner. The input provided by Bermuda's EOI partners with regard to their experience with Bermuda was very positive.

Key recommendation(s)

6. Bermuda is recommended to exercise its monitoring and enforcement powers to support legal requirements for the maintenance of legal ownership, identity and accounting information.

7. In respect of the aspects of the 2016 ToR that were not evaluated in the 2013 Report, particularly with respect to the availability of beneficial ownership information, this report recommends that Bermuda (i) ensure that beneficial ownership information is available for all relevant entities and arrangements, in particular the ones that have no relationship with an AML obligated person in Bermuda; (ii) improve its oversight of the compliance with the obligations to update ownership information pursuant to the exchange control regulations and take enforcement measures in cases of non-compliance; (iii) implement supervision of corporate service providers.

Overall rating

8. As shown in Table 2, Bermuda has been assigned the following ratings: Compliant for elements A.3, B.1, B.2, C.1, C.2, C.4 and C.5, Largely Compliant for elements A.2 and C.3 and Partially Compliant for element A.1. The overall rating is Largely Compliant based on a global consideration of Bermuda's compliance with the individual elements. A follow up report on the steps undertaken by Bermuda to address the recommendations made in this report should be provided to the PRG no later than 30 June 2018 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Table 2. **Summary of determinations and factors underlying recommendations**

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
Legal and regulatory framework determination: The element is in place but certain aspects of the legal implementation of this element need improvement.	The BMA collects information on "ultimate beneficial owners" of relevant legal entities in many instances as part of its role as exchange controller. However, this information may not always mirror the definition of beneficial owner under the international standard and may not identify a natural person who exercises ultimate effective control over the legal entity. Moreover, beneficial ownership information, as defined under the standard, is required to be collected by AML obligated persons, such as financial institutions, lawyers, accountants, trust companies and licensed corporate service providers, as part of their customer due diligence obligations. However, there is no legal requirement for companies and partnerships to engage an AML-obligated person in Bermuda, although in practice most of them are likely do so.	Bermuda should ensure that beneficial ownership information is available for all relevant entities.

Determination	Factors underlying recommendations	Recommendations
Legal and regulatory framework determination: The element is in place but certain aspects of the legal implementation of this element need improvement. *(continued)*	In respect of exempted (non-licensed) trustees, such as private trust companies, the statutory requirements to identify beneficiaries appear to be limited to the immediate beneficiaries. Also, there are no statutory requirements to identify a protector of the trust (if any) and any other natural person exercising ultimate effective control over the trust.	Bermuda should take all reasonable measures to ensure that beneficial ownership information is available to their competent authorities in respect of trusts governed by the laws of Bermuda or in respect of which a trustee is resident in Bermuda.
EOIR rating: Partially Compliant	During the review period, the Registrar did not exercise his monitoring and enforcement powers to support the legal requirements for the availability of ownership and identity information with regard to companies and partnerships. Since then, the Registrar of Companies (Compliance Measures) Act 2017 came into force in March 2017. This Act empowers the Registrar of Companies to monitor and regulate registered entities through inspections and enforcement. The Registrar established a new compliance unit and commenced to exercise its statutory powers.	Bermuda should ensure that all its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which ensure the availability of ownership and identity information in all cases.

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Partially Compliant *(continued)*	Bermuda has a comprehensive system requiring that information on "ultimate beneficial owners" of relevant legal entities and arrangements be available in the hands of the exchange controller and that beneficial ownership information, as defined under the standard, be available in the hands of AML obligated persons. However, (i) there is limited oversight and enforcement of the compliance with the obligations to update "ultimate beneficial ownership" information pursuant to the exchange control regulations; and (ii) the supervision of CSPs' compliance with their customer due diligence obligations and identify the beneficial owner under the AML framework is yet to be implemented.	Bermuda should enhance the monitoring and enforcement of the compliance with the obligations to update beneficial ownership information. This includes establishing adequate oversight of corporate service providers and ensure that they perform adequate customer due diligence and maintain beneficial ownership information of their customers in practice.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
Legal and regulatory framework determination: The element is in place.		

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Largely Compliant	Except for those entities that are subject to licensing with the BMA, no system of monitoring of compliance with accounting record keeping requirements was in place during the review period, which may cause the legal obligations to keep accounting records to be difficult to enforce. Since then, the Registrar of Companies (Compliance Measures) Act 2017 came into force in March 2017. This Act empowers the Registrar of Companies to monitor and regulate registered entities through inspections and enforcement. The Registrar established a new compliance unit and commenced to exercise its statutory powers.	Bermuda should ensure that all its appropriate monitoring and enforcement powers are sufficiently exercised in practice to support the legal requirements which ensure the availability of accounting information in all cases.
	Bermuda's law in force during the review period provided the court with discretion of determining how long books and records of an involuntarily liquidated company should be maintained following its dissolution and, in practice, the court often determined that such books and records should be destroyed immediately after liquidation. This has prevented Bermuda from replying to one EOI request during the review period. Effective as of 10 March 2017, Bermuda's law requires that the liquidator maintain records of account for five years from the end of the period to which such records of account relate.	Bermuda should monitor the implementation of the recently introduced record keeping obligations regarding liquidated companies to ensure that records are kept for a minimum period of five years in all cases.

Determination	Factors underlying recommendations	Recommendations
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
Legal and regulatory framework determination: The element is in place.	Banks are required to identify individuals who ultimately own or control a trust as part of their customer due diligence measures. However, they are not required to identify all of the beneficiaries of a trust as only individuals who are entitled to a specified interest in at least 25% of the capital of the trust property must be identified.	Bermuda should ensure that banks are required to identify all of the beneficiaries (or class of beneficiaries) of trusts which have an account with a bank in Bermuda as required under the standard.
EOIR rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
Legal and regulatory framework determination: The element is in place.		

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Largely Compliant	The EOI Acts were amended in July 2015 to expressly annul the information holder's rights to access an EOI request that would otherwise exist pursuant to the Supreme Court (Records) Act 1955. The amendments have not been sufficiently tested in practice.	Bermuda should monitor that the EOI request is only disclosed in line with the international standard.
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
Legal and regulatory framework determination: The element is in place.		
EOIR rating: Compliant		
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework 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 implementation of EOIR in practice.	
EOIR rating: Compliant		

Preface

9. This report is the fourth review of Bermuda conducted by the Global Forum. Bermuda previously underwent an EOIR review through three assessments during the first round of reviews: the 2010 Phase 1 Report, the 2012 Supplementary Phase 1 Report and, mostly recently, the 2013 Phase 2 Report.

10. Bermuda's three assessments during the first round of reviews were conducted according to the terms of reference approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews. The 2013 Phase 2 Report was initially published without the rating of the individual essential elements or any overall rating, as the Global Forum waited until a representative subset of reviews from across a range of Global Forum members had been completed in 2013 to assign and publish ratings for each of those reviews. Bermuda's 2013 Phase 2 Report was part of this group of reports. Accordingly, the 2013 Report was republished later in 2013 to reflect the ratings for each element and the overall rating for Bermuda. Information on the previous reviews is listed in Table 3 below.

Table 3. **Summary of reviews**

Review	Assessment team	Period under review	Legal framework as of (date)	Date of adoption by Global Forum
Phase 1 report	Mr. Koki Harada, Deputy Director of the International Tax Policy Division in the Tax Bureau of Japan's Ministry of Finance; Dr. Antonia Schenk-Geers, Senior Policy Adviser for International Exchange of Information Affairs in the Netherlands Ministry of Finance; and Ms. Caroline Malcolm from the Global Forum Secretariat	N/A	May 2010	September 2010

Review	Assessment team	Period under review	Legal framework as of (date)	Date of adoption by Global Forum
Supplementary Phase 1 report	Mr Kotaro Yamada, Section Chief, International Tax Policy Division Tax Bureau, Ministry of Finance, Japan; and Ms Sarita de Geus, Senior Policy Advisor, International Tax Law at the Directorate-General for the Tax and Customs Administration of the Netherlands Ministry of Finance; and Ms. Caroline Malcolm from the Global Forum Secretariat	N/A	Not specified in the Report	April 2012
Phase 2 report	Mr Junya Toya, Deputy Director, International Operations Division, National Tax Agency, Japan; and Ms Sarita de Geus, Senior Policy Advisor, International Tax Law at the Directorate-General for Tax and Customs Administration of the Netherlands Ministry of Finance; and Ms Doris King and Mr Mikkel Thunnissen from the Global Forum Secretariat.	1 January 2009 to 31 December 2011	May 2013	July 2013
Phase 2 report (with ratings)	N/A	1 January 2009 to 31 December 2011		November 2013
EOIR report, 2nd round of reviews	Ms. Vandana Ramachandran, Director (FT and TR-IV), Central Board of Direct Taxes, Ministry of Finance, Government of India; Ms. Perihan Islekoglu, Legal Officer Exchange of Information, International Division, Fiscal Authority, Liechtenstein; and Ms. Renata Teixeira from the Global Forum Secretariat	1 April 2013 to 31 March 2016		August 2017

11. This evaluation is based on the 2016 ToR, and has been prepared using the 2016 Methodology. The evaluation is based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 29 May 2017, Bermuda's EOIR practice in respect of EOI requests made and received during the three year period from 1 April 2013 to 31 March 2016, Bermuda's responses to the EOIR questionnaire and the follow-up questions, information

supplied by partner jurisdictions, information independently collected by the assessment team, as well as information provided by Bermuda's authorities during the on-site visit that took place from 6-9 December 2016 in Hamilton, Bermuda.

12. The evaluation was conducted by an assessment team consisting of two expert assessors and one representative of the Global Forum Secretariat: Ms. Vandana Ramachandran, Director (FT and TR-IV), Central Board of Direct Taxes, Ministry of Finance, Government of India; Ms. Perihan Islekoglu, Legal Officer Exchange of Information, International Division, Fiscal Authority, Liechtenstein; and Ms. Renata Teixeira from the Global Forum Secretariat.

13. The report was approved by the PRG at its meeting on 17-20 July 2017 and was adopted by the Global Forum on [date].

14. For the sake of brevity, on those topics where there has not been any material change in the situation in Bermuda or in the requirements of the Global Forum's ToR since the 2013 Report, this evaluation does not repeat the analysis conducted in the previous evaluation, but summarises the conclusions and includes a cross-reference to the detailed analysis in the previous reports.

Brief on 2016 ToR and methodology

15. The 2016 ToR were adopted by the Global Forum in October 2015. The 2016 ToR break down the standard of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Bermuda's legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects.

16. In respect of each essential element (except element C.5 *Exchanging Information*, which uniquely involves only aspects of practice) a determination is made regarding Bermuda's legal and regulatory framework that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. In addition, to assess Bermuda's EOIR implementation and effectiveness in practice a rating is assigned to each element of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant. These determinations and ratings are accompanied by recommendations for improvement where appropriate. Finally, an overall rating is assigned to reflect Bermuda's overall level of compliance with the EOIR standard.

17. In comparison with the 2010 ToR, the 2016 ToR includes new aspects or clarification of existing principles with respect to:

- the availability of and access to beneficial ownership information;
- explicit reference to the existence of enforcement measures and record retention periods for ownership, accounting and banking information;
- clarifying the standard for the availability of ownership and accounting information for foreign companies;
- rights and safeguards;
- incorporating the 2012 update to Article 26 of the OECD Model Tax Convention and its Commentary (particularly with reference to the standard on group requests); and
- completeness and quality of EOI requests and responses.

18. Each of these new requirements are analysed in detail in this report.

Brief on consideration of FATF evaluations and ratings

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

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

21. While on a case-by-case basis, an EOIR assessment may use some of the findings made by the FATF, the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments

may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example because mechanisms other than those that are relevant for AML/CTF purposes may exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

22. These differences in the scope of reviews and in the approach used may result in differing outcomes.

Overview of Bermuda

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

Legal system

24. Bermuda is a self-governing overseas territory of the United Kingdom. Bermuda's legal system is based on English common law, and relevant legislation is enacted either from the United Kingdom legislature, which must be specifically extended to Bermuda to have effect, or local legislation, enacted by Bermuda's Parliament.

25. There are two types of local legislation – primary legislation which is enacted by Parliament, and subordinate legislation which is made by the Ministers or other government bodies under the authority of primary legislation. Types of subordinate legislation include Rules, Regulations and Orders. There is a three tier-court system (Magistrate's Court, Supreme Court and the Court of Appeal), as well as a further right of appeal to the Privy Council in London.

26. The development and interpretation of Bermuda's laws are heavily influenced by English common law and precedents set by the English courts. The Supreme Court Act 1905 provides that the common law, the doctrines of equity and the Acts of Parliament of England of general application which were in force in England in 1612 are in force in Bermuda to the extent that they are not otherwise altered by Bermudian primary legislation (s. 15). Furthermore, when interpreting or construing statutory provisions, except where expressly provided by primary legislation, Bermudian courts and public authorities must "apply as nearly as practicable the rules for interpretation and construction of provisions of law for the time being binding upon the Supreme Court of Judicature of England" (Interpretation Act 1951, s. 10). In construing non-statutory law (such as common law rights and obligations), case law from other common law jurisdictions would have persuasive value in the courts of Bermuda, with the case law from English courts generally bearing the greatest weight.

27. Bermuda's Constitution Order 1968 states Bermuda's status of internal self-government in all areas apart from defence, internal security and international affairs. Bermuda relies on the United Kingdom to extend to it relevant international instruments, including international conventions.

28. With regard to entering into international agreements, specifically TIEAs, Bermuda is entrusted by the United Kingdom Foreign Commonwealth Office (FCO) to negotiate and conclude agreements that provide for the exchange of information on tax matters, as well as any ancillary agreements. Bermuda's entrustment is given on the understanding that the United Kingdom remains responsible for the international relations of Bermuda; and on the conditions that the Government of Bermuda supply evidence to the FCO that the jurisdiction is content to conclude such an agreement directly with the Government of Bermuda, and that the proposed final text of the agreement be submitted to the FCO in London for approval before signature. Following legal review, the FCO would notify the Bermudian authorities that the signing can take place. TIEAs are signed by Bermuda's Minister of Finance and generally come into force 30 days after signing by both Bermuda and the other contracting jurisdiction. The power for giving effect to EOI agreements under Bermudian domestic law is set out in the International Cooperation Act. The Minister is not required to table EOI agreements before Parliament prior to their ratification.

29. On 10 October 2013**,** the United Kingdom extended the Convention on Mutual Administrative Assistance in Tax Matters, as amended (the "Multilateral Convention") to Bermuda. The Multilateral Convention entered into force in Bermuda on 1 March 2014.

30. EOI agreements are given the force of domestic law (secondary legislation) in Bermuda.

Tax system

31. Bermuda has a consumption-based tax system, focused primarily on payroll tax and customs duty, which are supplemented by government fees (stamp duties, passenger taxes and property tax). Bermuda does not impose income tax.

Financial services sector and relevant professions

32. Bermuda's GDP in 2015 was BMU 5.9 billion.[1] It is estimated that 50% of the GDP is related to financial services.

1. Bermuda's currency is the Bermudian dollar, fixed at BMU 1 = USD 1 and all amounts referred to in this report are in BD, unless otherwise indicated.

33. All financial services are regulated by a single regulator, the Bermuda Monetary Authority (BMA). The total number of persons regulated by the BMA at the end of 2015 was 2 010.

34. Bermuda is a globally significant insurance centre which includes general insurers, composite insurers, long-term insurance and reinsurance. There are 1 231 licensed insurers, inclusive of 776 captives. It is also the world's largest captive insurance jurisdiction. The total value of assets held by insurers in Bermuda was BMU 631.7 billion at the end of 2015, which represent an increase of 10% in relation to 2010 figures. Gross premiums written amounted to BMU 130.8 billion in 2015 and capital held was BMU 200.8 billion.

35. The insurance industry is regulated by the BMA in accordance with the Insurance Act 1978 and related regulations. The regulation of insurers is based on different classes of license, which relate to the size and lines of business that the insurer will carry on, and the degree of regulation varies according to the risk assessment for each class, whilst minimum capital and surplus requirements also differ for each class.

36. Bermuda has four licensed banks with 12 local branches. The two largest banks have presence in 77 jurisdictions. The total value of deposits held by these banks was over BMU 21.4 billion in 2015. All the banks are members of financial groups with affiliates involved in trust business, investment companies, and other financial services. In addition, there is one credit union, with members exclusively from local labour unions. The BMA is responsible for the licensing and supervision of the banks and the credit union.

37. Bermuda's investment market comprises investment business, fund administrators, investment funds and the Bermuda Stock Exchange (BSX). Bermuda has a large and active investment fund and funds services sector. The jurisdiction hosts a number of multinational financial services organisations, and is home to a large number of hedge funds, investment managers, and portfolio managers as well as internationally-active fund administrators. There are 31 licensed fund administrators and 57 licensed investment business providers.

38. In relation to investment funds, there are 441 authorised funds. The total net asset value of investment funds in Bermuda was BMU 137.1 billion at 31 December 2016. The BSX is a fully electronic securities market that serves as a domestic market for local companies and domestic investment funds, and as a venue for recording trades in internationally-listed companies. The total trading volume on the BSX in 2016 was 8.2 million shares with a corresponding value of BMU 48.6 million. The total market capitalisation of the BSX as at 31 December 2016 (excluding funds listings) stood at over

BMU 343.8 billion with the domestic market comprising BMU 2.5 billion. All trading members must be Bermuda-domiciled companies. The BSX also operates a clearing and settlement system and a depository.

39. In addition, Bermuda has a trust business sector which is closely aligned with other regulated sectors and professionals, including the licensed banks and law firms. All trustees that are carrying on a trust business must be licensed under the Trust (Regulation of Trust Business) Act 2001 (Trust Regulation Act) unless expressly exempted from licensing provisions under the Trusts (Regulations of Trust Business) Exemption Order 2002 (Trusts Exemption Order). To date, only companies have been licensed and there are 29 licensed trust companies (four less than in 2011) managing, in total, trust assets of BMU 79 billion.

40. There is a wide range of Corporate Service Providers (CSPs) carrying on the business of the formation and management of companies and partnerships. Most of the CSPs are owned or controlled by law firms and accounting firms as well as regulated financial institutions. Presently, there are approximately 100 CSPs operating in and from Bermuda. The Corporate Service Provider Business Act 2012 (CSPBA 2012), which came into effect from 1 January 2013, brought in a new licensing regime for CSPs and placed them under AML/ATF requirements. Corporate service providers were given an extension until 1 October 2016 to apply for a licence and 91 have made applications. While the licensing authorisation process for CSPs has begun, no licenses have been issued yet.

41. Lawyers and accountants are regulated by their professional associations, the Bermuda Bar Association and the Chartered Professional Accountants Bermuda, respectively. Lawyers and accountants carrying out formation and management of legal entities and arrangements are subject to supervision by the Barristers and Accountants Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement (AML/AFT) Board. There are 32 regulated professional firms under the supervision of the Board, 7 of them are accounting firms and 25 are law firms.

Exchange controls

42. Bermuda has exchange controls and the BMA acts as the Controller of Foreign Exchange. The Exchange Control Regulations 1973 and the Companies Act 1981 set out various provisions in relation to the issue, transfer, redemption and repurchase of securities. Accordingly, the BMA must give prior approval for issuance and transfer of securities in Bermuda companies involving non-residents, except where general permission has been granted pursuant to the Notice to the Public of June 2005.

CFATF evaluation

43. Bermuda is a member of the Caribbean Financial Action Task Force (CFATF). The CFATF last published a Mutual Evaluation Report for Bermuda in 2008 (the 2008 Report). A series of follow up reports were subsequently published detailing the actions that Bermuda had taken to address the recommendations in the 2008 Report. The 2008 Report had rated Bermuda Non-Compliant in relation to Recommendation 5 (Customer Due Diligence), Compliant with Recommendations 33 (Legal persons – beneficial owners) and 34 (Legal arrangements – beneficial owners). Bermuda's 5th Follow-up Report dated 12 May 2014 concluded that Bermuda had addressed all deficiencies identified in the 2008 Report concerning Recommendation 5 (Customer Due Diligence). In May 2014, the CFATF recognised that Bermuda had made significant progress in addressing the deficiencies identified in the 2008 Report and, therefore, could be removed from the regular follow-up process and start reporting progress on a biannual basis. Bermuda's next CFATF evaluation is scheduled to commence at the fourth quarter of 2018.

Recent developments

44. In July 2016, Bermuda enacted legislation on the formation of a new body corporate, the Limited Liability Company (LLC). This legal entity has separate legal personality but it has a membership structure and governance structure similar to a partnership. As at 31 March 2017, there were 16 LLCs registered in Bermuda.

45. On 24 March 2017, the Registrar of Companies (Compliance Measures) Act 2017 came into force. This Act works in tandem with existing company, LLC and partnership legislation by empowering the Registrar of Companies to monitor and regulate registered entities through inspections and enforcement.

46. The Partnership and Limited Liability Companies (Beneficial Ownership) Bill 2017 (the "Bill"), was tabled in the House of Assembly on 12 May 2017 and passed by both Houses of the Legislature with effect from 22 May 2017. The commencement date for the Bill is 25 May 2017. The purpose of the Bill is to require notification to be made to the BMA where a legal entity has engaged the services of a corporate service provider (that holds an unlimited licence[2] issued under the Corporate Service Provider Business Act 2012), with respect to the appointment and change of general partners or admission, in specified circumstances, of members of LLCs and to stipulate that such an appointment or change of a general partner or admission of a

2. An "unlimited license" is a license to provide any or all corporate services set out under section 2(2) of the Corporate Service Provider Business Act 2012 (as amended).

member shall not take effect until the date of receipt of the notification by the BMA. The Exchange Control Amendment Regulations 2017 were published in the Official Gazette on 12 May 2017. The Regulations will be tabled in the House of Assembly on 9 June 2017 to complete the parliamentary process. The effective date is the date of publication (12 May 2017)[3] Bermuda advises that now that the Bill has been enacted, the Corporate Service Provider Business (Beneficial Ownership) Regulations 2017 can be published and thereafter tabled in the House of Assembly to complete the parliamentary process. The Amendment to the Regulation allows the BMA to issue CSP licenses while ensuring CSPs are required to notify the BMA on the issuance or transfer of securities.

47. Bermuda committed to several initiatives on automatic exchange of information:

- in 2013, Bermuda signed an intergovernmental agreement with the United States to implement exchange of financial account information under the United States' Foreign Account Tax Compliance Act (FATCA).
- in 2014, Bermuda committed to implement the Common Reporting Standards ("CRS") for the sharing of financial account information with other CRS participating jurisdictions. As an early adopter, Bermuda committed to begin exchanges under the CRS by September 2017. Bermuda has also been exchanging financial account information with the United Kingdom since 2016.
- in 2016, Bermuda committed to exchange information under the OECD Base Erosion and Profit Shifting (BEPS) country-by-country reporting regime, requiring Bermuda's multinational corporations to report information to Bermuda's Ministry of Finance by 31 December 2017, with first exchanges by mid-2018. On 1 January, 2017, Bermuda became a member of the BEPS' Inclusive Framework.

3. The Regulations are not subject to parliamentary debate but the House of Parliament will have 21 days to object. If there is not an objection, the Regulations will be transferred to the Senate for another 21 day period. If there is not an objection, the Regulations will be added to the statute books accordingly. Where both houses of the Legislature do not object to the Regulations, the effective date of the Regulations remains the date of publication.

Part A: Availability of information

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

A.1. Legal and beneficial ownership and identity information

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

49. The 2013 Report found that Element A.1 was determined to be "in place" and rated Largely Compliant. Two Phase 2 recommendations were made for Bermuda to (i) exercise its monitoring and enforcement powers to support legal requirements for the maintenance of ownership and identity information; and (ii) monitor the implementation of the licensed corporate service providers (CSPs) regime that had, at that time, been recently introduced. During the period of 2009-11 Bermuda predominantly received EOI requests in relation to ownership and identity information of companies, although requests were also received in relation to partnerships. No EOI partner indicated that a particular type of ownership information was unavailable in Bermuda.

50. With respect to the first recommendation mentioned above, this review concludes that, during the new review period, the Registrar of Companies did not exercise monitoring and enforcing powers to support the compliance by legal entities with the obligations to maintain ownership and identity information. In March 2017, the Registrar of Companies (Compliance Measures) Act 2017 came into force empowering the Registrar of Companies to monitor and regulate registered entities through inspections and enforcement. The Registrar established a new compliance unit and commenced to exercise its statutory powers. On-site inspections of 30 companies have been completed and additional inspections on the records of 85 companies are expected to be conducted prior to 14 July 2017. Bermuda is recommended to ensure that monitoring and enforcing powers are appropriately implemented to support the legal requirements for the maintenance of legal ownership and identity information.

51. With respect to the second recommendation, concerning the monitoring of the implementation of the CSPs regime, this recommendation needs to be revised as the licensed CSP regime did not become operational in Bermuda during the new review period and the regime is actually in the process of being reformulated. As a result, the obligations to file ownership information that were in existence before the creation of the CSP regime remained applicable during the entire review period. Bermuda is presently taking steps to reformulate the CSP regime to ensure that such regime does not remove any of the filing obligations that would apply to instances where a CSP has not been engaged. The original recommendation given in the 2013 Report has been deleted and a new recommendation has been added for Bermuda to implement the oversight of the compliance by CSPs with the obligations established under the AML framework (see more details below).

52. In respect of the aspects of the 2016 ToR that were not evaluated in the 2013 Report, particularly with respect to the availability of beneficial ownership information, Bermuda has a very comprehensive system requiring that (i) information on the "ultimate beneficial owners"[4] of relevant legal entities and arrangements be filed with the exchange controller; and (ii) beneficial ownership information, as defined under the standard, be maintained by AML obligated persons. Bermuda has a longstanding registry of "ultimate beneficial ownership information" kept by the exchange controller which ensures that this type of information is readily available to Bermuda's competent authority.

53. Some aspects of Bermuda's system could nonetheless be improved. Although the exchange controller collects information on "ultimate beneficial owners" of relevant legal entities in many instances pursuant to the exchange

4. The term "ultimate beneficial owner" is used under Form 1 of the Company (Forms) Rules 1982. This term is not defined in the form or in other pieces of Bermuda's legislation (such as the Companies Act, the Exchange Control Act nor the Exchange Control Act Regulations). The guidance established by the BMA pursuant to the General Permission 2005 issued under Regulation 41 of the Exchange Control Regulations combined with the Personal Declaration Form for Shareholders indicates that ultimate beneficial owner may be understood as any individual proposing to acquire 10% or more of the equity securities of either registered in or to be registered in Bermuda. Equity securities are defined under said General Permission to mean a share of a company that entitles the shareholder to vote or appoint one (or more) directors. In respect of partnerships, a personal declaration is to be completed by the general partner(s), where the general partner is an individual or where the ultimate beneficial owner of the general partner is an individual. In respect of trusts, a declaration is to be completed by the settlor/beneficiary/trustee (the one who exercises control of the trust).

controls laws, the information collected may not always mirror the definition of beneficial owner under the international standard.

54. Beneficial ownership information, as defined under the standard, is collected by AML obligated persons as part of their customer due diligence obligations. Bermuda's AML requirements include a number of obligated persons such as financial institutions, lawyers, accountants, trust companies and license corporate service providers. However, there is no legal requirement for companies, partnerships and certain trusts to engage an AML obligated person. In practice the Bermuda authorities advise that the great majority of legal entities and arrangements will engage an AML obligated person in Bermuda and any gap concerning the scope of application of these obligations would be small. It is also noted that the supervision of CSPs' compliance with their customer due diligence obligations under the AML framework is yet to be implemented.

55. In summary, in relation to beneficial ownership, this report recommends that Bermuda (i) ensure that beneficial ownership information is available for all relevant entities and arrangements, in particular the ones that have no relationship with an AML obligated person in Bermuda; (ii) improve its oversight of the compliance with the obligations to update "ultimate beneficial ownership" information pursuant to the exchange control regulations and take enforcement measures in cases of non-compliance; (iii) implement AML supervision of CSPs.

56. During the current peer review period Bermuda received 77 requests, approximately 30% relating to ownership and identity information. Peers were generally very satisfied with the information received. Bermuda was expressly asked to provide beneficial ownership information on 22 occasions and this information was generally provided to the satisfaction of the requesting partners.

The new table of determinations and ratings is as follows: [5]

5. The tables of determinations and ratings shown in this report display all recommendations that have been made in the previous report in strike-through and replaced, if necessary, with recommendations based on the current analysis in all cases where the circumstances have changed. If circumstances have not changed then the factor underlying the recommendation and the recommendation remain unchanged. New recommendations and factors underlying those recommendations are shown as underlined. On publication, the box will be displayed as a clean version.

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	The BMA collects information on "ultimate beneficial owners" of relevant legal entities in many instances as part of its role as exchange controller. However, this information may not always mirror the definition of beneficial owner under the international standard, and may not identify a natural person who exercises ultimate effective control over the legal entity. Moreover, beneficial ownership information, as defined under the standard, is required to be collected by AML obligated persons, such as financial institutions, lawyers, accountants, trust companies and licensed corporate service providers, as part of their customer due diligence obligations. However, there is no legal requirement for companies and partnerships to engage an AML-obligated person in Bermuda, although in practice most of them are likely do so.	Bermuda should ensure that beneficial ownership information is available for all relevant entities.
	In respect of exempted (non-licensed) trustees, such as private trust companies, the statutory requirements to identify beneficiaries appear to be limited to the immediate beneficiaries. Also, there are no statutory requirements to identify a protector of the trust (if any) and any other natural person exercising ultimate effective control over the trust.	Bermuda should take all reasonable measures to ensure that beneficial ownership information is available to their competent authorities in respect of trusts governed by the laws of Bermuda or in respect of which a trustee is resident in Bermuda.
Determination: **The element is in place but certain aspects of the legal implementation of this element need improvement.**		

Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice	During the review period, the Registrar did not exercise his monitoring and enforcement powers to support the legal requirements for the availability of ownership and identity information with regard to companies and partnerships. Since then, the Registrar of Companies (Compliance Measures) Act 2017 came into force in March 2017. This Act empowers the Registrar of Companies to monitor and regulate registered entities through inspections and enforcement. The Registrar established a new compliance unit and commenced to exercise its statutory powers.	Bermuda should ensure that all its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which ensure the availability of legal ownership and identity information in all cases.
	Bermuda has a comprehensive system requiring that information on "ultimate beneficial owners" of relevant legal entities and arrangements be available in the hands of the exchange controller and that beneficial ownership information, as defined under the standard, be available in the hands of AML obligated persons. However, (i) there is limited oversight and enforcement of the compliance with the obligations to update ownership information pursuant to the exchange control regulations; and (ii) the supervision of CSPs' compliance with their customer due diligence obligations and identify the beneficial owner under the AML framework is yet to be implemented.	Bermuda should enhance the monitoring and enforcement of the compliance with the obligations to update beneficial ownership information. This includes establishing adequate oversight of corporate service providers and ensure that they perform adequate customer due diligence and maintain beneficial ownership information of their customers in practice.
Rating: Partially Compliant		

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

57. The rules with respect to company formation in Bermuda are generally the same as the ones reported in the 2013 Report (see paras. 50-52). The only change refers to the introduction of a new type of entity, the Limited Liability Company (LLC) under the Limited Liability Company Act 2016 (the "LLC Act"). The LLC is dealt with later in this section.

58. Three main types of companies can be formed under the Companies Act:

- Companies limited by shares;
- Companies limited by guarantee; and
- Unlimited liability companies.

59. As at 18 October 2016, there were 14 286 companies limited by shares, 301 companies limited by guarantee, 39 unlimited liability companies and 459 overseas companies (permit companies, dealt with further below).

60. Companies incorporated under the Companies Act are categorised as Local companies and Exempted companies. Moreover, the Companies Act also deals with Permit companies, which are companies incorporated outside of Bermuda which have been granted a permit to carry on business in Bermuda. Local companies may carry on trade or business in Bermuda and must be majority-owned and controlled by Bermudians, with certain exceptions. Exempted companies may be owned and controlled by Bermudians or non-Bermudians, but are restricted to carrying on business outside of Bermuda, with limited exceptions. Exempted companies constitute the most widely used corporate vehicle in Bermuda. The three categories are further defined below:

- Local companies – 60% or more of voting capital is held by persons who have Bermudian status and at least 60% of directors must have Bermudian status (as defined in the Bermuda Immigration and Protection Act 1956), pursuant to section 114 of the Companies Act. Such companies may carry on business domestically in Bermuda. At the time of the last review, there were 3 286 Local companies registered in Bermuda. As at 31 December 2016, the number of active Local companies was 3 113.
- Exempted companies – more than 40% of voting capital is held by non-Bermudians, with at least one director resident in Bermuda, or one secretary or resident representative that are ordinarily resident in Bermuda. Under sections 129 and 129A of the Companies Act, exempted companies may not carry on business domestically except with the express permission of the Minister of Economic

Development or as provided for in limited circumstances under section 129A(4). At the time of the last review, there were 11 467 Exempted companies registered in Bermuda. As at 31 December 2016, the number of active Exempted companies was 10 545.

- Permit companies – companies incorporated outside of Bermuda must, under section 134, obtain a permit from the Minister to carry on business in Bermuda. At the time of the last review, there were 423 permit companies registered in Bermuda. As at 31 December 2016, the number of active permit companies increased to 480.

61. Since July 2016, Bermuda also allows Limited Liability Companies (LLCs) to be registered in Bermuda pursuant to the LLC Act. This legal entity has separate legal personality but it has a membership structure and governance structure similar to a partnership. As at 31 December 2016, there were three LLCs registered in Bermuda. LLCs can also be categorised as Local LLCs and Exempted LLCs. Bermuda is recommended monitor the compliance by LLCs with the obligations to maintain ownership and identity information (see Annex 5).

Legal ownership and identity information requirements

62. As described in the 2013 Report in section A, paragraphs 53-93, legal ownership and identity requirements for companies are mainly found in Bermuda's company law complemented by a combination of requirements provided in exchange controls, licensing and AML laws and regulations. Bermuda's exchange controls, licensing and AML laws and regulations will also apply to ensure the maintenance of beneficial ownership information and are described in that section (see further below). Table 4 shows a summary of the legal requirements to maintain legal ownership information in respect of companies:

Table 4. **Legislation regulating legal ownership information of companies**

Type	Company Law (Companies Act and LLC Act)	Tax Law	Exchange control laws	Licensing requirements	AML Law
Local companies	All	None	Some	Some	Some
Exempted companies	All	None	Some	Some	Some
Permit (foreign) companies	All	None	Some	Some	Some
Local LLCs	All	None	Some	Some	Some
Exempted LLCs	All	None	Some	Some	Some

Company law requirements

63. The 2013 Report noted that all companies incorporated under the Companies Act must register with the Registrar of Companies (the Registrar). Companies are not expressly required to provide the Registrar with the names of its owners upon registration; however, as a matter of practice, the Registrar requires companies to do so. Moreover, as part of the incorporation process, information on the company's ownership chain is provided to the BMA in its capacity of agent of the Minister and exchange controller for consideration and approval at the time of the company's formation (see further below). Similar requirements apply to LLCs (see further below).[6]

64. Up-to-date legal ownership information is required to be maintained by the companies themselves in a shareholder register kept at their office in Bermuda (section 65, Companies Act). The register must record the name and address of members, and the share capital held and is publicly available. Similarly, LLCs must keep a register of members at their registered office in Bermuda (section 55, LLC Act). Bermuda confirmed that the shareholder register of a company and the register of members of a LLC must be keep up-to-date for as long as the entity is in business. Specific retention periods are provided only for cases of the company or LCC has been dissolved, wound up or liquidated (see subsection on Dissolved Companies below).

65. The BMA is provided with the information on the proposed ownership of the company of all Local and Exempted companies and LLCs for approval prior to their registration by the Registrar. Identity information on all owners in the full ownership chain must be disclosed to the BMA under Form 1 of the Company (Forms) Rules 1982 and the prescribed Application Form for Registration/Continuation under the LLC Act 2016. Through this, identity information on direct, intermediate and ultimate beneficial owners is provided to the BMA, thereby looking through any "corporate veil". The identity information provided includes the name, address and nationality (for natural persons) or place of incorporation (for legal persons). The form or the Bermuda legislation does not contain a definition of ultimate beneficial owner. It is understood that as a matter of practice and policy it refers to individuals who ultimately owns 10% or more of the voting shares of the company or have shareholder rights to appoint one or more directors). These individuals must supply a personal declaration. This procedure, however, only provides Bermuda authorities with ownership information upon the formation of a registered company; subsequent changes of ownership are only required to be vetted by or informed to the BMA if they refer to transfer from

6. Exchange control provisions for local and exempted LLCs are provided for in section 45(7) of the LLC Act 2016.

or to non-residents and if they reach a certain threshold, as explained below in relation to the exchange control rules.

66. Local companies must submit to the Registrar a return of shareholdings in the company on an annual basis (Companies Act, section 117), which includes statement of the number and par value of each class of shares beneficially owned by Bermudians. This filing is used by the Registrar to monitor whether the local company has undergone a change of ownership which results in the violation of the 60/40 requirement for local ownership (see the description of local companies above).

67. Companies formed outside of Bermuda which engage in or carry on any trade or business in or from Bermuda, referred to as permit companies, must obtain a permit from the Minister of Economic Development. The Registrar of Companies clarified that this requirement would cover the situation where a company formed outside of Bermuda has its senior management in Bermuda or key functions operated in Bermuda. A penalty of BMU 1 000 applies to the officers of a permit that fail to obtain a permit; moreover, the obligation to obtain the permit remains applicable. A permit company is required to appoint and maintain a principal representative in Bermuda, and any change to such principal representative must be notified within 21 days to the Registrar under section 136A. Permit companies must, as part of their application process, provide ownership information, as provided under exchange control and AML laws described below.

Exchange control requirements

68. Pursuant to Bermuda exchange control requirements, Local and Exempted companies seeking to issue equity to non-residents must seek permission from the Controller of Foreign Exchange, which involves the vetting of the non-residents including the full disclosure of the chain of ownership of any person owning 10% or more of the voting shares of the company (or having shareholder rights to appoint a director). Changes after incorporation of more than 10% of ownership are required to be approved by the exchange controller (unless shares are listed on a recognised stock exchange). Prior to 2013, the disclosure referred to persons owning 5% or more of the voting shares of the company. There is an exception to the permission requirement: no permission will be required from the Exchange Controller for the transfer of shares of a company which engages a licensed CSP (regulation 25A). It is noted, however, that since the licensed CSP regime was introduced in 2012, no CSPs have actually been licensed to date and therefore all transfer of shares meeting the 10% ownership threshold are currently still vetted by the BMA (more details included in the section *in practice* below).

69. Since October 2012, permit companies are required to report to the Exchange Controller the identity of persons who beneficially own 10% or more of their capital, unless their shares are listed on a recognised stock exchange or they have appointed a licensed CSP as their principal representative. As noted above, to date, the CSP licensing regime has not been implemented and therefore there are currently no licensed CSPs. As a result, since October 2012, all transfer of shares in permit companies reaching the 10% ownership threshold must be vetted by the BMA.

70. For the recently created LLCs, the BMA's consent is required if either of the following would occur as a result of the issuance or transfer of an LLC interest: (i) the issuance or transfer of LLC interests which would result in any person acquiring 10% or more of the voting interests in the LLC; (ii) the acquisition of enough additional voting interests to bring ownership above 50% of the voting interests in the LLC by any person already holding an interest in the LLC between 10% and 50% (s. 45(7) LLC Act).

Licensing requirements

71. There are a number of sectors in Bermuda which are specifically regulated by imposing a requirement that the business be carried on by a license holder. These licensing regulations impose additional requirements to retain identity and ownership information as a condition of the license. The BMA is the oversight body in respect of each type of license. The licensed sectors are insurance, investment, bank and deposit taking institutions, money service providers, trust businesses and CSPs. A licensee must advise the BMA in advance, of any changes to the controlling shareholders of the licensed entity (the share proportion point at which a person is said to "control" a licensed entity and therefore when this requirement is triggered, is specific to each type of license). The BMA is empowered to prevent changes of control in certain instances.

AML requirements

72. As noted in the 2013 Report, the regulatory regime applicable to AML obligated persons is a key element in Bermuda's regime to maintain identity and ownership information. A wide range of businesses and professionals are covered under the AML regime. As a result, most persons conducting business in or from Bermuda or will have some involvement through either a one-off transaction or ongoing business relationship with an AML obligated persons. In each of those instances, the relevant customer due diligence obligations on AML obligated persons will be triggered.

73. "AML obligated persons" as referred to herein are those persons subject to the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (AML/ATF Regulations) which are described in

the legislation as "relevant persons" (regulation 4). This includes "independent professionals" and "AML/ATF regulated financial institutions". They include banks and deposit companies, investment businesses, investment fund administrators, money service businesses, some insurance businesses, persons carrying on licensed trust businesses as well as lawyers and accountants when they are providing certain services. Moreover, by virtue of the CSPBA 2012, licensed CSPs are also considered to be AML obligated persons. Corporate services include acting as agent for the formation/establishment of a company or partnership, acting as nominee, providing administrative or secretarial services to companies or partnerships, and acting as a resident representative of a company or partnership in Bermuda.

74. AML obligated persons are required to (i) identify their customer, and verify the customer's identity on the basis of documents, data or information obtained from a reliable and independent source; (ii) identify, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify his or her identity so that the relevant person is satisfied that he or she knows who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement; and (iii) obtain information on the purpose and intended nature of the business relationship (regulation 5).

Nominee shareholders

75. As noted in the 2013 Report, professional nominees are considered to be carrying on a "corporate service provider business" under the CSPBA 2012, and are expressly subject to the obligations imposed by the AML/ATF Regulations. Under these regulations, professional nominees are required to conduct CDD, which includes identifying their clients. The CDD obligations entail that the professional nominee must collect and maintain identity information on the person on whose behalf it is holding the shares. It is noted, however, that no CSP has been licensed to date, and therefore, the obligations imposed under the CSPBA have not been further enforced in practice (as further detailed below).

76. Notwithstanding the above, under the Exchange Control Regulations, a nominee acting for a non-resident in respect of securities must obtain permission from the exchange controller in respect of holding or transferring such securities, which requires the disclosure of information on the beneficial owner of the securities.

77. In other instances, for example, where a person acts as a nominee in a private capacity (i.e. not by way of business) and is not acting for a non-resident, there are no obligations imposed on a nominee in respect of ownership

and identity information of the beneficial owner. However, during the 2013 review, the Bermudian authorities indicated that most nominees operate by way of business in Bermuda. Bermuda reports that the situation remains unchanged during the present review period.

Enforcement measures and oversight

78. There are penalties in place to sanction non-compliance with the legal obligations related to ensuring the availability of ownership and identity information of companies in Bermuda. The key penalty provisions are set out below:

- A company which fails to comply with the requirement to maintain a registered office in Bermuda, and to advise the Registrar of Companies of its address, is liable to a fine of BMU 20 per day in default in respect of a company (section 62(4), Companies Act). It is at the registered office that a company is required to keep its register of members.
- A company which fails to maintain a shareholder register at its registered office is liable, on summary conviction, to a fine of BMU 75 per day. The penalty also applies to any officer of the company who knowingly contravenes, or permits or authorises the contravention (section 66A, Companies Act).
- A company incorporated outside of Bermuda which has obtained a permit to carry on business or trade in Bermuda which fails to advise the Registrar of its principal representative in Bermuda within 21 days, is liable to a fine of BMU 20 per day in default (section 136A, Companies Act).
- The Registrar has authority to strike off of the Register of Companies any company which he has "reasonable cause to believe" is not carrying on business or is not in operation (section 261, the Companies Act).
- Failure to submit a return of shareholdings under section 117 of the Companies Act is subject to a default fine of BMU 250. Submitting false information triggers a BMU 1 000 fine upon summary conviction and BMU 2 000 on indictment.
- Failure to comply with the obligations set in that Registrar of Companies (Compliance Measures) Act 2017 (such as the obligations to produce documents and records) are subject to a default fine between BMU 100 and BMU 500 per day in default (section 10).
- Failure to inform the Controller of a change of 10% or more in the beneficial ownership of a permit company, where required, is considered an offence under the Exchange Control Regulations. The

directors of such company may be fined a maximum of BMU 2 000 or imprisoned for a maximum term of three months upon summary conviction; or fined BMU 10 000 or imprisoned for a maximum term of two years upon indictment (sections 50 and 51).

- Licensed CSPs are subject to CDD requirements under the AML/ATF regime (section 67 and paragraph 6 of Schedule 2, CSPBA 2012). A licensed CSP that fails to comply with an obligation imposed by the AML/ATF Regulations is liable under regulation 19 to a fine of BMU 50 000 on summary conviction, or to either or both a fine of BMU 750 000 and imprisonment for up to 2 years on indictable conviction.
- AML obligated persons (e.g. financial institutions, independent professionals who fail to comply with an obligation imposed by the AML/ATF Regulations is liable under regulation 19 to a fine of BMU 50 000 on summary conviction, or to either or both a fine of BMU 750 000 and imprisonment for up to 2 years on indictable conviction.

79. The 2013 Report found that, although enforcement provisions were in place to support the obligations to ensure the availability of ownership and identity information on companies, the number of cases in which investigatory and enforcement actions had been taken was low. As highlighted in the 2013 Report, the Registrar had only exercised their monitoring and enforcement powers in relation to such entities in a very limited number of cases upon receipt of a notification of suspicion or complaint. This was considered too limited in the context of the number of registered entities in Bermuda.

80. The deficiencies identified in the 2013 Report and summarised above have not been addressed in the current period review. The inspection powers of the Registrar continued to be engaged only in case of a notification of suspicion or complaint. During the review period, Bermuda reported that there have been no such cases and, therefore, no inspections were conducted. As a result, the recommendation for Bermuda to "ensure that all its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which ensure the availability of ownership and identity information in all cases" remains.

81. At the time of the on-site visit in December 2016, the Registrar of Companies was in the process of establishing a compliance unit, which would be responsible for carrying monitoring and enforcement functions. In March 2017, the Registrar of Companies (Compliance Measures) Act 2017 entered into force detailing a number of functions that can be carried out by the Registrar regarding the on-site and off-site inspection of registered entities and the enforcement measures that can be applied in instances of non-compliance. Since the new Act came into force, the Registrar reports having

established the compliance unit and commenced to exercise its new statutory powers. The compliance unit has completed on-site visits of three (out of a total of 91) service providers which act as registered office for approximately 46% Bermuda registered entities. Each of the corporate service providers was questioned about the existence and use of internal policies and procedures to promote compliance by their clients and reliability of the data collected and asked to fill-in a pre-inspection questionnaire. Moreover, records of 30 companies that used the services of the referenced service providers in total were reviewed (representing 0.22% of the total companies registered in Bermuda). The companies were chosen randomly, and included a proportional mix of local and exempted companies. Of the 30 companies inspected, 93% (28 of 30) were fully compliant with the requirements for maintaining current legal ownership information and information on the officers and directors. The remaining two companies had changes in the location of their registered offices, and will be subject to further investigation followed by remediation and fines if warranted. Going forward, the Compliance Unit will perform outreach to Bermuda's business community to promote awareness of the record-keeping and reporting requirements for registered entities as well as awareness of the statutory powers of the Registrar under the Act. The Compliance Unit anticipates performing additional inspections of at least 85 companies records prior to 14 July 2017. These inspections are being performed in a similar method as the first inspections. The service providers acting as registered offices of companies have been sent a pre-inspection questionnaire followed by an on-site inspection to confirm or discuss the responses provided and review the requested records and documentation. The progress in addressing the recommendation concerning the exercise of monitoring and enforcement powers will be assessed in the next review of Bermuda.

82. The 2013 Report also considered that the level of fines applicable to violations by companies of their record keeping and registration requirements were considered to be relatively low in practice (BMU 20 and BMU 75 per day in default), in particular taking into account the GDP per capita of Bermuda. Additional penalty provisions have been established in the Registrar of Companies (Compliance Measures) Act 2017, and those appear to be set at appropriate level.

83. Pursuant to section 261 of the Companies Act, the Registrar has authority to strike off of the Register of Companies any company which he has "reasonable cause to believe" is not carrying on business or is not in operation. Usually the trigger that a company is not carrying on business is its failure to pay company fees and file an annual memorandum with the Registrar (Companies Act, sections 121 and 131). In the event that a company fails to meet its filing and fee obligations under the Companies Act, it is automatically placed in the striking off process, which is conducted regularly on an annual

basis. By the end of the review period (i.e. by 31 March 2016), 831 companies were not in compliance with the payment of fees and, as such, were placed in the striking off process. During the review period, a total of 1 035 companies were struck off from the Registrar. The striking off process takes approximately nine to twelve months to be completed. The Registrar may send to the company a letter (the "first letter") inquiring whether the company is carrying on business or is in operation. If the Registrar does not, within one month of sending the first letter, receive any answer thereto he shall, within fourteen days after the expiration of the month, send to the company a registered letter (the "second letter"). The second letter states that no answer thereto has been received, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in an appointed newspaper with a view to striking the name of the company off the register. If the Registrar either receives an answer to the effect that the company is not carrying on business or is not in operation, or does not within one month after sending the second letter receive any answer, he may publish in an appointed newspaper, and send to the company a notice that at the expiration of three months from the date of that notice the company named in the notice will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

84. If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in an appointed newspaper and send to the company or the liquidator if any, a like notice as described in the paragraph above. At the expiration of three months from the date of the published notice, the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in an appointed newspaper. Upon such publication the company shall be dissolved provided that the liability, if any, of every officer, manager and member of the company shall continue and may be enforced as if the company had not been dissolved. Pursuant to section 261(5A) of the Companies Act, every person who was a director or an officer of a company at the date upon which the company is struck off, the register shall ensure that the records of account of the company referred to in section 83 of the Companies Act that are in existence on that date are kept for five years from the end of the period to which such records of account relate; and where applicable, any record specified in regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 is kept for the period specified in that regulation.

85. Companies may be restored to the Register provided that certain statutory conditions are met. In order to be restored, a company must pay all annual fees, penalties and make all requisite annual filings for the period in which the company was struck off through the current period. The Registrar

of Companies then obtains a notice of no objection to the restoration from the BMA and other government departments that a company may owe money to, such as the Office of the Tax Commissioner. After all fees have been paid and provided that the notice of no objection is received, the Registrar then will advise the Attorney General's Chambers of the Registrar's consent to have company restored to the register. Through an attorney, the company must then file a petition to the court to have company restored. The company is only restored to the register when the Registrar receives an order from the court to restore it to the register.

86. Notwithstanding the deficiencies identified in relation to the oversight of companies' obligations to maintain share registers, the BMA, in its capacities of (i) exchange controller, (ii) AML supervisor and (iii) licensor of the financial sector, also had a relevant role in relation to the maintenance of legal ownership information by companies in Bermuda. As the BMA's role is particularly relevant in connection to the maintenance of beneficial ownership information, its oversight and enforcement are further described further in that section.

87. In practice, companies can usually be formed in less than a week, if the proposed "ultimate beneficial owners" do not require additional scrutiny. Additional scrutiny by the BMA would often be required if the person is an undischarged bankrupt, has been convicted of a criminal offence, has fraud or dishonesty been proved against in civil proceedings, have been sanctioned by regulatory bodies (fit and proper test). The BMA is also alert to the possibility that the individual presenting him or herself as "ultimate beneficial owner" may in fact be acting as nominee and this is taken into account when reviewing the plausibility of the application. Depending on the situation, the BMA would object to the formation of the company. Guidance on the assessment of the Beneficial Owners has been formalised by the BMA in March 2015. The BMA can issue an approval in less than 24 hours if the beneficial owners are known to the BMA and considered not to pose risks. The Registrar of Companies can usually form a company within 24-48 hours from the time of receipt of a notice of no objection from the BMA. This time estimate increases to (up to) two weeks, however, if the company is formed to undertake a restricted business activity which undergoes additional scrutiny and requires Ministerial consent.

88. The 2013 Report contained a recommendation for Bermuda to monitor the practical implementation of the licensed CSP regime and the other recently introduced obligations in ensuring the availability of ownership and identity information with respect to the relevant entities and arrangements in particular with respect to permit companies. Since then, permit companies are required to inform the exchange controller of any change of 10% or more in the beneficial ownership of a permit company. During the review period, the BMA did not conduct inspections to verify if permit companies have

consistently complied with those filing obligations (more details are provided in the beneficial ownership section further below). The BMA reports that approximately 30% of the permit companies are publicly listed and the BMA will be verifying the situation in relation to the other permit companies.

Dissolved companies

89. If a company is being dissolved via the liquidation process then the responsibility for keeping certain records pertaining to the company (as generally defined by section 83 of the Companies Act and Regulation 15 of the Proceeds of Crime Act) rests with the liquidator. This only applies to records that have been provided to the liquidator from the company. Further the responsibility for keeping liquidation records (a different set of records) also rests with the liquidator under section 255(A1) of the Companies Act and section 204 of the LLC Act.

90. Pursuant to section 255 of the Companies Act and section 204 of the LLC Act, books and papers of a company being wound up and about to be dissolved can be destroyed in the case of a winding up by the Court, in such way as the Court directs. In such cases, effective as of 10 March 2017, the referenced sections also provided that no responsibility should rest on the company, the liquidator or any person to whom the custody of the books and papers has been committed if such persons retain custody of such books and papers for a period of at least five years, commencing on the date of the dissolution of the company. Before 10 March 2017, the period was two years. In practice, during the review period, the court has in many instances determined that books and records of liquidated companies could be destroyed immediately after liquidation, in particular in cases of companies that have been struck off by the Registrar and liquidated by a public appointed liquidator. Although some legal ownership information is maintained with the exchange controller in such cases, it was not ensured that information on all shareholders was maintained for a period of at least five years. Bermuda is recommended to monitor the implementation to the 2017 amendments to the Companies Act and LLC Act to ensure that legal ownership information of liquidated companies is kept for a minimum period of five years in all cases.

91. If a company is to be dissolved via the strike off process and thus no liquidator was ever appointed, the responsibility for keeping certain records pertaining to the company (as generally defined by section 83 of the Companies Act) rests with every person who was a director or officer of the company at the date in which the company was struck off the register (Companies Act, section 261(5A); LLC Act, section 210(5A)). Every person who was a director or an officer of a company at the date upon which the company is struck off the register shall ensure that the records of account of the company referred to in section 83 of the Companies Act that are in existence

on that date are kept for five years from the end of the period to which such records of account relate; and where applicable, any record specified in regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 is kept for the period specified in that regulation.

Availability of legal ownership information in practice

92. During the current peer review period Bermuda received 77 requests, and approximately 30% relating to ownership and identity information. Peers were generally satisfied with the information received. Legal ownership information was generally collected from the companies themselves and supplemented with information held by the BMA.

Beneficial ownership information

93. Under the 2016 ToR, beneficial ownership on companies should be available. In Bermuda the exchange control and the AML laws are the main pieces of legislation requiring beneficial ownership information to be available.

Exchange control requirements

94. The Exchange Control Act 1972 provides that the Minister of Finance may make regulation for "controlling the issue and transfer of securities to or to the nominees of persons resident outside Bermuda, and other dealings in or with or in relation to securities or capital monies payable thereon" (section 2). The Exchange Control Regulations further detailed the circumstances where the exchange controller's approval must be sought in connection with the issuance or transfer of securities, including shares. Those regulations were further complemented by directions issued by the exchange controller in its website.[7]

95. As described above in the section on legal ownership, the BMA, in its capacity of agent of the Minister of Finance, must give prior approval to the incorporation of companies and LLCs. Identity information on all owners in the full ownership chain must be disclosed to the BMA (Form 1 of the Company (Forms) Rules 1982 and the prescribed Application Form for Registration/Continuation under the LLC Act 2016). "Ultimate beneficial owners" of 10% or more of the voting shares of the company (or shares with rights to appoint directors) must supply a personal declaration. The exchange

7. Please refer to the Bermuda Monetary Authority's website: www.bma.bm/company-matters/SitePages/Issue,%20Transfer,%20Redemption%20and%20Purchase%20of%20Securities.aspx.

controller must be satisfied that the persons who wish to own/control such entities are persons of integrity and good standing.

96. Pursuant to the directions given in the exchange controller website, the exchange controller must grant prior approval to any subsequent transfer of 10% or more of the shares of the company from or to non-residents for exchange control purposes. Once that permission has been granted a non-resident person may acquire up to 50% of the shares of the company without the prior approval of the controller. This permission is conditional upon subsequent notification to the controller. Prior permission of the BMA must be sought for that person to hold more than 50% of the voting shares of the company. No prior permission for companies listed on a recognised stock exchange, companies under the Investment Funds Act 2006 or companies that have appointed a licensed CSP as their principal representative. Licensed CSPs are subject to AML obligations that require the identification of beneficial owners of their customers. As noted above, the CSP licensing regime had not yet been implemented to date.

97. The same legal framework generally applies to permit companies since October 2012. As such, permit companies are required to report to the exchange controller the identity of persons who beneficially own 10% or more of their capital.

98. Failure to inform the Controller of a change of 10% or more in the beneficial ownership of a permit company, where required, is considered an offence under the Exchange Control Regulations. The directors of such company may be fined a maximum of BMU 2 000 or imprisoned for a maximum term of three months upon summary conviction; or fined BMU 10 000 or imprisoned for a maximum term of two years upon indictment (sections 50 and 51). Notwithstanding the above, the Exchange Control Regulations provides that, in relation to the transfer of shares in Bermuda companies, the transferor/transferee and their agents shall not commit an offence unless they knew or had reason to believe that the requirements under the regulations were not fulfilled (s. 13).

99. Moreover, in circumstances where no prior permission from the exchange controller has been sought to issue and transfer shares where required, the interpretation of the regulations has been that the transfer may not be effected and the BMA may refer the matter to prosecution.

Exchange control requirements in practice

100. Bermuda authorities advise that Bermuda has been collecting identity information on non-residents "ultimate beneficial owners" of legal entities for over 70 years and the BMA has been involved with the vetting and approving of owners for over 25 years. The information collected is maintained by the BMA in an electronic corporate registry that is searchable by the name

of a company or owner, including "ultimate beneficial owners". The registry covers information on (i) founders of all companies (Local Companies, Exempted Companies and Permit Companies); (ii) information on the transfer of shares of companies to and from non-resident shareholders (subject to the minimum threshold of 10%). A team of six full time employees are dedicated to the BMA's exchange control function. The team also work closely with the BMA AML, licensing and legal teams. In total the BMA has approximately 150 employees.

101. The application for share transfer permission may be made electronically or by mail to the BMA. The company whose shares are being transferred may submit directly or by way of its agent who must be a corporate service provider to access the BMA's electronic filing system. The BMA verifies all submissions for share transfer and where there are issues (such as incomplete documentation, doubts whether the persons identified as the "ultimate beneficial owners" are fit and proper), the BMA will not proceed with the approvals and permissions until it is satisfied that the information is accurate and the persons identified as the "ultimate beneficial owners" are fit and proper. From time to time, there are cases where the applicants do not meet the "fit and proper test" and the BMA does not grant the approval for incorporation of a company by that applicant. In one case in 2005, the BMA had received a complaint from another country on a mutual assistance case about a Bermuda company. After an independent investigation was made with the assistance with several investigative bodies, it was determined that false information had been given concerning the "ultimate beneficial owners". Severe sanctions were applied in that case: the assets of an investment fund of more than USD 30 million were seized and confiscated under a court order.

102. The BMA retains information records pertaining to permissions/approvals issued in its capacity as the controller for an indefinite period of time and historic data is stored in archives, including in relation to inactive or struck-off companies.

103. The BMA reports that, to date, there have been few incidents of failure to seek the necessary permissions. In such cases, the company or its agent may seek a retroactive permission. When an application is made for retroactive permissions, the BMA will verify the reasons why and the risks involved as well as consider the appropriate sanctions to be applied under the circumstances. For instance, on occasion companies' agents, being CSPs, have determined that the permission was not procured and will seek retroactive permission in order to ensure that the transfer is not at risk. The BMA reviews such requests and determines if they are in order and capable of being granted approval. This process includes conducting due diligence vetting on the owners who are the subject matter of the retroactive permission. If

there are any issues, the Exchange Controller may carry out further enquiries and/or formal investigations. Where the due diligence review results have been deemed satisfactory, the BMA has issued the permission retroactively. If there is an issue (e.g. case of gross negligence by the company and/or the CSP or "ultimate beneficial owners" that are consider to be not fit and proper), the BMA may refer the matter for prosecution. Additionally, the BMA may report the matter to the Registrar of Companies who may carry out further enquiries and/or investigations related to the company and its activities.

104. The exchange controller processes over one hundred applications per month for entities which are looking to transfer shares and are seeking permission of the Authority in its capacity as Exchange Controller. Out of the more than one hundred share transfer applications processed in any given month, about two or three are seeking retroactive permissions. Therefore, for the period 1 April 2013 to 31 March 2016, the approximate number of share transfer requests processed was over 3 600 and out of this approximately 108 requested retroactive approval. The average period for retroactive permissions is between one to two years. The period of time requested for validation can vary.

105. During the review period, no sanctions were imposed as the BMA considered that the conduct of companies or their agents did not warrant it under the circumstances. The BMA advises that there have not been in such cases a deliberate failure to file the permissions but rather the corporate agent has discovered the omission and then sought the necessary permissions. It was often the case that the oversight was detected within a year of the transfer, and the submission for retroactive application is made as soon as the fault was detected.

106. It is noted, however, that the BMA does not have an on-site or off-site inspection programme to verify compliance with the obligations under the exchange control regulations. Therefore, any change in "ultimate beneficial ownership" may go undetected. The only way they can be detected currently is when they are voluntarily informed by the company or a CSP. Bermuda is recommended to enhance monitoring and enforcement of the compliance with the obligations to update ownership information (see recommendation on the A.1 box).

107. Information on Bermudian resident "ultimate beneficial owners" is only covered at the time of formation of the company. Changes in resident owners are not captured by the exchange control regulations. However, Bermuda considered that the companies would need to keep this information to ensure the 60/40 ownership rule is maintained at all times. Local companies are required to file with the Registrar an annual return of shareholdings stating the percentage of Bermudian share ownership (Companies Act, section 117). Registrar of Companies staff cross-check each return to monitor

whether the local company has undergone a change of ownership which results in the violation of the 60/40 requirement.

108. As noted earlier, there is an exception to the exchange control permission requirement: no permission will be required from the exchange controller for transfer of shares of a company that appoints a licensed CSP. Presently, this exception is not in effect as the licensing process for CSPs, originally planned to be implemented in 2013, has been delayed. As a result, during the review period, all companies were still required to seek permission of the BMA as exchange controller (for the transfer of shares above the 10% threshold from/to non-residents). Bermuda explained that, originally, the government policy had been that licensed CSPs would retain beneficial ownership information which would be readily accessible and the requirement for exchange control permissions would be removed for those legal entities that have engaged a licensed CSP. Recently, the Bermuda government has taken the position that, although licensed CSPs will be statutorily required to have beneficial ownership information, there should still be a requirement in place for information to be filed with a central authority in relation to exchange control. A change in legislation to this effect is planned.

AML law requirements

109. The Proceeds of Crime Act 1997 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (AML/ATF Regulations) form the basis on Bermuda's AML regime. These two pieces of legislation create obligations on regulated financial institutions and certain service providers (AML obligated persons) including banks and deposit companies, investment businesses, investment fund administrators, money service businesses, some insurance businesses, persons carrying on licensed trust businesses as well as lawyers and accountants when they are providing certain services.

110. Moreover, by virtue of the Corporate Service Provider Business Act 2012 (CSPBA 2012), licensed CSPs are also considered to be AML obligated persons. Corporate services include a wide range of activities including: acting as agent for the formation/establishment of a company or partnership; acting as nominee; providing administrative or secretarial services to companies; acting as a resident representative of a company or partnership in Bermuda, providing registered office; correspondence or administrative address, maintaining the books and records of a company; filing statutory forms, resolutions, returns and notices; keeping or making any necessary alteration in the register of members of a company in accordance with section 65 of the Companies Act 1981; the performance of functions in the capacity of resident representative under the Companies Act 1981. Although there is no legal requirement for companies to engage a corporate service

provider, the Bermuda authorities advise that virtually all companies (including local companies, exempted companies and permit companies) will need to engage a CSP in the course of their corporate life in Bermuda.

111. In circumstances including one-off transactions and ongoing business relationships, the AML/ATF Regulations impose three separate obligations: (i) to undertake customer due diligence; (ii) on-going monitoring; and (iii) record keeping. There are some limited exceptions set out in regulation 10 of the AML/ATF Regulations to the requirement to undertake customer due diligence (CDD) measures,[8] whilst "enhanced CDD measures" are required in certain "higher risk" circumstances as set out in regulation 11, such as where the customer is not physically present for identification purposes.

112. "Customer due diligence measures" are defined in regulation 5 as meaning:

> Identifying the customer, and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
>
> Identifying, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures on a risk-sensitive basis, to verify his identity so that the relevant person is satisfied that he knows who the beneficial owner is, including in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement; and
>
> Obtaining information on the purpose and intended nature of the business relationship.

113. Beneficial owner of a company other than a company whose securities are listed on an appointed stock exchange is defined in regulation 3 of the AML/ATF Regulations as any individual who (i) ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the company; or (ii) otherwise exercises control over the management of the company. In the context of licensed CSPs, which were brought within the AML/ATF regime in January 2013, the definition of "beneficial ownership" reflects the description above except that the threshold of ownership is 10%, rather than 25%, of the capital of the entity (regulation 3(11)).

8. Those circumstances were considered by the CFATF as in line with the FATF standards. See Fourth Follow-Up Report, Bermuda, dated November 22, 2013. Bermuda's full resolution of the deficiencies identified in the 3rd Round Detailed Assessment Report was described at pages 8-10 of the Fourth Follow-Up Report, specifically at paragraphs 16 (viii), (xiii), (xiv), (xv) and 17.

114. Ongoing monitoring includes maintaining up to date customer identity information and monitoring transactions to determine whether they are apposite to the customer's business and risk profile.

115. The record keeping requirements set out in Part 3 of the AML/ATF Regulations include retaining CDD evidence, and the "supporting evidence and records" in respect of the matters the subject of the CDD measures. Guidance on what specific evidence and records must be kept is set out in the AML/ATF Guidance Notes, which whilst non-binding, must, under regulation 19, be taken into account by a court in determining whether an offence relating to non-compliance with the AML/ATF Regulations has been committed.

116. Under regulation 14, an AML obligated person may rely on certain third parties to undertake the required CDD measures; however, the AML obligated person remains liable for any failure to apply such measures. Moreover, notwithstanding the AML obligated person's reliance on the other person, the AML obligated person must immediately obtain information sufficient to identify customers; must satisfy itself that reliance is appropriate given the level of risk for the jurisdiction in which the party to be relied upon is usually resident (regulation 14). Where a third party is relied on, the obligation to retain records for a period of five years is imposed on the third party, rather than the AML obligated person.

117. The AML/ATF Regulations also require AML obligated persons to apply the CDD measures, ongoing monitoring and record-keeping obligations to their existing clients at appropriate times which will be determined on a risk-sensitive basis. More specific guidance is set out in the industry Guidance Notes. For example, in the Trust sector Guidance Notes, higher risk accounts and relationships are recommended to be updated annually in an independent review of CDD information, activity and transactions (Section 6.7, pp. 21-22); The Insurance sector Guidance Notes indicate that additional CDD may be required on a trigger event basis (II.179, pp. 32). In practice, the BMA reports that, in the discussions with regulated entities at on-site inspections, it has recommended that this updating occur annually for high risk accounts; every 12-24 months for medium risk accounts and every 24-36 months for low risk accounts.

AML supervision in practice

Supervision by the BMA

118. In its capacity of AML supervisor, the BMA oversees the compliance of AML obligated persons such as banks, investment businesses, fund administrators, insurance managers or brokers, fund administrators and trust

businesses with their obligations. The CSPs will also be under the supervisory umbrella of the BMA once the licensing process is concluded. The BMA's AML department was formed in 2008 and currently has a team of seven full time employees in supervisory and policy units. They work closely with the BMA's prudential department when identifying high risk entities and industries and they also share results of their reviews.

119. Prior to the review period, the BMA implemented an outreach programme to ensure that the AML obligated persons had a good understanding of the obligations to conduct customer due diligence, on-going monitoring and record-keeping. The focus in the current review period was on on-site inspections to verify the policies and procedures and customer due diligence files. The BMA has carried out 50 AML/ATF on-sites banking, trust, investment business, long-term (life) direct insurance, fund administration and money service sectors. This covered three of Bermuda's four banks and 15 trust companies.

120. A risk based approach is used for selecting files so that higher risk files are the subject of more reviews. This includes for instance customers in riskier geographical locations and politically exposed persons. Where failings are apparent, additional files may be selected to confirm any findings. The number of files reviewed at each on-site to ensure compliance with CDD requirements varies based upon the size and complexity of the AML obligated entity, and if necessary during the on-site the sample size is increased and the on-site extended. As a rule, a representative sample of 5-10% of files are reviewed covering high, medium and low risk rated clients in each on-site.

121. During an AML/ATF on-site review, the files of the AML/ATF regulated financial institutions are tested via a process which makes use of three customer review checklists:

- The first checklist looks at the framework for each account and the on-site senior analyst reviews the file for documentation supporting the account's ownership structure in the case of entity, including share register naming beneficial owners and number of shares held, and identification of natural persons in the case of legal structures and arrangements (e.g. all directors, partners, principals, trustees, signatories and other persons (e.g. with power of attorney) exercising control over individual customer or management of customer. The checklist also ensures that files are reviewed for individual customer risk assessments, proper sign off and approvals and ongoing monitoring.
- The second checklist covers the identification and verification of individual customers and beneficial owner(s) where the beneficial

owner is not the customer. Using this template, the reviewer checks, among other items, that natural persons have been identified (full legal name, date and place of birth and principal residential address) and verified through use of a certified or notarised copy of a passport or driver's licence and utility bill (showing full residential address – PO boxes are not acceptable). For accounts for politically exposed persons, enhanced due diligence has been applied to the account and identification and verification process.

- The third checklist is used for (identification and verification for entities and arrangements (companies, trusts, charities, partnerships etc.). The reviewer checks, among other items, that the ownership structure and documentation is on file. The reviewer looks for documentation supporting the full legal name and trade name, date and place of incorporation, registered office and listing (if applicable). Documentation to support the verification of the entity/trust including sight of a shareholder registry, confirmation of listing on an exchange (if applicable), corporate memorandum and articles of association or equivalent constitution documents (trust deed, trust constitution etc.) are reviewed. The review checks whether the regulated financial institutions has gathered customer identification and verification information for customers and beneficial owners on the account subject to the 25% threshold. For trusts, the review checks the parties (settlor, trustee, and beneficiary) including a copy of the trust structure showing parties to the trust along with the trust deed. There is a requirement to conduct CDD on at least a 25% ownership, except for Corporate Service Providers where the requirement is at least 10%. There are cases where a financial institution may decide after risk rating a client that the application of CDD is required on a greater percentage of the account ownership, in those cases the on-site examination takes those risk factors in to account during the file testing.

122. Where an on-site is conducted and deficiencies of any kind are found that AML/ATF regulated financial institution is put on a remediation tracker. The regulated financial institution is given 30-90 days to remediate the issues or in the case of systemic issues, more time is granted but the company is put on enhanced monitoring and follow-up with an on-site to follow. The BMA follows up to ensure that all issues are fixed, holding meetings with the regulated financial institution, putting it on enhanced monitoring and follow-up with on-sites to follow in the case of serious remediation issues to ensure that they have been fixed. In the case where regulated financial institutions fail to remediate or there are significant failings, the institutions are fined. Some on-site inspections found more serious deficiencies including failure to conduct comprehensive ongoing and/or transaction monitoring, weak AML/ATF policies and procedures and failure to implement a comprehensive AML/ATF

risk-based approach. Remediation plans were developed and enforcement actions were carried out in the case of serious deficiencies.

123. During the peer review period, the BMA carried out enforcement actions in 11 cases. These disciplinary activities included imposing restrictions, civil penalties and petitioning for the wind up regulated entities. In 2014, the BMA levied BMU 1.5 million in penalties relating to an AML breaches in the investment arm of an insurance company. In 2015, serious systemic deficiencies were found at four regulated entities within the banking, trust and insurance sectors. While all these companies were subject to on-going monitoring and required to take remediation measures, the trust company was fined BMU 250 000 for failure to take actions in response to an adverse AML on-site report. Three entities under close monitoring in 2015 including a bank and two insurance companies were fined BMU 250 000, BMU 750 000 and BMU 1.5 million in 2016 for serious and/or repeated AML/ATF breaches. In 2017, one company was fined BMU 1.5 million in civil penalties. The fines in 2015, 2016 and 2017 were for various issues relating to failures to remediate, breaches of the various supervisory acts as they relate to that particular entity, and/or significant failings within the company generally and from an AML/ATF stand point. In all instances the fines were published in some form (press release or within the BMA's annual report) and in some instances the actual name of the entity was also published. In the cases noted above, the issues highlighted have been addressed and there have been ongoing meetings and status reporting provided by the regulated financial institutions in question. The BMA further reports that there will be follow-up on-site visits conducted during 2017 to verify that appropriate remediation efforts remain on track.

124. In March 2016, the BMA announced a change of policy in relation to enforcement decisions, involving making the use of its enforcement powers public. Under the new policy, the BMA will issue press releases detailing the nature of the enforcement action, the size of any penalty, the identity of the entity or person involved and the circumstances of the breach. Press releases are issued following conclusion of any appeal or after expiry of an appeal period.[9]

125. The BMA also conducted company specific and industry-specific desk based reviews. These reviews looked at AML/ATF policies, including CDD policies. The BMA also conducted a series of industry outreach sessions for trust, fund administrators, banking and investment business representatives and for CSPs in preparation for the introduction of the licensing regime.

9. See www.bma.bm/BMANEWS/Bermuda%20Monetary%20Authority%20Fines%20Sun%20Life%20Financial%20Investments%20%28Bermuda%29%20Ltd%20$1,500,000%20and%20Restricts%20Licence.pdf.

126. The 2013 Report contained a recommendation for Bermuda to monitor the practical implementation of the licensed CSP regime and the other recently introduced obligations in ensuring the availability of ownership and identity information with respect to the relevant entities and arrangements in particular with respect to permit companies.

127. As mentioned above the CSP licensing regime has not been implemented to date. As a result, CSPs were not the subject of on-site inspections on their compliance with customer due diligence and other AML obligations, including the obligation to identify the beneficial owner of their customers. There is no legal requirement for companies to engage a Bermudian CSP; however, in practice, the BMA advises that most companies will need to engage such professionals in order to navigate through the exchange control filing requirements or to comply with obligations under the Companies Act, concerning the maintenance of an address and a representative in Bermuda. Bermuda is recommended to establish adequate oversight on corporate service providers and ensure that they maintain beneficial ownership information of their customers in practice (see A.1 box of recommendations).

Supervision by the Barristers & Attorneys AML/ATF Board

128. The Barristers and Attorneys AML/ATF Board (the Board) has been designated as the supervisory body for AML/ATF supervision of law and accounting firms' compliance with their AML obligations under the POCA. Section 28 of the Bermuda Bar Act 1974 provides generally that only lawyers or accountants who are authorised to practice law or in the accounting profession in Bermuda may provide a fee-based service of preparing a memorandum of association for a corporate body. As such, lawyers and accountants will have a close involvement with legal entities and requirements to perform customer due diligence are triggered.

129. During the review period, the Board concluded 30 on-site reviews, covering 30 of the 33 regulated firms. The three remaining firms will be inspected in 2017. The on-site reviews consisted of a three-step approach. First, details or policies and procedures are reviewed, then interviews of management and compliance officers are conducted to verify their understanding of the obligations and policies and the practices of the organisation. Following that, customer due diligence files are reviewed. Remediation plans had to be developed for seven firms. Deficiencies identified included lack of enhanced due diligence for high risk customers. The firms that received remediation plans will be on-sited again in 2017. In terms of introduced business, the onsite identified that some of the firms would still perform their own due diligence even if the AML Regulations would allow them to rely on third parties.

130. Lawyers and accountants, including the ones in independent practice, are supervised by the Bermuda Bar Association in relation to their compliance with their obligations under the AML framework, including the obligation to identify the beneficial owner of their customers.

Licensing requirements

131. Licensing places "minimum criteria" on applicants and license holders including that they be "fit and proper" persons and that the business be conducted in a "prudent manner". The BMA is empowered to give directions or impose sanctions (including the imposition of fines and the revocation of licenses) for breaches of the minimum criteria. License regulations generally require that the license holder maintains a physical presence in Bermuda (which is stated in the licence); and maintains an approved auditor. More stringent requirements apply for insurers which must maintain a principal office and a principal representative in Bermuda. The licensee must advise the BMA within 14 days of any alteration to these details. In addition, a licensee must advise the BMA in advance, of any changes to the controlling shareholders of the licensed entity (the share proportion point at which a person is said to "control" a licensed entity and therefore when this requirement is triggered, is specific to each type of license). The BMA is empowered to prevent changes of control in certain instances.

132. In relation insurance companies, for instance, sections 1A (3) to (6) of the Insurance Act provide for the broad meaning of a controller, which is defined as including a director, secretary or senior executive and shareholder controller. Shareholder controller pertains to a holder of 10% or more of the shares in a registered person carrying voting rights or where the holder is entitled to exercise or control 10% or more of the voting power, or where the holder has significant influence over the management of the registered person.

Licensing requirements in practice

133. The BMA reports have continuously used its regulatory oversight to ensure it identifies failures in good governance and that improper practices were rectified throughout the regulated sectors. As part of its regulatory mandate, the BMA reported that it conducts appropriate vetting of the notification of change of controllers which are to be submitted by licensed entities.

Availability of beneficial ownership information in practice (Peer experience)

134. During the current peer review period Bermuda received 77 requests, with 30% relating to ownership and identity information. Peers were generally very satisfied with the information received. Bermuda was expressly asked to provide beneficial ownership information on 22 occasions and this information was provided to the satisfaction of the requesting peers. One peer noted in its input that beneficial ownership information had not been provided in one instance by Bermuda. The case referred to the identity of investors in a mutual fund. Bermuda considers that this information would be categorised as accounting records of the mutual fund company and this case is dealt with under element A.2.

ToR A.1.2: Bearer shares

135. Bermuda does not permit the issuance of bearer shares (section 53 of the Companies Act) and no issues concerning bearer shares have arisen in practice in this review or in the previous reviews of Bermuda.

ToR A.1.3: Partnerships

136. Two types of partnerships may be established under Bermuda law: general partnerships, and limited partnerships. Partnerships may also be categorised according to their ownership, as follows:

- Local partnership: A partnership formed under the Partnership Act 1902 (Partnership Act), between two or more Bermudians. It may be a general or limited partnership. Currently, all local partnerships are general partnerships. As at 4 July 2017, there were 380 general partnerships registered with the Office of the Tax Commissioner; or
- Exempted partnership: either (i) at least one individual partner is not Bermudian; or (ii) at least one of the partners is an exempted or foreign-incorporated company. An exempted partnership may only carry on business with persons outside Bermuda, except where it does business in Bermuda, with an exempted company, permit company or exempted partnership, in furtherance of its business carried on outside Bermuda. An exempted partnership may be a general or limited partnership. As of 31 December 2016, there are 1 004 exempted partnerships registered in Bermuda, all of which are limited partnerships, with the exception of 10 which are general partnerships. The number of exempted partnerships has only slightly increased since the 2013 Report when there were 963 of them.

137. Moreover, an overseas partnership, being a partnership formed under the laws of another jurisdiction which engages in or carries on any trade or business in Bermuda, must obtain a permit and register with the Minister pursuant to the Overseas Partnerships Act 1995 (Overseas Partnerships Act). As at 31 December 2016, there were 88 overseas partnerships registered in Bermuda.

138. The 2013 Report (see paras. 94-111) concluded that there were comprehensive registration and record keeping requirements to ensure the availability of information in relation to partnerships under Bermuda law. Those can be summarised as follows:

- The Registrar retains updated identity information on general partners of exempted, overseas and limited partnerships, as well as other information identifying such partnerships (such as the address of their registered office and/or resident representative).
- Through vetting requirements, updated identity information on general partners of limited partnerships and exempted partnerships is also held by the BMA, where such entities have not appointed a licensed CSP. The BMA also collects identity information on the general partners of overseas partnerships.
- Identity information on limited partners is not maintained by the Registrar. General partners of limited partnerships formed under Bermuda law, including exempted limited partnerships, are required to maintain a register of limited partners in a registered office in Bermuda and advise the Registrar of the registered office's address.
- Identity information on partners of a local general partnership would be available through payroll tax registration information filed by the partnership with the Tax Commissioner.

139. The 2013 Report also notes that following sanctions are provided by law to support the legal requirements described below:

- A exempted partnership (including a limited exempted partnership) which fails to comply with the requirement to maintain a registered office in Bermuda, and to advise the Registrar of Companies of its address, is liable to a fine of BMU 100 per day (section 10(12), Exempted Partnerships Act 1992 (Exempted Partnerships Act)). It is at the registered office that an exempted partnership is to keep its register of general partners.
- Any general partner of a limited partnership who knowingly contravenes, permits or authorises the failure to keep a register of limited partners as required is liable, on summary conviction, to a fine of BMU 75 per day (section 7(8), Limited Partnership Act 1883 (Limited Partnership Act)).

- An exempted partnership which fails to keep the required accounting records exposes every partner respectively, to liability for a fine not exceeding BMU 500 under section 14(4) of the Exempted Partnerships Act 1992 (Exempted Partnerships Act).
- The Minister may require an exempted partnership, or overseas partnership to produce such books or documents as may be required to determine whether such an entity has breached their statutory obligations. A person who fails to produce such information, shall be guilty of an offence and liable to a fine not exceeding BMU 5 000 (section 18, Exempted Partnerships Act); section 16(4), Overseas Partnerships Act).
- Failure to give the resident representative of an exempted or overseas partnership notice of any partnership meetings, by reason of an accidental omission, does not invalidate any action taken at those meetings pursuant to section 17(6) of the Exempted Partnerships Act, and section 13(3) of the Overseas Partnerships Act.
- An overseas partnership as well as any general partner of such partnership who with knowledge contravenes, permits or authorises a failure to advise the Registrar of a change to the partnership's registered details (including changes to the partnership name, registered office, resident representative or the general partners), will each be liable to a fine of BMU 75 per day in default (sections 22(6) and 22(7) of the Overseas Partnerships Act).
- Licensed CSPs are subject to CDD requirements under the AML/ATF regime (section 67 and paragraph 6 of Schedule 2, CSPBA 2012). A licensed CSP that fails to comply with an obligation imposed by the AML/ATF Regulations can be subjected to civil or criminal sanctions.

Monitoring and enforcement in practice

140. The 2013 Report noted that, as with the monitoring of companies, the Registrar only exercised their investigatory powers in relation to exempted or overseas partnerships in the event of receipt of a complaint or on notification of suspicion. No such complaints or notification of suspicion have been reported. Therefore, there have been no reported cases of enforcement actions being taken against a partner of a limited, exempted or overseas partnership for knowingly and wilfully contravening the requirement to notify the Registrar of changes to the general partners in their partnership. Since the penalty in relation to failure of a general partner of a limited partnership to maintain a register of limited partners was introduced in 2012, no specific oversight and enforcement has been carried out to date.

141. The deficiencies identified in the 2013 Report and summarised above have not been addressed in the current period review. The inspection powers of the Registrar continued to be engaged only in case of a notification of suspicion or complaint. During the review period, Bermuda reported that there have been no such cases and therefore no inspections were conducted. As a result, the recommendation for Bermuda to "ensure that all its monitoring and enforcement powers are appropriately exercised in practice to support the legal requirements which ensure the availability of ownership and identity information in all cases" remains.

142. The Registrar of Companies (Compliance Measures) Act 2017, which came into force in March 2017, empowers the Registrar to request and inspect legal ownership and identity information required to be kept by partnerships under the Partnership Act, the Exempted Partnerships Act, and the Limited Partnership Act. The Registrar reports having established a compliance unit and commenced to exercise its new statutory powers. The progress in this respect will be assessed in the next review of Bermuda.

143. With respect to general partnerships, identity information in relation to partners is reported to the Tax Commissioner through payroll tax registration. Such information should also be kept for payroll tax audit purposes. Under section 13 of the Taxes Management Act, the Tax Commissioner has power to obtain evidence and review the book and records of the taxpayer, including identity information in relation to partners. As mentioned above, as at 4 July 2017, there were 380 general partnerships registered with the Office of the Tax Commissioner. In the fiscal years 2014-16, the Office of the Tax Commissioner conducted 293 audits, across the range of payroll taxpayers, covering three general partnerships. Additional tax and penalties applied as a result of these audits during this period amounted to approximately BMU 9 million. They engage in local activities (farming, dining, security). A review of the tax files indicated that they have very basic corporate structures (with all partners being Bermudian individuals). Under the Exempted Partnerships Act, any general partnership having a foreign legal entity or foreign individual as partner is categorised as an exempted partnership and subject to the requirements of the Exempted Partnerships Act. Currently, nearly all exempted partnerships take the form of limited partnerships, as noted above.

Beneficial ownership information

144. In respect of beneficial ownership information, legal requirements to file or maintain information are provided under the partnerships' formation acts and AML/ATF Regulations, as follows.

145. The Limited Partnership Act, the Exempted Partnerships Act and the Overseas Partnerships Act ensure that information on the "ultimate beneficial owners" of general partners of such types of partnerships is maintained and filed with the BMA, as the BMA vets "ultimate beneficial owners" of general partners. There is no legal requirement to identify the owners of limited partners (see additional discussion below).

146. Beneficial ownership information of the partnerships themselves will be available if the partnerships engage an AML obligated person in Bermuda. There is no legal requirement that partnerships do so in all cases; however, in practice, most partnerships would also engage a CSP in Bermuda as their representative.

147. In relation to local general partnerships, as noted above, they can only be formed by Bermudian persons. If one or more of the partners in a partnership does not possess Bermudian status, then the partnership is an exempted partnership. Partnerships are subject to obligations provided under Bermuda's Payroll Tax Act 1995 and Taxes Management Act 1976. The Tax Commissioner advises that information on ultimate owners of the partnership is collected in the registration process and must be updated whenever there is a change in ownership. Moreover, a review of payroll tax files indicates that the partners of local general partnerships are usually individuals.

Limited partnerships

148. A limited partnership is formed under the Limited Partnership Act 1883 (Limited Partnership Act). Prior to registration, the following details must be provided to the BMA for review. For the limited partnerships appointing a licensed CSP, the review will be conducted by the appointed licensed CSP instead of the BMA. The BMA or the licensed CSP, as relevant, would then provide these details to the Registrar of Companies:

- Name of the partnership;
- Names and places of residence of the general partners;
- Address of the partnership's registered office in Bermuda, which may not be a post office box (sections 3 and 6, Limited Partnership Act).

149. Pursuant to section 8B(5) of the Limited Partnership Act, a change to those registered details will not take effect until they are notified to the Registrar. A limited partnership, which has not appointed a licensed CSP, at the time of registration, is requested to provide to the BMA certain information including the details of the "ultimate beneficial owners" of the general partners (Limited Partnership Act, s. 4). Such ownership details of all general partners must be approved by the BMA prior to initial registration or registration of a change to the general partner(s) (Limited Partnership Act,

s. 8B(3A) and (3B)). The consent of the BMA is not required in relation to a change of general partner where such change is to an affiliate of such general partner, provided that the partnership shall inform the BMA within 30 days of that change. Where a limited partnership has appointed a licensed CSP, the BMA's approval is not required from the BMA but the CSP would be required to conduct CDD in relation to the partnership.

150. Where there is a failure to notify the Registrar, a Court may make an order upon the petition of the Minister, imposing a fine not exceeding BMU 7 500 on any general partner or duly authorised person, or dissolving the partnership. Only a person who knowingly and wilfully contravened, or caused or permitted the contravention of the obligation to seek the Minister's consent for changes to the general partners will be so liable.

151. Bermuda advises that, strictly speaking under Bermuda law, limited partners do not control the partnership and, as a result, the information on the owners of general partners collected by the BMA would also to indicate the beneficial owners of the partnership itself. Under section 8C (2) of the Limited Partnership Act, the limited partners cannot participate in the management of the partnership and arguably would not meet the definition of beneficial owners. Moreover, in practice, many limited partnerships are investment funds and AML obligated entities, as such, they are subject to registration requirements in Bermuda, which involve the obligation to vet the investors/limited partners in the partnership to meet the AML obligations. Bermuda also advises that most partnerships would also engage a CSP in Bermuda as their representative. It is noted, however, that the CSP licensing regime has not yet been implemented in practice.

Overseas partnerships

152. An overseas partnership must obtain a permit and register with the Minister pursuant to section 3 (subject to section 3A) of the Overseas Partnerships Act 1995 (Overseas Partnerships Act). The overseas partnership must provide the Minister with the following details, which are registered:

- Name of the partnership;
- Names of all of the general partners, and their addresses;
- Address of the partnership's registered office in Bermuda, which may not be a post-office box (section 12, Overseas Partnerships Act);
- Name and address of the partnership's resident representative (a resident representative is a requirement imposed on overseas partnerships under section 13); and
- Law governing the partnership.

153. Any change to the registered details of an overseas partnership must be notified to the Registrar within 30 days, and where the change relates to the general partners, may only be made with the prior written consent of the Minister. In addition, at the time of registration an overseas partnership is requested to provide to the Minister certain information including the details of the "ultimate beneficial owners" of the general partners (section 4, Overseas Partnerships Act). Under section 8, a Minister may impose conditions on a permit, including that there shall be at least one or more partner ordinarily resident in Bermuda. An overseas partnership may under section 11 only carry on business with persons outside Bermuda, except where it does business in Bermuda with an exempted company, permit company or exempted partnership, in furtherance of its business carried on outside Bermuda. Further, section 11(5) requires that any banking business conducted in Bermuda by an overseas partnership must be conducted with a bank incorporated in Bermuda.

154. Overseas partnerships are not required to maintain a register of limited partners at their place of business in Bermuda or at the office of its resident representative in Bermuda. Overseas partnerships that have employees in Bermuda are subject to payroll tax filings and required to register with the Office of the Tax Commissioner. The registration requires disclosure of information on partners and the partnership is required to file quarterly tax returns. Out of the 88 overseas partnerships currently registered in Bermuda, two are registered with the Office of the Tax Commissioner. Bermuda is recommended to ensure the availability of information identifying limited partners of overseas partnerships in all circumstances (see Annex 5).

Exempted partnerships

155. The formation of an exempted partnership requires an application to the BMA for review, except where such formation is carried out by a licensed CSP (Exempted Partnerships Act, s. 9(1A)). The application information is then passed to the Registrar prior to registration, and includes:

- Name of the partnership;
- Name of all the partners (where a partner may be a corporate entity or other arrangement);
- For all general partners, chain of ownership information;
- Name and address of the resident representative (which may be a corporate entity or other arrangement); and
- Address of the partnership's registered office in Bermuda, which shall not be a post-office box (section 10(10) Exempted Partnerships Act).

156. Note that where the exempted partnership is also a limited partnership, or is concurrently applying to be a limited partnership, only the names of the general partners must be provided and not the names of the limited partners (Exempted Partnerships Act, section 5(1)(b)). Almost all of the exempted partnerships currently in existence in Bermuda (all but ten) are also limited partnerships.

157. Where the services of an unlimited licensed CSP[10] have not been engaged, partnership information must be approved by the BMA prior to registration, and any subsequent changes to the general partners must be approved by the BMA, which includes the provision of chain of ownership information on any new general partner. Under section 8 at the time of registration, an exempted partnership is requested to provide to the Registrar the certificate of exempted partnership and the consent of the Bermuda Monetary Authority. Under sections 10(10) and 11 of the Exempted Partnerships Act, an exempted partnership must maintain a registered office in Bermuda, and must advise the Registrar of its address within 14 days of establishing the office. Subsequent changes to the general partners must be reported to the Registrar (Exempted Partnerships Act, s. 13(5)).

Supervision by the BMA

158. The BMA's prior approval is required to form an exempted or limited partnership. Overseas partnerships require a permit issued by the Minister of Finance. As part of the process, the general partners must complete personal declarations. Overseas partnerships must publish in an appointed Bermuda newspaper the intention to apply for a permit, specifying its name, the names of the general partners, the law governing the partnership and stating the business it proposes to carry on from within Bermuda. All applications are vetted by the BMA and a recommendation is made to the Minister regarding the issue of a consent/certificate to form the limited/exempted partnership (or to grant a permit, in case of an overseas partnership). Changes in general partners' information including their "ultimate beneficial owners" must be reported to the BMA.

159. As noted in A.1.1 in respect of companies, the BMA does not monitor the compliance with the obligation to inform changes in general partner's "ultimate beneficial owners". As a result instances of non-compliance may go undetected. Bermuda is recommended to enhance the monitoring and enforcement of the compliance with the obligation to update information on general partner's "ultimate beneficial owners" (see A.1 box of recommendations).

10. An "unlimited licensed CSP" is a person licensed to provide any or all corporate services set out under section 2(2) of the Corporate Service Provider Business Act 2012 (as amended).

AML framework

160. Where an AML obligated person enters in a business relationship or one-off transaction with a partnership, the AML/ATF regulations require such person to conduct CDD in relation to the partnership. In this context, the AML obligated person is required to identify the beneficial owner of the partnership when conducting customer due diligence. A "beneficial owner" of a partnership is defined as any individual who (i) ultimately is entitled to or controls (whether the entitlement or control is direct or indirect) more than a 25% share of the capital or profits of the partnership or more than 25% of the voting rights in a partnership; or (ii) otherwise exercises control over the management of the partnership (regulation 3(2)). In the context of licensed CSPs, which were brought within the AML/ATF regime in January 2013, the definition of "beneficial ownership" reflects that above description except that the threshold of ownership is 10%, rather than 25%, of the capital of the entity (regulation 3(11)).

161. The BMA conducts adequate supervision of compliance of AML obligated persons with their customer due diligence obligations (please see more details in A.1.1). As mentioned earlier, there is no legal requirement to partnerships engage an AML obligated person in all cases. Notwithstanding the above, Bermuda advises that, in practice, Exempted Partnerships/Limited Partnerships/Overseas Partnerships can be structured as investment funds and, as such, they are subject to registration requirements in Bermuda under the investment funds legislation, and are a regulated AML/ATF person with obligations to carry out CDD on shareholders/investors and to retain the information in accordance with the AML/ATF Regulations. Moreover, Bermuda advises that the majority of such entities are formed by lawyers and accountants and most of them will also engage a CSP in Bermuda as their representative. It is noted, however, that the CSP licensing regime has not yet been implemented in practice. Bermuda is recommended to ensure that (i) there is a legal requirement for the identification of the beneficial owner of an Exempted Partnership/Limited Partnership/Overseas Partnership which is not a registered fund (see recommendation in the A.1 box, regarding deficiencies identified in the legal framework); (ii) there is sufficient monitoring and enforcement of the compliance by CSPs with their customer due diligence obligations under the AML framework (see recommendation in the A.1 box, regarding deficiencies identified in the practical implementation). Bermuda advises that all limited partnerships in Bermuda (but 10) are exempted partnerships and have been established as investment vehicles. Given this, the partnerships will either be: (i) investment funds, as defined under the Investment Funds Act 2006, which are directly subject to AML requirements; or (ii) investment arrangements which will be serviced by a regulated service provider subject to AML requirements.

162. Exempted and Limited partnerships must maintain a resident representative in Bermuda. Bermuda advises that the great majority of such entities are formed by lawyers and accountants or CSPs that are subject to the AML framework. The Licensing and Authorisation office of the BMA confirmed that in their experience the majority of the partnerships formed and registered are represented by a lawyer and then administered by a CSP. As of 31 December 2016, 1 093 of the 1 108 partnerships on the Bermuda register were formed by lawyers, accountants or CSPs.

Availability of ownership information in practice

163. In practice, in the three-year period under review, Bermuda received no request for information on the identity of partners or beneficial owners of partnerships.

ToR A.1.4: Trusts

164. In line with English legal tradition, Bermuda's trust law is largely a product of the common law and accordingly many of the requirements in respect of trusts are not found in statute. Certain aspects concerning the duties, powers and regulation of trustees are codified in the Trustee Act 1975. In addition, The Hague Convention on the Law applicable to trusts and their recognition, 1985 has also been incorporated into domestic law by the Trusts (Special Provisions) Act 1989. These Acts apply regardless of whether it is a trust formed for non-resident beneficiaries, or by non-resident settlors, or where trust assets are located outside Bermuda. The formation of trusts is considered to be part of carrying on the practice of law, and thus any persons providing such services must be registered under the Bermuda Bar Act 1974.

165. The 2013 Report found that trustees who act by way of business, whether licensed or exempted from licensing, are subject to legal and regulatory requirements which sufficiently ensure that identity information with respect to trustees, settlors and beneficiaries is maintained. The obligations on licensed trustees to ensure the availability of relevant identity information are contained in the AML/ATF Regulations as well as the Code of Conduct and Statement of Practice issued by the BMA. The 2013 Report also noted that, since the obligation on exempt trustees to maintain relevant identity information under the Trustee Act had only been recently introduced at the time (in July 2012), the effectiveness of this obligation had not been tested during the 2009-11 review period. Bermuda was recommended monitor its practical implementation.

166. The 2013 Report also found that, persons acting as trustees not "by way of business" as well as Private Trust Companies fell outside the scope of the licensing regulations and the AML/ATF Regulations. Record-keeping

obligations derived from the Trustee Act and common law duties would nonetheless apply to such trustees.

167. Moreover, it is also conceivable that a trust could be created which has no connection with Bermuda other than that the settlor chooses that the trust will be governed by the laws of Bermuda. In that event, there may be no information about the trust available in Bermuda.

168. There have been no change in the legal framework applicable to trusts since the 2013 Report. With respect to beneficial ownership of trusts, the AML/ATF Regulations contain adequate requirements for the identification of beneficial owners of trusts. For exempted (non-licensed) trustees such as private trust companies, the statutory requirements to identify beneficiaries appear to be limited to the immediate beneficiaries, as no express requirements for the trustee to understand the control and ownership structure of the trust are provided. Also, there are no statutory requirements to identify a protector of the trust (if any) and any other natural person exercising ultimate effective control over the trust. Bermuda is recommended to take all reasonable measures to ensure that beneficial ownership information is available to their competent authorities in respect of trusts administered in Bermuda or of which a trustee is resident in Bermuda.

169. During the review period, the BMA has monitored the licensed trust business in relation to their compliance with obligations to maintain beneficial ownership information of the trusts they administer or act as a trustee.

170. Bermuda did not receive any requests in relation to trusts in the last review period (1 January 2009-31 December 2011), although it received one request for information regarding the beneficiary of a trust in 2012 which it fully responded to within 90 days. During the present review period, no requests in relation to trusts have been received either. Out of the EOI partners that provided peer input, none indicated any particular concerns with regard to the availability of identity and ownership information in relation to trusts.

Trust ownership and identity information, including beneficial ownership information

171. There is no general requirement for trusts to be registered or file any information with government authorities, including information relating to the identity of settlors, beneficiaries or trustees. Where the trust is a unit trust, it must be authorised under the Investment Funds Act 2006. Where the trust is a charitable trust seeking to solicit funds in Bermuda, it must be registered to attain charitable status. Trustees may be exempted or licensed. Licensing comes with specific requirements regarding the maintenance of legal and beneficial ownership information of a trust, as follows.

Licensed trustees

172. Trust licenses may be unlimited (issued to companies only) or limited (issued to partnerships and individuals). Limited license holders may under section 11A(2), only hold trust assets of BMU 30 million unless expressly permitted, and may not act as the sole trustee of any trust. As at November 2016, there were 29 licensed trustees, 4 less than in 2011. They are all companies and therefore they hold unlimited licenses. Control of licensed entities is closely regulated, for instance:

- In respect of an unlimited licence, where a person is to become a controlling shareholder (10% or more, or a majority shareholder) under section 24(1) of the Trust Regulation Act, the BMA must be notified in writing; and
- In respect of a limited licence held by a partnership, where a change in partners involves a person becoming a controlling partner (10% or more, or a majority partner), the BMA must be notified in writing.

173. A licensed trust business (the provision of the services of a trustee as a business, trade, profession or vocation) is an AML regulated person as defined in regulation 2(2) of the AML/ATF Regulations and is therefore subject to obligations to identify the beneficial owner of the trust.

174. The AML/ATF Regulation defines the beneficial owner of a trust as (i) any individual who is entitled to a specified interest in at least 25% of the capital of the trust property; (ii) in respect of any trust other than one which is set up or operates entirely for the benefit of individuals falling within item (i) above, the class of persons in whose main interest the trust is set up or operates; (iii) any individual who has control over the trust; (iv) the settlor of the trust.

175. Control is defined as "a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to (i) dispose of, advance, lend, invest, pay or apply trust property; (ii) vary the trust; (iii) add or remove a person as a beneficiary or to or from a class of beneficiaries; (iv) appoint or remove trustees; (v) direct, withhold consent to or veto the exercise of a power such as is mentioned in items (i), (ii), (iii) or (iv) above.

176. Further, the AML/ATF Guidance Notes provide at paragraphs 5.33 and 5.36 the following:

> [5.33]… The obligation to verify the identity of a beneficial owner is for the institution to take risk-based and adequate measures so that it is satisfied that it knows who the beneficial owner is. It is up to each institution whether they make use of records

> of beneficial owners in the public domain (if any exist), ask their customers for relevant data or obtain the information otherwise. There is no specific requirement to have regard to particular types of evidence.
>
> …
>
> [5.36] In some trusts and similar arrangements, instead of being an individual, the beneficial owner is a class of persons who may benefit from the trust (see paragraphs 5.163). Where only a class of persons is required to be identified, it is sufficient for the institution to ascertain the name and the scope of the class, without identifying any members of the class.

177. Licensed trustees are guided by a Code of Practice and Statement of Principles, issued by the BMA, which are non-binding but by section 7(4) of the Trust Regulation Act, trustees are to have regard to the Code in conducting their business. The Code and Statement outline best-practice standards on the maintenance of ownership and identity records. On an annual basis, licensed trustees are also required to complete a prescribed certificate declaring that they have complied with the minimum criteria for licensees, as well as the Code of Practice. A licensee who fails to provide such a certificate is liable for a fine of BMU 10 000 on summary conviction.

178. Of particular relevance are clauses 3 and 5 of the Code which provide:

> 3. Licensed undertakings must have procedures in place to ensure that proper due diligence is carried out before a decision is made to act for any new customer…. To ensure compliance with these requirements licensed undertakings should have adequate policies and procedures in place to ensure that they know the identity of each settlor, protector and custodian on an on-going basis and to the fullest extent possible the identity of the beneficiaries.
>
> …
>
> 5. Undertakings need to ensure that they understand fully the rationale for particular structures and to be comfortable that the business is suitable. These standards also apply mutatis mutandis, in relation to any trust business delegated to the licensed undertaking by another trustee. In such cases, the licensed undertaking must have full knowledge of the trust arrangements, and must retain in its files copies of all the records which would pertain to trust business introduced directly to the trust company by a settlor. A licensed undertaking should not act as agent for others in the management of trust assets unless it is satisfied that the trustee is subject to professional standards equivalent to its own.

179. Non-compliance with the Code or Statement will also be taken into account by the BMA under sections 7(5) and 12 of the Trust Regulation Act, when determining whether an applicant or existing licensee fulfils the minimum criteria for granting or retaining a trust license.

Exempt Trustees

180. The following exceptions apply to the licensing of trust business:

- where the relevant trusts are administered outside of Bermuda (Trusts (Regulation of Trust Business) Order 2003 (Trusts Regulation Order)); or
- Private Trust Companies (PTC): a company that provides trustee services only to trusts specified in its memorandum of association or permit (clause 3 of the Trusts Exemption Order); or
- certain individual trustees: being a member of a recognised professional body or a co-trustee of a trust where at least one other co-trustee is licensed (clauses 4-6 of the Trusts Exemption Order) and subject to AML/ATF oversight. However, to date there are no professional bodies recognised.

181. Trustees that are exempt from licensing by virtue of being a PTC, a bare trustee, a registered pension fund, or investment fund, are nonetheless required to retain identification information in respect of the trustees, settlors and beneficiaries of the trust(s) for which they act (section 13B(1) and (2)(a), Trustee Act). Trustees which are exempted by virtue of being a co-trustee of a trust which is also managed by a licensed trustee are required to ensure there is retained in Bermuda the above-mentioned identity information (section 13B(2)(b), Trustee Act). As of 31 December 2016, there are 238 PTCs registered in Bermuda.

182. Under the terms of the exemption, the PTC can only perform the duties of trustee for the trusts set out in the memorandum of association (Trusts (Regulation of Trust Business) Exemption Order 2002, s. 3). The BMA advises that, at the time of the formation of the PTC, the trusts to be administered are identified on the memorandum of association provided to the Registrar of Companies and the BMA is informed of the settlor and the intended beneficiaries. If there are any changes to the named trusts, these must be approved by the Minister. The objective is to limit the activity of the private trust company to trusts of the named settlor or a specific trust. The other exemptions are restricted in that there is a licensed trustee involved or the exempted trustee is otherwise regulated (e.g. pension plan registered under the National Pension Scheme (Occupational Pensions) Act 1998, Unit trust which is an investment fund regulated under the Investment Funds Act

2006 and subject to the Proceeds of Crime (Anti-money laundering and Anti-terrorist Financing) Regulations 2008.

183. In the case of trustees who are not licensed under Bermuda law, the requirements to identify beneficiaries appears to be limited to the immediate beneficiaries, as no requirements for the trustee to understand the control and ownership structure of the trust is provided under the Trustee Act. Also, there are no statutory requirements to identify a protector of the trust (if any) and any other natural person exercising ultimate effective control over the trust. Bermuda is recommended to take all reasonable measures to ensure that beneficial ownership information is available to their competent authorities in respect of trusts administered in Bermuda or of which a trustee is resident in Bermuda.

184. Fiduciaries that are providing trustee services in or from Bermuda whilst acting in a private capacity (i.e. not by way of business) and who are not carrying on a business fall outside the scope of the trust regulations. Common law requirements would apply in such cases as described below.

Common law requirements

185. All trustees are subject to the common law requirements to have knowledge of all documents pertaining to the formation and management of a trust. The Bermuda authorities confirmed that English common law relating to trusts and the fiduciary duties of the trustee is followed in Bermuda. Pursuant to English common law requirements, there are a number of duties that trustees must fulfil which would require trustees to maintain ownership and identity information regarding the trust. Firstly, the trustee is obligated to administer the trust solely in the interests of the beneficiaries and therefore the beneficiaries will have to be made clearly identifiable in the trust deed. Secondly, the trustee owes a duty to manage the trust in accordance with the instructions of the settlor, meaning that the settlor will also have to be clearly identifiable in the trust deed.

186. Pursuant to English common law, trustees have a duty to account to the beneficiaries and must be able to provide a beneficiary with information concerning the operation and transactions of the trust. In the event of non-compliance with these duties by the trustee, beneficiaries have the right to enforce the trust (Beswick v Beswick [1968] AC 58) and the settlor or beneficiaries can commence legal proceedings against the trustee. Where a trustee is found to be in breach of his/her duties, s/he is required to compensate a party who has suffered loss resulting from the breach. It is not solely beneficiaries of the trust who could have standing (*locus standi*) for bringing such an action against the trustee; although in practice, beneficiaries may be in the easiest position to demonstrate such standing. In general, any person that can

establish that his/her rights are either being infringed or are threatened with infringement by the defendant may have standing to bring such private law proceedings.[11]

Availability of trust ownership information in practice

187. Licensed trustees are obligated under the AML regime and the Code of Conduct and Statement of Practice to maintain identity information on trustees, settlors and beneficiaries of the trusts for which they act. This includes beneficial ownership information of the trust, as defined in detail under the AML/ATF Regulation.

188. Failure of licensed trustees to submit a policy and demonstrate they have a structure in place to comply with their obligations under the Code of Conduct and Statement of Practice is considered a serious breach by the Bermudian authorities. A penalty of BMU 250 000 (USD 250 000) was imposed in one case in 2015 where there was found to be a serious breach. In less serious cases the relevant entity is subjected to enhanced supervisory oversight, including the use of specific powers such as imposition of regular reporting obligations, until the breach is fully remedied.

189. In relation to the AML regime, the BMA has investigatory powers as well as powers to impose penalties for non-compliance with AML obligations. The trust industry is considered a high priority sector by the BMA and significant resources have been devoted to its monitoring during the review period. Nineteen of the 29 licensed trustees have been subjected to AML on-site visits. As well during this period all of the licensed companies were subject to prudential onsite visits and one AML off-site review. Two banks with trust licenses were on-sited and found to be in non-compliance and placed on enhanced follow-up. Six of the 19 trust licensees which underwent AML on-sites were found to be partially compliant and placed into remediation, subject to enhanced review until their policies and procedures were amended. The remainder of the Trust Companies on-sited were found to be compliant or largely compliant with the Regulations. It is noted arising out the prudential on-site, breaches of the minimum licensing criteria were identified with poor governance and inadequate systems and procedures in place. The entity was sanctioned and fined BMU 250 000. There were no other enforcement sanctions imposed on trust companies during the review period.

190. In addition, in the last years, the BMA has undertaken outreach programmes to the trusts and investment sector, including soliciting input from the private sector to develop models for ensuring AML compliance that is

11. Hall v Hubbard and Boden and Ryan, 1996 Civil Jur. No. 181, [1996] Bda LR 70.

tailored to the licensed trust industry and providing workshops to promote better understanding of licensed trustees' AML and licensing obligations.

191. In relation to trusts managed by exempt trustees, the requirement to maintain relevant identity information for exempt trusts is set out in the Trustee Act (section 13B(2)(b)). An exempt trustee who knowingly and wilfully contravenes the requirement to retain or cause to be retained identification information on the trustees, beneficiaries and settlors of the trust for which it acts will be liable, upon summary conviction, to a fine of BMU 75 per day in default (section 13B(3), Trustee Act). Exempt trustees are not subject to the monitoring of any particular government authority. They remain of course subject to the powers of the court in the exercise of their fiduciary duties.

192. Finally, with respect to the common law obligations on trustees, a court has the discretionary power to remove a trustee from his/her function where this is necessary for safeguarding the welfare of the trust, even where such removal has not been expressly requested by the parties.[12] The Bermuda authorities indicated that the failure of the trustee to keep records as required would be an impediment on the welfare of the trust.

ToR A.1.5: Foundations

193. Bermuda law does not allow for the creation of foundations.

Other relevant entities and arrangements

194. The 2013 Report noted that Bermuda had not identified any other relevant entity or arrangement which may be formed under its laws. No other entity or arrangement has been identified in the course of the present review either.

A.2. Accounting records

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

195. The 2013 Report concluded that requirements were in place for all relevant entities and arrangements to maintain accounting records, including underlying documentation, for a minimum period of five years. However, the 2013 Report noted that the statutory obligations in relation to permit companies, general partnerships, overseas partnerships and professionally

12. Wrightson, Re, Wrightson v Cooke, [1908] 1 Ch 789.

managed trusts had only recently entered into force, in 2012. Accordingly, the effectiveness of these provisions in practice could not be assessed during the period under review. Moreover, the 2013 Report found that no system of monitoring of compliance with accounting record keeping requirements was in place, except for those entities that are subject to licensing with the BMA. Bermuda was recommended to ensure that all its appropriate monitoring and enforcement powers were sufficiently exercised in practice to support the legal requirements for the availability of accounting information.

196. Bermuda did not take sufficient measures to address the recommendation mentioned above in the current review period. Therefore, the recommendation given in the 2013 Report remains applicable.

197. After the review period, in March 2017, the Registrar of Companies (Compliance Measures) Act 2017 came into force empowering the Registrar of Companies to monitor and regulate registered entities through inspections and enforcement. The Registrar established a new compliance unit and commenced to exercise its statutory powers. On-site inspections of 30 companies have been completed and additional inspections on the records of 85 companies are expected to be conducted prior to 14 July 2017.

198. During the current review period, Bermuda received 61 requests for accounting information and information was found to be available to reply to all such requests except for one.

199. In relation to that one request, Bermuda was unable to reply to its EOI partner because the liquidator had destroyed the company's books and records immediately after liquidation, following an authorisation given by the Court to proceed in this regard. Bermuda law applicable at the time (Companies Act, section 255 (1) (a) and LLC Act, section 204) provided the court with discretion of determining how long books and records of an involuntarily liquidated company should be maintained following its dissolution and, in practice, the court often determined that such books and records should be destroyed immediately after liquidation. Effective as of 10 March 2017, the Companies Act and the LLC Act were amended to clarify that the records of account of a company or LLC that has been wound up must be kept by the liquidator for five years from the end of the period to which such records of account relate (Companies Act, section 255 (A1) (a) and LLC Act, section 204(A1) (a)). Bermuda is recommended to monitor the implementation of the new legal requirements in practice to ensure that records are kept for a minimum period of five years in all cases.

200. Two other requests that covered accounting information and underlying documentation could not answered because of access issues and are dealt with under Elements B.1 and C.1.

201. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework		
Determination: The element is in place.		

Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice	Except for those entities that are subject to licensing with the BMA, no system of monitoring of compliance with accounting record keeping requirements was in place during the review period, which may cause the legal obligations to keep accounting records to be difficult to enforce. Since then, the Registrar of Companies (Compliance Measures) Act 2017 came into force in March 2017. This Act empowers the Registrar of Companies to monitor and regulate registered entities through inspections and enforcement. The Registrar established a new compliance unit and commenced to exercise its statutory powers.	Bermuda should ensure that all its appropriate monitoring and enforcement powers are sufficiently exercised in practice to support the legal requirements which ensure the availability of accounting information in all cases.

Practical implementation of the standard		
	Underlying Factor	**Recommendation**
	Bermuda's law in force during the review period provided the court with discretion of determining how long books and records of an involuntarily liquidated company should be maintained following its dissolution and, in practice, the court often determined that such books and records should be destroyed immediately after liquidation. This has prevented Bermuda from replying to one EOI request during the review period. Effective as of 10 March 2017, Bermuda's law requires that the liquidator maintain records of account for five years from the end of the period to which such records of account relate.	Bermuda should monitor the implementation of the recently introduced record keeping obligations regarding liquidated companies to ensure that records are kept for a minimum period of five years in all cases.
Rating: Largely Compliant		

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

Companies under the Companies Act and LLCs

202. The 2013 Report noted that every registered company and, since July 2012, every "permit company" (being a foreign incorporated company which is engaged in or carrying on a trade or business in or from Bermuda), is required to keep proper records of account which includes a record of: (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place; (b) all sales and purchases of goods by the company; and (c) the assets and liabilities of the company.

203. Such records are to be kept at the registered office of the company, or such other place. Where that other place is outside Bermuda, then it is required that at the company's registered office in Bermuda such records should be kept which would allow ascertainment "with reasonable accuracy

of the financial position of the company at the end of each three month period". Since June 2011, it was clarified that Bermuda registered companies must keep accounting records and underlying documentation for a minimum period of five years from the date which they were prepared. In addition, a penalty was introduced such that any company and any officer of the company who knowingly contravenes, permits or authorises non-compliance with such obligations is liable, on summary conviction, to penalties of BMU 7 500. These provisions were also introduced with respect to permit companies as of July 2012. In addition, at the time of registration as a permit company, the foreign company must provide to the Minister a certified copy of its latest audited financial statements.

204. The LLC Act provides that LLCs are required to keep proper records of account with respect to its business including, records of account with respect to its assets, liabilities and capital, cash receipts and disbursements, purchases and sales and income, costs and expenses. The records of account shall be kept at the registered office or at such other place as the managers think fit. If the records of account are kept at a place outside Bermuda, there shall be kept at the registered office such records of account as will enable the financial position of the LCC, at the end of each three-month period, to be ascertained with reasonable accuracy. Records must be kept from the date on which they were prepared, for a period of five years. Any LLC manager who knowingly contravenes, or permits or authorises the contravention of the obligation to maintain proper records of account commits an offence and is liable on summary conviction to a fine of BMU 7 500. Bermuda is recommended monitor the compliance by LLCs with the obligations to maintain accounting records and underlying documentation (see Annex 5).

Liquidated companies

205. Effective as of 10 March 2017, Section 255 (A1) (a) of the Companies Act and section 204 (A1) (a) of the LLC Act requires liquidators to maintain the records of account of a company that has been wound up for five years from the end of the period to which such records of account relate. Failure to comply with this obligation would subject the liquidator to a default fine of BMU 500.

206. Previously, the two Acts allowed books and records of a company/LLC being involuntarily wound up and about to be dissolved to be destroyed in the case of a winding up by the Court, in such way as the Court directs. In such cases, the law also provided that no responsibility shall rest on the company, the liquidator or any person to whom the custody of the books and papers has been committed if such persons retain custody of such books and papers for a period of at least two years, commencing on the date of the dissolution of the company. That has impacted Bermuda's ability to obtain information requested by one treaty partner during the review period. The

request referred to information on the identity of account holders/investors in a Bermuda mutual fund company. Bermuda categorised this request as a request for accounting information. In that specific case, the court had authorised the destruction of the liquidated mutual fund company's records immediately after liquidation. This was common practice during the review period because the court often agreed to liquidators' petitions to destroy records to avoid continuous storage costs.

207. Bermuda is recommended to monitor the implementation of the recently introduced record keeping obligations regarding liquidated companies to ensure that records are kept for a minimum period of five years in all cases. In particular, since the fine of BMU 500 for non-compliance with the record-keeping requirements appears to be set at a low level, Bermuda is recommended to monitor whether this fine is dissuasive enough to promote compliance.

Partnerships

208. All partnerships, i.e. all exempted partnerships, limited partnerships, general partnerships and overseas partnerships, are subjected to the same accounting and bookkeeping requirements under their respective governing legislation. Such requirements were only introduced in relation to limited partnerships and general partnerships from June 2011 and in relation to overseas partnerships, from July 2012. Every partnership is required to keep proper records of accounts at its registered office in Bermuda, or another place. "Proper records" are defined to include records of account with respect to the partnership's assets, liabilities and capital, cash receipts and disbursements, purchases and sales and income costs and expenses. Where the records are kept at a place outside Bermuda, the relevant partnership is required to keep at the registered office in Bermuda such records which would allow ascertainment "with reasonable accuracy" of the partnership's financial position at the end of each three month period. Legislative amendments made in June 2011 clarified that all partnerships are required to keep records of account for five years. Since June 2011, in respect of exempted partnerships, general partnerships and overseas partnerships, any partner who knowingly contravenes, permits or authorised the contravention with this obligation is guilty of an offence and liable to a fine of BMU 7 500 on conviction. The same penalty applied to the general partner of a limited partnership who does not keep records of account for a period of at least five years.

Trusts

209. In respect of accounting records pertaining to trusts, the Trustee Act 1975, as amended in July 2012, provides that professional trustees (whether licensed or exempt) are required to keep or to cause to be kept accurate trust

accounts and records (including underlying documentation) including records of account with respect to the trust's assets; liabilities; additions to trust and distributions, purchases and sales; and income and expenses. Records of accounts are required to be kept for five years. Any trustee who knowingly and wilfully contravenes, permits or authorises the contravention with this obligation is guilty of an offence and liable to a fine of BMU 7500 on conviction. The obligation in respect of keeping accurate trust accounts and records rests with the trustee. Either trustees must keep such records themselves or put in place suitable arrangements with appropriately contracted service providers who will keep such records on their behalf. Either way, the obligation rests with the trustees, and the penalties for any contraventions apply to the trustees.

210. Guidance on the maintenance of financial records by licensed trustees is set out in the Code of Practice and Statement of Principles made pursuant to the Trusts Regulation Act. Whilst not binding, the Code of Practice and the Statement of Principles outline best-practice standards on the maintenance of financial records. Clause 7.6 of the Code provides:

> Licensed undertakings must keep and preserve appropriate records in Bermuda which will at least include such records as are appropriate for their functions, as required by any applicable law and as will enable the provision of information, to persons interested in trusts and entitled to the information, on a timely basis. This should include … trust accounts or records which would enable trust accounts to be drawn up. …. Financial records must be maintained so as to permit a thorough and satisfactory supervisory activity and to permit the performance of trust audits as pre-arranged.

211. Under the common law all trustees are subject to an obligation to ensure that records and accounts are prepared and maintained for a reasonable period of time to ensure that the trust is properly managed. Bermuda authorities confirmed that the common law requirements are those principles as set out under English common law. It is a well-established principle of English common law that it is the "duty of a trustee to keep clear and distinct accounts of the property he administers, and to be constantly ready with his accounts".[13] Such accounts should be open for inspection at all times by the beneficiary and should trustees default in rendering such accounts, the beneficiary is entitled to have the accounts seized by the court. In such instances trustees would be held liable for paying the costs of such an order and in

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

certain cases may also be removed. Furthermore where trustees are found guilty of active breaches of trust or wilful default or omission, they may be held personally liable for any loss.[14]

Licensed entities

212. Licensing requirements are imposed on certain industry sectors (insurance, investment, bank and deposit taking institutions, money service providers and trust businesses). These requirements impose additional obligations in respect of accounting information. The Licensing Acts[15] are supplemented by regulations as well as guidance found variously in Statements of Principles, Codes of Conduct and Guidance Notes. Whilst some obligations in respect of accounting information vary according to the license types, there are some general themes and obligations which are set out below.

213. The Licensing Acts place "minimum criteria" on applicants and license holders including that the licensed business be conducted in a "prudent manner". In respect of accounting information, the minimum criteria provide (or in words to this effect) that:

> A registered person shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.

214. Further clarification of the minimum criteria obligations is set out in industry-specific guidance issued in respect of each of the licensed sectors. For example, in respect of the insurance sector, clause 2.5 of the Statement of Principles to the Insurance Act 1978, provides in respect of the minimum criteria that:

> …the records and systems must be such that the registered person is able to fulfil the various other elements of the prudent conduct criterion and to identify threats to the interests of policyholders and potential policyholders. They should also be sufficient to enable the registered person to comply with the applicable notification and reporting requirements under the Act. Thus, delays in providing information or inaccuracies in the information provided will call into question the fulfilment of the requirement.
>
> The nature and scope of the particular records and systems which a registered person should maintain should be commensurate with

14. Lewin on Trusts 17th Edition, p. 627, 1198 and 1199.
15. See the list of key licensing legislation in *Licensed Entities* above.

> its needs and particular circumstances, so that its business can be conducted without endangering its policyholders and potential policyholders. In judging whether an institution's records and systems are adequate, the Authority has regard to its size, to the nature of its business, to the manner in which the business is structured, organised and managed, and to the nature, volume and complexity of its transactions. The requirement applies to all aspects of a registered person's business, whether on or off balance sheet, and whether undertaken as a principal or as an agent.

215. Banks, insurance firms, investment businesses and licensed trust businesses are required to file annual financial statements with the BMA, with an exception for investment providers who do not hold client assets. Banks, insurance firms, investment businesses and licensed trust businesses are also required to appoint an approved auditor to audit their financial statements. These auditors have a statutory obligation to report any matters of concern to the BMA.

AML obligated persons

216. The regulatory regime applicable to AML obligated persons provides another layer of record-keeping obligations in particular in relation to transaction records. Most persons conducting business in or from within Bermuda will have some involvement through either a one-off transaction or ongoing business relationship with a AML obligated person, and in each of those instances, the relevant accounting record obligations on AML obligated persons will be triggered.

217. The record keeping requirements set out in the AML/ATF Regulations include retaining CDD evidence and the "supporting evidence and records" in respect of the matters the subject of the CDD measures. AML obligated persons are required to retain records, including accounting records, for a period of 5 years from the end of the business relationship or the date of the transaction. Administrative fines, of up to BMU 500 000, are imposed for failure to comply with requirements under the AML/ATF Regulations, including for failure to comply with record-keeping obligations.

Oversight and enforcement of requirements to maintain accounting records

218. In terms of oversight of the compliance with the accounting obligation, the situation remains the same as described in the 2013 Report: there is no requirement to file accounting records with any government authority, with the exception of certain licensed entities which are required to submit annual accounts to the BMA as their regulator (see below).

219. During the review period, the Registrar did not carry out spot-checks, or had in place any other system of monitoring, with regard to the maintenance of accounting records and underlying documentation by entities. Investigations could be undertaken in light of reported suspicion. No fines have been imposed in the period under review for failure to comply with account record keeping obligations.

220. Since March 2017, with the entry into force of the Registrar of Companies (Compliance Measures) Act 2017, the Registrar has been empowered to monitor and regulate registered entities through inspections and enforcement. The Act provides the Registrar with powers to request and inspect records of account required to be kept by registered entities under the Companies Act, the Limited Liability Company Act, the Partnership Act, the Exempted Partnerships Act, and the Limited Partnership Act. The Registrar has commenced to implement these new statutory powers with the establishment of the compliance unit. The compliance unit has completed on-site visits of three service providers (out of a total of 91) which represent a total of nearly half of Bermuda registered entities. During the inspections, accounting records of a total of 30 companies were inspected. Eighty percent of the companies (24 of 30) were fully compliant with the requirements for maintaining proper books and records of account. Three of the remaining companies were found to be partially compliant, and three companies were found to be non-compliant. These six companies will be subject to further investigation, followed by remediation and fines if warranted. Going forward, the compliance unit will perform outreach to Bermuda's business community to promote awareness of the recordkeeping and reporting requirements for registered entities as well as awareness of the statutory powers of the Registrar under the Act. The Compliance Unit anticipates performing additional on-site inspections to verify the records of at least 85 companies prior to 14 July 2017.

221. Entities licensed and regulated by the BMA (i.e. banks, insurance firms, investment businesses, money service providers and licensed trust businesses) are required to submit audited annual accounts except for investment providers who do not hold client assets. The BMA generally relies upon the review of the licencees' auditors to confirm the quality of their accounting records. The BMA could examine financial records in its on-site inspection of the regulated entities. Licensed entities only form a limited subset of all commercially registered companies and partnerships in Bermuda, which totals over 16 000 entities. In comparison, as at the end of 2016, there were 1 261 registered insurers, 567 registered investment funds, 29 licensed trust businesses and 4 licensed banks in Bermuda. Accordingly, Bermuda should ensure that all its appropriate monitoring and enforcement powers are sufficiently exercised in practice to support the legal requirements which ensure the availability of accounting information in all cases.

222. The BMA advises that during the review period it conducted on-site examinations (either AML supervision or prudential reviews or jointly) on all trusts companies to ensure they meet their obligations including maintaining records concerning customers' transactions. Similarly, the Barristers and Attorney's AML Board advises they reviewed the policies and procedures regarding record-keeping of all professionals (law and accounting firms) providing services to legal entities and arrangements. The BMA has not conducted inspection of the records retained by corporate service provides as they have not been licensed yet. It is noted that the record-keeping requirements under AML are primarily transaction-based and may not be sufficient to identify, for instance, the financial position of the customer as well as some transactions that do not involve the service provider.

Availability of accounting information in practice

223. The 2013 Report indicated that in the 2009-11 review period, Bermuda received six EOI requests in relation to accounting information relating to companies only. The number of requests for accounting information has grown considerably since the last review. During the current review period, Bermuda received 36 requests for accounting information relating to companies and 25 in relation to individuals.

224. In relation to one request, Bermuda was unable to reply to an exchange of information request because the liquidator had destroyed the company's books and records immediately after liquidation following the authorisation of the court (see earlier in this section). The request referred to the clients/investors in a mutual fund company and Bermuda classified this request as a request for accounting information.

A.3. Banking information

Banking information should be available for all account-holders.

225. The 2013 Report concluded that element A.3 was in place and Compliant. The combination of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (AML/ATF Regulations) and the licensing requirements for financial institutions imposed appropriate obligations on banks and deposit companies to ensure that all records pertaining to accounts as well as related financial and transactional information are available. All requests for banking information had been answered.

226. The legal framework concerning the availability of banking information remains unchanged since the last review. In the current review period, Bermuda replied to all 37 requests for banking information to the satisfaction of its treaty partners, as confirmed by peer input.

227. The EOIR standard now requires that beneficial information in respect of accountholders be available. In this regard, the AML law in Bermuda generally contains appropriate legal requirements. One issue has been identified in relation to the identification requirements related to beneficiaries of a trust where a trust has a customer relationship with a bank in Bermuda. Banks are required to identify natural persons who ultimately own or control a trust as part of their customer due diligence measures. However, they are not required to identify all of the beneficiaries of a trust as required under the standard. Instead, banks must identify only individuals who are entitled to a specified interest in at least 25% of the capital of the trust property. Bermuda should ensure that banks are required to identify all of the beneficiaries of trusts as required under the standard.

228. The compliance by banks of the requirements to maintain beneficial ownership information of their accountholders has been the subject of supervision and enforcement by the BMA.

229. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	Banks are required to identify individuals who ultimately own or control a trust as part of their customer due diligence measures. However, they are not required to identify all of the beneficiaries of a trust as only individuals who are entitled to a specified interest in at least 25% of the capital of the trust property must be identified.	Bermuda should ensure that banks are required to identify all of the beneficiaries (or class of beneficiaries) of trusts which have an account with a bank in Bermuda as required under the standard.
Determination: The element is in place		
Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant.		

ToR A.3.1: Record-keeping requirements

230. Banking institutions must under section 14 of the Banks and Deposit Companies Act 1999, meet the "minimum criteria" set out in Schedule 2 to that Act. This includes that they be "fit and proper" persons, that minimum net asset thresholds are maintained, that the business is effectively directed by at least two individuals, and that the business be conducted in a "prudent manner". Clauses 4(7) and 4(8) of the minimum criteria provide that

> (7) An institution shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will maintain adequate accounting and other records of its business and adequate systems of control of its business and records.
>
> (8) Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the institution to be prudently managed.

231. Guidance on the minimum criteria is set out in the Statement of Principles to the Banks and Deposit Companies Act 1999, which provides inter alia that:

> … the records and systems must be such that the institution is able to fulfil the various other elements of the prudent conduct criterion, and to identify threats to the interests of depositors and potential depositors. …. Thus delays in providing information, or inaccuracies in the information provided, will call into question the fulfilment of the requirement of subparagraphs 4(7) and 4(8).
>
> The nature and scope of the particular records and systems which an institution should maintain should be commensurate with its needs and particular circumstances, so that its business can be conducted without endangering its depositors and potential depositors.

232. Moreover, Regulation 13 of the AML/ATF Regulations set out certain specific requirements on banking institutions, including that a banking institution:

- Shall not enter into or continue a banking relationship with a shell bank, or knowingly with a bank which permits its accounts to be used by a shell bank (where a shell bank is an institution carrying on banking activities which are unregulated and has no meaningful physical presence in the jurisdiction of its incorporation);
- Shall not set up an anonymous account or pass book for any new or existing customer;
- Shall as soon as possible apply CDD measures and ongoing monitoring of existing anonymous accounts or passbooks.

233. Regulation 15 of the AML/ATF Regulations requires AML obligated persons including banks and other financial institutions to maintain customer identity information as well as supporting evidence and records in respect of business relationships and transactions undertaken by their clients for five years beginning on the date the business relationship ends, or the date from an occasional transaction. In cases where the relevant person has been notified by a police officer in writing that an investigation is being carried out, the records must be kept pending the outcome of the investigation. In the case of reliance the person who is being relied on must keep the records for five years beginning on the date of the reliance. Chapter 8 of the Guidance Notes on AML/ATF expands on the requirement in regulation 15, and in respect of information relevant to account-holders, provides at clause 8.16 that:

> All transactions carried out on behalf of or with a customer in the course of relevant business must be recorded within the institution's records. Transaction records in support of entries in the accounts, in whatever form they are used, e.g. credit/debit slips, cheques, should be maintained in a form from which a satisfactory audit trail may be compiled where necessary, and which may establish a financial profile of any suspect account or customer.

234. The combination of the AML/ATF Regulations as well as the regulatory regime for licensed financial institutions ensures that all records pertaining to accounts as well as related financial and transactional information is available.

235. The Bank and Deposit Companies Act provides for administrative fines of up to BMU 500 000 per fault on every person who fails to comply with any requirements under this Act (section 49A). Failure to satisfy the minimum criteria for licensing could also lead to a restriction or revocation of a bank's license (sections 17 and 18). Furthermore, non-compliance with AML/ATF Regulations in relation to the conduct of CDD and retention of records are subjected to a fine of BMU 50 000 on summary conviction, or to either or both a fine of BMU 750 000 and imprisonment for up to 2 years on indictable conviction (regulation 19) or to a civil sanction of up to BMU 500 000 for breach of regulations (section 20 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.

Beneficial ownership information on account holders

236. The 2016 ToR specifically require that beneficial ownership information be available in respect of all account holders. In this regard, as described under section A.1.1 of this report, banks are required to undertake customer due diligence, on-going monitoring and record keeping in circumstances including one-off transactions and ongoing business relationships.

237. "Customer due diligence measures" are defined in regulation 5 as meaning:

- Identifying the customer, and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;
- Identifying, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures on a risk-sensitive basis, to verify his identity so that the relevant person is satisfied that he knows who the beneficial owner is, including in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement; and
- Obtaining information on the purpose and intended nature of the business relationship.

238. Regulation 5 further provides that CDD measures, in the case of a legal entity, include identifying and verifying the identity of a natural person (either customer, beneficial owner, person of control or ownership) by some means and, where no natural person has been identified, identifying a relevant natural person holding the position of a chief executive; or a person of equivalent or similar position.

239. The AML/ATF Regulations define "beneficial ownership" in regulation 3. Specific definitions are provided for body corporates, partnerships and trusts. They all include the identification of individuals that ultimately owns or controls the legal entity or arrangement. A minimum ownership threshold of 25% is provided in certain circumstances:

- Body corporates (such as companies) other than a company whose securities are listed on an appointed stock exchange: beneficial owner means any individual who (i) ultimately owns or controls (whether though direct or indirect ownership or control, including through bearer share holdings) more than 25% of the shares or voting rights in the body corporate; or (ii) otherwise exercises control over the management of the body;
- Partnerships: beneficial owner means any individual who (i) ultimately is entitled to or controls (whether the entitlement or control is direct or indirect) more than a 25% share of the capital or profits of the partnership or more than 25% of the voting rights in a partnership; or (ii) otherwise exercises control over the management of the partnership.
- Trusts: beneficial owner means (i) any individual who is entitled to a specified interest in at least 25% of the capital of the trust property;

(ii) as respects any trust other than one which is set up or operates entirely for the benefit of individuals falling within item (i) above, the class of persons in whose main interest the trust is set up or operates; (iii) any individual who has control over the trust; (iv) the settlor of the trust.

240. As noted above with respect of trusts, banks are only required to identify individuals who are entitled to a specified interest in at least 25% of the capital of the trust property. This is inconsistent with the standard which requires that all of the beneficiaries of the trust be identified irrespective of a specific threshold or controlling influence. Therefore, Bermuda is recommended to ensure that banks are required to identify all of the beneficiaries (or class of beneficiaries) of the trust. Bermuda advises although the regulations set the threshold at 25% of persons who have an interest in the trust capital, in practice, as a risk based policy, banks obtain information on all persons who have an interest in the trust capital as beneficiaries of a trust which has an account with a Bermuda licensed bank.

241. Ongoing monitoring includes maintaining up to date customer identity information and monitoring transactions to determine whether they are apposite to the customer's business and risk profile. The BMA's Guidance outlines the use of a risk-based approach to ongoing monitoring. In practice, the BMA has advised regulated entities that high risk customer should be monitored annually, medium risk every 12-24 months, and low risk every 24-36 months

242. The record keeping requirements set out in Part 3 of the AML/ATF Regulations include retaining CDD evidence, and the "supporting evidence and records" in respect of the matters the subject of the CDD measures. Guidance on what specific evidence and records must be kept is set out in the AML/ATF Guidance Notes, which whilst non-binding, must, under regulation 19, be taken into account by a court in determining whether an offence relating to non-compliance with the AML/ATF Regulations has been committed.

243. Under regulation 14, an AML obligated person may rely on certain third parties to undertake the required CDD measures as well as ongoing monitoring; however, the AML obligated person remains liable for any failure to apply such measures. Moreover, notwithstanding the AML obligated person's reliance on the other person, the AML obligated person must immediately obtain information sufficient to identify customers; and must satisfy itself that reliance is appropriate given the level of risk for the jurisdiction in which the party to be relied upon is usually resident. Where a third party is relied on, the obligation to retain records for a period of five years is imposed on the third party, rather than the AML obligated person (Regulation 15(4)). In practice, the BMA verifies compliance with reliance arrangements as part

of on-sites and off-site inspection of regulated entities. In this process, the BMA identifies any risks with reliance by regulated entities, which is monitored. If there is an issue with compliance, sanctions will be imposed on the Bermuda regulated entity and the BMA advised that it will reach out to the jurisdiction where the relied upon service provider is situated for assistance and compliance actions where appropriate.

Enforcement provisions to ensure availability of banking information

244. Bermuda's banking sector is formed of four banks. They are supervised by the BMA and subject to on-going supervision on their compliance with AML requirements, including the requirements to identify the beneficial owner of their customers.

245. During the peer review period, three of the four banks were subject to an AML focused on-site inspection. Desk-based reviews are done as part and parcel of on-site reviews of banks. Therefore, there were three desk-based reviews performed during the peer review period. A desk based review on the fourth bank commenced later in 2016 along with the on-site.

246. The on-site reviews use a risk based approach to selecting files so that higher risk files are the subject of more reviews. Where failings are apparent, additional files may be selected to confirm any findings. In general, deficiencies identified in the review of files included inability to access some of the verification documents supporting the identification of beneficial owners because of a lost password on an encrypted file. The BMA requested that remediation actions were taken and this will be followed-up in the next inception. One licensed bank was fined BMU 250 000 in civil penalties in 2016 relating to AML/ATF breaches.

247. Concerning the reliance of third party's due diligence, in practice, Bermuda authorities advise that considering the risks involved for the banks, they will perform their own independent due diligence despite the provisions in the AML framework that would allow them to rely on third party due diligence under regulation 14.

248. Banks and other financial institutions are also the main entities submitting suspicious activities reports (SARs) in Bermuda. The table below summarises the SARs filed in years 2013 to 2016 (up to 8 December 2016) and illustrates that banks and other financial institutions have been attentive to suspicious activities identified in the course of CDD or other obligations:

	2013	2014	2015	2016
Total SARs filed	373	331	447	449
SARs filed by banks	217	234	305	231

Availability of bank information in practice

249. The 2013 Report found that Bermuda had successfully responded to all of its requests for banking information in the period 2009-11. In the current review period, the 37 requests for banking information received by Bermuda were replied to the satisfaction of its treaty partners.

Part B: Access to information

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

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

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

251. The 2013 Report found that Bermuda's competent authority had appropriate powers to access information for responding to EOI requests and those powers were exercised in an efficient manner. The competent authority's access to information was based on a comprehensive power to issue notices to the holders of information. During the previous review period, Bermuda's competent authority successfully used its information gathering powers in order to obtain a wide range of information from banks, service providers and other third parties as well as another government authority.

252. In the interim, there have been substantial changes in the procedure to access information in Bermuda, which, since December 2013, requires a court issued production order. This procedure has been applied in order to reply to most requests received during the present review period and proven to allow the competent authority to access information in a timely manner.

253. There have been a number of cases where persons have sought judicial review in Bermuda against the Bermuda's competent authority or filed appeals against exchange of information. The decisions by Bermuda's courts have generally confirmed the adequacy of Bermuda's exchange of information powers. Moreover, additional amendments to clarify and/or strengthen such powers have been made during the review period.

254. In the current review period, Bermuda received 77 requests and information has generally been adequately accessed from Bermuda entities and arrangements, service providers, banks and government agencies.

255. The new table of determinations and ratings is as follows:

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

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

256. The 2013 Report found that Bermuda's competent authority powers to obtain relevant information were consistent regardless of the information holder from whom the information is to be obtained, for example a bank, other financial institution, company, trustee or individual; or whether the information to be obtained is ownership, identity, bank or accounting information. Those powers involved the issuance of a notice to the holder of the information. The issuance of a notice was based on an executive decision of the Minister of Finance subject to judicial review. The powers to issue EOI notices were supported by sanctions for non-compliance, although no sanctions had to be applied in practice during the 2009-11 review period (see 2013 Report, paras. 201-222 for more detail).

257. Bermuda's relevant information gathering powers are contained in legislation which deals solely with implementing Bermuda's obligations pursuant to its EOI agreements: the International Cooperation (Tax Information Exchange Agreements) Act 2005 (the "International Cooperation Act") and the USA Bermuda Tax Convention Act 1986 (the "USA-Bermuda Act"), when referenced together, the "EOI Acts".

258. Since the 2013 Report, the EOI Acts have been amended at five different occasions to clarify and strengthen Bermuda's access powers, in particular in view of litigation in Bermuda's courts concerning the disclosure of EOI requests (please see more details below in this section and in element C.3).

259. In December 2013, Bermuda's access powers were modified and since then they involve a judicial process. Pursuant to this process, Bermuda's Financial Secretary (or the Assistant Financial Secretary) must apply to the Supreme Court for a production order to be served upon the information holder, requiring the information holder to produce the information requested by Bermuda's EOI partner (section 5(1) of the International Cooperation Act

and section 5(1) of the USA-Bermuda Act, as amended). The Supreme Court is the second instance court in Bermuda, and their decisions can be appealed to the Court of Appeals, the court of third instance.

260. Under the EOI Acts, the Supreme Court may issue the production order if it is satisfied that (i) the conditions of the applicable agreement relating to a EOI request are fulfilled; or (ii) where the court is satisfied with the Minister's decision to honour a request in the interest of Bermuda (s. 5(2) of the International Cooperation Act and section 5(2) of the USA-Bermuda Act).

261. With regard to the first circumstance, the court must be satisfied that the request meets the conditions of the applicable EOI instrument (i.e. that the request meets the foreseeably relevant standard). A decision from the court further explains the court's task in this context:

> "68. (…) The legislative steer of section 5(2) of the 2005 Act is that, where the Court is satisfied that the conditions of the applicable TIEA have been fulfilled, it should make a production order. The courts in this jurisdiction have consistently demonstrated a willingness to do so.
>
> 69. However, the court does not apply a rubber stamp. A production order imposes obligations upon the person on whom it is served. (…) The potentially serious consequences of non-compliance underline that is important for the court, before making a production order, to satisfy itself that the requirements for doing so have been satisfied."[16]

262. Concerning the second circumstance provided by the law, in one case, a court decision considered in passing that a decision to honour a request "in the interest of Bermuda" when the foreseeable relevance standard would not have been met would not be lawful in Bermuda: "It is extremely doubtful whether a decision to honour a request on that basis would be lawful. Bermuda does not have any treaty obligation to honour a request that does not comply with the applicable TIEA."[17]

263. Therefore, Bermuda's laws ensure that the Bermuda competent authority can assist to gather information to respond to requests that meet the conditions of the applicable EOI instrument, as required under the standard. The possibility of Bermuda assisting where the foreseeable relevance standard would not have been met is unclear, as this could be considered unlawful by the courts.

16. Supreme Court of Bermuda, 2014: Nos. E, F and H, paras. 68 and 69.
17. Idem, para 65.

264. The Financial Secretary's application to the court production order may be made *ex parte* and in camera (section 5(5) of the International Cooperation Act and section 5(6) of the USA-Bermuda Act). That means that the information holder or the taxpayer would not be invited to take part of the proceeding in such cases.

265. The court production order will require the information holder to deliver the requested information to the Minister (or give access to such information to the Minister) within, as a rule, 21 days (section 5(2) of the International Cooperation Act and section 5(1A) of the USA-Bermuda Act). The court may decide on its own initiative or based on a request of the Financial Secretary to grant a longer or shorter period for the information holder to produce the information.

266. If the information holder is aggrieved by the service of the order, he or she may seek review of the order within 21 days of the date of the service of the order (section 5(6) of the International Cooperation Act and section 5(7) of the USA-Bermuda Act). Concerning the possibility of the information holder having access to the exchange of information request, those circumstances are detailed in element B.2 below.

267. The 2013 Report noted that the USA-Bermuda Act contained additional requirements for the issuance an EOI notice to obtain information to assist with an EOI request. Under the current production order system, such additional requirements remain in place (section 5 (2) and (4)). Peer input did not indicate concerns in relation to such requirements.

In practice

268. The production order procedure has generally worked very efficiently in practice. This procedure was used to reply to most requests during the review period. The cases are handled by Bermuda's commercial court of the Supreme Court and production orders have been issued diligently, in around seven to fourteen days from the date of application in the great majority of cases. Production orders have been issued in all instances where requested; sometimes following requests for clarifications from the court. In one instance, the production order was discharged and in another instance it was varied (those cases are dealt with later in this section). All applications by the Financial Secretary/Assistant Financial Secretary are made *ex parte* and the information holder/taxpayer do not participate in the court proceedings.

269. Under the production order process, the review of the validity of the request is done in a two-step process – first by the competent authority, second by the judge of Bermuda's Supreme Court. In a few cases, the judge has requested further clarification or information to the Financial Secretary before issuing the order to verify whether the standard of foreseeable

relevance has been met or when the requests were unclear (most likely due to translation issues). In those instances, the competent authority provided the required information sometimes after consulting the requesting jurisdiction. The competent authority considers that the clarifications requested by the court were reasonable and were helpful to ensure that the background of the request or the information that was being requested was correctly understood.

270. In some cases, the information holder/taxpayer appealed to the court after receiving the production order. Those cases are dealt under section B.2 of this report.

271. Bermuda's competent authority does not need to request a court production order to obtain information from other government authorities in Bermuda, as co-operation is done on the basis of a simple request from the competent authority. Government authorities holding relevant information for EOI include: the BMA (e.g. for ownership information); (ii) the Registrar of Companies (e.g. for information on a legal entity's registered address and local representative); (iii) the Bermudian Immigration Department (for information on foreign individuals, including their real estate purchases); (iv) the Tax Commissioner (e.g. information on payroll tax).

272. Once the court issues a production order, a member of the EOI unit will personally serve the order upon the information holder. In practice, information holders are given a 21-day period to respond. It is rare that information holders fail to respond within the deadline or apply for extensions. When they fail to respond, enforcement actions are applied as further detailed in this section. Extensions have been granted in situations of very voluminous requests (e.g. a request involving information on 195 persons). In that case, information is normally collected in batches and exchanged as the batches are received from the information holder.

273. During the period 2009-11, Bermuda did not have any difficulty obtaining information, either from financial institutions or otherwise. During the current review period also, Bermuda generally had no difficulties to obtain information from financial institutions or other information holders.

274. In two instances during the current review period (Supreme Court of Bermuda (Appellate Jurisdiction) 2015:2 Cadilly Consultants Limited vs. The Queen and Supreme Court of Bermuda, 2014: Nos. Y and Z), persons attempted to claim that they would not be required to provide information because the information was not in their possession. In both cases, the court determined that the information was in the persons' control and as such they were required to be provided under the EOI Acts. The person eventually supplied all the requested information.

275. In one case, Bermuda's Supreme Court has discharged a production order based on the grounds of material non-disclosure (Supreme Court of

Bermuda 2014: Ap of 2015, confirmed by Court of Appeal for Bermuda, Civil Appeal Ap of 2015) and as a result the information could not be collected. In that case, the court considered that relevant facts had not been disclosed to the court in the application to the production order – i.e. that a significant amount of information that was being requested had already been provided to the same EOI partner under a previous request made in 2012 and that the EOI partner had issued a ruling dropping the income reassessment. Bermuda's competent authority advised that, since this case, it made further improvements on its EOI database and is now able to check, at the time it receives a request, whether information has been requested about the same person or from the same information holder. In this way, the competent authority can follow-up more quickly with the requesting jurisdiction if there are issues of duplication as well as provide full facts to the court. Moreover, there is no impediment for the requesting jurisdiction to re-send the request adding some background information on the foreseeable relevance of the information considering the particular facts of the case. Finally, the EOI Acts were amended effective as of 23 February 2017 to make it crystal clear in law that the competent authority, when filing for an application for a production order, is not required to verify the statements made by the requesting jurisdiction in the EOI request.[18]

276. In another case (Supreme Court of Bermuda 2016: No. AA1), the production order was varied on the grounds of material non-disclosure to exclude the requirement to provide information on certain transactions that took place prior to the period under investigation by the requesting jurisdiction. In that case, the taxpayer also informed that the foreign competent authority had requested information from it days after making the request and that the information had been promptly supplied. The judge added in its judgement that if the foreign jurisdiction would nonetheless still require the supply of the information from transactions that could place before its investigation period, that it was open to make a fresh application, assisted by an explanation of the information's foreseeable relevance.

277. Other cases that triggered dispute in court are described in section B.2.

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

278. Bermuda's information gathering powers are specifically made for the implementation of EOI agreements entered by Bermuda. These powers are not curtailed by any requirement that the power may only be exercised

18. The International Cooperation (Tax Information Exchange Agreements) Amendment Act 2017 and the USA Bermuda Tax Convention Amendment Act 2017.

where there is a domestic tax interest. There are presently no domestic income taxes imposed by Bermuda. No issues concerning domestic tax interest have arisen during the 2009-11 period or the current review period.

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

279. It is an offence under section 9 of the International Cooperation Act for the recipient of a production order to fail without reasonable excuse to provide the information, to tamper or alter the information, or to destroy or damage information which they have been directed to provide. A person convicted of such an offence is liable under section 9(4) to a custodial sentence not exceeding 6 months; a fine not exceeding BMU 10 000; or both. Similar sanctions are contained under the USA Bermuda Tax Convention Act, but with a lower level of maximum imposable fine of BMU 5 000 (section 9(4)). In addition, where the person convicted of an offence is a licensed Service Provider, this may affect their license where one of the minimum criteria for license-holders is compliance with all Bermuda laws. The Bermuda authorities confirmed that any such breach would be informed on behalf of the Minister to the BMA.

280. Bermuda authorities also indicated that, in practice, if an extension is sought by the information holder, he/she would have to provide justification and evidence as to why such extension of time is necessary. Cases where extensions have been granted included situation where requested covered a great number of records for dozens of persons. In very few cases extensions have been requested and granted in Bermuda.

281. Failure to comply with an EOI production order is a criminal offence, accordingly, prosecution could be initiated by the Bermuda authorities against the non-compliant person. In such instance, the Bermuda competent authority would, together with the Financial Crime Unit and the Attorney General Chambers, prepare a criminal complaint which would be considered and brought by the Department of Public Prosecution. Where prosecution proceedings are initiated, it is expected that these would generally be concluded within six months of the raising of a formal complaint by the Bermudian competent authority.

282. Bermudian authorities have powers to search and seize information, with the approval of a judge, when information is requested under any of Bermuda's EOI agreements, pursuant to section 6 of the USA Bermuda Act (in relation to information requested under the USA-Bermuda EOI Agreement) or pursuant to section 6A of the International Cooperation Act (in relation to information requested under any of Bermuda's other EOI agreements).

283. During the 2009-11 review period, no person failed to comply with an EOI notice; and, therefore, no prosecutions had been registered or fines imposed. During the current review period, in at least two instances, the information holder failed to comply with a production order.

284. In one case,[19] after an initial warning to the information holder, Bermuda's competent authority applied to the court for a writ of sequestration against the property of the information holder by reason of contempt in wilfully disobeying the order. While the sequestration proceeding was on-going, the information holder delivered all required documentation, complying with the production order. The information holder was condemned to pay the competent authority's costs. In its decision, the court noted that:

> It is in the public interest that Bermuda complies with its obligations under TIEAs in a timely manner, both to assist requesting States and to maintain and enhance its reputation in the sphere of international tax enforcement. The Company's laggardly approach tended to frustrate this important public interest.

285. In another case, the information holder complied with the production order after being fined and filed an appeal against the application of the fine in such circumstances (Supreme Court of Bermuda (Appellate Jurisdiction 2015:2 Cadilly Consultants Limited vs. The Queen). In that case, the Supreme Court upheld the application of the fine and only granted a modest reduction on its amount considering that the information holder had eventually supplied the information.

286. In that decision the judge noted an anomaly in the International Cooperation Act in that an individual who commits an offense under section 9 can be both fined and imprisoned but a company can only be fined. The International Cooperation Act does not contain a provision which allows the prosecution of a director, manager, secretary or other similar officer of a company for certain offences committed by the company.

> The Legislature may wish to consider increasing the maximum fine under the 2015 Act to a level that is more likely to have a real deterrent effect. On the other hand, it is important to keep a sense of proportion. The recipients of production order do generally comply with them. There is not an epidemic of non-compliance needing to be stamped out.

287. Threats of prosecution and preparatory steps for potential prosecution were taken in one instance. In such case, the matter was ultimately resolved without the need for prosecution.

19. Supreme Court of Bermuda, 2014: Nos. Y and Z.

ToR B.1.5: Secrecy provisions

288. There are no secrecy obligations imposed by statute in Bermuda including in respect of bank information or identity, ownership or accounting information concerning companies, partnerships, trusts or any other entity or arrangement. Where common law obligations of confidentiality apply, a person is protected by way of an absolute defence to any claim brought against the person for acts or omissions done by him/her in good faith in complying with the production order (section 7 of the International Cooperation Act and section 5(1)A of the USA-Bermuda Act).

289. With respect to the legal profession, the scope of confidentiality or legal professional privilege in Bermuda is primarily based upon English common law principles and encompasses both advice privilege and litigation privilege. Advice privilege applies to confidential communication between a lawyer in his/her professional capacity with his/her client which is made for the purposes of seeking or giving legal advice. The advice given must be directly related to the lawyer's performance of his/her professional duty as the client's legal adviser rather than just as a "man of business" (Three Rivers DC v Bank of England (No. 6), [2005] 1 AC 610). Litigation privilege applies to all confidential documents created primarily for the purpose of ongoing or anticipated litigation.

290. The possibility to decline a request on the basis of the information being protected by legal professional privilege is also included in section 4(2)(d) of the International Cooperation Act.

291. The 2013 Report raised a concern that of having the Attorney General Chambers advising against the issuance of EOI notices in circumstances where the Chambers concluded that legal professional privilege may could be validly claimed. The 2013 Report noted that Attorney General Chambers would not be in a position to assess with certainty whether legal professional privilege may be validly claimed as they would not be not privy to a particular client-attorney relationship and, as such, would not possess the information to enable it to evaluate whether a piece of communication containing the information requested by the Minister is confidential or otherwise. During the current review period, the Bermuda's authority changed its practices and would always request the issuance of a production order. It is then for the information holder to claim legal privilege or not and the matter is then to be decided by the courts.

292. In one only instance during the review period legal professional privilege was claimed in Bermuda (Supreme Court of Bermuda 2014: No. Ap of 2015). Although the case was decided on different grounds, the judge agreed with the information holder's claim that some materials requested to be produced were covered by legal professional privilege and as such would not be required to be produced.

293. In relation to one request, Bermuda did not reply to inquiries for accounting information. Bermuda explained that in that case the requesting jurisdiction had asked Bermuda's competent authority to provide the information that was held by the BMA as regulator of the insurance sector, and not to contact the taxpayer for obtaining the requested information, as it believed this could undermine its investigation. Bermuda explained that the Multilateral Memorandum of Understanding (MMOU) with the International Association of Insurance Supervisors (IAIS) entered by the BMA prevents it from sharing the requested information with non-regulators. The competent authority did not seek to serve a production order upon the BMA in this case. The requesting jurisdiction agreed with Bermuda that under similar circumstances it would not force one of its insurance regulators to lift the confidentiality rules provided the international rules of the IAIS and that therefore there was agreement between the parties not proceed to force the Bermuda insurance regulator to break with the international standard of the IAIS MMOU. Bermuda advised that if the treaty partner had advised that it would force its insurance regulators to lift the confidentiality rules provided the rules of the IAIS under similar circumstances, Bermuda would have collected the information and a production order would not be required in such a case, as the BMA is an agent of the Minister of Finance and the Minister could give written directions for the BMA to co-operate in such a case as per the BMA Act (s. 21).

B.2. Notification requirements, rights and safeguards

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

294. The 2013 Report found that rights and safeguards applicable in Bermuda were compatible with effective exchange of information. No notification requirement was provided under Bermudian law. Moreover, whilst a person affected by an EOI request had a right to seek judicial review, no judicial proceedings had been brought against the Bermudian authorities during the 2009-11 period.

295. The present review finds that the rights and safeguards provided under Bermuda law, including the amendments made after the 2013 Report, remain compatible with effective EOI. During the new review period, persons affected by EOI have in nine instances exercised their appeal rights in court. In some instances, the appeals sought to provide the information holder with all evidence which had been put before the court when the production order was issued, including a (redacted) copy of the EOI request. Those cases are dealt with in more detail in element C.3. There have been instances where persons have also challenged the foreseeable relevance of the request and those cases are reviewed under element C.1.

296. The 2016 ToR have introduced a new requirement where an exception to notification has been granted – in those cases there must also be an exception from time-specific post-notification. Bermuda's law does not require notification; and therefore the change made in the ToR did not have an impact in this review. Element B.2 continues to be in place and Compliant.

297. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
Determination: The element is in place.		
Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice		
Rating: Compliant		

ToR B.2.1: Rights and safeguards should not unduly prevent or delay effective exchange of information

Notification, holding period

298. The 2013 Report noted that, and it remains the case, under Bermuda's law, there is no obligation to notify the subject of a request for information. Where information is not in the possession of the competent authority, a production order may be issued to the holder of the information. There is no obligation on the holder not to inform the subject of the request, or any other person. As a matter of fact, effective as of 12 December 2013, the International Cooperation Act (section 5A) and the USA-Bermuda Act (section 5A) include an anti-tipping off provision restricting the information holder to disclose to any person "information or any other matter which is likely to prejudice the implementation of that request" under certain circumstances (see section C.3). The anti-tipping off provisions do not apply to the disclosure of information to a professional legal adviser in connection with giving legal advice.

299. Prior to July 2015, the International Cooperation Act provided that, once the Minister had obtained information pursuant to a notice, the Minister was required to retain that information for a period of ten days before providing it to the requesting jurisdiction. Where information was obtained by the Bermudian competent authority by entry to premises under a warrant, the retention period was 20 days. Similar provisions are set out in the USA Bermuda Act where the retention period is 20 days in all cases. Effective

4 July 2015, the holding requirements described above were repealed and, as result, Bermuda's competent authority can exchange information with the requesting jurisdiction as soon as information has been gathered under both EOI Acts.

Other rights and safeguards

300. Taxpayer and information holders can appeal against the production orders in court, as they can appeal against other orders issued by the Bermuda Supreme Court. Moreover, under the notice regime that was in place prior to July 2015, a judicial review challenge could be brought against the Bermudian competent authority with respect to the issuance of the EOI notice. The initiation of judicial review proceedings or appeal proceedings would suspend the Bermudian authorities' powers to collect the information or transfer the collected information to the requesting jurisdiction.

301. Where an appeal is brought against the Bermudian competent authority against the exchange of information in the court of first instance (the Supreme Court of Bermuda), the Bermudian authorities indicated that the process from initiation of proceedings to conclusion of court hearing could take between one and a half months to one and a half year, dependent upon the issues at stake and the schedule of the courts. If additional appeals are made to the Court of Appeal for Bermuda, the case would normally take and additional six months to one year.

302. During the review period, there have been nine cases where information holders or taxpayers filed an appeal against exchange of information. These cases can be further categorised as follows (sometimes one case involved more than one category):

- In nine cases, the information holder requested the disclosure of the EOI request and other documents submitted to the court in the application for a production order/the EOI request and other documents submitted to the competent authority for the issuance of the EOI notice (under the previous notice system). Those cases are dealt with under element C.3;
- In six cases, the taxpayer and/or information holder question the foreseeable relevance of the request (those cases are dealt with under elements C.1 and B.1); and
- In one cases, there was a discussion of the costs for collection of information.

303. The appeal and judicial review rights and their exercise in practice during the review period seem to be compatible with effective exchange of information, as they have not systemically impeded or delay EOI. There are

no rights to inspect EOI files in Bermuda and, as noted in the analysis concerning Element C.3, the EOI Acts, effective of February 2017, restrict the access to information sent and received under EOI under the Public Access to Information Act 2010.

304. Peer input did not raise concerns regarding the application of rights and safeguards in Bermuda.

Part C: Exchanging information

305. Sections C.1 to C.5 evaluate the effectiveness of Bermuda's EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether the mechanisms respect the rights and safeguards of taxpayers and third parties and whether Bermuda could provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

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

306. The 2013 Report concluded that Bermuda's network of EOI mechanisms was "in place" and was rated Compliant. In 2013, Bermuda had 3 DTCs and 35 TIEAs.

307. Whilst the 2013 Report identified some issues with some bilateral agreements entered into by Bermuda, these were considered minor issues and did not warrant a downgrade of the determination from "in place". With respect to 12 of the EOI relationships, Bermuda signed competent authority agreements (CAAs) with its EOI partners. Where a CAA has not yet been concluded between Bermuda and an EOI partner, the Bermuda's competent authority had unilaterally undertaken, in the form of a commitment letter, to adhere to interpret certain non-standard provisions in the relevant TIEA so as to allow for exchange of information in accordance with the international standard. These steps ensured that Bermuda's EOI agreements were interpreted to allow for exchange of information in line with the international standard. Bermuda was recommended to, nonetheless, give due and appropriate consideration, in its handling of EOI requests in practice, to the variations in the requirements applicable to each of its EOI instruments to ensure that effective EOI was not impeded.

308. Following the 2013 Report, Bermuda entered into four new TIEAs, with Belgium, Chile, Guernsey, Poland and one DTC with the United Arab Emirates, bringing the total of bilateral instruments signed to 43. In addition, on 10 October 2013**,** the United Kingdom extended the Multilateral Convention to Bermuda and it is in force in Bermuda since 1 March 2014. The Multilateral Convention completely addressed any remaining concerns in relation to the few Bermuda's EOI instruments that contain non-standard provisions, as both Bermuda and the EOI partners concerned are covered by the Convention.

309. Neither Bermuda's EOI instruments nor its domestic law exclude the possibility of making and responding to group requests. Bermuda has not received group requests in the review period but has received requests that referred to several taxpayers as well as requests where the name of the taxpayer(s) was not provided. Bermuda's competent authority advised that it is in a positon to process group requests and there are no legal impediments for Bermuda to do so. In such circumstances, the competent authority would need to receive some information identifying the group, such as banking account numbers, tax identification number or other information that may be available depending on the case (e.g. detailed description of the group and the specific facts and circumstances that have led to the request).

310. The new table of determinations and ratings is as follows:

Legal and regulatory framework determination
The element is in place.
EOIR Rating
Compliant

ToR C.1.1: Foreseeably relevant standard

311. Exchange of information instruments should allow for exchange of information on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. The 2013 Report found that Bermuda's network of DTCs generally followed the *OECD Model Tax Convention* and were applied consistently with the Commentary on foreseeable relevance. Similarly, Bermuda's TIEAs generally followed the *2002 Model Agreement on Exchange of Information on Tax Matters*.

312. Bermuda continues to interpret and apply its DTCs and TIEAs consistent with these principles.[20]

20. For instance, the Supreme Court of Bermuda in Minister of Finance v A Company [2015], considered that at para. 27: "Bermuda is presumed to legislate in

313. The 2013 Report noted that the DTC between Bermuda and the Seychelles contains an annexed "Mode of Application" which provides, amongst other things that the requesting jurisdiction must provide "the identity and, to the extent known, address of any person which the applicant State believes to be in possession of the requested information" must in order to demonstrate the foreseeably relevance of the information. The requirement for the requesting jurisdiction to provide information in relation to the identity of the person believed to be in possession of the information in all cases, and not only to the extent known, is different from the wording in Article 5(5) of the Model TIEA. Subparagraph (e) of Article 5(5) only mentions providing "to the extent known, the name and address of any person believed to be in the possession of the requested information". It is accepted that in practice, in most cases, the description of the requested information in an EOI request might in itself also provide indication of the person that is believed to be in possession of it. However, there could remain circumstances where such indication is not obvious.

314. The practical application of this provision has not been tested to date. The Bermudian authorities confirmed that they do not interpret "identity" in the above context as requiring the provision of the name of the person. Furthermore, the Bermudian authorities assert that they would be willing to assist with an EOI request even where identity information relating to the person believed to be in possession of the requested information is not provided. Finally, as both Bermuda and the Seychelles are covered by the Multilateral Convention, they can exchange information under this arrangement in accordance with the standard.

315. Bermuda's DTC with Belgium and Qatar use the term "relevant" in lieu of "foreseeably relevant". The term "relevant" is recognised in the commentary to Article 26 of the Model Tax Convention to allow for the same scope of exchange as does the term "foreseeably relevant". Bermudian authorities confirmed that they adhere to the commentary in their interpretation of Bermuda's DTCs.

316. None of Bermuda's EOI instruments exclude the possibility for making and responding to group requests. Bermuda has not received group requests in the review period but has received requests that referred to several taxpayers as well as requests where the name of the taxpayer(s) was not provided. One request was a follow-up from the information exchange by Bermuda's financial institutions and insurance companies automatically with an EOI partner. The partner sent the questions on the date received by means

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accordance with its treaty obligations. When construing the 2005 Act it is therefore permissible to take into account the terms of the applicable TIEAs and the model conventions and official commentaries which provide their legal context.".

of an EOI request. Bermuda's competent authority advised that it is able to process group requests and there are no legal impediments for Bermuda to do so. In such circumstances, the competent authority would need to receive some information identifying the group, such as banking account numbers, tax identification number or other information that may be available depending on the case (e.g. detailed description of the group and the specific facts and circumstances that have led to the request).

317. In practice, in cases where a request is unclear or incomplete, the Bermudian authorities indicate that they would seek clarification or additional information from the requesting jurisdiction before considering whether to decline to respond it. Bermuda sought clarification from its EOI partner in relation to 6 out of the 77 EOI requests received in the three-year period under review (see C.5 for further details).

318. Since December 2013, the process for accessing information in Bermuda involves a court production order. Under this system, the judge from the Supreme Court must be satisfied that the request for production order meets the requirements of the EOI Acts and, ultimately, that the EOI request meets the standard of foreseeable relevance. Therefore, the analysis of foreseeable relevance is carried out in two steps: first by the competent authority upon receipt of the request and then by the judge when reviewing the competent authority's application for a production order. When the application for a production order is made, the Minister has a duty of full and frank disclosure to the court and that would involve the "disclosure of all material matters which are known or ought to be known by the requesting party".

319. During the review period, there have been two cases where the court considered that there had been a material non-disclosure to the court. In those cases, the additional information provided by the information holder/taxpayer on the case had indicated that important facts had not been provided to the court in the request for production order and that ultimately impacted the assessment of foreseeably relevance of the request (Court of Appeal for Bermuda, Civil Appeal Ap of 2015 and Supreme Court of Bermuda 2016: No. AA1). The two court decisions have been analysed in section B.1 of the report.

320. The Supreme Court of Bermuda decision 2016: No. AA1 in passing elaborates on the standard of foreseeable relevance:

> 53. The Agreement requires that the applicant provides to the fullest extent possible information as to the tax purposes for which the information is sought and why it is relevant to the determination of the tax liability of the taxpayer in question. In my judgment, this requirement will be satisfied if the Court is

> able to conclude from the evidence adduced by the applicant that there is a reasonable possibility that the information requested will be relevant. Its relevance may be readily apparent from the background material provided in the request even if the request does not spell out the link between the requested information and the investigation in express terms. However any explanation will undoubtedly assist the court, and without an explanation the court may well conclude that the information sought is not foreseeably relevant. It is not for the Court to speculate.
>
> 54. To require clear and specific evidence that there is a connection between the information requested and the enforcement of the requesting State's tax laws is in my judgment to put the test too high as such clear and specific evidence may form part of the requested information and therefore be unavailable to the applicant at the time of the request.

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

321. The 2013 Report found that none of Bermuda's EOI instruments restricted the jurisdictional scope of the exchange of information provisions to certain persons, for example those considered resident in one of the partners concerned. However, the 2013 Report also found that in some Bermuda's EOI instruments[21] an additional provision appeared to create a further obligation where the request relates to a person who is neither a resident nor national of either the applicant or requested jurisdictions, as follows:

> If information is requested that relates to a person that is not a resident, nor a national, of one or other of the Parties, it also shall be established to the satisfaction of the competent authority of the requested Party that such information is necessary for the proper administration and enforcement of the fiscal laws of the applicant Party.

322. The 2013 Report considered that this requirement may narrow the application of the "foreseeably relevant" standard in the OECD Model TIEA for those cases where the request relates to a person who is neither a resident nor national of either the applicant or requested jurisdictions. No issues have arisen in the 2009-11 review period and the current review period in this regard.

21. Australia, Germany, Mexico, New Zealand, the Nordic countries and the United States.

323. The DTC entered into between Bermuda and the United Arab Emirates in 2015 does not contain wording indicating that exchange of information is not restricted by Article 1. Article 1 of the DTC defines its personal scope of application and indicates that it applies to persons who are residents of one or both of these jurisdictions. The absence of this reference to Article 1 in the EOI article could mean that the exchange of information is limited to the residents of the jurisdictions. However, the EOI provision in the DTC with the United Arab Emirates applies both to carrying out the provisions of the agreements and of the jurisdictions' domestic laws concerning taxes covered by the agreement "insofar as the taxation there under is not contrary to the Agreement". As domestic laws are applicable to residents and non-residents equally, even in absence of reference to Article 1, the jurisdictions are under the obligation to exchange information in respect of all persons.

324. The additional instruments concluded by Bermuda since the last review provide for exchange of information in relation to all persons. Peers have not raised any issues in practice during the current review period.

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

325. The 2013 Report did not identify any issues with Bermuda's network of EOI instruments in terms of ensuring that all types of information could be exchanged and no issues arose in practice.

326. The additional instruments that Bermuda has entered into since then do not contain any limitations in this respect either. During the present review period, Bermuda exchanged different types of information (ownership, accounting, insurance and banking information) including information held in a fiduciary capacity. No limitations were found in Bermuda's instruments and peers have not raised any issues in this respect.

ToR C.1.4: Absence of domestic tax interest

327. The 2013 Report did not identify any issues with Bermuda's network of EOI instruments s regarding a domestic tax interest and no issues arose in practice.

328. The additional instruments that Bermuda has entered into since then also allow information to be obtained and exchanged notwithstanding it is not required for domestic tax purposes. There are presently no domestic income taxes imposed by Bermuda. In practice, no issue linked to domestic tax interest has arisen during the current review period and that is confirmed by peer input.

ToR C.1.5: Absence of dual criminality principles

329. The 2013 Report did not identify any issues with Bermuda's network of EOI instruments in respect of dual criminality and no issues arose in practice.

330. None of the EOI instruments concluded by Bermuda since the 2013 Report apply the dual criminality principle to restrict the exchange of information and in practice, no issue linked to dual criminality has arisen during the present review period either.

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

331. The 2013 Report found that Bermuda's network of EOI instruments provided for exchange in both civil and criminal matters and no issues arose in practice.

332. All of the EOI instruments concluded by Bermuda since its last review provide for the exchange of information in both civil and criminal tax matters. In practice, Bermuda received and responded to EOI requests in relation to both civil and criminal matters. As some of Bermuda's EOI instruments contain different entry into force dates for civil and criminal matters, Bermuda often requires that its EOI partner clarify whether the request relate to civil or criminal tax matter if that information is not already contained in the EOI request.

ToR C.1.7: Provide information in specific form requested

333. The 2013 Report noted that, with two exceptions, all of the EOI agreements concluded by Bermuda allowed for information to be provided in the form of depositions of witnesses and authenticated copies of original records, to the extent allowable under the requested jurisdiction's domestic laws. In the case of the Bermuda-Japan and the Bermuda-Mexico EOI instruments, they only provided for the applicant party to specifically request that information be provided in the form of authenticated copies of original records.

334. The 2013 Report noted nonetheless that the competent authority can provide information in the specific form requested to the extent permitted under Bermudian law and administrative practice. Such power is expressly provided for in Bermuda's domestic legislation (section 5(4), International Cooperation Act; section 10, USA Bermuda Act):

> Section 5(4) Where a request so stipulates and the production order makes such requirement, information sought shall be in the form of –

(a) depositions of witnesses, disclosed on oath; or

(b) original documents or copies of original documents, certified or authenticated by a Notary Public.

335. The instruments entered into since the 2013 Report also allow the parties to provide information in specific form requested to the extent allowable under the requested jurisdiction's domestic laws. In practice, during the present review period, Bermuda has been able to provide information in the form requested by its partners.

ToR C.1.8: Signed agreements should be in force

336. The 2013 Report noted that Bermuda had taken all steps necessary for its part to bring into force all instruments it has signed with the exception of one EOI agreement.

337. Since then, Bermuda has ratified this agreement as well as the five new agreements signed since the 2013 review.

338. In practice, once agreement negotiations have been concluded, the Bermudian authorities must provide the draft text to the Foreign and Commonwealth Office (FCO) in London for review prior to signing. The Bermudian authorities indicated that this process takes on average between three to four weeks. Following its review, the FCO would notify the Bermudian authorities by letter that the signing can take place.

339. EOI agreements signed by the Minister of Finance generally come into force 30 days after signing by both Bermuda and its EOI partner. The power for giving effect to EOI agreements under Bermudian domestic law is set out in the International Cooperation Act. The Minister is not required to table EOI agreements before Parliament prior to their ratification.

Table 5. **Bilateral EOI Mechanisms**

A	Total Number of DTCs/TIEAS	A = B+C	43
B	Number of DTCs/TIEAs signed (but pending ratification), i.e. not in force	B = D+E	7 [all ratified by Bermuda]
C	Number of DTCs/TIEAs signed and in force	C = F+G	36
D	Number of DTCs/TIEAs signed (but pending ratification) and to the Standard	D	7
E	Number of DTCs/TIEAs signed (but pending ratification) and not to the Standard	E	0
F	Number of DTCs/TIEAs in force and to the Standard	F	36
G	Number of DTCs/TIEAs in force and not to the Standard	G	0

340. In addition to Bermuda's bilateral agreements, on 10 October 2013**,** the United Kingdom extended the Multilateral Convention to Bermuda. The Multilateral Convention entered into force in Bermuda on 1 March 2014.

ToR C.1.9: Be given effect through domestic law

341. Bermuda has in place the legal and regulatory framework to give effect to its EOI instruments.

342. The 2013 Report analysed two provisions which expand the circumstances, beyond those provided for by the standard, in which the competent authority may decline a request. One provision allowed the Minister to decline a request on the basis that the requesting jurisdiction did not agree to pay costs. This provision has been removed from Bermuda's International Cooperation Act in December 2013. The other provision remains. It allows competent authority to decline a request where:

> Section 4(2)(g): the Minister is not satisfied that the requesting party will keep the information confidential and will not disclose it to any person other than – (i) a person or authority in its own jurisdiction for the purposes of the administration and enforcement of its tax laws; or (ii) a person employed or authorised by the government of the requesting party to oversee data protection.

343. During the review period Bermuda has not declined to assist with an EOI request on the basis of that provision.

344. Moreover, Bermuda's Supreme Court has clarified that Bermuda is able to handle assistance to collect information that dates prior to the entry into force of the instrument provided that is collected for the purposes of an investigation under a taxable year covered by the agreement:

> Further, material generated prior to a particular tax year may be relevant to the assessment of taxes falling due in that tax year. In short, the date on which the Agreement came into force would not have been a reason for not ordering the production of material produced prior to that date. (Supreme Court of Bermuda 2014: Ap of 2015)

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

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

345. The 2013 Report concluded Bermuda's network of EOI instruments covered all relevant partners, meaning all those partners who interested in entering into an EOI instrument with Bermuda. Element C.2 was rated "Compliant".

346. Since that review, Bermuda continued to expand its EOI network, demonstrating commitment with the EOI standard. As referenced under section C.1.,

On 10 October 2013, the United Kingdom extended the Multilateral Convention to Bermuda. The Multilateral Convention entered into force in Bermuda on 1 March 2014. Bermuda also entered into four new TIEAs with Belgium, Chile, Guernsey, Poland and one new DTC with the United Arab Emirates, bringing the total of bilateral EOI instruments to 43.

347. Comments were sought from Global Forum members in the preparation of this report and no jurisdiction advised that Bermuda refused to negotiate or sign an EOI instrument with it. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Bermuda is recommended to maintain its negotiation programme so that its exchange of information network continues to cover all relevant partners.

348. The new table of determinations and ratings is as follows:

Legal and regulatory framework determination
The element is in place.
EOIR Rating
Compliant

C.3. Confidentiality

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

349. The 2013 Report found that the confidentiality of information exchanged with Bermuda was adequately protected by obligations imposed under its EOI instruments as well as domestic legislation. Under Bermuda's domestic law, there were penalties applicable in the event of a breach of the confidentiality obligations. However, the 2013 Report found that, during the 2009-11 review period, the amount and type of information set out in EOI notices issued by Bermuda to obtain requested information gave rise to concerns with regard to the protection of the confidentiality of incoming EOI requests. Bermuda revised its policy with effect from January 2013 (and the policy was further updated in April 2013) to ensure that only the minimum information from an EOI request, as is necessary for it to disclose to obtain the requested information, was provided to the notified person. Bermuda was recommended to monitor the implementation of the revised policy. Element C.3 was determined to be in place and rated Largely Compliant.

350. Since the 2013 Report, Bermuda's powers to access information have been significantly amended and now involve the service of a court issued production order upon the information holder (see section B.1). In practice, in

some instances the EOI request (or a redacted version) has been disclosed by the Bermuda competent authority in the course of judicial appeal proceedings in Bermuda. In the course of the review period, Bermuda amended the EOI Acts to expressly annul the information holder's rights to access an EOI request that would otherwise exist in Bermuda. The amendments have not been sufficiently tested in practice and Bermuda is recommended to monitor that the EOI request is only disclosed in accordance with the international standard.

351. Element C.3 is now determined to be in place and the rating remains Largely Compliant.

352. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
Determination: The element is in place.		
Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice	The EOI Acts were amended in July 2015 to expressly annul the information holder's rights to access an EOI request that would otherwise exist pursuant to the Supreme Court (Records) Act 1955. The amendments have not been sufficiently tested in practice.	Bermuda should monitor that the EOI request is only disclosed in line with the international standard.
Rating: Largely Compliant		

ToR C.3.1: Information received: disclosure, use and safeguards and ToR C.3.2: Confidentiality of other information

353. All bilateral EOI instruments concluded by Bermuda meet the standards for confidentiality including the limitations on disclosure of information received, and use of the information exchanged, which are reflected in Article 26(2) of the OECD Model Tax Convention, and Article 8 of the OECD Model TIEA. Confidentiality of the information exchanged in line with the standard is also provided for in Article 22 of the Multilateral Convention.

Anti-tipping off provision

354. Effective as of 12 December 2013, the International Cooperation Act (section 5A) and the USA-Bermuda Act (section 5A) include an anti-tipping off provision restricting the information holder to disclose to any person "information or any other matter which is likely to prejudice the implementation of that request". The anti-tipping off provisions do not apply the disclosure of information to a professional legal adviser in connection with giving legal advice.

> Tipping-off
>
> 5A (1) A person is guilty of an offence if –
>
> (a) he knows or suspects that the Minister is acting, or is proposing to act, in connection with a request under section 5; and
>
> (b) he discloses to any other person information or any other matter which is likely to prejudice the implementation of that request.
>
> (2) A person is guilty of an offence if –
>
> (a) he knows or suspects that a request has been made under section 5; and
>
> (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following such request.
>
> (…)

355. During the review period, Bermuda's competent authority advised that there has been no cases where tipping off has been identified.

Information disclosed to the court for the issuance of production orders

356. In practice, under the production order regime, the Financial Secretary would present to the court a redacted copy of the EOI to request the issuance of the order. This redacted version would exclude information such as the name and signature of the person representing the foreign competent authority. This has been considered adequate by the Bermudian courts.

> Supreme Court of Bermuda Civil Jurisdiction 2014: Nos E, F and H
>
> "20. There is in principle no reason why, in order to avoid disclosing sensitive information, the Plaintiff should not redact the request before it is place before the Court. However the redacted request must contain sufficient information for the Court to satisfy that the requirements of the applicable TIEA have been complied with."

Content of the production order

357. Bermuda is required to issue a court production order to obtain information from third parties in order to reply to EOI requests. Bermuda's law does not specify the type of information that must be contained in the production order.

358. In practice, the Bermudian competent authority has developed a production order template. The template includes the following information: (i) the EOI agreement under which the request is being made; (ii) the name of the requesting jurisdiction; and (iii) the taxable period under investigation; (iv) the information required. Bermuda advises that the tax period under investigation is given to allow the information holder to determine the period for which information is required to be produced. As a matter of practicality, it is generally accepted that a requested jurisdiction needs to disclose minimum information in an EOI request as necessary for it to obtain the requested information. In that context Bermuda is recommended not to disclose the taxable period under investigation in all cases but to specify the years to which the information is being requested for. In Bermuda's experience, these periods are often aligned and there has been no undue disclosure of information during the period under review.

Disclosure of the EOI Request

359. The extent to which Bermuda's competent authority is required to disclose an EOI request to the person required to provide information has been a "historical battleground" in Bermuda (Supreme Court of Bermuda Civil Jurisdiction 2014: Nos E, F and H; para. 14).

360. Bermuda's EOI Acts were amended in December 2013, December 2014 and July 2015 to clarify the Bermuda's government position that the disclosure of the EOI request and other documents submitted to the court in the application for a production order should only be disclosed if so authorised by the court based on an application to be made by the person served with a production to the court. Pursuant to the ITC Act, the person served with a production order must first apply to the court for discovery of the documents. At this stage, a court proceeding is initiated. The court will then analyse the application and direct the disclosure of such documents as it considers appropriate for the purposes of the review depending on the facts and circumstances. Effective as of July 2015, section 5(6A) and 5(6B) of the ITC Act provided as follows:

> Section 5
>
> (6A) A person served with a production order under subsection (1) who wishes to view the documents filed with the court on the application for the production order –

> (a) shall not be entitled as against the Minister to disclosure of such documents until the person has been granted a right of review under subsection (6B) and the court has directed disclosure of such documents as it considers appropriate for the purposes of the review; and
>
> (b) shall not (notwithstanding anything to the contrary contained in the Supreme Court (Records) Act 1955) be permitted to view such documents on the court file until such right of review has been granted and the court has directed as aforesaid.
>
> (6B) Upon the application under subsection (6) having been filed with the court, the court shall decide whether to grant the person a right of review.

361. The legal amendments to the ITC Act were made with an intention to neutralise the impact of the landmark decisions from the Court of Appeal of Bermuda such as the ones on Civil Appeal No. 4 of 2013 (The Minister of Finance vs. Bunge Ltd.) and Civil Appeal No Ad of 2015 (The Minister of Finance vs. AD).

362. Concerning the 2013 Court of Appeal decision on The Minister of Finance vs. Bunge Ltd., at the time of that decision, Bermuda's access powers were still based on an EOI notice issued by the Minister of Finance (and not yet at a court production order). The Court of Appeal considered in that case that, based on the common law principles of fairness and justice, the recipient of an EOI notice had the immediate and automatic right of discovery that would include seeing the underlying request or the terms of such request without the need of seeking judicial review to exercise such right. The result of such decision was that the Minister would be required to (i) set out the terms of the request in *verbatim* in the EOI notice or (ii) provide the information holder with a copy of the EOI request (redacted if necessary) upon his/her request without the need of the information holder seeking judicial review:

> 22. (a)(…) the person on whom the notice is served is entitled to see, and the Minister is bound to produce, the terms of the Request, so far as they are relevant to the notice given. Hence the Judge's qualified ruling "so much of the Request as is necessary to show that the statutory requirements for the Request have been complied with, but redacted to exclude any sensitive material" (judgment para.39), with which we agree. Without the production of the request, the person cannot know if the request is valid;
>
> (c) disclosing the terms of the request in the above circumstances does not involve any breach of Bermuda`s international obligations under Article 8 of the Agreement. When proceedings are

> commenced, production is expressly permitted. In advance of proceedings, the rights of the person on whom the notice is served can be formulated in terms of the order which would be made by the Court, if an Application were made to it. Those rights can and should be recognised before proceedings are begun.

363. Following this decision, Bermuda's government adopted in December 2013 (with subsequent amendments made in 2014) the court order regime, under which the discovery rights of persons, including the information holder, would aimed to be applied only at a later step when the person makes an application to the court to see the terms of the request. The Bermudian government's intention was that the court would need to authorise the person being served with the production order to view the EOI request.

364. However, the 2013 legal amendments were not considered sufficient by the Court of Appeal to remove the person's right under common law to see the evidence on which the production order as the International Cooperation Act. This was because the ITC Act did not expressly restrict this common law right or a statutory right that would exist under the Supreme Court (Records) Act 1955 (that would permit a person served with a production order to apply for facilities to inspect and copy the documents filed in support of an *ex part*e application).

365. To make the situation crystal clear, the EOI Acts were further amended in July 2015 to expressly annul the information holder's rights that would otherwise exist under the Supreme Court (Records) Act 1955. As the July 2015 amendments have not been sufficiently tested during the review period, Bermuda is recommended to monitor that the EOI request is only disclosed in the course of judicial procedures in Bermuda in line with the international standard.

366. Paragraph 11 of the commentary on Article 8 of the Model Tax Convention deals with the disclosure to information holders and taxpayers and explains that "it is understood that the requested State can disclose the minimum information contained in a competent authority letter (but not the letter itself) necessary for the requested State to be able to obtain or provide the requested information to the requesting State, without frustrating the efforts of the requesting State. It further explains that "If, however, court proceedings or the like under the domestic laws of the requested State necessitate the disclosure of the competent authority letter itself, the competent authority of the requested State may disclose such a letter unless the requesting State otherwise specifies".

367. Bermuda maintains open communication channels with its treaty partners and, in many instances, consulted them on whether it can disclose the EOI request to the information holder/taxpayer under the court

procedures. It is recommended that Bermuda invariably consult its treaty partners in all cases where a court procedure in Bermuda would mandate the disclosure of the EOI request to confirm if the treaty partner authorises such disclosure. It is understood that the cases where an EOI partner would not authorise such a disclosure, Bermuda may not be in a position to reply to an EOI request. This has happened in one instance where the requesting jurisdiction elected to withdraw the request after the court ordered its disclosure to the taxpayer.

368. Bermuda authorities advised that in most cases after the Minister has disclosed the documents supporting the application for the court order (including a redacted copy of the EOI request) to the information holder, the information holder complied with the terms of the production order delivering the required information.

369. With regard to cases where the information is held by another government authority in Bermuda, the competent authority will only provide such authority with the minimum details necessary for collecting the requested information. The EOI request is not shared with other government information holders.

Disclosure of Information under the Public Access to Information Act 2010

370. Pursuant to section 12 of the Public Access to Information Act 2010. Bermudians citizens or residents have a right to and must, on request, be given access to any record that is held by a public authority other than an exempt record. Pursuant to section 26A, effective as of 1 April 2015, of the same act, information or records submitted to the Minister of Finance in connection of an international tax agreement are considered exempt records. An amendment has been made to the EOI Acts effective as of 23 February 2017 to clarify in those acts that section 26A of the Public Access to Information Act 2010 would restrict the disclosure of information sent and received under EOI.

Disclosure of information to the public following appeal proceedings

371. The decisions in appeal proceedings related to EOI in Bermuda letters of the alphabet are used in the place of the names of the parties to the proceedings. Moreover, documents presented in the proceedings (e.g. an EOI request) are not available for consultation by the public.

Handling and storage of EOI requests and related information

372. The procedures concerning handling and storage of EOI requests and related information remain the ones described in the 2013 Report

(paragraph 283). Hard copies of the EOI requests and related materials are kept by the EOI unit in a locked cabinet within their offices in the Ministry of Finance to which only the EOI unit hold the keys. Access to the offices of the Ministry of Finance is restricted to those with security passes only. The CA representatives operate a "clean desk" policy: all hard copy files are returned to the filing cabinet and locked every evening.

373. The competent authority has not yet discarded EOI materials or sent them off-site for archive. The competent authority is considering incinerating very old (e.g. more than ten years old) requests and related materials.

Provision of requested information to EOI partners

374. Answers to EOI requests and related materials are sent via courier service or encrypted emails.

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.

375. The 2013 Report identified no issues concerning the application of rights and safeguards in Bermuda and element C.4 was determined to be "in place" and was rated "Compliant". The situation remains the same in the present review. Input from Bermuda's peers did not indicate any concerns regarding the application rights and safeguards in Bermuda and their impact on EOI in practice during the period under review.

376. The new table of determinations and ratings is as follows:

Legal and regulatory framework determination
The element is in place.
EOIR Rating
Compliant

ToR C.4.1: Exceptions to provide information

377. The international standard allows requested parties not to supply information in response to a request in certain identified situations. The limits on information which can be exchanged that are provided for in the OECD Model TIEA and Article 26 of the OECD Model Tax Convention are included in each of the EOI instruments concluded by Bermuda That is, information which is subject to legal privilege; which would disclose any trade, business,

industrial, commercial or professional secret or trade process; or would be contrary to public policy, is not required to be exchanged. The limitations in respect of legal privilege and public policy are also incorporated into Bermuda's domestic law (section 4 of the International Cooperation Act).

378. The 2013 Report noted that the definition of attorney-client privilege in Bermuda's EOI agreement with Canada (Article 7(3)) appeared to include information enclosed within a communication between a client and another person who is not a legal advisor which is beyond the exemption for attorney client privilege under the international standard. Both Bermuda and Canada have nonetheless confirmed that they interpret the definition of attorney-client privilege used in their EOI agreement in line with the international standard and no issues have arisen in practice in this respect.

379. As noted under section B.1, during the present review period, Bermuda was not able to reply to one request for accounting information held by the BMA because the Multilateral Memorandum of Understanding (MMOU) with the International Association of Insurance Supervisors (IAIS) would prevent it from sharing the requested information with non-regulators. Bermuda explained that, in that case, the requesting jurisdiction had asked Bermuda's competent authority to collect the requested information from the BMA, as regulator of the insurance sector, and not to contact the taxpayer, as it believed this could undermine its investigation.

380. In another request, the information holder claimed attorney client privilege in its appeal to the court against the order to produce information; however the case was eventually decided on other grounds (of material non-disclosure to the court) and the issue of attorney client privilege was also considered in the court decision (Supreme Court of Bermuda 2014: Ap of 2015).

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

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

381. In order for exchange of information to be effective, jurisdictions should request and provide information under its network of EOI instruments in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to respond to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.
- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.

- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

382. Bermuda's 2013 Report concluded that Bermuda had a responsive approach to EOI and was able to respond to requests in a timely manner. During that review period, Bermuda had received 15 requests from five partners, with a significant increase in the number of requests in the last year under review. Partners had generally praised the level of co-operation shown by Bermuda and the timeliness of responses. It was noted that, although the number of requests during the review period was limited, they covered a range of ownership, accounting and banking information. The 2013 Report also noted that, notwithstanding Bermuda's practical experience with exchanging information with a number of partners being relatively new, Bermuda's exchange procedures had been long established following a long standing relationship with one EOI partner. Element C.5 was rated Compliant and no recommendation was given in the box. Two in-text recommendations were given for Bermuda:

1. To monitor the trend for an increase in the number of EOI requests and ensure that its resources and procedures remain adequate to support effective EOI, following the entry into force of a number of its EOI instruments; and

2. To have its EOI staff attending Global Forum training seminars to familiarise with the requirements of the Terms of Reference.

383. During the current review period, the trend for an increase in the number of EOI requests received has materialised and Bermuda received five times more requests than during the previous review. Bermuda continued to be able to respond to the incoming requests in a timely manner and its assistance was highly appreciated by its partners. Bermuda has expanded its EOI team adding two additional staff. EOI staff also joined a Global Forum training event. Out of the 77 requests received from 12 EOI partners, Bermuda was able to reply to 66% within 90 days and 83% within 180 days. Bermuda did not send any EOI requests and that was expected as Bermuda does not impose direct taxes. Bermuda has demonstrated its commitment to support its partners in their EOI investigations and its procedures and practices to handle incoming requests remain adequate. Element C.5 continues to be rated Compliant.

384. The new table of determinations and ratings is as follows:

Legal and regulatory framework determination
Not Applicable
EOIR Rating
Compliant

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

385. Over the period under review (1 April 2013-31 March 2016), Bermuda received 77 requests from 12 jurisdictions. This represented increase of more than 400% in the number of requests in relation to the previous review period. The table below summarises Bermuda's response times:

Table 6. **Statistics on response times**

	1 April 2013-31 March 2014		1 April 2014-31 March 2015		1 April 2015-31 March 2016		Total	
	Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received	32	100	22	100	23	100	77	100
Full response: ≤ 90 days	15	47	19	86	17	74	51	66
≤ 180 days (cumulative)	24	75	21	95	19	83	64	83
≤ 1 year (cumulative)	30	94	21	95	21	91	72	94
> 1 year	2	6	0	0	0	0	2	3
Declined for valid reasons	0	0	0	0	0	0	0	0
Status update provided within 90 days (for responses sent after 90 days)	16	94	3	100	4	100	23	96
Requests withdrawn by requesting jurisdiction	0	0	1	5	0	0	1	1
Failure to obtain and provide information requested	0	0	0	0	1	4	1	1
Requests still pending at date of review	0	0	0	0	1	4	1	1

Bermuda counts each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested.

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

386. In comparison with the previous review period, the Bermuda's response times have increased in the present review period. During the 2009-11 period, Bermuda was able to respond to 73.33% of its requests within 90 days and 93.33% within 180 days. It is noted that the number of requests received then was considerably smaller. Also some requests received more recently were more laborious, covering a very wide range of records for several years or a considerable number of taxpayers (e.g. one single request covering more than a hundred taxpayers).

387. Bermuda's competent authority sought clarification from its partners in relation to six requests, including cases where clarification has been requested by the court to issue a court order for production of information. Bermuda advised that the requests were sent by the same partner and did not specify whether it related to a civil or criminal matter. This information was essential for Bermuda's determination of whether assistance could be provided considering the entry into force provision of the TIEA between Bermuda and the requesting jurisdiction. One of the cases also involved a

clarification concerning the taxpayer's name, as it was not correctly stated in the original request. Peer input did not raise any concern regarding Bermuda's requests for clarification.

Issues covered under other essential elements

388. The timeliness or the handling of requests may be affected by aspects of a jurisdiction's system other than the organisation of the EOI function itself that are dealt with in this essential element C.5. Where this is the case, then these issues are analysed under the appropriate heading. In particular, section B.1. *Access to Information* analyses the access to information generally. Section B.2 on *Rights and Safeguards* analyses issues arising in respect of notification rules or appeal rights. In addition, section C.3 *Confidentiality* deals with the storage and handling of requests and related information as well as an assessment of whether disclosure of information to the holder of the information is in conformity with the standard.

389. Requests that took more than 90 days to reply generally refer to:

- requests which involved litigation in the Bermuda's courts (e.g. appeals filed by the information holder or the taxpayer against the access to the requested information; or judicial measures sought by the competent authority to compel the production of information by the information holder);
- requests for accounting information and banking information covering several years and large number of documents, which are in some cases maintained overseas at the control of a person in Bermuda.

390. In most cases, even where there have been appeals to the Supreme Court, Bermuda was still able to reply to requests in timeframe of 90 to 180 days. Requests that took from 180 days to one year generally involved a further appeal to Bermuda's Court of Appeal. Even in the instances where Bermuda was not able to reply to requests within 90 days, Bermuda's peers generally considered that the assistance provided by Bermuda was timely.

391. Bermuda was not able to provide (full) assistance in relation to three requests. They related to:

- one case where the accounting records requested of a company that had been involuntarily liquidated were found not to be available as further detailed in element A.2 of the report. This request is shown as failure to obtain and provided information in Table 6 above;
- one case where the information was found to be available but was not accessible because the requesting jurisdiction requested that the taxpayer not be contacted. In that case, BMA did not provide the

information due to some confidentiality provisions and the requesting jurisdiction did not further pursue the matter because it would not be able to access the requested information from its own insurance regulator under similar circumstances. This is dealt with in section B.1.5 of the report. This request is shown as request withdraw by the requesting jurisdiction in Table 6 above;

- a case where Bermuda was not able to provide assistance following an appeal filed by the information holder and a court decision considering that there had been material non-disclosure (as detailed in section B.1 of this report). Bermuda has nonetheless provided a partial reply covering a substantive part of the information requested. Bermuda advises that the requesting jurisdiction is in the process of sending a revised request letter. This request is shown as pending in Table 6 above.

ToR C.5.2: Organisational processes and resources

392. The organisational processes for exchanging information in Bermuda remain to a great scale similar to the ones described in the 2013 Report (paragraphs 308-328). The only significant differences refer to the process for the competent authority accessing information which now involves a court procedure, as described in section B.1.

Resources and training

393. The Minister of Finance or his/her authorised representatives are designated as the Competent Authority under Bermuda's information exchange mechanisms. The Minister's authorised the Assistant Financial Secretary for Treaties as his representative. The Assistant Financial Secretary heads the Treaty Unit (the "EOI Unit") which is responsible for handling EOI cases. The contact details Bermuda's competent authority is available at the Global Forum's Competent Authorities Database and is provided by Bermuda to its EOI partners.

394. The 2013 Report recommended in the text that Bermuda monitored the volume of requests and ensured that its resources and procedures remained adequate to support effective EOI. During most of the new review period, the head of the EOI Unit (the Assistant Financial Secretary for Treaties) has dealt with most incoming requests on his own. Later in 2016, two staff members were added to the EOI unit, a junior EOI officer and a senior EOI officer. Bermuda indicates that appropriate level of budgeted financial resources is available to the EOI Unit.

395. During the review period covered by the 2013 Report, the work load of EOI Unit consisted of approximately 50% EOI request and 50%

agreement negotiations and EOI-related legislative activities. During the current review period, the negotiation work has significantly reduced after the Multilateral Convention was extend to Bermuda; and the work on EOI on request combined with the AEOI implementation has been the core of EOI Unit's workload.

396. Training of EOI staff continued to be mostly conducted "on the job". All staff is required to familiarise with the EOI Unit's procedure manuals, as well as OECD and Global Forum publications concerning EOIR and AEOI. Moreover, one staff has participated in a Global Forum training seminar and other officers have joined Global Forum plenary meetings, Peer Review Group meetings and Competent Authority conferences.

Incoming requests

397. The EOI Unit uses a control spread sheet to log and track the progress in responding to every EOI requests. Since mid-2016, each incoming request is logged by the junior EOI officer who is also responsible for the tracking. All requests from the current review period have been added to the log and the EOI spreadsheet. During the review period, the Head of the Unit maintained simplified tracking records.

398. Bermuda currently maintains very detailed statistics on the EOI requests received, including the type of information sought, the type of tax, the status of the taxpayer (e.g. natural person, company, partnership, trust), the type information holder, the nature of the foreign investigation (civil or criminal).

399. Acknowledgement of receipt of the request is generally sent by secure mail or e-mail within seven days of receipt of the request. If some of the request information is available, Bermuda proceeds with sending partial replies in the interest of time, detailing in the cover letter which questions have been answered. When Bermuda considers that the request has been fully responded to, that is also made clear in the cover letter. Bermuda generally sends status updates every month and without exception within the 90-day deadline to ensure its partners are duly informed of the status of their requests.

400. When a request is received, the officer checks the signature/letterhead against the EOI instrument to ensure that the request is signed by the appropriate competent authority. The EOI officer also assesses the validity of the request. This assessment includes an examination of whether the request conforms to the instrument under which the request is made (e.g. with respect to taxes covered or years under investigation, signed by the appropriate competent authority) and whether it contains sufficient information to identify the taxpayer under investigation and establish the foreseeable relevance of

the information requested. If the officer is satisfied that the request meets the conditions of the EOI instrument, the officer will prepares a minute of the Minister of Finance's memorandum to support its application for the Supreme Court's production order (see Section B.1).

401. All communication to the requesting competent authority are reviewed and validated by the Assistant Financial Secretary.

Outgoing requests

402. The 2016 ToR includes an additional requirement to ensure the quality of requests made by assessed jurisdictions. Bermuda does not impose direct taxes and has not sent EOI requests.

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

403. Exchange of information should not be subject to unreasonable, disproportionate or unduly restrictive conditions. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI.

Annex 1: Jurisdiction's response to the review report[22]

Bermuda has a long history of supporting all forms of international cooperation. Accordingly, we appreciate the advice provided by the Peer Review Group in the form of recommendations in our assessment report. We anticipate that Bermuda will file an application for a Supplementary assessment on Element A.1 to upgrade its rating to Compliant, as soon as we put into force and effect some legislative amendments and practices which are currently in the process of being established.

22. 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 Jurisdiction's EOI mechanisms

1. Bilateral instruments for the exchange of information

EOI Partner	Type of agreement	Date signed	Date entered into force
Argentina	TIEA	22.08.2011	14.10.2011
Aruba	TIEA	20.10.2009	01.12.2011
Australia	TIEA	10.11.2005	20.09.2007
Bahrain	DTC	22.04.2010	29.01.2012
Belgium	TIEA	11 April 2013	Not yet in force
Brazil	TIEA	29.10.2012	Not yet in force
Canada	TIEA	14.06.2010	01.07.2011
Chile	TIEA	24.06.2016	Not yet in force
China	TIEA	02.12.2010	03.11.2011
Curaçao	TIEA	28.09.2009	24.03.2015
Czech Republic	TIEA	15.08.2011	Not yet in force
Denmark	TIEA	16.04.2009	25.12.2009
Faroe Islands	TIEA	16.04.2009	09.09.2010
Finland	TIEA	16.04.2009	31.12.2009
France	TIEA	08.10.2009	28.10.2010
Germany	TIEA	03.07.2009	06.12.2012
Greenland	TIEA	16.04.2009	22.03.2012
Guernsey	TIEA	23.08.2013	05.04.2014
Iceland	TIEA	16.04.2009	02.04.2011
India	TIEA	07.10.2010	03.11.2010
Indonesia	TIEA	22.06.2011	Not yet in force
Ireland	TIEA	28.07.2009	11.05.2010

EOI Partner	Type of agreement	Date signed	Date entered into force
Italy	TIEA	23.04.2012	03.04.2017
Japan	TIEA	01.02.2010	01.08.2010
Korea	TIEA	23.01.2012	13.02.2015
Malaysia	TIEA	23.04.2012	28.12.2012
Malta	TIEA	02.11.2011	05.11.2012
Mexico	TIEA	15.09.2009	09.09.2010
Netherlands	TIEA	08.06.2009	01.02.2010
New Zealand	TIEA	16.04.2009	23.12.2009
Norway	TIEA	16.04.2009	22.01.2010
Poland	TIEA	25.11.2013	15.03.2015
Portugal	TIEA	10.05.2010	16.03.2011
Qatar	DTC	10.05.2012	Not yet in force
Seychelles	DTC	21.06.2012	19.04.2013
Singapore	TIEA	29.10.2012	06.12.2012
Sint Maarten	TIEA	28.09.2009	24.03.2015
South Africa	TIEA	06.09.2011	08.02.2012
Sweden	TIEA	16.04.2009	25.12.2009
Turkey	TIEA	23.01.2012	18.09.2013
United Arab Emirates	DTC	12.02.2015	Not yet in force
United Kingdom	TIEA	05.12.2007	10.11.2008
United States	TIEA	02.12.1988	02.12.1988

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

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the Multilateral Convention).[23] The Multilateral Convention is the most comprehensive multilateral instrument available for all forms of

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

tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

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

On 10 October 2013**,** the United Kingdom extended the Multilateral Convention to Bermuda.

Currently, the amended Convention is in force in respect of the following jurisdictions[24]: Albania, Andorra, Anguilla (extension by the United Kingdom), Argentina, Aruba (extension by the Kingdom of the Netherlands), Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria, Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Costa Rica, Croatia, Curacao (extension by the Kingdom of the Netherlands; Curaçao used to be a constituent of the "Netherlands Antilles", to which the original Convention applies as from 01-02-1997), Cyprus,[25] Czech Republic, Denmark, Estonia, Faroe Islands (extension by the Kingdom of Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by the Kingdom of Denmark), Guernsey (extension by the United Kingdom), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malaysia,

24. This list includes State Parties to the Convention, as well as jurisdictions, which are members of the GFTEI or that have been listed in Annex B naming a competent authority, to which the application of the Convention has been extended pursuant to Article 29 of the Convention.

25. Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, the Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Poland, Portugal, Romania, Russia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Kingdom of the Netherlands; Sint Maarten used to be a constituent of the "Netherlands Antilles", to which the original Convention applies as from 01-02-1997), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Kingdom and Uruguay.

In addition, the following are the jurisdictions that have signed the amended Convention, but where it is not yet in force: Burkina Faso, Cook Islands, Dominican Republic, El Salvador, Gabon, Guatemala, Jamaica, Kenya, Kuwait, Morocco, Philippines, Saint Lucia, Turkey, United Arab Emirates and the United States (the 1988 Convention in force on 1 April 1995, the amending Protocol signed on 27 April 2010).

Annex 3: List of laws, regulations and other material received

Information exchange for tax purposes laws

USA Bermuda Tax Convention Act 1986

International Cooperation (Tax Information Exchange Agreements) Act 2005

Commercial laws

Companies Act 1981

Limited Liability Company Act 2016

Registrar of Companies (Compliance Measures) Act 2017

Partnership Act 1902

Limited Partnership Act 1883

Exempted Partnerships Act 1992

Overseas Partnerships Act 1995

Trustee Act 1975

Trusts (Regulation of Trust Business) Exemption Order 2002

Regulatory and anti-money laundering/anti-terrorist financing laws

Exchange Control Act 1972

Exchange Control Regulations 1973

Bermuda Monetary Authority Act 1969

Trusts (Regulation of Trust Business) Act 2001

Insurance Act 1978

Bermuda Bar Act 1974

Institute of Chartered Accountants Act 1973 and Byelaws

Proceeds of Crime Act 1997

Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008

Annex 4: Authorities interviewed during on-site visit

Ministry of Finance

Minister of Finance

Financial Secretary

Assistant Finance Secretary: Treaty Unit

Officers: Treaty Unit

Tax Commissioner

Representatives, Office of the Tax Commissioner

Ministry of Economic Development

Director of Business Development

Attorney General's Chambers

Deputy Solicitor General

Deputy Chief Parliamentary Counsel

Bermuda Monetary Authority

CEO

Director of Legal Services and Enforcement

Legal Counsel

Assistant Director, Licensing Insurance Supervision

Principal, AML/ATF Unit

Bermuda Police

Inspector

Director of Public Prosecution

The Registrar of Companies

Registrar of Companies

Assistant Registrar of Companies

National Anti-Money Laundering Committee (NAMLC)

Coordinator of NAMLC

Barristers and Accountants Anti-money Laundering and Anti-Terrorist Financing Supervision and Enforcement Board

Member of Parliament and Director of the Board

Bermuda Bar Association

Representatives

Chartered Accountants of Bermuda

Representatives

Liquidator's Association

Representatives

Annex 5: List of in-text recommendations

The assessment team or the PRG may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. A list of such recommendations is presented below.

- Section A.1.1 – "Bermuda is recommended monitor the compliance by LLCs with the obligations to maintain ownership and identity information."
- Section A.1.1 Liquidated Companies – "Bermuda is recommended to monitor the implementation to the 2017 amendments to the Companies Act and LLC Act to ensure that legal ownership information of liquidated companies is kept for a minimum period of five years in all cases."
- Section A.1.3 – Bermuda is recommended to ensure the availability of information identifying limited partners of overseas partnerships in all circumstances.
- Section A.2.1 – "Bermuda is recommended monitor the compliance by LLCs with the obligations to maintain accounting records and underlying documentation."
- Section A.2.1 – "In particular, since the fine of BMU 500 for non-compliance with the record-keeping requirements appears to be set at a low level, Bermuda is recommended to monitor whether this fine is dissuasive enough to promote compliance."
- Element C.2 – "As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Bermuda is

recommended to maintain its negotiation programme so that its exchange of information network continues to cover all relevant partners."

- Section C.3.1 – "In that context Bermuda is recommended not to disclose the taxable period under investigation but to specify the years to which the information is being requested for".
- Section C.3.1 – "It is recommended that Bermuda invariably consult its treaty partners in all cases where a court procedure in Bermuda would mandate the disclosure of the EOI request to confirm if the treaty partner authorises such disclosure."

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OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
(23 2017 13 1 P) ISBN 978-92-64-28007-6 – 2017

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request BERMUDA 2017 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 140 jurisdictions participate on an equal footing.

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

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

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

This report contains the 2017 Peer Review Report on the Exchange of Information on Request of Bermuda.

Consult this publication on line at ***http://dx.doi.org/10.1787/9789264280083-en***.

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ISBN 978-92-64-28007-6
23 2017 13 1 P