GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard in Practice

SAN MARINO

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: San Marino 2013

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

November 2013
(reflecting the legal and regulatory framework
as at May 2013)

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Table of Contents

About the Global Forum 5

Executive Summary 7

Introduction 11

Information and methodology used for the peer review of San Marino 11
Overview of San Marino 13
General information on legal system and the taxation system 14
Recent developments 18

Compliance with the Standards 19

A. Availability of Information 19

Overview 19
A.1. Ownership and identity information 21
A.2. Accounting records 48
A.3. Banking information 56

B. Access to Information 63

Overview 63
B.1. Competent Authority’s ability to obtain and provide information 64
B.2. Notification requirements and rights and safeguards. 76

C. Exchanging Information 79

Overview 79
C.1. Exchange-of-information mechanisms 80
C.2. Exchange-of-information mechanisms with all relevant partners 91
C.3. Confidentiality 92
C.4. Rights and safeguards of taxpayers and third parties. 95
C.5. Timeliness of responses to requests for information 96

Summary of Determinations and Factors Underlying Recommendations. . . .103

Annex 1: Jurisdiction's Response to the Review Report 107

Annex 2: List of All Exchange-Of-Information Mechanisms 108

Annex 3: List of All Laws, Regulations and Other Material Received. 110

Annex 4: Persons Interviewed During the Onsite Visit 113

About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information for tax purposes in San Marino as well as the practical implementation of that framework. The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information (EOI) partners.

2. San Marino is located in the Italian peninsula and shares its border with Italy. It is not a member of the European Union (EU), but co-operates with it under a number of EU mechanisms. San Marino relies on a well-diversified economy. The revenue from construction, tourism and banking and financial services contributes more than half of its GDP.

3. San Marino committed to the international standards of transparency and exchange of information for tax purposes in 2000. San Marino has been very active in negotiating tax information agreements, signing 44 such agreements to date. In 2012, San Marino signed a protocol to amend the double taxation convention with Italy, which is its main trading and financial partner, bringing the agreement to the standard. San Marino has already ratified both this double taxation convention and the amending protocol.

4. A number of recent changes have significantly improved the legal and regulatory framework, such as reducing the scope of bank secrecy so it does not limit international exchange of information for tax purposes. Bearer shares can no longer be issued and anonymous companies, which were previously allowed to issue bearer shares, have now been converted to joint-stock companies or closed down. Bearer passbooks have either been converted to nominative accounts or closed, and the authorities have put in place an effective system to ensure the closing down of bearer passbooks and identify the persons who claimed those instruments. Recent changes to Sammarinese legal and regulatory framework have also created clear obligations on all relevant entities to keep accounting records including underlying documents for at least five years.

5. Ownership information is available for all relevant entities and arrangements, including foreign companies and partnerships setting up permanent establishments in San Marino. San Marino fiduciary companies whose clients hold shares in foreign companies are required to disclose the identification of the persons for whom they are acting as nominees, their shareholdings, and (where relevant) their beneficial owners. Banks in San Marino are required to keep all records pertaining to the accounts held by them, as well as related financial and transactional information. Sanctions are in place for violations of obligations concerning keeping of corporate books and accounting records (which include information on entities' owners). Monitoring and the application of sanctions where relevant ensure that ownership information is available. Nevertheless, accounting records were not always available, in particular in relation to companies committing fraudulent activities and against which enforcement actions had already been taken by the Sammarinese authorities.

6. San Marino's competent authority, the Central Liaison Office (CLO), has the necessary access powers to obtain information from all relevant entities for the purposes of responding to international requests. Recently, the CLO has been empowered to obtain information in civil tax matters and it can also access information directly from the holders. The powers of the tax authorities to obtain information have also been strengthened. The scope of professional secrecy in San Marino's laws conforms with the standards.

7. San Marino has signed a total of 44 international agreements allowing for the exchange of information in tax matters, of which 34 are currently in force. Out of the remaining 10 agreements not in force, San Marino has ratified 8 agreements and awaits ratification by its partner.

8. San Marino has a unilateral mechanism in place to provide tax information upon request to the jurisdictions with which it has initialled or signed DTCs or TIEAs in conformity with international law, but which have not yet entered into force. The practical use of this mechanism by San Marino's partner jurisdictions depends on their internal legal provisions, which may or not allow requesting and making use of information in absence of an international agreement. No jurisdiction has relied on this mechanism to request information from San Marino.

9. The authority in charge of exchanging information for tax purposes is the CLO which is located within the Ministry of Finance. The exchange process is well organised, with internal processes in place for handling EOI requests. The exchange of information unit is well resourced in terms of personnel, IT and technical expertise. In addition to being responsible for EOI on request under DTCs and TIEAs, the CLO is also charged with exchange of information for other tax purposes. For example, San Marino exchanged information with one partner on VAT matters in a large number of cases.

10. For the period 2009-11, San Marino received only three requests from one jurisdiction pursuant to its treaty network of TIEAs and DTCs. In those cases, San Marino was able to provide information in a timely manner (in 96 days on average). Nonetheless, as the number of EOI requests received by San Marino is likely to increase in the coming years due to the growing number of agreements entering into force, San Marino should monitor that its processes and resources continue to allow for timely exchange of information.

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

12. A follow up report on the steps undertaken by San Marino to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.

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

Introduction

Information and methodology used for the peer review of San Marino

13. The peer review process of San Marino has been undertaken across three reports; the 2011 Phase 1 report, a Supplementary Phase 1 report, and a Phase 2 Report. The assessments of the legal and regulatory framework of San Marino as well as its practical implementation and effectiveness were based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference,*[2] and were prepared using the Global Forum's *Methodology for Peer reviews and Non-Member Reviews.*[3]

14. The 2011 Phase 1 Report of San Marino, which was adopted and published by the Global Forum in January 2011, was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 5 October 2010, and other materials supplied by San Marino, and information available in the public domain.

15. The Supplementary Phase 1 report, which followed the 2011 Report of San Marino, was prepared pursuant to paragraph 58 of the Global Forum's Methodology and was adopted by the Global Forum in October 2011. The supplementary report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at August 2011, and information supplied by San Marino.

16. The Phase 2 assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at May 2013, San Marino's responses to the Phase 2 questionnaire, supplementary questions and other materials supplied by San Marino, information provided by exchange of

2. See Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information for Tax Purposes (full text available at www.oecd.org/dataoecd/37/42/44824681.pdf).
3. See Methodology for Peer reviews and Non-Member Reviews (full text available at www.oecd.org/dataoecd/37/41/44824721.pdf).

information partners, and explanations provided by San Marino during the on-site visit that took place on 2 and 3 October 2012 in San Marino. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance (including the Central Liaison Office and the Tax Office), the Ministry of Foreign Affairs, and the Ministry of Industry, Handicraft and Trade (including the Office for Control and Supervision over Economic Activities), the Central Bank, the Court Registry, the Association of Lawyers and Notaries, and the Accountants Association. A list of all those interviewed during the onsite visit is attached to this report at Annex 4.

17. The following analysis reflects the integrated 2011 Phase 1, supplementary Phase 1 and Phase 2 assessments of the legal and regulatory framework of San Marino in effect as at May 2013 and the practical implementation and effectiveness of this framework in the three-year review period of 1 January 2009 to 31 December 2011.

18. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses San Marino's legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding San Marino'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. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning San Marino's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. An overall rating is also assigned to reflect San Marino's overall level of compliance with the standards.

19. The assessments in respect of the 2011 Phase 1 Report as well as the Supplementary Phase 1 Report were conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Caroline Peffer, Ministry of Finance, Luxembourg, Monica Sionara Schpallir Calijuri, from the Secretariat of the Federal Revenue of Brazil, and Sanjeev Sharma from the Global Forum Secretariat.

20. The Phase 2 assessment was conducted by the same team and an additional representative of the Global Forum Secretariat: Mr. Francesco Positano. The assessment teams assessed the legal and regulatory framework and the practical implementation and effectiveness of this framework and relevant EOI arrangements in San Marino.

21. The ratings assigned in this report were adopted by the Global Forum in November 2013 as part of a comparative exercise designed to ensure the consistency of the results. An expert team of assessors was selected to propose ratings for a representative subset of 50 jurisdictions. Consequently, the assessment teams that carried out the Phase 1 and Phase 2 reviews were not involved in the assignment of ratings. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach. The assignment of ratings was also conducted at a different time from those reviews, and the circumstances may have changed in the meantime. Readers should consult Annex 1 for information on changes that have occurred.

Overview of San Marino

22. The Republic of San Marino is Europe's third smallest independent state, after Monaco and the Vatican, and has a resident population of over 32 400, of whom over 5 000 are foreign citizens (mostly Italian). The State covers an area of 61.2 square kilometres and is located in Central-Northern Italy, 23 kilometres from the Adriatic Sea. San Marino is divided into nine Castelli (municipalities), each bearing the name of its chief town. Italian is the official language of San Marino and it has adopted the Euro[4] as its currency.

23. San Marino is a republic. The Office of Head of State is jointly held by two Captains Regent, who are elected every six months by the Great and General Council (Parliament) from amongst its members. They preside over meetings of the Great and General Council and the Congress of State (Cabinet) and supervise the activities of the public institutions. The Parliament (the Great and General Council) is elected every five years by universal suffrage and consists of 60 members. Executive power vests with the Congress of State.

24. San Marino is not member of the European Union but it signed an agreement on co-operation and customs union with the status of "third country" in 1991 and its territory is treated as part of the EU customs zone. On the basis of this agreement, trade between San Marino and the EU is carried out exempt of all import and export duties or taxes with an equivalent effect.

25. Due to sharing of borders with Italy on all sides and various other reasons, Italy is the most important partner in Sammarinese economic life. All the imports and exports of San Marino are routed through Italy. Italy accounts for about 90% of San Marino's export market. Sammarinese banks

4. The Council of European Union has authorised San Marino to use the Euro as its official currency and mint a limited quantity of Euro with its own national images.

have indirect access to the EU payment systems via Italian banks acting as direct participants on behalf of San Marino banks. San Marino has signed many bilateral conventions with Italy dealing with diverse issues like postal, telegraphic, telephone, services by professionals, convention for the circulation of bicycles and automobiles, Convention on Good Neighbourliness and Friendship of 1939[5], agreements on imports/exports matters, Monetary Conventions *etc*, the oldest being the Postal Convention of 1865.

26. San Marino's economy heavily relies on tourism and banking industries, as well as on the manufacturing. About two million tourists visit San Marino each year. The services sector represented 65.1% of its GDP of EUR 1 460 million (2011 est.), while the industrial sector represented 34.9%.[6] The global financial crisis has had a far-reaching impact on the Sammarinese economy. Between 2008 and 2011, the economy contracted by about 22% mainly due to a significant compression of financial institutions' balance sheets and a sharp decline in the manufacturing base.

General information on legal system and the taxation system

Legal system

27. San Marino's legal system is based on civil law system with Italian law influences.

28. The Declaration on Citizens' Rights, enacted in 1974, is the highest law stipulating the country's institutional framework. This law guarantees fundamental civil, political and social rights to Sammarinese people and is considered equal to a constitutional charter. The legislation of the Republic of San Marino is made up of statutes, laws, commune and customary laws. There are different kinds of laws: ordinary laws (*Leggi*), qualified laws (*Leggi Qualificate*) and constitutional laws (*Leggi Constituzionali*), and different kinds of decrees. The Great and General Council approves all the laws and decrees, though with different level of majority depending on the type of law. International treaties and conventions come first in the hierarchy of legal norms, followed by Constitutional laws, qualified and ordinary laws, decrees, Congress of State Decisions, FIA Instructions, and regulations. Congress of State decisions are binding and enforceable. Instruments under various names including circulars and instructions *etc* may also be issued but these do not have the status of law or regulation. Regulations and circulars issued by the Central Bank or the Financial Intelligence Agency are however mandatory and enforceable.

5. The said convention envisages several matters, which includes Judicial Cooperation, Administrative Cooperation and free circulation of people and goods.
6. Source: Statistical Office of the Republic of San Marino.

29. Judicial power is organised in a Single Court having ordinary and administrative jurisdictions. Two levels of appellate courts available: the Civil and Criminal Judge of Appeal and the Administrative Judge of Appeal; and the judge of the last appeal. The Council of Twelve (*Consiglio dei XII*), chaired by the Captains Regent fulfils administrative functions. The jurisdictional functions are now conferred upon the Judicial Bodies after the adoption of Constitutional Law in 2003. The Constitutional Court (*Collegio Garante della costituzionalità delle norme*), established on 28 April 2005, verifies that laws, acts, and provisions are consistent with the constitutional principles.

Taxation system

30. San Marino's taxation system provides for direct and indirect taxes. Direct tax is in the form of general income tax, which is levied on both natural and legal persons. It taxes the worldwide income of its residents, whereas non-residents are taxed on income sourced in San Marino. Indirect tax is in the form of import tax.

31. Individuals are taxed at progressive rates to increasing income brackets and tax rates ranges from 12% (for income below a threshold of EUR 9 296) to 50% (for any income above a threshold of EUR 232 405). Capital appreciation from speculative transactions is taxed at 8%. Companies pay tax at rate of 17% of their income. No tax is levied on distributed dividends. San Marino offers tax benefits to companies investing in plants and technologies resulting in new production processes, reduction of pollutants, energy savings or restructuring of jobs. The operating profits invested in the range of 30% to 60% are tax exempt.

32. Trusts are taxable entities and income produced by the trust assets is taxed at the ordinary company tax rate (17%), but on a tax base which is 10% of the actual trust income. Therefore, the effective tax rate is 1.7%. Transfers from settlor to trustee and from the trust to beneficiaries are exempt from taxes.

33. There is no VAT in San Marino, but there is a tax on the import of goods. This is a single-phase tax which applies to the total value of the goods imported into San Marino. The ordinary tax rate is 17%, but special rates exist for some types of goods.

Overview of financial sector and relevant professions

34. The Law on Companies and Banking, Financial and Insurance Services, also known as "LISF" provides for the licensing and supervision of reserved activities. The Central Bank of the Republic of San Marino

(CBSM)[7] is the licensing and supervisory authority. This law regulates the financial sector activities undertaken by banks, financial and fiduciary companies, management companies and insurance companies. The maintenance of records under the provisions of this law adds greatly to meet the requirements of effective exchange of information.

35. The banking and financial sectors are shrinking since the onset of global financial crisis and banks have lost about 30% of their deposits during the period of December 2008 to December 2011.[8] The banking assets were EUR 6 700 million in December 2012. Of the 11 banks operating in San Marino, four have been operating for many years, carrying out traditional banking services (two Sammarinese owned and two owned by Italian commercial banks). Two of these banks are no longer in operation. San Marino also had 35 financial companies as of June 2011, with EUR 793 million of assets under fiduciary administration. In March 2013, the number of financial and fiduciary companies was reduced to 16. The banking sector in San Marino is undergoing a consolidation process and as of March 2013, no foreign financial or banking group has a stake in a Sammarinese bank. San Marino does not have a stock exchange.

36. Until the first half of 2009, insurance services were exclusively supplied by agencies of foreign insurance companies, mainly Italian, operating domestically. Since the second half of 2009, the first two Sammarinese life insurance companies also started operating. As of March 2013, one investment firm and two asset management companies were also operating in San Marino.

37. Domestic fiduciary companies operate in San Marino, holding customers' assets in their own names and charging fees for these services. Foreign fiduciary companies can only open accounts or have shareholdings in San Marino companies.

38. Professionals providing services to customers, such as lawyers, and accountants are required to register with their respective Registry. They are also "obliged parties" under the anti-money laundering and counter-terrorist financing (AML/CFT) laws[9] of San Marino. The exercise of the Office of Professional Trustees is subject to authorisation of the Central Bank. Trustees are also subjected to anti-money laundering provisions with regard to record keeping of the trusts.

7. An authorisation from Congress of State is necessary for some activities.
8. www.imf.org/external/pubs/ft/scr/2012/cr12108.pdf.
9. Law No.92/2008, modified by Law No.73/2009.

Overview of commercial laws and other relevant factors for exchange of information

39. San Marino allows companies and partnerships as the forms of business in the country. These are created and regulated under the provisions of specific laws. Foundations are also allowed to be created, though only for non-profit purposes.

40. The levy of income tax is governed by the Introduction to the General Income Tax (Law No.91/1984) as amended by Law No.66 of 2007, Law Decree No.153 of 2009. The taxation regime for trusts is governed separately by Law No.38/2005. The legal basis for the exchange of information for tax purposes is not provided in the income tax law.

41. The framework for the exchange of information for tax purposes was created through Law No.95/2008. This has created the Central Liaison Office (CLO), the competent authority in San Marino, for implementing all the international agreements adopted by San Marino.

42. On 7 December 2004 an agreement was signed with the European Community establishing measures similar to those defined by Council Directive 2003/48/EC regarding taxation of income from savings in the form of interest payments. The EU Savings Tax Initiative became effective in 2005 in San Marino, through Law No.81/2005.

43. San Marino introduced changes to its strict banking secrecy laws by Law No.5/2010. Now, bank secrecy cannot be used to stop access to bank information by authorities for the purposes of exchange of information in accordance with international agreements signed by San Marino.

44. Law No.92 of 17 June 2008 "Provisions on preventing and combating money laundering and terrorist financing" is the main anti-money laundering legislation in San Marino. This law entered into force on September 2008. Amendments to this law were introduced by Law No. 73 of 19 June 2009 and Decree Law No.134 and Decree Law No.181 of 2010. The AML/CFT Law of San Marino provides for the creation of the Financial Intelligence Agency and sets down the obligations on obliged parties. The requirements for obliged parties to keep customers' identity and ownership information and the records of their transactions contributes to keeping of records for the purpose of exchange of information.

45. The Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), or which San Marino is a member, conducts evaluations of San Marino's compliance with the FATF Recommendations for Anti-Money

Laundering and Combating of Financial Terrorism (AML/CFT).[10] In response to the findings of the 2007 evaluation of San Marino, a database for the exchange of information between San Marino banks and Italian intermediary banks on cross-border transactions that are settled through the Italian payment system was created in 2009. On 29 September 2011, the MONEYVAL published the "Report on Fourth Assessment Visit" on San Marino.

Recent developments

46. In June 2012, San Marino and Italy signed a protocol to the 2002 tax convention to include provisions to include the terms of Article 26 of the OECD Model Tax Convention. This treaty provides for exchange of information to the standard. It has been ratified by San Marino.

47. San Marino signed a new Monetary Agreement with the European Union in March 2012. This new agreement, in force as of 1 September 2012, requires the implementation in the Sammarinese regulatory framework of all relevant European Directives in a time frame varying from one to six years.

48. On 16 May 2013, San Marino issued Decree Law No.54/2013, establishing a new deadline to claim the balance held in the bearer passbooks closed ex lege on 30 June 2010. Pursuant to this Decree Law, bearer passbook holders must claim the balance by 1 January 2014, while previously this deadline was 30 June 2020. By 31 January 2014, the banks will have to transfer the balance of all unclaimed bearer passbooks to the treasury.

10 www.coe.int/moneyval.

Compliance with the Standards

A. Availability of Information

Overview

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

50. San Marino has made several changes in recent years in its legal and regulatory framework for strengthening the existing framework to ensure that the obligations imposed on domestic and foreign companies, partnerships, trusts and foundations for keeping ownership and identity information are generally sufficient to meet the international standards. In 2010 and 2011, San Marino established licensing requirements for foreign companies and foreign partnerships desirous of setting up a permanent establishment in San Marino. Changes to the trust law in 2011 require registration of trust certificates for all trusts which contain information on the beneficiaries with a current interest in the trust fund. Further, in 2011, San Marino amended its company law to provide sanctions for violations of obligations concerning keeping

of corporate books (which include ownership information) and accounting records. Also, enforcement provisions now ensure the availability of ownership and identity information for all entities and arrangements.

51. Previously, San Marino had provisions in its law providing for the issue of bearer shares, the creation of anonymous companies, and the issuance of bearer bank passbooks and bearer deposit certificates. All of these provisions have been abrogated. All anonymous companies were required to be converted into joint-stock companies or wound up and bearer shares were required to be converted into registered shares by 30 September 2010. Bearer passbooks had to be closed or converted into nominative accounts by 30 June 2010.

52. San Marino enacted a law in 2010 to regulate activities of foreign fiduciary companies which participate in San Marino companies. Further, changes to the law in 2011 introduced obligations on fiduciary companies registered in San Marino to disclose to the authorities information identifying the person(s) for whom they act and also identification data of the beneficial owners of such persons in all cases.

53. Domestic companies and partnerships are required to maintain accounting records. The trust law and laws governing foundations oblige the respective entities to maintain accounting records and data. Pursuant to the amendments to the relevant laws in 2011, only individuals (sole proprietors) may keep simplified accounting records and ensured that full accounting records are kept by foreign partnerships that carry on business in San Marino.

54. Sammarinese commercial law governing the creation and regulation of companies, partnerships, trusts and foundations, as well as the requirements under the Income Tax Law, provide for keeping accounting records for five years.

55. In respect of financial institutions and other authorised parties, the combination of licensing and AML/CFT regimes impose appropriate obligations to ensure that customer due diligence information and financial transaction records of their customers are available and maintained for a minimum of five years.

56. In practice, updated information on ownership of all relevant entities is available, often electronically, with the Sammarinese authorities. The legal framework, complemented by sanctions, ensures that the ownership information available with authorities is updated and reliable. Bearer shares have been eliminated. The authorities have put in place an effective system to ensure the closing down of bearer passbooks and bearer certificates of deposits and to identify the persons who claimed those instruments.

57. The Commercial Registry of the Single Court also keeps balance sheets of companies which are deposited annually with them. Accounting records and underlying documentation are maintained by relevant entities and arrangements.

58. Over the three year period under review (2009, 2010, 2011), San Marino received three EOI requests from one jurisdiction concerning ownership and accounting records of companies and partnerships, as well as banking information. The information in these cases was provided in a timely manner to the requesting jurisdiction (in 96 days on average). Moreover, San Marino has actively exchanged ownership and accounting information relating to indirect taxation with one partner under an administrative cooperation agreement in a large number of cases. Although this is not an agreement of EOI on direct tax matters, the information required to be provided is the same as the information required to be maintained under the *Terms of Reference*. There have been some cases where accounting records were not available. These cases mainly relate to companies committing fraudulent activities and against which enforcement actions had already been taken by the Sammarinese authorities. It is recommended that San Marino monitor that the enforcement measures continue to be applied properly so as to ensure the availability of accounting information consistent with the standard.

A.1. Ownership and identity information

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

Companies (ToR 11 A.1.1)

59. Companies in San Marino are governed under the provisions of Law No.47/2006. This Law, referred as Company Law in this report, repealed the earlier Company Law (Law No.68/1990), with the exception of its Article 4 (non-commercial associations and foundations: concepts and basic rules).

60. According to Art. 2 of the Company Law, as amended by the Law No.98 of 7 June 2010, companies with share capital can be established in the form of joint-stock companies (società per azioni) and limited liability companies (società a responsabilità limitata). Law No.98/2010 amended Article 2 of the Company Law and provides that companies in the form of public limited companies (anonymous companies) can no longer exist and all anonymous companies must convert into joint-stock companies.

11. *Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information.*

61. Article 2 of the Company Law also allows for the creation of unlimited partnerships ("società in nome collettivo") as a form of company and provisions of this law which apply to companies apply equally to such partnerships.

62. In addition, Art. 3 provides for the creation of societies among professional persons for conducting together the professional activity for which they are authorised.

63. Legislation also provides for co-operatives, which are specifically regulated under Law No.149/1991, and more generally under the old Company Law (Law No.68/1990). Co-operatives are commonly in the nature of housing co-operatives or consumer co-operatives managing grocery stores. These operate for the benefit of their member-owners. Information about members of co-operatives is available with the Court Registrar. The provisions of the Company Law apply to co-operatives.

Registration of companies

64. Article 20 of the Company Law obliges all the San Marino companies to be registered in the Register of Companies, maintained by the Court Registrar, part of the Single Court. Companies gain legal personality on their registration in the Company Register.

65. The Register of Companies contains details of each registered company. Such details include: details of the memorandum of association; registered office; subscribed and paid up capital and any variations; personal particulars of the legal representatives of the company, of the directors, the auditors, liquidators and other information regarding the important events during the existence of the company (Art. 6 of Company Law).

66. The main document forming the basis of registration is the memorandum of association of the company, which must be in the form of a public deed. For registering a company, the notary must file an authenticated copy of the memorandum of association and documents attesting to the existence of the conditions envisaged by the Law with the Registrar's office.[12] The Registrar enters the company in the Register and such registration is also notified to the Office of Industry, Handicraft and Trade (Art. 20 of the Company Law).

67. Resolutions to modify the memorandum of association must be made in a public deed submitted by the notary to the Registrar for registration (Art. 22). The Registrar also receives the minutes of all general meetings containing decisions relative to changes to the memorandum of association and articles of association, appointment of directors, and approval of the balance

12. The register is held by the Office of the Court Registrar.

sheet. These minutes must be filed with the Registrar within 30 days following their registration with the Mortgage Register Office of the Republic of San Marino, or if not applicable, from the date on which the general meeting was held (Art. 6, Companies Law).

Ownership information on companies

68. The memorandum of association contains information on the identity of owners and also contributions made by them to the capital of the company. Articles 14 and 15 provide for the reduction and increase of capital respectively.

69. Participation in joint-stock companies is represented by shares. Both natural and legal persons can be members of companies with share capital. San Marino allows creation of sole partner companies. The issue of shares must be endorsed and authenticated by a notary. Share capital is freely transferable, unless established differently by the articles of association. Registered shares must be transferred by means of a public deed recorded by a San Marino notary, who is required to file an authentic copy of assignment deed with the Registrar's office. Transfer has effect after it has been registered in the stock ledger.

70. Article 72 of the Company Law obliges the company to keep a stock ledger containing the personal details of the holders of the registered shares and holdings and also any transfers or obligations relating to the same. The stock ledger, and any changes thereto, must be endorsed by the Mortgage Register Office and it must be kept in the registered office of the company for its entire duration. The personal details recorded are the shareholder's full name and any other data contained in an ID card or passport or, in case of legal entities, the business name and the certificates of registration with the Court. The stock ledger can also be deposited with a Lawyer, a Public Notary or Accountant (holding a university degree or a high school certificate), regularly enrolled in the respective San Marino Register, without prejudice to the obligation to produce these documents to the competent authorities in case of request, assessment, or inspection (Company Law, art. 72(5)). Failure to produce the documents results in the application of sanctions (see sub-element *A.1.6, Enforcement provisions* below).

71. San Marino enacted Law No.98 of 7 June 2010 (Provisions for the Identification of the Beneficial Ownership Structure of Companies under San Marino Law). Article 4 of this law requires all companies with share capital having their registered office in San Marino to provide a certified abstract of their Register of Shareholders, through a Notary Public, to the Commercial Registry of the Single Court by 31 July 2010. This Register of Shareholders must clearly outline the company's ownership structure. Anonymous companies were

required to comply with the requirement by 30 November 2010. This requirement legally ensures that information on ownership of all existing companies is submitted to the Commercial Registry of the Single Court.

72. All domestic companies, whether owned by residents or non-residents are subjected to the same regulations with regards to ownership and accounting information.

73. In addition, under Art. 40 of Law No.129 of 23 July 2010, the Office of Industry, Handicraft and Trade is obliged to keep the public register of licences containing information on all licences granted for carrying out business in San Marino. It must contain the name of holder, the Economic Operator registration and identification code, the place of establishment of the business, the details of economic activity carried out and status of licence. In order to obtain a licence, no information on ownership is required to be furnished.

74. To sum up, domestic companies are obliged to keep information that identifies the owners in the stock ledger. The law mandates availability of ownership information with the Registrar.

Ownership information of companies held by public authorities in practice

75. The Commercial Registry of the Single Court keeps information on companies, cooperatives, consortia and foundations in separate registers. The Register of Companies, maintained by the Registrar contains information on the memorandum of association, the registered office, subscribed and paid-up capital, the corporate purpose, the date on which balance sheet was approved, the personal particulars of the legal representatives of the company, measures taken by judicial authorities concerning liquidation of the company, existence of a sole partner etc. This register is public and can be accessed free of charge by any person during the opening hours of the Single Court. As of 30 September 2012, there were 3 479 limited liabilities companies, 502 joint-stock companies, and 68 cooperatives registered in the Registrar. A total of 1 206 companies were in liquidation and 233 were undergoing insolvency proceedings.

76. In addition to the Register of Companies, the Commercial Registry of the Single Court maintains, as per Congress of State Decision No.55/2009, a separate electronic database detailing historical information on the identification data of shareholders of limited liability companies and joint stock companies registered in San Marino. This database records the shareholders' names, biographic data, including residence and the percentage of capital stock held by them in each of the companies where the shareholder holds shares. Ownership information of companies is updated immediately when

any change in ownership is communicated by the notary to the Registrar. The notary who validated the companies' deeds or transfers of shares must communicate such changes to the Registrar within 30 days of validation. The Register indicates the dates when the information was provided as well as the date of change in ownership. The information received by the Single Court is kept in both hardcopy and electronic forms. The mechanism to record the changes ensures that the information available with the Registrar of Companies is complete and reliable. The database also contains historical information on the directors and members of companies, partnerships, cooperatives, and foundations. The Registrar updates this database on the basis of the information inserted in the Register of Companies. According to the Sammarinese authorities, all information contained in the database is readily available and can be searched and cross-checked very easily. This database is not public but is accessible to other public offices, including the Central Liaison Office, the Financial Intelligence Agency, the Ministry of Industry, the Fraud Squad of the Civil Police, the Office for Control and Supervision of Economic Activities, the Office of Industry, Handicraft and Trade, and the Tax Office.

77. San Marino has submitted that as of 30 September 2012, 1 206 companies out of total of 5 420 companies and 21 out of 76 foundations were in liquidation. This includes 1 054 companies and 10 foundations in voluntary liquidation. San Marino has indicated that the high proportion of companies in liquidation is mainly due to the dissolution of companies following the inclusion of San Marino in Italy's "black list" in 2010, the monitoring activities of the Office for Control and Supervision of Economic Activities (see section A.1.6 below), and the global economic crisis. Under article 72(2) of the Company Law, companies must keep the corporate registers "for its entire duration", which would include when they are in the process of liquidation. Companies in liquidation have the same reporting obligations to the Commercial Registry as all other companies, including the obligation to report any ownership change. For companies that have been liquidated, the corporate registers must be kept by the liquidator, a notary or an accountant for five years and can be examined by anybody (Company Law, Art. 113). Before a company is finally liquidated and struck off the register, the liquidator must submit to the Tax Office a tax return which covers the whole liquidation period.

78. In the three-year period under review, San Marino received three requests concerning the ownership of domestic companies and exchanged the requested information in all cases. The information in two cases was timely provided to the requesting jurisdiction (in 96 days on average). In addition, San Marino exchanged ownership information with one partner in the framework of an administrative assistance in VAT matters in a large number of cases. Although this is not an agreement of EOI on direct tax matters, the

information required to be provided is the same as the information required to be maintained under the *Terms of Reference*. In ten cases (about 7%), information has not been provided either because San Marino did not consider it a valid request or because more information has been requested to the partner.

Income tax law

79. The Income Tax Law (Law No.91/1984) obliges all persons receiving income to file a tax return (Art. 28)[13], irrespective of tax liability. Persons earning corporate income and self-employed people must file a tax return even if they have not generated any income. Income tax returns filed by companies do not contain information on their ownership.

80. Profits distributed by joint-stock companies are not subjected to tax at source (Art. 39 of Income Tax Law). Starting from the 2012 tax period (Art. 37 of Law No.150/2012), individuals resident in San Marino receiving profits from San Marino companies must indicate in the tax return the amount of profits received from San Marino companies with share capital, even if income is not taxable. San Marino companies were already required to declare these profits, although they were not taxed.

Foreign companies

81. Article 11 of Law No.129 of 23 July 2010[14] has created obligations on foreign companies to obtain licences from the Office of Industry, Handicraft and Trade, if they wish to open a permanent establishment and intend to undertake economic activities in San Marino. Pursuant to Article 13 of Decree Law No. 36/2011, they are required to fulfil all setting-up procedures before a San Marino notary and to appoint a representative in San Marino and submit documents which *inter alia* include a certified copy of the statutes, certificate of the effectiveness of the company or equivalent document and a certified copy of the articles of association of the permanent establishment.

82. The Office of Industry, Handicraft and Trade keeps a public Register of Licenses listing all licenses issued and including the name of the holder, the Tax Registration Number, the date of issuance of the license and other information deemed useful. There are three types of licenses that can be granted to foreign companies: for retail commerce, the building sector, and for branches. As of October 2012, there were 177 foreign companies licensed by the Office of Industry, Handicraft and Trade, of which 162 permits granted to Italian operators involved in retail trade and 15 fixed-term permits in the

13. Article 29 provides exemption from filing tax returns for some persons.
14. Effective from 10 August 2010.

building sector. Three permanent establishments are registered with the Commercial Registry.

83. Legal persons having their place of effective management in the territory of San Marino are considered tax resident in San Marino (Art. 2 of Law No.91/1984) and accordingly their worldwide income is taxable in San Marino. Until recently, foreign companies were not however taxed because the Income Tax Law did not contain the concept of permanent establishment, however, on 6 August 2010 the Congress of State issued Decree No.144[15], which amended Law No.91/1984 and introduced the definition of permanent establishment[16], similar to that of Art. 5 of OECD Model Tax Convention, and prescribed the same accounting requirements for foreign companies as are applicable to domestic companies. These changes to the law ensure the availability of the ownership and identity information for foreign companies with their place of effective management or administration in San Marino.

84. In the three-year period under review, San Marino did not receive any request for information in respect of foreign companies.

Regulated entities

85. Entities carrying on reserved activities[17] are subject to prior authorisation and regulation by the CBSM (Law No.165/2005 – Law on Companies and Banking, Financial and Insurance Services referred to as "LISF"). In some cases, authorisation from the Congress of State is also necessary. The LISF contains comprehensive provisions for the regulation of authorised parties and reserved activities. Supervised entities include banks, finance companies, fiduciary companies, investment fund management companies, investment enterprises, insurance companies, trustees, financial promoters and insurance brokers. Acquiring a substantial participation or losing it requires notification to the supervisory authority. Article 23 of LISF provides

15. San Marino's Constitutional Law empowers the Congress of State to issue Decrees having immediate force of law on the basis that they must be submitted to the Parliament within three months for formal ratification, under of penalty of nullity. This decree came into force on 8 August 2010, on the date of publication and was ratified by the Parliament on 26 October 2010.
16. The Decree of 6 August 2010 defines the notion of "permanent establishment" (mentioned in Art. 2 of the Law of 13 October 2010) as applying to non-resident companies.
17. The reserved activities listed in Annexure 1 of LISF are: Banking, granting of loans, fiduciary activities, investment services, collective investment services, non-traditional collective investment services, insurance, re-insurance, payments services, electronic money issue services, exchange intermediation and the taking of holdings.

powers to the supervisory authority to request information from authorised parties about participants (owners and members) and also from companies directly or indirectly holding participations in the authorised parties.

86. Entities carrying out the reserved activities must have their registered office and administrative seat in San Marino. Foreign persons can also be authorised to carry out reserved activities in San Marino through the setting up of branches or the provision of services without establishment, if those fulfil prescribed requirements (Art. 75(1) of LISF).

Service providers

87. The regulatory regime for service providers requiring them to keep identity and ownership in respect of their customers is provided by the AML/CFT Law. The service providers are referred to as "obliged parties" in Art. 17 of the Law.

88. Obliged parties include: banks; financial and insurance and re-insurance agencies; the Central Bank; post offices; financial promoters; professional credit recovery services; investment services; assistance and consultancy on tax, financial and commercial matters; credit brokerage; real estate brokerage; custody services; auction houses; purchase of unrefined gold; trade in antiques; and various professionals. A notary, who must sign a public deed used to establish a company, is an obliged entity under the AML/CFT Law.

89. Law No.92/2008 requires the obliged parties to conduct customer due diligence (CDD). The customer due diligence measures include identifying and verifying the identities of customers and beneficial owners before establishing a business relationship or carrying out a transaction, and also on-going monitoring of the relationship with the customer and updating the data, documents and information acquired during the fulfilment of the customer due diligence obligations (Art. 22 Law No.92/2008). This law defines "beneficial owners" of a company to be natural person(s) that directly or indirectly own more than 25% of the voting rights in the company or control the management of the company.

90. In 2008 and 2009, laws were enacted in order to phase out bearer instruments. Laws also provided that after 1 January 2012 no new bearer passbooks can be issued and those issued earlier with low balances must also be closed or converted. Banks must carry out customer due diligence for each deposit, withdrawal, closure or conversion regarding bearer passbooks. Subsequently, these due dates were brought forward by Law-Decree No.136/2009, under which:

- issuance of bearer passbooks was prohibited with immediate effect;
- all bearer passbooks, regardless of their balances, must be closed or converted to nominative accounts by 30 June 2010.

91. Issue of certificates of deposit in bearer form was prohibited by a Decree enacted on 8 November 2009. Designated Non-Financial Businesses and Professions[18] (DNFBPs) are covered under the ambit of AML/CFT Law. Professional Practitioners are obliged to conduct identification and verification of the identity of customers and their beneficial owners. The detailed requirements have been prescribed in the instructions issued by the Financial Intelligence Agency[19]. Instruction No.2009-09 deals with the obligations of non-financial entities with regard to CDD requirements and record keeping. The requirements apply to all forms of customers including companies, foundations and trusts.

92. The Financial Intelligence Agency (FIA) Instruction 2009/06 "Requirements of customers due diligence, record keeping and suspicious transactions reporting for the professional practitioner" specifically requires lawyers, notaries public and accountants involved in the formation of companies or transfer of shares, to conduct due diligence on their clients.

93. The obliged parties are regulated and supervised by the FIA. An obliged party which fails to comply with the obligations imposed by the AML/CFT Law is liable to different types of sanctions depending on the nature of the violation. For example, the violation of customer due diligence obligations is punishable with a pecuniary administrative sanction from EUR 5 000 to EUR 70 000 (Art. 61 of Law No.92 as amended by Art. 9 of Law No.73/2009 and subsequently amended by Art. 23 of Decree Law No.134 of 26 July 2010).

Nominees

94. Article 72 of the Company Law requires companies to keep the personal details of the holders of the registered shares in the stock ledger. These provisions require that the information about the natural or legal shareholder be kept in the stock ledger, regardless of whether such shareholder is a nominee. The stock ledger does not have information on which stock holders are nominees, nor on the persons for whom nominees act.

95. The LISF defines fiduciary activity as holding of the title of the assets of third parties in execution of a mandate without representation. It

18. Article 20 of Law No.92/2008 defines professionals covered by the provisions of the AML regulations in San Marino and these are: Members of the Register of Chartered and Certified Accountants; members of the register of independent Auditors and Auditing firms and the Register of Actuaries; and members of the register of Lawyers and Notaries of the Republic of San Marino with regard to specified services.
19. Instruction No.2009-06/2009 and Instruction No.2009-09.

is the understanding of the assessment team that fiduciary companies fall within the category of nominees but these may not be the only forms of nominees acting in San Marino. Pursuant to article 17 of the Companies Law, as specified by Circular No.2010-02, fiduciary companies must disclose their fiduciary status in dealings with third parties and are forbidden from using their own name to appear as being the direct party in a contract.

96. Fiduciary activity can only be carried out by legal persons under an authorisation from the Central Bank (Law No.165/2005). Such authorised legal persons are banks and fiduciary companies. Article 17 of the Company Law deals with the participation by fiduciary companies. Such companies, upon acceptance of the fiduciary mandate are under an obligation to obtain prior certification with regard to the grantors of the mandate and must declare the same in the articles of association.

97. In 2010, San Marino has enacted a law to regulate activities of fiduciary companies, including foreign fiduciary companies, which participate in San Marino companies (Law No.98 of 7 June 2010[20] – Provisions for the Identification of the Beneficial Ownership Structure of Companies under San Marino Law). This law sets out the conditions for San Marino and foreign fiduciary companies having a mandate to participate in San Marino companies. They are required to comply with the enforcement provisions issued by the Central Bank of the Republic of San Marino (CBSM) and the FIA. They must comply with the same obligations imposed on fiduciary companies authorised in San Marino by Art. 17[21] of the Company Law as amended. Foreign fiduciary companies cannot establish contractual and pre-contractual relations with clients on San Marino territory. Article 3 of Delegated Decree No.153 of 2 September 2010 requires deposit of original certificates obtained by fiduciary companies with a San Marino notary. The information available with the CBSM is accessible to the competent authority for international tax matters (the Central Liaison Office (CLO)) pursuant to Art. 7 of Law No.98/2010 as well as to the Office for Control and Supervision of Economic Activities.

98. Law No.98/2010, as amended by Article 12 of Decree Law No.36/2011, also requires that fiduciary companies, whether domestic or foreign, must communicate, in all cases, to the Supervision Department of the CBSM, the identification data of the persons for whom they are executing the mandate, the shareholding of each of them and in case they are not

20. This law came into force on 23 June 2010.
21. Article 17 of Company Law was amended by Law No.162/2010 and provides that "fiduciary companies may not establish undertakings, acquire or possess their holdings on the basis of the fiduciary assignments if the certification shows that the grantor or beneficial owner is an unfit party.".

natural persons, the identification data of their beneficial owners. Any subsequent changes concerning the persons for whom they act and/or beneficial owners must also be communicated. Previous to the enactment of Decree Law 36/2011, this obligation applied to fiduciary companies having mandate to participate in San Marino companies only. From 2011, this obligation has been extended also to domestic fiduciary companies with shareholding in foreign companies, thus removing any gap concerning disclosure of ownership information held by fiduciary companies (Art. 12 Decree Law No.36/2011).

99. San Marino's authorities have indicated that the CBSM may request and obtain both on-site and off-site, at any given moment, information from San Marino fiduciary companies on shareholdings in San Marino companies held by fiduciary companies and on the persons for whom they act and beneficial ownership thereof. The CBSM also has access to the information on grantors and beneficial owners of customers of fiduciary companies who invest in San Marino and also information on the grantors and beneficial owners on behalf of whom the San Marino fiduciary company purchases assets in San Marino or abroad, including company shareholdings. The CBSM has issued Circulars[22] 2007-03, 2008-06 and 2010-03 in this regard. The Central Bank of San Marino has also issued Regulation No.2011-03 for Financing Operations (Financial Companies), strengthening the supervision of fiduciary companies.

Ownership information of fiduciary companies in practice

100. Pursuant to Law No.98/2010, the CBSM has established a Register of Fiduciary Investments,[23] containing updated information on persons asking fiduciary companies to act for them, the size of the investment attributable to each one and, where these persons are not natural persons, the personal details of the beneficial owners. This information is kept in respect of all fiduciary companies, established in San Marino or abroad, where the mandate refers to investments in San Marino companies. As regards the size of fiduciary activities in San Marino, as of March 2013, there were 16 fiduciary companies in activity in San Marino, which held about 85% of total fiduciary investments of EUR 622 229 782. The balance of 15% of fiduciary investments is held by banks. The CBSM has indicated that it frequently cooperates with other public offices by exchanging information regarding fiduciary activities. Furthermore, the Register of Fiduciary Investments is accessible to the CLO and the Office for the Control and Supervision on Economic Activities upon request. The CLO has requested from the CBSM information

22. English translations of these circulars were not provided to the assessment team.
23. www.bcsm.sm/index.php?option=com_content&task=view&id=726&Itemid=472&lang=en.

regarding mandates for investments in San Marino companies held by fiduciary companies nine times in the last three years (2010, 2011, 2012) and all information has been received by the CLO.

101. In the three-year period under review, San Marino did not receive any request on fiduciary companies from DTC or TIEA partners. In the framework of administrative assistance in VAT matters with one partner San Marino exchanged ownership information of fiduciary companies.

Bearer shares *(ToR A.1.2)*

102. The Company Law allowed anonymous companies to issue shares in bearer form. Provisions in the Company Law relating to anonymous companies were repealed by Law No.98/2010. This law required all bearer shares to be converted to registered shares and consequently all anonymous companies to convert into joint stock companies by 30 September 2010 and deposit a certified abstract of the Register of Shareholders with the Commercial Registry of the Single Court by 30 November 2010. Companies not fulfilling these obligations were subject to compulsory winding up. Prior to Law No.98/2010, it was already possible for anonymous companies to transform into joint-stock companies or limited liability companies pursuant to Article 86 of the Company Law.

103. Article 31 of the Companies Act had provisions for raising of fresh capital by joint stock companies through issue of bearer bonds. However, such bonds can no longer be issued for raising fresh capital (Art. 5 of Law Decree No.162 of 24 September 2010).

104. As of 30 September 2010, at the date when all anonymous companies were required to be converted into joint-stock companies, there were 688 anonymous companies registered in San Marino, of which 119 were already in the process of winding-up and 171 transformed into joint-stock companies or limited liability companies pursuant to Article 86 of the Company Law. Of the remaining 398 anonymous companies, 388 provided the abstract with the name of all shareholders and converted into joint-stock companies under Article 1 of the Law No.98/2010.

105. The remaining ten companies were reported to the Office of Industry, Handicraft and Trade for not depositing the abstract of the register of shareholders and were reported to the Law Commissioner for the application of the liquidation procedures under Article 1(5) of Law No.98/2010. Out of these ten, one company has subsequently complied with the requirement (and converted into joint-stock company), five have been placed in ex-officio liquidation, and four have started voluntary liquidation.

106. It is noted that when a company is placed in ex-officio liquidation or starts voluntary liquidation procedures, the Court Registry informs the Office of Industry, Handicraft and Trade thereof and the latter proceeds to the suspension of the licence to carry out activities, starting from the date when the company is placed in liquidation, or to its revocation. Moreover, Article 107 of Law No.47/2006 establishes that, when a fact determining the dissolution of a company arises, the directors must not conduct new transactions. The directors who conduct new transactions are jointly and severally liable for the damages incurred by the company, the partners, the creditors and third parties. Liquidators must also abstain from conducting new transactions beyond what is strictly necessary to complete the liquidation, and the management of any business activity that may be useful for the purpose of liquidation must in any case require the prior authorisation of the Law Commissioner (Article 109, of Law No.47/2006).

107. As a result of the actions taken by San Marino, no anonymous companies operate in San Marino. Over the years 2009, 2010, and 2011, San Marino did not receive any request concerning anonymous companies from DTC or TIEA partners. In the framework of administrative assistance in VAT matters with one partner, San Marino exchanged information on anonymous companies until their abrogation.

***Partnerships** (ToR A.1.3)*

108. Company Law (Law No.47/2006) provides for the creation of unlimited partnerships and these are legal persons in accordance with the Company Law. In such partnerships, all partners are jointly, severally and unlimitedly liable for the obligations of the partnership.

109. The provisions of the Company Law and licensing requirements which are applicable to domestic companies apply equally to domestic partnerships and, as a result, ownership and identity information is maintained for domestic partnerships, though not information with respect to the ownership chain. Partnerships register either with the Office of Industry, Handicraft and Trade or with the Labour Office (in case of professionals). As of October 2012, there was one unlimited partnership registered in San Marino, which had started the voluntary liquidation procedures in 2005.

110. Article 11 of Law No.129/2010 prescribes the licensing requirements for foreign entities "società estera" seeking to set up a permanent establishment in the Republic of San Marino. Article 11(1) of Law No.129/2010, as amended by Article 13 of Decree Law 36/2011, provides that: *only foreign companies or partnerships shall be allowed to set up a permanent establishment in the Republic of San Marino.* Prior to this amendment it was unclear whether the term "società estera" included foreign partnerships.

111. The requirements for obtaining a license from the Office of Industry, Handicraft and Trade are examined in the section *Foreign companies* above in connection with foreign companies. Foreign companies are required to submit documents which, inter alia, include a certified copy of the statutes, a certificate of the effectiveness of the company or equivalent document, and a certified copy of the articles of association. With the amendment to Law No.129/2010, foreign partnerships desirous of setting up a permanent establishment in San Marino must also obtain a license. San Marino authorities have indicated that, in case of a foreign partnership, equivalent information (including the details of the partners) is required by the licensing authority, prior to the granting of a license to a foreign partnership.

Tax law

112. Partnerships are not required to register with the Tax Office. Upon registration with the Office of Industry, Handicraft and Trade or with the Labour Office, they are assigned an economic operator code, which is used also for identification for tax purposes.

113. Domestic partnerships are not taxed as separate legal persons. Partnerships are required to file a tax return by 30 June of the year following the tax year, though no tax is payable by them. The profits or losses of partnerships are attributed to each partner in accordance with their shareholding (Art. 2 of Law No.91/1984). Partners' names are not reported in the tax return. However, partnerships must attach to the tax return a prospectus disclosing the personal details of partners, their residence and their respective shares of profits. As of today, no partnerships have filed a tax return since the only one registered in San Marino started voluntary liquidation procedures in 2005.

114. Decree Law No. 172/2010 introduced the concept of permanent establishment in the Income Tax Law No. 91/1984 and now the income of a permanent establishment is subject to tax. Pursuant to a clarification in the Licensing Law, foreign partnerships can set up a permanent establishment to undertake economic activities in San Marino. Permanent establishments of these foreign partnerships would therefore be subject to tax in San Marino. Further, Article 34 of the Income Tax Law, as amended by Article 14 of Decree Law 36/2011, requires permanent establishments of non-resident partnerships to keep accounting records similar to those kept by domestic partnerships and companies with share capital.

Service providers

115. As noted previously with respect to companies, Law No.92/2008 requires a wide range of financial institutions as well as non-financial businesses and professions (DNFBPs) to conduct customer due diligence. The

customer due diligence measures include identifying and verifying the identities of customers and beneficial owners before establishing a business relationship or carrying out a transaction, and also ongoing monitoring of the relationship with the customer and updating the data, documents and information acquired during the fulfilment of the customer due diligence obligations. Thus, the ownership of any partnership which holds an account or conducts any financial business in San Marino will be known to the financial institutions or DNFBP involved.

116. In addition, Article 11 of Law No.129/2010, as amended by Article 13 of Decree Law 36/2011, establishes that [*a*] *foreign company or partnership desiring to set up a permanent establishment in San Marino must fulfil all setting-up procedures before a San Marino Public Notary and appoint a representative in San Marino, who shall have the same rights and obligations as a sole director.* Public notaries in San Marino are subject to AML obligations and must conduct customer due diligence. Accordingly, they must identify their customers and the beneficial owners of their customers.

Conclusion and practice

117. Information on the partners of unlimited partnerships is available in the Register of Companies, maintained by the Single Court. In order to obtain and renew a business licence, unlimited partnerships and foreign partnerships carrying on business in San Marino must disclose information on their partners to the Office of Industry, Handicraft and Trade. The manner in which the Single Court and the Office of Industry, Handicraft and Trade maintain this information is described under section A.1, subsection *companies* and *foreign companies* respectively.

118. In the three-year period under review, San Marino did not receive any requests on partnerships from DTC or TIEA partners.

Trusts *(ToR A.1.4)*

119. Law No.37/2005 governed the creation and regulation of trusts in San Marino; however, this law has been repealed and replaced by new laws, decrees and regulations:

- Law No.42 of 1 March 2010 – Trust Act;
- Decree No.49 of 16 March 2010 – Office of Professional Trustee;
- Decree No.50 of 16 March 2010 – Registration and keeping of the trust register and procedure for the authentication of the book of events;

- Decree No.51 of 16 March 2010 – Identification of the methods and procedures necessary to keep the accounts of administrative facts relating to trust assets;
- Regulation 2010-01 – Regulation for the professional exercise of the office of trustees in the Republic of San Marino;
- Regulation 2011-06 – Regulation on Trusts and Supervision of Financial Trustees.

120. The Trust Act is a comprehensive law on trusts and provides for the creation, amendment, revocation and termination of trusts and the rules relating to the parties to the trust namely the trustee, beneficiaries and protectors. It also contains provisions relating to foreign trusts.

121. Trusts created under Law No.37/2005 are required to conform to the provisions of the laws and trustees of such trusts must make necessary amendments to the trust instruments in this regard. Failure to comply with these provisions attracts an administrative fine of EUR 2 000 which is levied on the trustee (Art. 64(4) Trust Act).

122. A trust can be created exclusively by a deed through a public notary. For the formation of trusts, location of assets, residence or domicile of settlors, trustees or beneficiaries, whether in or out of San Marino, is not a factor. Article 6 of the Trust Act requires that a trust shall be created by an instrument in writing and authenticated by a notary public. Accordingly, oral or implied trusts are not recognised under San Marino's Law.

123. The Trust Act provides for the creation of three types of trusts:

- beneficiary trusts : created for the benefit of one or more beneficiaries;
- purpose trust : created to pursue one or more purposes; and
- beneficiary and purpose trust: for the benefit of beneficiaries and pursuing a purpose.

124. Article 6 of the Trust Act requires the trust instrument to contain various information about identification of the trustee, identification of the resident agent, if the trustee is non-resident, the settlor's will to create the trust, identification of the trust assets, identification of beneficiaries in the case of beneficiary trust and identification of the protector in the case of the purpose trusts.

125. Article 6 (2) (g) then provides for the trust elements to be available for beneficiary trusts as:

- the identification of the beneficiaries, or the criteria which enable them to be identified, or the identification of the person who has power to identify the beneficiaries; and

- rules ensuring the presence of a protector, authorised to take action against the trustee in case of breach of trust when, for any reason, there are no beneficiaries and in other cases envisaged by the law.

126. A trust is required to be registered in a Trust Register, which is maintained by the Office of the Trust Register, part of CBSM. Art. 7 of the Trust Act obliges the trustee to draw up a certificate of trust to be authenticated by a notary public. This certificate should contain information on the trustee, protector, settlor and beneficiaries. The notary public must file this certificate with the Office of the Trust Register, where it is transcribed into the Register. However, ambiguities were created by Art. 3 of Delegated Decree No50 of 16 March 2010, which provides that only an abstract of the trust instrument is to be registered. Art. 15 of Decree Law No. 36/2011 amended the Delegated Decree No.50 of 16 March 2010 to clarify that the "abstract" of trust instrument has the same meaning as the "certificate" of the trust instrument referred to in Art. 7 of the Trust Act. While the trust instrument does not need to identify the beneficiaries or the class of beneficiaries (they may simply note *the identification of the person who has the power to identify the beneficiaries*), the trust certificate, which must be deposited with the Office of the Trust Register, must contain details of the beneficiaries with a current interest in the trust fund.

127. Sammarinese law requires the appointment of a trustee by the trust instrument. The position of trustee can be held by one or more natural or legal persons, none of whom shall be a trustee of more than one trust subject to San Marino law. However, this restriction does not apply for a natural or legal person identified as an obliged party under the AML/CFT Law or substantially equivalent law of other state. Delegated Decree No.49/2010 regulates professional trustees who hold the office of trustee in a plurality of trusts. The CBSM has issued Regulation 2010-1, which sets out the requirements for obtaining the authorisation to the Office of the Professional Trustee and the maintenance of requirements.

128. If the trustee of a San Marino trust is not resident, the trust certificate must indicate a resident agent, who must be a professional (a member of the Association of Lawyers and notaries or of the Accountants Association). The resident agent is responsible for communicating to the Office of the Trust Register any amendments, for creating, updating and keeping the Book of Events and for other duties provided by law. The resident agent is also required to draft the trust certificate based on the information provided by the non-resident trustee (Art. 7 Trust Act). Each year the resident agent is required to ask the non-resident trustee to inform him of any fact or act which should result from the Book of Events (Art. 28 Trust Act). The Book of Events contains a description of the events regarding trusts, among others, the beneficiaries or changes to the trustees or protectors. Therefore, the resident

agent is likely to get information from the non-resident trustee at least annually. The Book of Events must be shown on request to the CBSM, to the FIA (Article 14, Delegated Decree No. 50/2010), the Judicial Authority, the protector (Article 28, Trust Act) and to the Central Liaison Office (Article 15 bis, Law No. 95/2008). Penalties apply if information is not correct. Moreover, the parties of the trust may sue the trustee for failing to cause the updating of the information in the Trust Register. As the resident agent must be a professional, he or she is subject to the provisions of the anti-money laundering legislation.

129. All documentation delivered to the Office of the Trust Register must be signed with the authenticated signature of a notary public or in the presence of the head of the office. The trustee, or the resident agent in case the trustee is non-resident, must inform the Office of the Trust Register of any amendments relating to the elements specified in the certificate by means of a new certificate, within 15 days from the date such amendment has been made by the resident trustee, or has been received by the resident agent (Article 13, Trust Act). A resident trustee or a resident agent who fails to communicate such changes within the time limit is liable to an administrative sanction of EUR 2 000. When receiving a notification concerning any amendments to the original certificate, the Office withdraws the original certification and issues a new one with the updated information.

130. The office of protector is envisaged under the Trust Act. It is compulsory to provide for a protector in case of a purpose trust; however this is only necessary in case of a beneficiary trust when no beneficiaries are in existence. The settlor of the trust can reserve some rights or powers and can also appoint himself as protector.

Service providers

131. Notaries public provide services in relation to creation, certification and registration of trusts. Without their involvement no trust can be created in San Marino. Provision of services in relation to trusts by these professionals brings them within the ambit of obliged parties in the AML/CFT Law (Art. 17 and Art. 20).

132. Professional trustees are categorised as non-financial parties, with obligations under Article 19 of the AML/CFT Law (Article 4 of Delegated Decree No.49 of 16 March 2010). Only financial institutions, companies, lawyers, notaries and accountants, who are members of their associations, can act as professional trustees. They are subject to authorisation and supervision by the CBSM. Only the professional exercise of a trustee office is subject to all obligations under the AML/CFT Law. The holding of the trustee office in a plurality of trusts (more than one) is regarded as "professional exercises"

(Art. 18 Trust Act). Non-professional trustees (trustee of a one single trust) are required to report suspicious transactions under Art. 36 of the AML/CFT Law. As of October 2012, there were 7 professional trustees and 46 non-professional trustees.

133. Under the Art. 22 of AML/CFT Law, notaries and professional trustees must undertake CDD measures include identifying and verifying the identities of the settlors.

134. Article 22 of Law No.92/2008 describes the scope of required CDD measures as including "if necessary, identification of the beneficial owner and taking risk-based and adequate measures to verify the identity". Article 23 also refers to taking adequate measures in order to understand the ownership and control structure of the customer. Article 1(1) (r) (2) of the same law defines the beneficial owner for trusts as, "the natural person(s) who is beneficiary of more than 25% of the property of a foundation, trust or other arrangements with or without legal personality that administers funds; whenever the beneficiaries have not been determined, the natural person(s) in whose principal interest the entity is established or acts".

135. In support of the AML/CFT Law, pursuant to Art. 21 of FIA Instruction No.2009-06 professional practitioners are required to maintain an anti-money laundering register which *inter alia* contain particulars of the beneficial owner, when present. Article 11 of the instruction requires that, when the customers are not operating on their own behalf, the professional practitioner must acquire the identification details of the beneficial owners. The FIA issued another Instruction No. 6 of 2010 on identification of the beneficial owners of trusts.

136. While anti-money laundering obligations require trustees to identify settlors of trusts they manage, the obligations under the AML/CFT Law do not adequately ensure the availability of information on the beneficiaries as of only those who had more than a 25% interest in the trust property requires to be identified. Nevertheless, all the beneficiaries with a current interest in the trust fund are always known to the Office of the Trust Register regardless of the interest they hold.

Tax law

137. A trust is a taxable entity. Law No.38/2005 regulates the taxation of all trusts regulated by San Marino law and managed by a trustee resident in San Marino or otherwise fiscally resident in San Marino. Trusts are considered fiscally resident in San Marino if they are administered by at least one trustee who has been authorised to exercise such office in accordance with the law on trusts.

138. Under Article 3, the trust is liable for the taxable income of the trust. The trustee is responsible for the tax obligations of the trust, which includes duty to pay the tax and other reporting requirements as per tax laws, which includes filing of income tax returns. It is compulsory for all trusts to file tax returns; however, information on the beneficiaries and settlors is not required to be provided in the tax return and information on beneficiaries is not available with the Tax Office.

139. Article 7 of Law No.38/2005 and its Decree allow trustees not to disclose the fiscally non-resident beneficiaries' identities but instead pay a withholding tax. However, the tax is not required to be withheld if the trustee communicates the names and data, citizenship, residence and any other data or information requested to the Financial Administrative Branch of the Republic of San Marino. In case of distributions to fiscally resident beneficiaries, trustees must report details of actual economic beneficiaries to the Financial Administrative Branch. Therefore, under the tax provisions, the tax authorities have information on all fiscally resident beneficiaries, but not on non-resident beneficiaries.

Foreign trusts

140. In 2004, San Marino ratified the Hague Convention on the Recognition of Trusts allowing the free use of foreign trust laws. The Trust Act defines the foreign trust as a trust whose applicable law is a law on trusts of a foreign state. Article 56 contains provisions specific to foreign trusts and provides that:

- provisions relating to creation of trusts (Art. 6) referred to earlier apply to creating foreign trusts where the settlor is a natural or legal person residing in San Marino;
- foreign trusts with an administrative seat in the Republic of San Marino are required to be registered in the Trust Register in the same manner as domestic trust; and
- resident trustees of foreign trusts are required to meet all the requirements prescribed as relating to domestic trusts.

141. The trust laws do not envisage any restriction on the residents of San Marino to act as trustees for foreign trusts.

142. The administration of a trust by a San Marino resident trustee makes the trust fiscally resident in San Marino and taxable in San Marino.

143. As in the case of domestic trusts, the resident trustee of a foreign trust must draw up a certificate of trust to be authenticated by a notary public containing, among others, the details of the trustee, protector, settlor and beneficiaries (Articles 7 and 56 of the Trust Act). The notary public must file

this certificate with the Office of the Trust Register, where it is transcribed into the Register.

Mutual funds

144. Under San Marino Law, a mutual fund is a sort of unit trust, managed by a fund management company which needs to be authorised by the CBSM. All provisions of the Company Law apply to fund management companies. The regulations issued by the CBSM have set clear rules about cross-border operations, obliging foreign funds to be authorised. As a result, full information is available on the members of unit trusts.

Availability of information in practice

145. As noted above, all trusts created under San Marino's Trust Act as well as any foreign trust administered by a resident trustee must register with the Trust Register. The Trust Register is maintained by the Office of the Trust Register, part of the CBSM. In addition to the information available as described above, the Trusts Register records the following information, and any change thereto, contained in the trust certificate:

- the name of the trust and its type;
- an indication as to whether the trust is revocable or not;
- details of the trustee and any limitations placed upon its powers;
- details of the protector, if any, and the nature of his powers;
- details of the settlors;
- details of the beneficiaries with a current interest in the trust fund;
- the date of the trust instrument and the duration of the trust, if any;
- the governing law of the trust;
- a description of the purpose of the trust in case of a purpose trust;
- details of the resident agent, where the trustee is not resident.

146. The Sammarinese authorities have also indicated that in addition to this information, the Office of the Trust Register maintains full personal details of each person identified in the documentation, proof of payment of the fee for original registration and for the registration of any change, as well as all correspondence received and sent and the name of the notary who keeps a full copy of the trust deed.

147. As at August 2012, there were 74 domestic trusts registered in the Trusts Register, of which 72 were beneficiary trusts and 2 purpose trusts. One foreign trust applying the law of Jersey was also registered in the section of the Trust Register that records foreign trusts. Out of these 75 trusts, 32 had resident trustees.

148. The professional exercise of trustee activity in San Marino must be authorised by the CBSM, which registers the authorised professional trustees in the Professional Trustee Register. The CBSM supervises the maintenance of requirements and may revoke the authorisation in every case it ascertains the loss of these requirements or in other cases provided by law. In addition to specific supervision (see A.1.6), the maintenance of these requirements is monitored yearly through the control of the updated documents and certificates presented by the professional trustee for the renewal of the authorisation and with compulsory training courses that all authorised professional trustees must attend.

149. Any information included in the Trust Register is accessible to the CLO upon request. The Trust Register is also accessible to the Judicial Authority, the FIA, the Central Bank, and the Law Enforcement authorities performing the function of judicial police. In the three-year period under review, San Marino did not receive any EOI request related to ownership of trusts.

Foundations *(ToR A.1.5)*

150. Foundations can be created under Sammarinese Law. These are not commercial entities but part of the non-profit sector and must pursue the purpose of public benefit. A foundation can only be created through a public notary, who is an obliged party under the AML/CFT Law.

151. Provisions relating to regulation of non-commercial associations and foundations are available in Art. 4 of Law No.68/1990, the old company law, and these provisions continue to be in operation. The creation, administration and liquidation of associations, foundations and other non-profit organisations are subject to the provisions applicable to the companies contained in the Company Law (Law No.47/2006). In addition, Law No.129 of 23 July 2010 (Regulations Governing Licenses to pursue Industrial, Service, Handicraft and Commercial Activities) has enacted special provisions for associations, foundations and non-profit organisations. This Act entered into force in August 2010.

152. Congress of State Decision No.55/2009, required creation of a separate database on members of associations, foundations, co-operatives and consortium. This database, which has the same characteristics as for companies, is kept at the Single Court Registrar's Office. Foundations are

required to keep at their registered office a register containing the names of their members and beneficiaries and must submit a list of their members to the Commercial Registry of the Single Court by 31 December each year, which allows the Court to update the Registry. Foundations are also subject to supervision by the Judge of Supervision and the Financial Intelligence Agency.[24] Any public authority can have access to the data contained therein upon request. Further, on 27 May 2009, the Council of Twelve, which supervises not-for profit organisations, adopted Decision No. 30 of 2009 which requires these entities to register data and information regarding funds received and their use for at least five years from the date when they were granted or used and to provide yearly a report to the Judge of Supervision. The FIA issued instruction No. 5 of 2010 on 8 July 2010 setting out the criteria for identification of beneficial owner of foundations and associations.

153. The database can be accessed by other public offices, including the Central Liaison Office, the Financial Intelligence Agency, the Ministry of Industry, the Fraud Squad of the Civil Police, and the Tax Office. As of September 2012, there were 76 foundations registered in San Marino.

154. Pursuant to Art. 37 and 38 of Law No.129/2010 and to the Memorandum of Understanding for the Prevention and Countering of Money Laundering and Terrorist Financing between the Council of Twelve, the Judge of Supervision over associations, foundations and non-profit organisations and the Financial Intelligence Agency of 14 September 2009, the Judge of Supervision fulfils the following functions:

- supervises these entities’ compliance with obligations related to budget sheets, prospectuses and summaries of funding and uses;
- reports to FIA risk factors possibly linked with AML/CTF crimes that emerged during the controls referred to above; and
- reports to the Council of Twelve. Such reports may contain proposals for the removal of non-operating entities or entities operating unlawfully.

155. The profits of foundations are not taxable in San Marino and thus they are not obliged to submit information to the Tax Office unless they produce corporate income, in which case they are required to file a tax return.

156. In the three years under review, San Marino did not receive any requests for information on foundations.

24. For this purpose a memorandum of understanding between the Council of Twelve, the Judge of Supervision and the Financial intelligence Agency was signed on 14 September 2009.

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

157. Article 5 of Law No.98 of 7 June 2010 has prescribed an administrative sanction of EUR 5 000 for each offence relating to reporting and filing obligations envisaged in the Company Law and subsequent amendments and also under Law No.98/2010. These administrative sanctions are applied by the Office of Industry, Handicraft and Trade following a report by the competent supervisory offices/bodies to which communications are to be addressed or with which documents have to be deposited. Moreover, Article 4 of Law No.98/2010 established that by 31 July 2010, all companies with share capital, other than anonymous companies, had to submit to the Commercial Registry of the Single Court, through a San Marino public notary, a certified abstract of their register of shareholders, clearly outlining their ownership structure.

158. The Court Registry reported to the Office of Industry, Handicraft and Trade that 201 companies (other than anonymous companies) did not deposit the abstract of their register of shareholders and 12 companies (other than anonymous companies) deposited such abstract after 31 July 2010. With regard to any identified violation which may affect the company's existence, the Office of Industry, Handicraft and Trade reported the violation to the Law Commissioner, which applied sanctions. The Law Commissioner is competent to start any liquidation procedures of companies. After the entry into force of Law No.98/2010, all companies have always provided information to the Commercial Registry within the time limits prescribed by the Company Law.

159. Companies issuing bearer shares (anonymous companies) were required to liquidate or be converted into joint-stock companies, also providing the abstract of the register of shareholders, by 30 September 2010. Ten anonymous companies were reported to the Office of Industry, Handicraft and Trade for not depositing the abstract of the register of shareholders and were reported to the Law Commissioner for the application of the liquidation procedures under Article 1(5) of Law No.98/2010. Out of these ten, one anonymous company has subsequently complied with the requirement (and converted into joint-stock company), five have been placed in ex-officio liquidation, and four have started voluntary liquidation.

160. The Office for Control and Supervision of Economic Activities (OCSEA) was established in 2008 to prevent and counter fiscal fraud, similar illicit behaviours, and trade distortions. The OCSEA reports to the Congress of State, which can order the revocation of the business licence of economic operators who carry out activities in such a way as to undermine the prestige and interest of the Republic of San Marino (Article 76, Law No.130/2010). In 2009, 2010, and 2011, the OCSEA monitored the activities of 166, 193 and 262 economic operators (companies and individuals) respectively. These

economic operators were selected on a risk-based approach, mainly among those involved in trade business with Italy. These monitoring actions entailed the analysis of data collected from different San Marino authorities, and where more in-depth analysis was required the OCSEA verified corporate books and accounting documentation. The monitoring actions did not reveal any non-compliance with obligations concerning the keeping of ownership information. They nonetheless revealed a number of other violations or possible violations, concerning for example the validity of the business licence (16 cases), the lack of paid-up capital (74 cases), fiscal irregularities (38 cases), and anti-money laundering legislation (49 cases). These violations or possible violations were reported to the competent office for further verifications and the application of sanctions. The OCSEA reported to the Congress of State a number of companies committing fraudulent activities. The Congress of State revoked 2 business licenses in 2009, 28 in 2010 (with 2 additional business licenses suspended), and 18 in 2011. Moreover, a number of companies started voluntary liquidation following a request for information from the OCSEA.

161. Fiduciary companies that have received a mandate concerning investments in Sammarinese companies are obliged to report to the Supervision Department of the CBSM the identifying data on the persons for whom they act, the shareholding of each of them and in case they are not natural persons, the identification data of their beneficial owners. This information is recorded in the Register of Fiduciary Investments. The sanction on fiduciary companies for failure to communicate this information is EUR 5 000, as established by Article 5 of Law No.98/2010. Since 2010, the CBSM reported three companies relating to the failure of communicating the capital interest held in Sammarinese companies.

162. Until 2011, no sanctions for companies or partnerships were envisaged for their failure to keep ownership information in accordance with the law. However, Article 10 of Decree Law No. 36/2011 introduced such sanctions in the Company Law. Article 72(7) of the Company Law, as amended, sets out sanctions for violations of obligations concerning keeping of corporate books and accounting records, which contain information on the shareholders of companies. Failure to keep and produce the records to the competent authorities attracts an administrative pecuniary sanction ranging from EUR 2 000 to EUR 25 000. Where there are repeated administrative breaches, the pecuniary administrative sanction can be increased up to three times, both for the minimum and for the maximum amount, depending on the gravity of the infringement. The extent of the sanction and relevant grounds thereof are determined by the OCSEA, while the Office of Industry, Handicraft and Trade is instead responsible for collection of the sanction. The Sammarinese authorities have advised that no sanctions were imposed since the sanctions to keep corporate books have been introduced. They

have indicated that administrative verifications and checks carried out by the OCSEA and upon request of the CLO did not identify any irregularities.

163. The Central Bank of San Marino keeps a Register of Fiduciary Investments. All activities of fiduciary companies are regulated by the CBSM. The CBSM circular 2010-02 issued on 14 July 2010 prescribes clear requirements and prohibitions to ensure a safe and prudent management of these companies. Circular No. 2010-03 outlines the reporting requirements on all fiduciary companies registered in San Marino. The CBSM carries out off-site and on-site inspections of fiduciary companies as part of its supervision programme. Based on the findings of these inspections, the CBSM has ordered compulsory administrative liquidations in the case of eight fiduciary companies since the end of 2010. In 2011, there were 35 fiduciary companies. As at October 2012, two fiduciary companies were also under extraordinary administration.

164. Article 37 of Law No.129/2010 establishes that foundations must submit an annual report to the Court Registry, disclosing the balance sheet and the prospectus entitled "Summary of Funding and Uses". By 31 December of every year, foundations must file with the Commercial Registry a list of their members, which means those persons making up the managing body of the foundation. Pursuant to Article 37 of Law No.129/2010 foundations are also required to keep at their registered office a prospectus entitled "Detail of Funding and Uses", which discloses the identity of the funders and the beneficiaries of the foundation. Failure to comply with information reporting and keeping requirements entails an administrative sanction of EUR 2 000, for any single violation, applied by the Office of Industry, Handicraft and Trade, following a report by the Commercial Registry of the Single Court, which also transmits the documents of non-complying entities to the Law Commissioner. Since the entry into force of Law No.98/2010, the Court Registry has identified, and reported to the Office of Industry, Handicraft and Trade, 27 foundations not in compliance with the depositing requirements, with three foundations depositing the balance sheet beyond the limit. Out of the 24 non-complying foundations, three had already been placed under special administration and four in liquidation. The remaining 17 foundations were reported to the Law Commissioner for the necessary measures: six have subsequently complied, nine have been placed under ex-officio liquidation, and two have started voluntary liquidation procedures. The San Marino authorities have not performed on-site controls.

165. Article 66 of the Income Tax Law provides for the administrative sanctions for non-fulfilment of obligations by taxpayers. A fine ranging from EUR 51 to EUR 309 applies for not keeping records in accordance with the legal provisions. A fine ranging from two to four times the amount of tax due is imposed, if the tax due on income source not included in the tax return is

higher than EUR 18 076, however, no administrative sanction applies where a taxpayer unintentionally submits an inaccurate, incomplete and false tax return and provides well-founded reasons.

166. Legal and natural persons providing services relating to the establishment, management or administration of companies, trusts or similar arrangements, are regulated under the AML/CFT Law of San Marino (Law No.92/2008). Administrative and criminal sanctions have been outlined in Title VI of this law and violations relating to customer due diligence and registration are punishable with pecuniary administrative sanctions ranging from EUR 5 000 to EUR 70 000. The pecuniary administrative sanction shall be doubled if the violation of the customer due diligence requirements is perpetrated by using fraudulent means. The amount of these sanctions was increased in 2010 when Article 61 of Law 92/2008 was amended by Article 23 of Decree Law No.134/2010 and subsequently replaced by Art. 24 of Decree Law No. 187/2010.

167. Persons performing the office of professional trustee are considered obliged parties under the AML/CFT Law, and are subject to the Supervision of the FIA (Art. 4 of Delegated Decree No.49 of 16 March 2010). They are also subject to supervision by the CBSM, the supervisory authority. The CBSM may impose an administrative sanction of EUR 2 000 to any notary public, resident trustee or resident agent for failure to register the trust or omission to request cancellation of the trust from the Register within the specified time (Article 8 of Trust Act). Trustees who are financial entities subject to the LISF are also supervised by the CBSM. Article 60 provides for a punishment to a trustee in the form of second-degree arrest and second-degree disqualification from the office of trustee for failure to keep wholly or in part the accounts relating to the trust assets. Between 2009 and 2012, the FIA conducted four on-site inspections of: two professional trustees, one resident agent, and one non-professional trustee. In 2013, the CBSM conducted one on-site inspection of a trustee that is a financial entity subject to the LISF. The FIA and the CBSM systematically checked the documentations kept by trustee or by the resident agent, including the Books of Events. In two cases, such inspections were followed by sanctions for violations of AML provisions including non-compliance with due diligence obligations. In one case, the FIA is processing the inspection results.

168. Updated information on the settlors, trustees, protectors, and beneficiaries of trusts is maintained in the Trust Register. Failure to communicate this information, or any change thereto, within the period specified in the Trust Act, to the Office of the Trust Register results in an administrative sanction of EUR 2 000 (Articles 8(8) and 13(5) of the Trust Act) or EUR 3 000 (Art. 7(3) of the Trust Act). The Sammarinese authorities have indicated that in 2012 the Office of the Trust Register imposed one sanction

of EUR 2 000 due to a delay in the communication of amendments relating to the element specified in the certificate.

169. In addition to the powers conferred on the Judicial Authority by law, the trustee, a beneficiary, the protector or any other interested party may apply to the judge for an order regarding the fulfilment of an obligation or the exercise of a power of the office of trustee or protector and the replacement of the trustee or the protector who has violated the law or the trust instrument or the appointment of a new or additional trustee or protector (Art. 53 of the Trust Act).

Conclusion

170. The enforcement measures provided in the law are dissuasive and ensure availability of ownership information to the Sammarinese authorities. San Marino has already applied enforcement measures in a number of cases relating to the one-off requirement on joint-stock companies, limited liability companies, and partnerships to provide the abstract of their register of shareholders to the Court Registry. The Court Registry has also supervised and applied sanctions in respect to foundations. Besides, thanks to the actions taken by San Marino authorities no anonymous companies issuing bearer shares are in circulation. The activities of companies have been monitored by the OCSEA since 2009. The CBSM and the FIA have monitored fiduciary companies and trusts, applying sanctions where appropriate.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

A.2. Accounting records

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

General requirements *(ToR A.2.1)*

171. The Company Law obliges companies to keep accounting records, namely the journal book of original entries, the inventory ledger and the book of depreciable assets (Art. 72 of Law 47/2006) at the registered office of the company. Article 72 (5) of the Company Law, as amended by Decree Law No. 36/2011, further provides that these books must be kept for the entire

duration of the company or partnerships, and can also be deposited with a Lawyer, a Public Notary or Accountant (holding a university degree or a high school certificate), regularly enrolled in the respective San Marino Register, without prejudice to the obligation to produce these documents to the competent authorities in case of request, assessment, or inspection. Failure to produce the documents to the competent authorities results in the application of sanctions (see section *A.1.6, Enforcement provisions* above). Directors of the company must prepare a balance sheet to truthfully and correctly represent the assets, liabilities and financial situation of the company and the operating results of the business year, which coincides with the calendar year (Art. 74). The balance sheet comprises the statement of assets and liabilities, the profit and loss account and balance sheet statement. The principles for drawing up the balance sheet and the structure and content of the balance sheet are prescribed in the company law. This requirement applies to all type of companies and partnerships.

172. All joint stock companies are obliged to nominate auditors. In case of limited liability company, the appointment of auditor is necessary when company capital exceeds EUR 77 000 or the proceeds from sales and services exceeds EUR 2 000 000 for two consecutive business years. A board of auditors is nominated when the sales and services in the company exceed EUR 7 300 000 for two consecutive business years. Auditors are required to make sure that the annual balance sheet corresponds to the accounting results.

173. The balance sheet, auditor's report and the minutes of the meeting of any company and partnership approving the balance sheet must be filed by the directors with the Commercial Registrar's office (Art. 84 of Company Law). The financial statements must also be approved in a general meeting of the company.

174. The Company Law refers to the preparation of a balance sheet to reflect the operating results of the business year which must be prepared annually. The law refers to the accounting standards; but no accounting standards appear to have been prescribed under Sammarinese law. In December 2012, the Accountants Association ("Ordine dei Commercialisti") approved a document establishing the principles guiding the redaction of the balance sheet of companies. The Accountants Association is a publicly-recognised association and the principles established in this document should be followed by all accountants preparing the balance sheet of all companies, excluding those who apply the international financial reporting standards. The Accountants Association is currently discussing another document providing guidelines as to the content of the balance sheet in accordance with the Company Law.

175. The obligation to keep proper accounting records by companies engaged in providing financial services are provided under the LISF. Articles 29 to 34 of this law oblige the authorised parties to prepare financial statements so as to give a true and fair view of the assets and liabilities, the financial situation and profit and loss account for the year.

176. Article 72(7) of the Company Law as amended by Decree Law No. 36/2011 establishes sanctions on companies and partnerships for failures to meet the prescribed accounting obligations. The fine for a violation ranges from EUR 2 000 to EUR 25 000. Depending on the type of the violation, the sanction is determined and applied by the Tax Office, or alternatively, it is determined by the OCSEA and applied by the Office of Industry, Handicraft and Trade. Moreover, Article 56 prescribes that directors must fulfil the obligations imposed by the law and in particular they are answerable for regular accounting and keeping of the corporate books. It refers to penal sanctions but no such sanctions are detailed.

177. As regards keeping of accounting books by trusts, Delegated Decree No.51 of 16 March 2010 obliges the trustee to keep regular and complete accounting of the facts concerning the trust's assets and to annually draw up the trust's balance sheet and the inventory of the trust fund. Article 4 of Law No.38/2005 (Taxation of Trusts) requires the trustee to maintain book entries in systematic form and in accordance with the provisions on proper accounting. The failure by a trustee to keep the accounts relating to the trust's assets, resulting in loss to the beneficiaries, attracts punishment by terms of second-degree arrest and second-degree (nine months to two years) disqualification from the office of trustee (Art. 60 of the Trust Act). Thus far, the Sammarinese authorities have indicated that no violation has been identified. The resident trustee or resident agent (in case of a non-resident trustee) must keep Book of Events of the trust in conformity with Article 28 of Law No.42/2010 and Article 15 bis of Law No.95/2008. The Book of Events contains accounting records such as the trust's balance sheet, inventory of trust fund and a report containing the summary and description of the main events changing the size and composition of the trust fund.

178. An obligation to keep accounting records by foundations, associations and other non-profit organisations arises under Art. 37 of Law No.129/2010. These entities are required to register data and information regarding funds received and the use thereof. Every foundation must deposit every year an abstract of the balance sheet and the prospectus "Summary of Funding and Uses" with the Commercial Registry. Article 37(5) provides that failure to comply with information reporting, keeping and filing requirements will lead to an administrative sanction of EUR 2 000.

Tax law

179. Section IX of Law No.91/1984 (Introduction of the General Income Tax) stipulates provisions relating to accounting entries. Article 34 under the heading "accounting requirements for companies, similar entities and major companies" establishes that companies, partnerships, similar entities, permanent establishments of non-resident companies and partnerships must keep a day book, an inventory book and a register of depreciable assets, all duly certified, as well as auxiliary accounting entries clearly indicating assets and profits consistent with the size and nature of business. They must also compile an inventory and balance sheet with a profit and loss account. Article 14 of Decree Law 36/2011 amended Article 34 of the Law No.91/1984 to explicitly provide that the accounting records to be kept by partnerships and permanent establishments of foreign partnerships are the same as those kept by companies. These changes introduced in 2011 to the Tax Act ensure keeping of accounting records by foreign partnerships carrying on business in San Marino.

180. Article 35 of the Income Tax Law under the heading, "simplified accounting rules for minor firms" provides that, where the revenue made during the reference year has not exceeded the amount indicated in Art. 26 (e.g. EUR 800 000), the "minor firms" shall be exempted for the following two years from the full accounting requirement under Art. 34. However, they must still maintain an inventory book and a purchase and sale book, without prejudice to the obligation to keep purchase and export invoice and any other books or documents required in any legislation. The relevant provisions in the Income Tax Law were amended in 2011 by Decree Law No.36/2011 to restrict the definition of "minor firms" to only economic operators holding an individual license (i.e. sole proprietors).[25] Until the enactment of the Decree Law, all taxpayers conducting business activities, whose revenue was less than EUR 800 000, could qualify to keep simplified accounting records.

181. Article 26 provides that economic operators holding an individual license, whose income is defined according to provisions of Article 20, and who are not already bound to prepare financial statements, except for the firms subject to the regime provided for in Article 27 bis, and who during the year have achieved revenues exceeding EUR 800 000, must prepare (in

25. Sole proprietors are natural persons resident in San Marino who have been issued a licence, under Law No.129/2010 "Regulations Governing Licenses To Pursue Industrial, Service, Handicraft And Commercial Activities", to run a business. They operate in the agriculture, production and services, handicraft and in commercial activities (e.g. trade and business agents, hairdressers, painters, carpenters, plumbers, bakers, electricians, cafeteria operators, restaurateurs and operators of small stores).

addition to the inventory and balance sheet) the profit and loss account and balance sheet for the subsequent two years.[26]

182. Article 66 of Law No.91/1984 provides a monetary fine ranging from EUR 51.65 to EUR 307.87 for failure to keep accounting records in accordance with the law.

183. The relaxed requirements for economic operators holding an individual license (i.e. sole proprietors) whose revenue is below the threshold of EUR 800 000 mean that partial accounting records must be kept. That is, they must keep records which explain all transactions but they are not obliged to keep records enabling the financial position to be determined and they are not obliged to prepare financial statements or a balance sheet. As at 8 September 2011, there were approximately 1 200 sole proprietors with revenues under EUR 800 000. While, considering the nature of the sole proprietors and the number of them, the fact that the accounting records to be kept by these persons are not completely consistent with the international standard is not a material gap, San Marino should ensure that this allowance for simplified accounting records does not in any way interfere with the effective exchange of information in tax matters. All the other entities, including sole proprietors considered as major firms, must keep full accounting records and underlying documents consistent with the standard.
Underlying documentation (ToR A.2.2)

184. The Company Law provides for keeping the original copies of the incoming and outgoing correspondence and invoices in an orderly way for each operation (Art. 72). The external auditor or the auditing company charged with auditing the accounts, for companies achieving revenue exceeding a threshold amount, is required to check to make sure that the company's accounts are kept in a regular way and the accounting records appraise the management affairs correctly (Art. 68). The auditing companies or auditors are liable in relation to the company, the partners and third parties for the damages deriving from failure to accomplish their duties. These provisions also apply to partnerships and foundations.

185. The governing laws relating to trusts do not specifically prescribe keeping of particular underlying documentation in support of the accounting records. However, trustees are obliged to keep regular and complete accounting relating to trust assets. In addition, Delegated Decree No.51 of March 2010 requires trustees to keep accounting books in a systematic manner and

26. San Marino's authorities have indicated that the tax reform which will be presented to the Parliament for approval to reduce the threshold from EUR 800 000 to EUR 350 000. The process for the approval of the tax reform has just been resumed by the new government in office since December 2012. The entry into force is expected for 1 January 2014.

according to proper accounts standards. Professional trustees are also obliged parties under the anti-money laundering laws of San Marino and thus must keep all documentation related to customer due diligence and financial transactions (Art. 4 of Law No.49/2010).

186. Authorised parties are under an obligation to keep records under anti-money laundering legislation. Article 34 of Law No.92/2008, as amended by Decree Law No.134/2010, requires obliged parties to keep supporting evidence of the transactions.

5-year retention standard *(ToR A.2.3)*

187. Article 72 of the Company Law requires the accounting records specified therein to be kept for five years in compliance with Directory LXXI of Book of the Charters. The same provisions apply to partnerships. Foundations must keep accounting records for at least five years pursuant to Art. 37 of Law No.129/2010.

188. Persons exercising the office of professional as well as non-professional trustees are required to keep the documents relating to trusts for five years from the date at which they cease to hold that position (Art. 4 of Law No.49/2010).

189. The Sammarinese AML/CFT Law requires the authorised parties to maintain all records related to customer due diligence and transactions for at least five years.

190. Article 38 of the General Income Tax Act requires that all entries and records under this tax law or other tax laws and in any case relevant for assessment purposes be kept for five years from the end of the relevant tax year.

The availability of accounting information in practice

191. The Commercial Registry receives annually the balance sheet of joint stock companies, limited liability companies as well as partnerships. The Sammarinese authorities have indicated that since the entry into force of Law No.98/2010, all companies have complied with the 30-day time limit following the approval of the balance sheet for its deposit.

192. The Tax Office receives annually the income tax return from joint-stock companies, limited liability companies, partnerships, as well as foreign companies having a permanent establishment in San Marino. The Tax Office keeps the information contained in the tax return and the prescribed documents to be attached, which include the balance sheet, the profit and loss account, evidence of withholding tax payments and the documents evidencing the

deductible liabilities. The information received is stored in the database of the Tax Office which is divided into three sections: custom, indirect taxation, and direct taxation. Since 2010, the Tax Office stores all information concerning the income tax returns in electronic forms. The database is accessible by the CLO and other public authorities upon request.

193. Over the years 2009, 2010, and 2011, the Sammarinese tax authorities have indicated that they carried out audits in respect of taxpayers on a regular basis. Out of more than 4 000 legal persons that filed an income tax return every year, 483 audits took place in 2009, 619 in 2010, and 640 in 2011. Overall, a number of sanctions were imposed, including 230 for not filing the tax return, 200 for filing an inaccurate or false tax return, and 61 for not fulfilling obligations concerning tax return contents and attachments (which comprise the prescribed accounting documents). The fines applied ranged, as per Article 66 of the Income Tax Law, from EUR 51.65 to EUR 309.87. The Sammarinese authorities have indicated that accounting records and any documents attesting the value of assets and/or costs/revenues declared have always been verified and no specific violation for not fulfilling the accounting obligations in accordance with law provisions has been identified. Sanctions for not keeping correct accounting records were nonetheless applied in 19 cases concerning individual taxpayers.

194. In 2009, 2010, and 2011, the Office for Control and Supervision of Economic Activities (OCSEA) carried out monitoring actions in respect of 166, 193 and 262 economic operators (companies and individuals). These monitoring actions entailed the analysis of data collected from different San Marino authorities, and where more in-depth analysis was required the OCSEA verified corporate books and accounting documentation. Among others, the OCSEA detected 38 irregularities and anomalies mainly concerning the transfer of goods by San Marino economic operators in such a way as to violate the revocation of import tax reimbursement legislation, the failure to produce invoices relative to goods and services, and failure to file tax returns. The OCSEA reported to the relevant authorities the infractions for the application of sanctions. The OCSEA also reported to the Congress of State a number of companies committing fraudulent activities, and the Congress of State revoked 2 business licenses in 2009, 28 in 2010 (with 2 additional business licenses suspended), and 18 in 2011. Moreover, a number of companies started voluntary liquidation following a request for information from the OCSEA.

195. Article 72(7) of the Company Law as amended by Decree Law No. 36/2011 establishes sanctions on companies and partnerships for failures to meet the prescribed accounting obligations. The fine for a violation ranges from EUR 2 000 to EUR 25 000. Since the entry into force of this provision, no such penalty has been applied as no specific violation has been detected

through the monitoring mechanisms applied by the Commercial Registry, the Tax Office and the OCSEA.

196. In the three-year period under review, San Marino received one request from DTC or TIEA partners on accounting records and information was provided in the requested form. In addition, San Marino exchanged accounting information with one partner in the framework of administrative assistance in VAT matters. This partner requested information concerning the effectiveness of transactions between economic operators (mainly underlying documentation such as invoices, transport and payment documentation) in 375 cases. In some cases the accounting information could not be exchanged because it was not available. The Sammarinese authorities have indicated that almost all the cases where accounting information was not available relate to companies which committed fraudulent activities in San Marino and were already under liquidation procedures, or whose business licence was already revoked.

197. The FIA and the CBSM monitors the activities of trusts, including the requirements to keep accounting information. Between 2009 and 2012, the FIA carried out on-site inspections of two professional trustees, a resident agent representing a non-resident trustee and a non-professional trustee residing in San Marino. In 2013, the CBSM conducted one on-site inspection of a trustee that is a financial entity subject to the LISF. The FIA and the CBSM imposed sanctions for non-compliance with due diligence obligations in relation to the placement of assets in a trust after its establishment. In all cases, the FIA and the CBSM requested the trustees and the resident agent to produce the Book of Events, verifying the accountings records. No violation in respect of the requirements to keep accounting records was ascertained.

198. San Marino monitored the compliance of foundations with information reporting, keeping and filing requirements. Between 2010 and 2012, the Commercial Registry reported to the Office of Industry, Handicraft and Trade a total of 27 foundations failing to deposit the balance sheet and/or the prospectus. The Office of Industry, Handicraft and Trade applied sanctions to 26 of these foundations.

199. Since 2009 the OCSEA has monitored economic operators in order to prevent and counter fiscal fraud, similar illicit behaviours, and trade distortions, causing 48 business licences being revoked by the Congress of State between 2009 and 2012. In the three years under review (2009, 2010, 2011), there have been some instances where accounting information was not available. These cases mostly related to companies that carried out fraudulent activities and that did not keep accounting records. These companies were not operating in San Marino anymore as the business licence of these companies was already revoked or the companies were under liquidation procedures. In 2011 San Marino established penalties under the Company Law up to

EUR 25 000 to sanction defaults with regard to the keeping of accounting information, thus strengthening the previous penalty existing under the Income Tax Act which ranged from EUR 51.65 to EUR 309.87. Even though San Marino has already acted to prevent companies from carrying out fraudulent activities and not keeping accounting records it is recommended that San Marino monitor that the enforcement measures continue to be applied properly so as to ensure the availability of accounting information consistent with the standard.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Compliant.	
Factors underlying recommendations	**Recommendations**
Strong penalties under the Companies Law to keep accounting records were enacted in 2011.	San Marino should monitor the application of the enforcement measures so as to ensure the availability of accounting information consistent with the standard.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

200. Entities carrying on banking business are subject to licensing requirements as well as the obligations imposed on them as service providers. Prior authorisation is required from CBSM for carrying on banking business (Law No.165/2005 and Law No.96/2005). The legislative framework for record keeping requirements, as service providers, applicable to banks and other financial institutions is in the AML/CFT Law (Law No.92/2008) and Decree Law No.126 of 15 July 2010.

201. The obligation to apply CDD is set out in Article 21 of the AML/CFT Law and CDD must be carried out when establishing a business relationship, or when carrying out occasional transactions or professional services for an amount exceeding EUR 15 000. Financial institutions are obliged to identify the customer and verify the customer's identity (Art. 22). Financial

institutions are also required to conduct on-going due diligence on business relationship. The CDD obligations also apply to relationships existing on the date of coming into force of the AML Law. Article 34 of Law No.92/2008 requires all financial institutions (obliged parties) to record data and information obtained under CDD requirements and keep the records and copy of documents obtained for at least five years from the closure of the business relationship or execution of the occasional transaction. Article 34(2), as amended by Decree Law No.126/2010, requires the obliged parties to register and keep the supporting evidence and records of business relationships and occasional transactions or of services provided for a period of five years from the closure of business relationship or execution of the transaction. The FIA issued the following instructions in this regard:

- Instruction No. 1 of 2008: "Operating rules and procedural aspects of the fight against Money Laundering and Financing of Terrorism on Customer Identification Procedure";
- Instruction No.5 of 2008: "Operating rules and procedural aspects of the fight against Money Laundering and Fight against Terrorism on extension of the CDD requirements of financial parties"

202. Paragraph 5 of Art. 34 of Law No.34/2008 specifically notes that these obligations to maintain detailed records for at least 5 years apply equally to "all transactions both domestic and international, concerning existing and terminated business relationships, as well as to occasional transactions." As a result banking information is available for all account holders.

203. The competence for supervision of compliance with AML/CFT requirements lies with the Financial Intelligence Unit (FIA). The AML Law also obliges the authorised parties to make available the documents and information maintained to the FIA. The FIA has issued instruction No.2009-10/2009 (replaced by Instruction No. 01/2012) prescribing the requirements relating to registration and maintenance of the data and information on customers as per Art. 34 of Law 92/2008. Law No.73/2009 and Decree Law No.134/2010 provide sanctions for violations of CDD obligations and non-compliance with the registration and reporting obligations and sanctions. Failure to comply with CDD requirements is sanctioned with an administrative fine from EUR 5 000 to EUR 70 000.

204. The FIA is the designated authority empowered to apply administrative sanctions, whereas the Law Commissioner of the criminal section of the court is responsible for applying criminal sanctions under the AML/CFT Law. As part of its supervision activities, the CBSM carries out Specific Inspections, Partial Inspections and General Inspections. The CBSM closely coordinates its supervision activities with the FIA and the Judicial Authority. During 2011, the CBSM carried out 23 inspections of bank and financial institutions which included 14 inspections in relations to AML issues.

Ninety-three suspicious transactions reports were sent to the FIA during the three year period ending in 2011. The FIA also carries out inspections. During 2010, the FIA carried out inspections of three banks (out of 12) and four financial/fiduciary companies (out of 45). These inspections led to detection of three violations of CDD and two violations of registration and reporting obligations and a penalty of EUR 76 000 was levied. Periodic joint meetings are held between the FIA and the CBSM so as to coordinate the AML/CFT supervision of the financial sector.

205. The AML/CFT Law, the instructions issued by the FIA and also the regulatory regime for authorised financial institutions should ensure the availability of all records pertaining to accounts as well as related financial and transactional information.

Availability of information on bearer passbooks and bearer certificates of deposit in practice

206. In 2008 and 2009, laws were enacted to phase out bearer passbooks and certificates of deposits issued by banks in San Marino. Law-Decree No.136/2009 "Urgent Provisions on Bearer Passbooks" among other things provided that:

- issuance of bearer passbooks is prohibited with immediate effect;
- all bearer passbooks, regardless of their balances, must be closed or converted to nominative accounts by 30 June 2010.

207. The FIA also issued Instruction No.2/2010 on 30 April 2010 on the subject "Provisions relating to Closure or Conversion of Bearer Passbooks and other Bearer Instruments and Securities". Before the deadline of 30 June 2010, 13 997 bearer passbooks had been closed or converted into nominative passbooks, and appropriate customer due diligence was required to be conducted when the bearer passbooks were closed or converted. The assets of those passbooks amounted to EUR 172 002 989. Moreover, withdrawals, closure or conversion of bearer passbooks over EUR 15 000 had to be reported to the compliance officer as potential suspicious transactions.

208. Deposits represented by bearer passbooks that were not closed or converted by 30 June 2010 have been closed for legal purposes by operation of the law and have been accounted for in specific liabilities account held by commercial banks up to the date of effective return to the rightful owner. Closed deposits are non-interest bearing from the date of closure. The number of passbooks closed for legal purposes by operation of the law were 20 091 containing deposits of about EUR 32 157 919. Of these passbooks, 234 had a balance greater than EUR 15 000 and 19 857 a balance equal or lower to EUR 15 000.

209. Article 6 of Delegated Decree No. 136 of 31 October 2008 read with Article 149 of Law No. 165 of 17 November 2005 provided that the rightful owner of the passbook could reclaim the balance in the account within ten years from the date the account was closed. Decree Law No.54/2013, issued on 16 May 2013, has shortened this deadline to 1 January 2014. By 31 January 2014, the banks will have to transfer the balance of all unclaimed bearer passbooks to the treasury.

210. Banks are obliged to conduct CDD at the time of first transaction requested by the customer until 30 June 2010 or at the time of transaction for the payment of the balance after 30 June 2010. Violations of CDD requirements regarding bearer passbooks or bearer deposit certificates are sanctioned under Article 61 of the AML/CFT Law and administrative sanctions from EUR 10 000 to EUR 50 000 can be imposed by the FIA. In order to monitor the implementation of Law Decree No.136/2009, the FIA has carried out on-site inspections aimed at verifying the proper fulfilment of the obligations set forth in the law decrees. All obliged entities previously empowered by law to issue bearer passbooks have been supervised twice: Throughout 2009 and 2010, 24 inspections highlighted one violation, sanctioned with an administrative fine of EUR 20 000. According to the FIA, both on-site and off-site monitoring is still on-going. Banks have produced internal reports providing elements that allow the AML Commissioner to analyse such cases, also pointing out whether the closure or conversion of a bearer passbook was carried out by a holder other than the person having opened it, or a transaction was performed by a person different to the last holder performing transactions through the passbook. The identity of any person opening a bearer passbook or performing any transaction through the passbook had to be disclosed to the bank.

211. The breakdown for the bearer accounts held in liabilities account by each bank in San Marino as of 15 April 2013 is provided below.

Table 1. Breakdown of the bearer passbooks (BP) held by each bank in San Marino
Table 2. Source: Financial Intelligence Agency (FIA)
Table 3. Situation as of 15 April 2013

Banks	No. of unclaimed BP exceeding EUR 15 000	Balance (in Euro)	No. of unclaimed BP under EUR 15 000	Balance (in Euro)
Bank 1	22	1 338 112.05	4 503	1 203 802.29
Bank2	0	-	160	34 170.82
Bank 3	16	2 170 723.92	190	264 115.33
Bank 4	0	-	0	-
Bank 5	0	-	0	-

Table 1. Breakdown of the bearer passbooks (BP) held by each bank in San Marino Table 2. Source: Financial Intelligence Agency (FIA) Table 3. Situation as of 15 April 2013				
Banks	**No. of unclaimed BP exceeding EUR 15 000**	**Balance (in Euro)**	**No. of unclaimed BP under EUR 15 000**	**Balance (in Euro)**
Bank 6	0	-	2	599.83
Bank 7	25	1 419 530.23	3 346	1 948 185.06
Bank 8	49	3 295 414.12	8 662	2 224 766.38
Bank 9	0	-	13	1 804.60
Bank 10	0	-	105	42 142.56
Bank 11	0	-	85	63 739.82
Total	**112**	**8 223 780.32**	**17 066**	**5 783 326.69**
General Total	**Total No. of unclaimed BP: 17 178**		**Total Balance: 14 007 107.01**	

212. As of 15 April 2013 there were 17 178 bearer passbooks kept in the liabilities account by nine banks, representing total assets of EUR 14 007 107.01. This means that from 30 June 2010 to 15 April 2013, 2 913 bearer passbooks were claimed. Only 112 of the unclaimed passbooks had a balance greater than EUR 15 000, with total assets of EUR 8 223 780.32. These figures show that the materiality of these passbooks is very limited, especially considering that the total amount of bearer passbooks corresponds to 0.28% of total bank direct deposits, which is about EUR 5 billion.

213. The issuance of certificates of deposit in bearer form was prohibited by a Delegated Decree No.154 enacted on 8 November 2009. With this measure, the issuance of all bearer instruments, other than passbooks, constituting savings deposits were prohibited as of 11 November 2009. The payment of more than EUR 15 000 (capital and interest) on the maturity of the existing deposits must be reported to the AML Officer. CDD must be carried out at the time of payment of deposit. The bearer deposit certificates have a definite due date for repayment, of deposit and interest, determined at the time of opening the deposit account and pursuant to the CBSM Regulation 07/2007, this deposit period cannot be more than five years.

214. As of 30 June 2010, there were 59 certificates of deposit in bearer form, for a total amount of EUR 1 863 000. As of 15 April 2013, there were still 17 certificates of deposit for a total amount of EUR 755 473.10 (more in details 7 certificates with a balance exceeding EUR 15 000, for a total of EUR 668 260.60). As the certificates of deposit have a pre-determined duration of maturity, the balance of 17 certificates will mature for payment maximum by 30 November 2014.

215. San Marino has put in place a mechanism to close down bearer passbooks and bearer certificates of deposits, and to identify the owners of them. Moreover, the FIA has carried-out extensive on-site and off-site inspections, applying sanctions where appropriate, to ensure that banks apply identification measures. Banks also know whether the closure or conversion of a bearer passbook was carried out by a holder other than the person having opened it, or a transaction was performed by a person different to the last holder performing transactions through the passbook. As of 15 April 2013, there were 17 178 closed passbooks which had not been claimed back containing deposits for EUR 14 007 107.01 and 17 closed certificates of deposit in bearer form for a total amount of EUR 755 473.10. Only 112 bearer passbooks and 7 bearer certificates of deposit had a balance over EUR 15 000. Bearer passbook holders must claim the balance by 1 January 2014 and the holders of bearer certificates of deposit by 30 November 2014.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

B. Access to Information

Overview

216. A variety of information may be needed in respect of the administration and enforcement of the relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether San Marino's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards that are in place would be compatible with effective exchange of information. It also assesses the effectiveness of this framework in practice.

217. The Central Liaison Office (CLO), San Marino's competent authority, has the necessary access powers to obtain information from all relevant entities for the purposes of responding to international requests. These powers were broadened in 2011 through Decree Law No.36/2011 and Law No. 106/2011 (Provisions for the Implementation of International Tax Assistance through Exchange of Information) ensuring among others that information can be obtained in both civil and criminal tax matters. The CLO was also granted powers to obtain information directly from persons holding or controlling the information requested. These amendments removed any deficiency concerning access powers of the CLO.

218. The procedure followed by the CLO in order to access information to respond to incoming requests for information depends on the type of information needed. The CLO has direct access to databases maintained by various public authorities and to the extent information is available in these databases, requests can be responded to without seeking information from other public authorities or the information holder. In other cases, the competent authority relies on public authorities, primarily the Commercial Registry of the Single Court, the Office for Control and Supervision of Economic Activities

(OCSEA), the Central Bank, the Financial Intelligence Agency (FIA), the Tax Office and other offices of the Public Administration. In 2011, the Tax Office was also sufficiently empowered to obtain information from the taxpayers for the purposes of control and international information exchange. The Tax Act, as amended in 2011, now provides that all records must be kept for five years. Earlier this period was three years. The competent authority has powers to obtain information held by banks, other financial institutions as well as ownership and accounting information for all relevant entities.

219. The powers of the CLO or other authorities to obtain information are backed by enforcement powers to compel production of information in case of non-compliance by the information holders. Although the use of enforcement powers has not been required in order to obtain information for exchange purposes, these powers have been used in domestic tax cases.

220. In practice, though San Marino is new to the field of exchange information, it has been actively obtaining and providing VAT related information to one partner. The procedures to obtain the information are the same, although it is noted that the administrative cooperation agreement under which VAT-related information is exchanged is limited in scope.

221. In 2011, changes introduced by Decree 36/2011 ensured that the scope of legal professional privilege in San Marino applying to lawyers and accountants is in line with the international standard. In practice, no one has opposed the provision of information to the CLO or to other authorities acting on request of the CLO on the basis of claims to professional privilege.

222. Taxpayers have appeal rights in respect of tax assessments, but the information requests from San Marino's authorities for tax as well as EOI purposes cannot be refused. Further, there are no notification requirements in San Marino.

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

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

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

223. The Central Liaison Office (CLO) is the Competent Authority of San Marino for international exchange of information in tax matters. It is constituted pursuant to Art. 9 of Law No.95/2008 for the purposes of international

administrative co-operation. It reports to the Congress of State (Council of Ministers) and to the Parliament. The CLO is an autonomous body which functions as San Marino's competent authority for all international agreements on exchange of information adopted by the Republic of San Marino. The responsibilities of the CLO extend to San Marino's network of TIEAs and DTCs as well as exchange of VAT-related information an under administrative agreement with one partner. The CLO co-operates with and can rely upon the Office for Control and Supervision of Economic Activities (OCSEA), the Central Bank, the Tax Office and other bodies of the public administration for the exercise of powers to obtain information to respond to requests for information from foreign competent authorities. Similarly, the Tax Office and the OCSEA can rely on the CLO for obtaining information from the foreign jurisdictions with which San Marino has concluded agreements.

224. The CLO derives its powers from Law No.95/2008. The powers of the CLO to obtain information were substantially broadened in 2011 through Decree Law No.36/2011 ensuring among others that information can be obtained in both civil and criminal tax matters. The tasks and functions of the CLO are set out in Art. 11 which provides that:

> The Central Liaison Office shall be the body responsible for contacting the competent offices of other countries for administrative cooperation with a view to implementing the international agreements adopted by the Republic of San Marino.
>
> The Central Liaison Office shall have the power to access directly or through other competent offices the information necessary to ensure the types of cooperation and exchange of information referred to in the previous paragraph; it shall also have access to information to prevent and counteract frauds, including tax frauds and "the like" as well as distortions in economic relations with other countries and jurisdictions. The functions set out in this paragraph are performed regardless of the fact that the behaviours might be criminally relevant.

225. Law No.5/2010 changed the rules relating to the bank secrecy, which can no longer be invoked against the CLO and other San Marino public bodies and offices responsible for the exchange of information in accordance with the international agreements in force. Given the powers granted to the CLO by article 11 of Law No.95/2008, the CLO can access information held by banks in response to a request for exchange of information, provided that the EOI agreement contains a provision akin to paragraph 5 to Article 26 of the OECD Model Tax Convention. Decree Law No.36/2011 supplemented previously issued Decrees in this matter, clarifying that the CLO can also access information from financial intermediaries. Further, the amendment

to Law No. 95/2008 by Article 2 of Decree No. 36/2011 empowered the CLO to access information in civil tax matters previously limited to criminal tax matters only.

226. San Marino has also passed Law No.106/2011. This law, titled "Provisions for the Implementation of International Tax Assistance through Exchange of Information", sets out legal and procedural mechanisms concerning exchange of information pursuant to the international agreements in force in San Marino. Article 2, paragraph 1, of this law provides that exchange of information in tax matters between the Republic of San Marino and other States and Jurisdictions must take place in compliance with international agreements in force. Further, the information must be exchanged according to the procedures and in compliance with such agreements. Article 5 further obliges the CLO to obtain, either directly or indirectly, the requested information for exchange purposes. This law has also created a domestic unilateral mechanism under which San Marino is able to provide information in tax matters, upon request, to any jurisdiction with whom it has initialled or signed an agreement providing for exchange of information in tax matters, but which is not yet in force (Article 2(2)). The provisions of this unilateral mechanism have not been used in practice thus far.

227. In view of the above, the CLO is empowered to obtain information in both criminal and civil tax matters for the purposes of exchange of information.

Powers to obtain information

228. The CLO has the powers to obtain information directly or indirectly, with the assistance of other authorities.

229. Pursuant to article 15 bis of Law No.95/2008, the CLO has complete and unlimited access to data and information available in registers, archives, professional registers kept by the Public Administration and Professional Associations and also data and information kept by the Central Bank and the Financial Intelligence Agency in accordance with the terms and procedures laid down in the MOUs referred to below, the Police Authority and the Single Court. Further, the CLO has been granted access to all information held by the Trust Register Office and it can directly request a trustee to produce the books of events pursuant to Article 28(5) of Law No.42/2010. Article 2 of the Decree Law 36/2011 established that the CLO can access information directly from all persons. In addition, Article 7 of Law No.106/2011 confirms that, without prejudice to what is envisaged in articles 11, 12, and 15 bis of Law No.95/2008, the CLO may obtain information directly from persons holding or controlling the information requested.

230. Article 12 of the Law No.95/2008 provides that the CLO may gain the co-operation of the OCSEA, the Tax Office, the Offices of the Public Administration and the Police Forces. Further, these authorities and all Offices of the Public Administration must respond to the requests of the CLO in accordance with the procedures established by the CLO in order to perform the functions laid down in Article 11. All the public authorities can assist the CLO regardless of whether the information requested relate to criminal or civil tax matters.

231. When seeking cooperation with other authorities, article 12 of Law No.95/2008, as amended by Decree Law No. 36/2011, provides that these authorities must respond to the requests of the CLO in accordance with procedures established by the CLO in order to perform the functions laid down in Article 11. Therefore, the prescribed authorities are legally obliged to assist the CLO.

232. Article 17 bis of Law No.95/2008, as amended by Decree Law No.36/2011, provides for conclusion of two co-operation agreements. Pursuant to this law, the following two MOUs have been signed, which provide for co-operation among the authorities signing the MOU:

- Memorandum of Understanding between the CLO, the OCSEA and the Financial Intelligence Agency concerning collaboration and exchange of information, concluded on 19 May 2011; and
- Co-operation Agreement between the CLO, the OCSEA and the Central Bank, concluded on 26 May 2011. This agreement governs the forms of co-operation for investigations into banking and financial aspects without prejudice to the provisions of bank secrecy contained in Article 36(5) of Law No.165/2005.

The CLO has further signed two MOUs, regulating the collaboration and exchange of information, namely:

- Memorandum of Understanding between the CLO and the Tax Office, concluded on 26 September 2012; and
- Memorandum of Understanding between the CLO and the OCSEA concluded on 28 September 2012.

233. The OCSEA was also set up by Law No.95/2008. Its role is to, directly or through other public offices, prevent, identify, investigate, counter tax fraud or “the like” frauds, and counter distortions in trade exchange. The OCSEA controls and supervises economic operators (primarily companies) (Art. 5). The OCSEA, on which the CLO can rely, can access information from companies (including partnerships) but not from other relevant entities namely trusts or foundations.

234. The CLO can request information from OCSEA, which in turn has the power to convene company (including partnerships) representatives and request them to submit any documents which could be useful to the fulfilment of its functions. The OCSEA also has access to premises, means of transport and documents of the economic operators (Art. 6 and Art. 8 of Law No.95/2008). The OCSEA can seek co-operation from the Gendarmerie, the Civil Police and the Fortress Guard Uniformed Unit (*Guardia di Rocca Uniformata*) for performing its functions.

235. Article 37 of Law No.129/2010 requires that data and information kept by associations, foundations and other non-profit organisations be provided, upon request, to the Judge of Supervision for supervisory functions and to the FIA to perform functions assigned by Law No.92/2008. San Marino has clarified that with respect to these entities, the CLO can seek information from the Law Commissioner or the FIA.

236. Article 13 of Law No.95/2008 provides that, the CLO can request co-operation from the CBSM for investigations into banking and financial aspects. It is from the CBSM or the FIA that the CLO obtains information available with financial institutions and fiduciaries, which these authorities have powers to access under the AML/CFT Law and Law No.165/2005.

237. In addition, the CLO can access information, in accordance with Art. 12 of Law No.95/2008, from other public authorities, including the:

- Office of Industry, Handicraft and Trade – business registration information;
- Commercial Registry of Single Court – company registration information;
- Foundations Authority – foundations;
- Labour Office – company employees;
- Registrar's Office – Register of residents and non-residents; and
- any other authorities such as the Registry and Mortgage Office or the, Motor Vehicle Registration Office.

238. The CLO and OCSEA have access to the data collected by the Tax Office. The CLO can also request the Tax Office to use its information gathering powers under Article 42ter of Law No.91/1984. These Tax Office powers are described in Art. 42ter under the heading "Controls Made by the Tax Office". These powers, for control purposes, as mentioned in Art. 42ter, allow the Tax Office to:

- require public officers to provide an abstract or copy of documents and acts held by them;

- summon taxpayers to appear at the office to submit clarifications, information and evidence; and
- require the submission of evidence of income or of change in income.

239. For the purpose of controls, the Tax Office is empowered to collect data and information relevant to accurate income assessment, audit tax returns filed by taxpayers and withholding agents and also check the regular keeping of the accounting records (Art. 42ter of ITA). These powers may be exercised when the CLO requests information from the Tax Office for the purpose of international exchange of information. Commonly the CLO will seek the assistance of the Tax Office when the information request pertains to individuals or when the CLO does not wish the legal person to be notified of the information gathering.

240. Article 11 of Decree Law No.36/2011 has significantly enlarged the scope of inquiries which may be undertaken by the Tax Office. Tax Office has been given stronger powers and it may conduct inquiries either on its own initiative or based on the requests from the CLO or bodies of the Public Administration. Article 11 of the Decree states:

> The Tax Office, for the areas within its competence and to perform the functions assigned to it, in addition to the control activities already provided for by special laws, can, on its own initiative or following reports or requests by the Central Liaison Office or other bodies of the Public Administration:
>
> - summon natural persons, Economic Operators as well as representatives of non-profit organisations to provide clarifications, information and evidence and to supply any document considered necessary, also for the purpose of implementing the provisions of the international agreements in force between the Republic of San Marino and other Countries and jurisdictions;
> - access the premises in which economic activities are conducted in order to carry out inspections and controls;
> - examine and ascertain the accounting records, the formal papers and documents relating to the economic activities carried out by economic operators;
> - request taxpayers to produce original copies of the documents reporting the expenses that they request be deducted pursuant to Art. 6 of Law n. 91 of 13 October 1984 and subsequent amending and supplementing acts (Income Tax);

- access the data and information contained in the registers, archives, databases kept and used by the Public Administration, which can be useful for performing its tasks and functions;
- request public officials an abstract or copy of the documents and formal papers in their possession;
- ask for the assistance of technical experts for issues that require special knowledge.

241. Article 38 of the Tax Act, as amended by Decree Law No. 36/2011, provides that: all entries and records required under Section IX, as well as the entries and records required under other tax laws and in any case relevant for assessment purposes, even in conflict with other provisions providing for shorter periods, must be kept for five years, excluding the tax period they refer to, and in any case until the assessments for said tax periods are concluded.

242. To conclude, subsequent to the amendments introduced by Decree law No. 36/2011 to Law No.95/2008 and the Tax Act, and also to the introduction of Law No.106/2011, the CLO has powers to obtain information from all relevant entities and arrangements, including banks, directly as well as indirectly through other authorities.Gathering information in practice

243. Since its establishment in 2009, the CLO is the competent authority for all international agreements on exchange of information on tax matters adopted by the Republic of San Marino as well as for collecting and exchanging VAT-related information with one partner. The procedures to access the requested information are the same.

244. The procedure followed by the CLO in order to access information to respond to incoming requests for information from partner jurisdictions mainly depends on the nature of the information. The CLO has direct access, through secured electronic means, to the databases maintained by the relevant public administration offices. It requests the assistance of other offices when needed.

245. Information on the ownership of companies, partnerships, cooperatives, consortia, associations, foundations and other non-profit organisations is readily available in the databases maintained by the Commercial Registry of the Single Court, to which the CLO has real time electronic access from its office. After verifying the availability of ownership information in the databases, the CLO may also request authentication of the information from the Office of the Commercial Registry or other public offices. It can also request the Commercial Registry to provide information on company certificates. For the period 2009-11, the CLO requested the assistance of the Commercial Registry in 88 cases, mainly in relation to VAT related assistance with one partner.

246. The Commercial Registry of the Single Court can also provide a copy of the balance sheet of a company, which is required to be filed by the company with it annually, to the CLO.

247. The CLO can request information from the Office for Industry, Handicraft and Trade in matters concerning licenses issued for carrying out commercial activities. For the period 2009-11, the CLO requested the collaboration of this Office in the framework of the administrative assistance in VAT matters with one partner. In 2011, the CLO requested the collaboration of this Office to respond to a request of information from a TIEA partner.

248. The CLO often requests the collaboration of the Tax Office in view of obtaining accounting information relating to companies, partnerships and foundations that are Sammarinese residents or when the CLO needs original copies of such records and their underlying documentation. The CLO has direct, complete and unlimited access, including through electronic means, to data and information available in records, archives, and databases of the Tax Office. The Tax Office can provide information available in tax files, including tax returns, or in documents collected in regard to import tax and special tax on petroleum products or obtained during audit or other control activities. The Tax Office is sufficiently empowered to carry out control activities on taxpayers and it can obtain information and documents held by the persons concerned. For performing such controls or obtaining the relevant documentation, the Tax Office usually relies on the Fraud Squad of the Civil Police. The Tax authorities indicated that they have been obtaining accounting information for tax audit purposes and can also request such information for EOI purposes. On being requested in writing by the CLO, the Tax Office is obliged to provide original copies of documents. The Memorandum of Understanding between the CLO and the Tax Office establishes that the Tax Office should provide the requested information within a time limit of 15-20 days. For the period 2009-11, the CLO requested the collaboration of the Tax Office in 114 cases, mainly in relation to VAT related assistance with one partner.

249. The CLO can directly request information from the person who is in control or possession of the required information. It mainly relies on the assistance of the Fraud Squad of the Civil Police for obtaining information directly from the information holder when either the information is required to be obtained urgently, or there is a risk of non-production, or the person is not traceable, or it needs to acquire original documents and copies thereof, obtain witness statements and interviews, and perform checks and controls at the head office and of the activity. The Fraud Squad of the Civil Police can access the information and documentation held by the persons concerned according to the procedures and instructions given by the CLO, regardless of whether the facts constitute a crime or not. In order to obtain witness

statements, the person(s) must be informed of the purpose of the information requested and of the criminal charges to which anyone giving false or hostile evidence to a public official is subject (Article 297 of the Criminal Code). For the years 2010 and 2011, the CLO requested the assistance of the Fraud Squad in 91 cases, mainly in relation to VAT related assistance with one partner.

250. Ownership information of fiduciary companies is contained in the Register of Fiduciary Investments and details of settlors, trustees, and beneficiaries of domestic trusts are available in the Trust Register. Both these registers are managed by separate offices within the Central Bank of San Marino. For the years 2010, 2011, and 2012, the CLO requested the assistance of the Central Bank of San Marino in nine instances concerning mandates for investments in San Marino companies held by fiduciary companies established in San Marino or abroad to respond to VAT-related requests for assistance from one partner.

251. The CLO generally obtains information in possession of banks by sending a request letter to the bank. The CLO has approached banks directly in at least one case. However, whenever an investigation concerning a bank account is required, the CLO may also seek assistance from the Central Bank of San Marino and the Financial Intelligence Agency. In 2011 and 2012, in relation to VAT related assistance with one partner, the CLO sent seven requests to the Financial Intelligence Agency to assist with the verification of bank-related information, verification of names, and verification and acquisition of information held for the purposes of anti-money laundering legislation.

252. The OCSEA carries out the activity of controlling and supervising all economic operators structured as an enterprise. The memorandum between the CLO and the OCSEA provides that the CLO can request the assistance of the OCSEA in obtaining the documentation regarding the fiscal position of economic operators involved and original copies or documents. The OCSEA also relies on the Police Force, particularly on the Fraud Squad of the Civil Police, for obtaining information. For the period 2009-11, the CLO requested the collaboration of the OCSEA in 83 instances, mainly in relation to VAT related assistance with one partner.

253. The powers of the CLO to access and collect information relating to criminal tax matters are the same as for civil tax matters. In the context of criminal investigations and proceedings in San Marino, nonetheless, without prejudice to the availability of data and information held by the Registry of the Single Court, the data and information regarding judicial activity may only be provided to the CLO upon prior authorisation by the Judge. If there are objective circumstances connected with the on-going investigations and stemming from the need to carry out an investigation to ensure authenticity of the evidence of the offence concerned, the acquisition and use of the information sought by the CLO may be postponed upon request of the judicial authority through a

reasoned decree of the investigating Law Commissioner. While providing assistance in VAT-related matters with one partner, there have been cases where the information sought by the CLO was held by the Court in the context of criminal investigations and proceedings in San Marino. In all instances, the Judge allowed the CLO to obtain the information and exchange it with the partner. The authorisation was provided in all cases in approximately 30 days.

254. In conclusion, the CLO has in place an effective system to gather information for EOI purposes. It can access information directly, or obtain assistance from other authorities to access information, when needed. The collaboration between the CLO and the other authorities appears to be good. In order to facilitate this cooperation, the CLO has signed Memoranda of Understanding with the OCSEA, the Central Bank of San Marino, the Financial Intelligence Authority, and the Tax Office.

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

255. The access powers granted to the CLO for exchange of information purposes – and to other authorities when requested by the CLO to assist it in performing its duties – allow San Marino's competent authority to obtain information regardless of the existence of any domestic tax interest in the information sought.

Compulsory powers *(ToR B.1.4)*

256. The CLO has the power to collect information directly from persons holding or controlling the information, as provided by article 11 of Law No.95/2008, as well as by article 7 of Law No.106/2011. Article 13 bis of Law No.95/2008, as amended by Decree Law 36/2011, provides sanctions for persons who hinder the collection of information by the CLO, do not respond to a request by the CLO, or fulfil requests only partially. The penalties are imposed and collected by the CLO and range from EUR 1 000 to EUR 50 000. The sanction is doubled when the illicit conduct occurs through recourse to fraudulent means.

257. Under Art. 42ter of the Income Tax Law, the Tax Office has the powers, which can be exercised in support of such international requests, to:

- require public officers to provide an abstract or copy of documents and acts held by them;
- summon taxpayers to appear at the office to submit clarifications, information and evidence; and
- require the submission of evidence of income or of change in income.

258. Non-compliance with these obligations can be sanctioned with a fine ranging from EUR 102 to EUR 618 (Art. 66 of the ITA).

259. Moreover, the Tax Office can, on its own initiative or following a request from the CLO, summon economic operators and natural persons to provide evidence and documents, access the premises in which economic activities are conducted, examine and ascertain the accounting records, and obtain original documentation. In case of non-compliance, the Tax Office can apply an administrative pecuniary sanction ranging from EUR 2 000 to EUR 15 000 (Art. 11 of Decree Law 36/2011).

260. The OCSEA is under an obligation to provide information to the CLO to support international exchange of information in tax matters (Art. 12 of Law No.95/2008) and OCSEA has the power to require company representatives to attend a meeting and produce documentation. The OCSEA also has the power to search companies' premises and seize documentation. Refusal to provide requested information or causing any other obstruction to the OCSEA can result in administrative pecuniary sanctions of EUR 1 000 to EUR 10 000 depending on the seriousness of the infraction (Art. 8 of Law No.95/2008).

261. In addition, the CLO, Tax Office and the OCSEA can seek the assistance of the Fraud Squad, which is a special section of the Civil Police tasked with preventing and combating tax fraud, swindling, distortions and irregularities in trade exchange. Article 32 of Law No.129 of 23 July 2010 has provided powers to Fraud Squad under which they may access the premises intended to be used for business activities for carrying out inspection of documents, verifications and any other investigations deemed useful to prevent, detect and counter illegal administrative activities. For the purpose of obtaining information that can only be seized in the framework of a criminal investigation, the CLO must first seek the authorisation from the Judge responsible for the investigation.

Use of compulsory powers in practice

262. In practice, the CLO obtains directly the information from the persons having possession or control over the information including third parties, or it relies on other authorities, including the Fraud Squad of the Civil Police. According to the Sammarinese authorities, the choice depends on the urgency of the case and the nature of information sought as well as the efficiency of the requested authority to obtain the information.

263. Since March 2011, when the relevant provision entered into force, the CLO has applied 27 sanctions (11 in 2011, and 16 in 2012) to persons who received a notice to produce the information and failed to provide the information as requested. The penalties were all applied in the context of VAT-related assistance to one partner. In each case, the penalty applied was

a EUR 3 000 fine. The information was eventually collected in two cases after the penalty was applied. When the information could not be obtained, the Sammarinese authorities have indicated the information was not available and that it related to accounting documents of persons whose business licence had already been revoked, or of companies under liquidation procedures (see also A.2). The CLO could nonetheless obtain and transmit other information held by the public authorities, including ownership information. The 11 persons sanctioned by the CLO in 2011 represent about 5% of the total persons from whom the CLO sought to gather information that year.

264. The Sammarinese tax authorities have indicated that, in the framework of tax audits on individuals and legal persons, fines ranging from EUR 25.82 to EUR 154.94 were levied for non-compliance relating to orders, requests and summons issued by the tax authorities (7 in 2009, 20 in 2010, and 29 in 2011). The Tax Office has thus far not applied sanctions pursuant to Article 11 of Decree Law 36/2011 in case of persons refusing or failing to produce, deliver, or transmit information to the Tax Office pursuant to a request by the CLO.

Secrecy provisions *(ToR B.1.5)*

265. Bank secrecy provisions are stipulated in the law on companies and banking, financial and insurance services (Law No.165/2005). The definition of bank secrecy in this law encompasses secrecy with regard to bank information and also the data and information relating to all the reserved activities. The directors, internal and external auditors, actuaries, employees, external consultants, members of supervisory committees, third party outsourced service providers and other persons specified in the law are bound by the obligations of bank secrecy (Art. 36).

266. These secrecy obligations are now overridden for specific purposes in accordance with Law No.5 of 21 January 2010, which amended Art. 36 of Law No.165/2005. Bank secrecy provisions cannot be invoked against the parties specified in the law in the exercise of their public functions. These parties include the Central Liaison Office and other public offices responsible for the direct exchange of information with foreign counterparts in accordance with the international agreements in force. However, the CLO can access banking information for EOI purposes only if the obligation to provide such information is clearly stated in the relevant EOI agreement. Moreover, Art. 36 provides that bank secrecy cannot be invoked against the Judicial Authorities for criminal matters, nor against the CBSM while fulfilling its supervisory functions, nor against the Financial Intelligence Agency (FIA).

267. During the three-year period under review, the CLO received one request of information held by banks and was able to access the information directly.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

B.2. Notification requirements and rights and safeguards

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

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

268. There are no notification requirements for taxpayers under Sammarinese law. The CLO and the Tax Office need not notify the requested natural or legal person of the purpose of the request for information.

269. The OCSEA may obtain information from companies (including partnerships) to respond to an international request for information for tax purposes. It must inform the company representatives of the reasons and specific facts relating to the need for the information when summoning that person (Art. 8 of Law No.95/2008). Equally, the companies are not able to refuse to provide the information requested. The failure to provide information attracts penalties.

270. Sammarinese authorities have indicated that, several other laws, such as the Law on Public Employees and laws on bar associations *etc*, similarly provide for the duty to abide by professional confidentiality or secrecy. Decree No.11 of 1995[27] deals with legal recognition of the by-laws of the Bars of lawyers and notaries in San Marino. Article 10 of this Decree provides that lawyers should maintain the confidentiality of the activity performed or issues dealt with. Lawyers are also prohibited from testifying on facts or acts they have gained knowledge of in the course of the professional activity. These provisions nonetheless do not limit the powers of the authorities to obtain information from lawyers for EOI purposes. Article 11 of Law No.95/2008, as amended by Decree Law No. 36/2011, explicitly provides that official and professional secrecy cannot be claimed when the CLO requests information to perform its functions. More specifically, those lawyers and accountants registered with the Register of Lawyers and Notaries (Albo degli Avvocati e Notai) and with the Register of Accountants (Albo dei Dottori

27. An English translation of this Decree was not provided to the assessment team.

Commercialisti e degli Esperti Contabili) can only claim professional secrecy and oppose the production of information to the CLO with respect to information they receive while performing their task of defending or representing clients during a judicial proceeding or in connection with such proceedings, including advice on initiating or avoiding proceedings. This amendment in 2011 dealing with the powers of the CLO explicitly clarified the scope of legal privilege applicable to lawyers and accountants for the purposes of international exchange of information in tax matters.

271. The representatives of the Accountants Association stated that the interpretation of professional legal privilege would apply to them only in situations where they are called to provide consultancy in a legal proceeding and only strictly in relation to the information they receive for the purpose of providing the advice. San Marino has also indicated that the privilege would not concern existing documents obtained by or deposited with the accountant. As such, where an accountant is called to provide a legal advice, the accountant can be considered an admitted legal representative. The representatives of the Accountants Association further stated that the association's ethical rules would suggest that an accountant should refuse to act as a consultant in a proceeding which involves one of their clients, although this is not ruled out by law. The representatives of the Accountants Association have confirmed that accountants give evidence in foreseen or admitted legal proceedings in a limited number of cases involving their clients where their expertise is required.

272. Notaries and lawyers are registered in the same Register of Lawyers and Notaries. However, notaries cannot claim any professional privilege when requested to provide information to public authorities because Law No.56/1995 clearly distinguishes between the two professions – those of lawyers and of notaries. In particular, a person who has performed notary activities is strictly prohibited from acting as defendant or representative in any proceeding where the legal acts that he or she has notified could be used as evidence or where the legal validity of these acts is disputed (Article 11, Law No.56/1995). The Sammarinese authorities have confirmed that notaries will not be covered by professional privilege in any case when requested to produce information relevant to exchange of information.

273. The professional legal privilege in San Marino is in line with this standard even though it does not expressly require the communication between the client and his attorney to be confidential in nature.

274. In practice, no one has opposed the provision of information to the CLO or to other authorities acting on request of the CLO on the basis of claims to professional privilege. The CLO requests information from the professionals (lawyers, notaries, and accountants) in about 30-35% of the cases.

275. Under San Marino's law, any person can take action in ordinary courts to protect its own rights (diritti soggettivi). In case of violation of legitimate interests (interessi legittimi), the person can take action in the administrative courts. The Sammarinese authorities have explained that where a person takes action to protect its own rights in front of a court, the person will still be obliged to transmit the information and the CLO will provide the information to the requesting jurisdiction. If the Court accepts a person's complaint and proclaims that the CLO obtained the information without authority of law, the CLO will then be responsible to compensate the person for the violated legitimate interests. In such case, the CLO will also inform the foreign counterpart of this Court's decision. The Sammarinese authorities have advised that no such action has ever been taken to oppose the provision of information to the CLO or other authorities when seeking information for EOI or tax purposes.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

C. Exchanging Information

Overview

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

277. San Marino has been actively engaged in extending its network of exchange of information agreements, which has resulted in signing of 36 agreements since January 2009, taking the total to 44 signed agreements. It also revised its double tax conventions with 7 jurisdictions by signing protocols which now provide for exchange of information to the international standards. At present, 34 of San Marino's international arrangements providing for the exchange of information in tax matters are in force. Out of the remaining 10 agreements, 8 have been ratified by San Marino. San Marino continues to negotiate agreements with various jurisdictions and has initialled 5 EOI arrangements.

278. San Marino has signed a protocol to the double taxation convention providing for exchange of information to the standard with its most important trading and financial partner, Italy. Both the double taxation convention and the protocol have been ratified by San Marino.

279. San Marino has passed law No.106/2011 which, amongst other things, enables it to provide information on a unilateral basis to any jurisdiction where there is an initialled or signed agreement for the exchange of information in tax matters. This law allows San Marino to provide information, on request, to partners with which its initialled/signed agreements are not in force. San Marino has notified all the treaty partners of the existence of this unilateral mechanism where the EOI agreement is not yet in force. San Marino has indicated that it also advises the jurisdictions with which it has initialled an agreement of the existence of this unilateral mechanism. The

effectiveness of this unilateral mechanism in practice depends on the legal provisions of partner jurisdictions, which may or not allow requesting and making use of information in absence of an international agreement. For example, Italy, a relevant partner, is unable to resort to the mechanism for the lack of a legal basis on its side. San Marino indicated that it has not received any request under this unilateral mechanism.

280. Confidentiality of information exchanged with San Marino is protected by obligations implemented in the exchange of information agreements and domestic legislation which provide for tax officers and the staff of the competent authority to keep information secret and confidential. Breach of the confidentiality obligations entails the application of criminal and disciplinary sanctions.

281. San Marino's agreements ensure that contracting parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information disclosure of which would be contrary to public policy.

282. The amendments to various laws in 2010 and 2011 as discussed in Sections A and B of the report have complemented the existing domestic framework to comply with and give effect to the provisions of the exchange of information agreements signed by San Marino.

283. During the three-year period under review (1 January 2009-31 December 2011), San Marino received only three requests for information from one partner. In those cases, San Marino was able to provide information in a timely manner. Nonetheless, the organisational process and resources put in place by San Marino need to be tested further, particularly in view of a possible increase of inbound EOI requests determined by the increasing number of agreements entering in force. San Marino has also been exchanging VAT-related information with one partner on the basis of an administrative cooperation agreement, however this exchange is limited in scope and so the experience cannot form the basis of an assessment of San Marino's ability to exchange of information to the standard.

C.1. Exchange-of-information mechanisms

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

284. San Marino has signed tax treaties with 18 jurisdictions namely; Austria, Barbados, Belgium, Croatia, Cyprus,[28] Georgia, Hungary, Italy, Liechtenstein,

28. 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

Luxembourg, Malta, Malaysia, Portugal, Qatar, Romania, St. Kitts and Nevis, the Seychelles, and Vietnam. In addition, it has signed protocols to its tax treaties with Austria, Belgium, Croatia, Italy, Luxembourg, Malta and Romania so as to bring the exchange of information article in line with Article 26 of the OECD Model Tax Convention. The tax treaty with Cyprus does not contain language similar to paragraph 5 of Article 26 of the OECD Model Tax Convention. The tax treaty with Seychelles contains a Protocol which could limit the exchange of information in certain circumstances.

285. San Marino has also signed TIEAs with 26 jurisdictions namely; Andorra, Argentina, Australia, The Bahamas, Canada, China, Czech Republic, Denmark, the Faroe Island, Finland, France, Germany, Greenland, Guernsey, Iceland, Ireland, Monaco, Netherlands, Norway, Poland, Samoa, South Africa, Spain, Sweden, the United Kingdom and Vanuatu. All these agreements but two (Czech Republic and Vanuatu) provide for exchange of information to the standard. Three of these agreements are not in force.

286. On 22 July 2011 the Sammarinese parliament passed law No.106/2011 "provisions for the implementation of international tax assistance through exchange of information". Articles 2 and 9-12 of this law provide a legal framework for exchange of information on request by San Marino on a unilateral basis. Article 2 (general provisions) provides that "pending the conclusion and entry into force of agreements between the republic of San Marino and other States or Jurisdictions to avoid double taxation and/or to favour exchange of information in tax matters on the basis of OECD standards, the provisions contained in title III of this law shall establish the procedures according to which the republic of San Marino provides tax information upon request to said States or Jurisdictions, with which the agreement negotiated, and initialled in conformity with international law, has not yet entered into force." Title III of the law (arts. 9 through 12) sets out the provisions for exchange of information pending the entry into force of the agreements.[29]

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.

29. Article 9 reads: "The Central Liaison Office (CLO) shall provide assistance to the competent authorities of the States or Jurisdictions referred to in Article 2, paragraph 2 above through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of said States or Jurisdictions concerning taxes covered by Article 10 hereunder. Such

287. The Global Forum has agreed on some key points that should be part of any unilateral mechanism. There must be:

- consultation with countries to be scheduled or otherwise designated;
- notification to jurisdictions that they are able to use this mechanism;
- a clear international commitment to be bound by the mechanism;
- complemented by clear procedures for designating which jurisdictions the mechanism applies to;
- a continuing primary focus for the jurisdiction of having bilateral or multilateral agreements in force; and
- domestic access powers to collect requested information and respond to requests.

288. This unilateral mechanism is applicable to those "…States or Jurisdictions, with which the agreement negotiated, and initialled in conformity with international law, has not yet entered into force." the law does not require scheduling of specific jurisdictions to which it would apply. For San Marino's authorities, obligations under this mechanism come into play from the time the agreement is initialled and end when the agreement comes into force. San Marino has established processes for informing jurisdictions that this mechanism is open to them to use. Through a note verbale, San Marino, sends a copy of law No.106/2011 to its counterpart and informs them of the procedure for sending requests to San Marino in accordance with the unilateral mechanism. San Marino has sent these notes verbale to those jurisdictions with which it currently has an initialled/signed agreement which is not in force.[30] For future agreements, the Note Verbale will be provided to the jurisdiction at the time the agreement is initialled. San Marino has indicated that it always advises the existence of this mechanism to its partners with whom an EOI agreement is initialled or signed.

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information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

Information shall be exchanged in accordance with the provisions of this Title irrespective of and independently from the content of the relevant agreement, which has not yet entered into force.

The rights and safeguards secured to persons by the laws or administrative practice in the republic of San Marino shall remain applicable to the extent that they do not unduly prevent or delay effective exchange of information."

30. The first such note verbale was sent to Italy soon after the law was enacted, on 25 July 2011. On 16 august 2011, notes verbale were sent to all other jurisdictions with which San Marino has an initialled/signed agreement which is not yet in force.

289. The text of Law No.106/2011 can be found on the public website of San Marino's Great and General Council (Parliament).[31] San Marino has also notified the Global Forum of the existence of this mechanism.

290. San Marino's authorities have indicated that their priority remains establishing bilateral agreements in line with the international standard and that the unilateral mechanism is seen as a complementary measure to allow for additional exchange of information in support of those agreements. This approach can be seen in San Marino's signature of the last six agreements allowing for the international exchange of information in tax matters.

291. Law No.106/2011 clearly provides that the CLO can use its access powers both for the purposes of requests received under bilateral agreements and for requests pursuant to the unilateral mechanism (see in particular arts. 9 and 11). As discussed in the part B of this report, San Marino has an effective domestic legal mechanism in place enabling it to collect information to meet the requests received from partner jurisdictions pursuant to international agreements, and also pursuant to the unilateral mechanism. It has adequate legal safeguards to ensure the confidentiality of the information received from and sent to the requesting jurisdiction.

292. As with any unilateral mechanism, the effectiveness of this unilateral mechanism in practice depends on the legal provisions of partner jurisdictions, which may or not allow requesting and making use of information in absence of an international agreement. For example, Italy, a relevant partner, is unable to resort to the mechanism for the lack of a legal basis on its side. In practice, no jurisdiction has requested information from San Marino based on the unilateral mechanism.

Other forms of exchange

293. San Marino exchanges tax related information with one partner under an administrative cooperation agreement. Under this arrangement, San Marino exchanges information on request in indirect tax matters with a view of combating swindling and distortions. For these purposes, San Marino also exchanges information automatically and spontaneously.

294. In addition, San Marino exchanges information automatically under Law No.81/2005 which gives domestic effect in San Marino to the requirements of the European Union Savings Directive (Council Directive 2003/48/EC). As such, San Marino has in place a bilateral agreement with each European Union Member State containing the same measures as are applicable to all European Member States under the Savings Directive. The

31. www.consigliograndeegenerale.sm/on-line/Home/ArchivioLeggiDecretieRegolamenti/scheda17098 996.html.

Tax Office, as the authority competent for this form of exchange of information, obtains statements relative to withholding taxes levied on interests paid to persons resident in a European Union member state, as well as voluntary communications for persons having decided to communicate their particulars instead of paying the withholding tax (now equal to 35%). Every year, the Tax Office automatically transmits information on beneficial owners to the competent authorities of the participating states. Between 2009 and 2011, 56 communications were sent to one partner.

Foreseeably relevant standard *(ToR C.1.1)*

295. The international standard for exchange of information provides that the competent authorities of the contracting states shall exchange such information as is foreseeably relevant to secure the correct application of the provisions of the convention or of the domestic laws of the contracting states. The commentary to Article 26(1) of the OECD Model Tax Convention provides that the standard of "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest extent possible. It does not allow "fishing expeditions".

296. The agreement with Cyprus provides for the exchange of information as is "necessary" for carrying out the provisions of the convention or of the domestic laws of the Contracting States concerning the taxes covered by the agreements. All other agreements use the term "foreseeably relevant" in place of "necessary". The commentary to Article 26 of the OECD Model Tax Convention, in paragraph 5 refers to this standard of "foreseeable relevance" and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article (e.g. by replacing "foreseeably relevant" with "necessary" or "relevant"). In view of this recognition of term "necessary", all of San Marino's agreements meet the "foreseeably relevant" standard.

297. However, the DTC with Seychelles contains a Protocol which provides, amongst other things, that "the name and, to the extent known, address of any person which the applicant State believes to be in possession of the requested information" must be furnished in order to demonstrate the foreseeably relevance of the information to the request. This requirement for the requesting jurisdiction to provide information in relation to the name of the person believed to be in possession of the information in all cases, and not only to the extent known, is an additional requirement beyond the wording of article 5(5) of the Model TIEA. Moreover, the Protocol to the DTC with Seychelles requires that, where banking records are sought by the applicant State, the requesting State should provide the identity of the specific bank from which information is sought; and in every case a statement of all supporting evidences and other circumstantial proofs which the request is based

upon. These requirements imposed by the Protocol with Seychelles could restrict effective exchange of information. It is therefore recommended that the wording of the Protocol be amended to ensure that the possibilities of their restrictions on EOI to the standard are removed.

298. Most of the TIEAs require the requesting jurisdiction to provide the greatest detail possible while making a request for the information. The specific details should state the tax purpose of seeking the information. The requested party may decline to provide the information if the request is not made in conformity with the agreement. These safeguards ensure that the "foreseeably relevant" requirement can be implemented by the jurisdictions. San Marino and Austria have amended the provisions of Protocol of 18 September 2009 to the DTC through an Exchange of Letters. This Exchange of Letters, ratified by San Marino on 20 March 2013, provides that, with regard to identity of the person in possession of the requested information, the requesting jurisdiction must indicate the name and address of that person only to the extent known to the requesting authorities. It has not been ratified by Austria thus far.

299. When validating an in-bound EOI request, the Director of the CLO assesses whether such request is foreseeably relevant and not a "fishing expedition" against the requirements established in the EOI agreement. During the three-year period under review, none of the three requests was refused for not being foreseeably relevant. With regard to one request relating to banking information, San Marino provided part of the information requested because the CLO deemed the other part of information requested as not "foreseeably relevant". The peer was looking for payments made by a resident company to a San Marino company and asked San Marino the entire bank statement of the San Marino company for a given period. San Marino only provided the information relating to one operation between the company and the Sammarinese company, explaining that only one operation took place. The other party was satisfied with the information received.

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

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

301. All of San Marino's tax treaties either specifically provide that the exchange of information is not restricted by Article 1 (Personal Scope) or

they note that information is to be exchanged for carrying out the provisions of the domestic laws of the contracting states. As domestic laws are applicable to residents and non-residents equally, it can be stated that even in absence of reference to Article 1, the contracting states are under obligations to exchange information in respect of all persons.

302. All of San Marino's TIEAs contain an Article dealing with jurisdictional scope which is in line with Article 2 of the OECD Model TIEA.

303. Therefore, all of San Marino's agreements provide for exchange of information with respect to all persons.

304. The unilateral mechanism does not restrict provision of information by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested.

305. In practice, no issue has arisen in relation to the type of person requested to provide information.

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

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

307. None of the TIEAs concluded by San Marino allow the requested jurisdiction to decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interest in a person.

308. The protocols to the tax treaties with Austria, Belgium, Croatia, Italy, Luxembourg, Malta and Romania and the tax treaties with Barbados, Georgia, Hungary, Liechtenstein, Malaysia, Portugal, Qatar, Saint Kitts and Nevis, Seychelles, and Vietnam contain exchange of information articles which incorporate a paragraph similar to Article 26(5) of the OECD Model Tax Convention. Parties to these agreements cannot decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

309. San Marino's tax treaty with Cyprus does not contain wording similar to Article 26(5) of the OECD Model Tax Convention. As highlighted in section B.1 of this report, San Marino has bank secrecy reinforced by statute, however, this can be overridden for exchange of information with foreign counterparts in accordance with international agreements. In absence of explicit obligations in the treaty with Cyprus to exchange bank information, San Marino's bank secrecy provisions will apply and information to the standard cannot be exchanged.

310. San Marino has sent a Verbal Note to Cyprus noting its willingness to sign a protocol that will align the treaty with the international standard in this respect.

311. While the unilateral mechanism does not specifically address the question of exchange of bank information, it provides: *For the purposes of obtaining the requested information by the Central Liaison Office, the provisions of Decree Law no.36 of 24 February 2011 and subsequent amendments shall apply* (Article 11, second paragraph, of Law No.106/2011). Decree Law No.36/2011 clearly allows exchange of bank information since it provides: *Bank Secrecy pursuant to Article 36 of Law no.165 of 17 November 2005 and subsequent amending and supplementing acts, as well as, in general, official secrecy and professional secrecy, cannot be opposed to the Central Liaison Office while performing its functions. Said Office can access directly the information held by financial intermediaries as well* (Art. 2).

312. During the review period, San Marino exchanged information held by banks with one partner.

Absence of domestic tax interest (ToR C.1.4)

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

314. The protocols to the tax treaties with Austria, Belgium, Croatia, Italy, Luxembourg, Malta and Romania and the tax treaties with Barbados, Georgia, Hungary, Liechtenstein, Malaysia Portugal, Qatar, Saint Kitts and Nevis, Seychelles, and Vietnam contain a paragraph in the exchange of information article which is identical to Article 26(4) of the OECD Model Tax Convention and all these agreements provide for exchange of information even though San Marino may not need such information for its own tax purposes. All the 26 tax information exchange agreements signed by San Marino

specifically oblige it to exchange of information notwithstanding that it may not need such information for its own tax purposes.

315. The tax treaty with Cyprus does not contain wording similar to Article 26(4) of the OECD Model Tax Convention. Exchange of information of all types will be possible under these bilateral tax treaties if the domestic laws of both jurisdictions do not restrict the exchange of information to matters wherein it has domestic tax interest. At least one treaty partner (Vanuatu) currently has restrictions in accessing information for exchange purposes, which limits the effective exchange of information under this TIEA.

316. As highlighted in section B.1 of this report, San Marino's competent authority has the power to access information regardless of any domestic tax interest. During the peer review of Cyprus, the Global Forum clearly determined that Cyprus does not have a domestic tax interest requirement.

317. The unilateral mechanism does not restrict provision of information to circumstances where San Marino has a domestic tax interest in the matter.

318. In practice, no issue linked to domestic tax interest has arisen.

Absence of dual criminality principles *(ToR C.1.5)*

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

320. The EOI agreements concluded by San Marino, as well as the unilateral mechanism, do not provide for the application of dual criminality principle to restrict the exchange of information, and in practice, no issue linked to dual criminality has arisen.

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

321. All of the EOI agreements concluded by San Marino and the unilateral mechanism provide for the exchange of information in both civil and criminal tax matters. The TIEA with the Czech Republic includes Article 8 of the Model TIEA, However, Article 1(2) states that "information received by the requesting Party under this Agreement may be used in the requesting Party as evidence in criminal proceedings only if judicial or other competent authorities of the requested Party give consent to it in accordance with the laws of the requested Party if such consent is, under these laws, necessary"

(Art. 1(2)). This requirement may prevent effective exchange of information or the use thereof and is therefore not to standard.[32] It is recommended that San Marino update this TIEA in order to remove this limitation. San Marino has already approached the Czech Republic to this end.

322. San Marino's laws allow its competent authority to obtain and provide information in both civil and criminal tax matters. In practice, EOI requests have been made to San Marino in relation to both civil and criminal matters.

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

323. The tax treaties concluded by San Marino do not contain restrictions on allowing for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction's domestic laws. There are no such restrictions in the laws of San Marino.

324. San Marino's TIEAs contain positive statements stating that the competent authority of the requested Party shall provide information to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

325. The unilateral mechanism specifically provides that, if specifically requested by the competent authority of the requesting state, the CLO must provide information in conformity with the law, to the extent allowable under San Marino's laws, in the form of depositions of witnesses and authenticated copies of the original records.

326. No partner jurisdiction has indicated any issue about the ability of San Marino to transmit information in the specific form requested.

In force (ToR C.1.8)

327. Exchange of information cannot take place unless a signed agreement enters into force. The international standard requires that a jurisdiction must take all steps necessary to bring them into force expeditiously. An agreement comes into force after both the contracting parties have completed the ratification process and notified each other of the same. In San Marino, the ratification is done by the Parliament and the whole ratification process takes usually between one and three months.

328. San Marino has signed 44 EOI agreements, comprising 18 DTCs and 26 TIEAs. Thirty-four of these agreements are in force. Out of the remaining 10 agreements not in force, San Marino has ratified 8 agreements and awaits ratification by its partner.

32. See also Phase 1 Peer Review of the Czech Republic, 2012.

329. Amongst the agreements ratified by San Marino are the double taxation convention and the amending protocol signed with Italy. Both the convention and the protocol were ratified by San Marino on 20 June 2012, and notification of the completion of these steps was sent to Italy on 3 July 2012. Therefore, San Marino has taken all necessary steps to bring this agreement into force.

330. San Marino's unilateral legal mechanism establishes a basis for San Marino to provide tax information, if so requested, under the provisions of initialled or signed treaties/protocols. The practical use of this mechanism by San Marino's partner jurisdictions depends on their internal legal provisions, which may or not allow requesting and making use of information in absence of an international agreement.

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

331. For information exchange to be effective, the parties to an exchange of information agreement need to enact any legislation necessary to comply with the terms of the agreement.

332. None of San Marino's domestic laws refer to mechanisms for establishing agreements for avoidance of double taxation or for the purpose of the exchange of information. San Marino's authorities have advised that after ratification by the Parliament and issue of ratification decree by the Captains Regent, DTCs and TIEAs acquire the status as domestic ordinary law. The CLO is constituted pursuant to Art. 9 of Law No.95/2008 for the specific purposes of international administrative co-operation.

333. The amendments to various laws in 2010 and 2011 as discussed in Sections A and B of the report have complemented the existing domestic framework to comply with and give effect to the provisions of the exchange of information agreements signed by San Marino. San Marino's competent authority has powers to access information to give effect to the terms of its international agreements.

334. Further, San Marino has also passed Law No.106/2011 for the implementation of international agreements for exchange of tax information. This law sets out: general provisions on exchange of information; exchange of information on the basis of bilateral agreements; and exchange of information pending the entry into force of the initialled or signed agreements.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

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

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

335. The standard requires that jurisdiction exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement.

336. San Marino has signed 44 agreements (18 DTCs and 26 TIEAs), of which 34 are presently in force. It is to be noted that out of remaining 10 agreements which are not in force, San Marino has taken all steps at its end to ratify 8 of these agreements, including the agreement and the protocol signed with Italy. Of its 44 signed agreements, the ones with Czech Republic, Cyprus, Seychelles, and Vanuatu do not provide for exchange of information to the standards.

337. The network of signed agreements to the standards includes agreements with 18 of the 27 European Union members and covers 21 of the 33 OECD members. These agreements cover its primary trading partners in Europe including Italy, its most relevant partner.

338. San Marino's signed agreements to the standard cover 39 of the Global Forum members, primarily in Europe. Similarly, its network of agreements includes 9 of the 19 country members of the G20.

339. Since 2009, San Marino has continued to expand its EOI network and has initialled agreements with Greece, India, Libya¸ Indonesia, and Singapore.

340. The Sammarinese authorities have indicated that San Marino is committed to expanding its network of EOI agreements as part of their commitment to full transparency.

341. Comments were sought from the jurisdictions participating in the Global Forum but no information has been received which would suggest that San Marino has not entered into an agreement with any jurisdiction when it was requested to do so.

Determination and factors underlying recommendations

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

Phase 2 rating
Compliant.

C.3. Confidentiality

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

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

342. The standards of confidentiality require that information received under the exchange of information provisions shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed to persons and authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings and judicial decisions.

343. All agreements concluded by San Marino meet the standards for confidentiality including the restrictions on the disclosure of the information received and also use thereof by a contracting party. The agreements provide that any information received by a Contracting Party under the Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by the Contracting Party. The agreements also provide for the restriction on disclosure of information received and these provisions comply with the requirements of the international standards.

344. Article 12 of Law 106/2011 specifically provides that any information provided to the requesting State must be treated as confidential and may be

disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the requesting State. The law also contains confidentiality provisions similar to Article 26(2) of the OECD Model Tax Convention. The Article further provides that, violations of the provisions by the persons or authorities of the requesting State shall entail the suspension of the forms of assistance regulated by the law.

345. Moreover, Article 17 of Law No.95/2008 provides that employees of San Marino's competent authority are bound to professional secrecy and confidentiality on any matters regarding the activities of the office of CLO and its relations with third parties. In addition, San Marino has submitted that criminal law punishes violations of confidentiality provisions as breaches of professional secrecy and there are no exceptions permitting disclosure of exchanged information.

346. With respect to the unilateral mechanism, this law also specifically provides that any information provided to the requesting State under the unilateral mechanism is to be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the requesting State (Art. 12). The effectiveness of the unilateral mechanism for providing information to the partner jurisdiction will also depend on the confidentiality provisions in the domestic laws of the requesting jurisdictions. If the confidentiality rules in respect of taxpayer information do not in absence of an international agreement allow sharing taxpayer information, which is often a necessary component of the request itself, the unilateral mechanism may not be acceptable to the requesting state. Therefore, as with any unilateral mechanism, the success of this mechanism will depend on the ability of partner jurisdictions to make requests in accordance with the mechanism.

Ensuring confidentiality in practice

347. The hardcopies of the information contained in an EOI request, as well as the related material, are stored in a dedicated room within the premises of the CLO. Access to the premises of the CLO is forbidden to persons who are not staff of the CLO. The information contained in the hard copy of a request that is relevant for the work of the CLO is transferred to soft files and saved in the hard drive of the CLO's computer network. The computer network of the CLO is sufficiently secured to allow access by authorised persons only.

348. When seeking assistance from other public authorities, the CLO will normally communicate only such information as is strictly necessary for the other authority to assist the CLO. The information communicated by the CLO will depend on the circumstances of the particular request. For example,

under no circumstances will the CLO transmit the entire request, but it will only communicate specific and indispensable data for the gathering of the information requested by other jurisdictions (such as: name of the person, trade operations, banking information, certificates). The CLO generally does not indicate to the assisting authority the name of the jurisdiction that made the EOI request. All public officials are bound by secrecy as prescribed by Law No.95/2008.

349. The CLO does not notify the taxpayer of the EOI request received. In practice, the Fraud Squad of Civil Police collects information directly from the taxpayers. They do not need to justify the reasons why information is sought and the CLO instructs these authorities as to what information can be communicated to the taxpayers. The same is valid when the CLO, the Fraud Squad of Civil Police, or the Tax Office addresses a third party to obtain the information. The information disclosed to taxpayers or third parties will simply be the list of information required and does not specify the name of the jurisdiction that made the EOI request. Other information can be communicated if this is necessary for the purposes of responding to a request for information. The OCSEA can request economic operators to provide documents and information without justifying the reasons. In case the OCSEA summons an economic operator, the economic operator must be informed of the reason why it was summoned (Art. 8(2), Law No.95/2008). In order to obtain witness statements, the Fraud Squad of the Civil Police must inform the person(s) of the purpose of the information requested and of the criminal charges to which anyone giving false or hostile evidence to a public official is subject (Article 297 of the Criminal Code).

350. The Sammarinese authorities have indicated that no cases of violation of confidentiality obligations have occurred.

Transmission of the information

351. The information obtained by the CLO is transmitted to the competent authority of the requesting jurisdiction under the form of courier service and encrypted email.

All other information exchanged *(ToR C.3.2)*

352. The confidentiality provisions in San Marino's agreements use the standard language of Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD Model TIEA and do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications

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

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

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

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

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

353. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

354. All of the TIEAs and the treaties with protocols concluded by San Marino incorporate wording providing that requested jurisdictions are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney-client privilege or information the disclosure of which would be contrary to public policy. Some of tax treaties, for example with Croatia, Cyprus and Liechtenstein contain provisions similar to standards but do not include provisions for declining information subject to legal privilege. It is unlikely that these minor variations will materially affect the rights and privileges of the taxpayers and third parties due to available general safeguards.

355. The unilateral mechanism specifically provides that the rights and safeguards secured to persons by the laws or administrative practice in San Marino remain applicable to the extent that they do not unduly prevent or delay effective exchange of information (Art. 9 Law No.106/2011).

356. The DTCs signed by San Marino contain a provision that a Contracting State is not obliged to supply information that would disclose any professional secrets. The scope of the term “professional secrets” is not defined in the tax treaties. Considering the provisions of paragraph 2 of

Article 3 of the respective tax treaties, for application of the tax treaties by San Marino, this term will derive its meaning from its domestic laws.

357. No issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by San Marino's exchange of information partners.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

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

359. There are no provisions in San Marino's laws or in its agreements pertaining to the timeliness of responses or the timeframe within which responses should be provided. As such, there appear to be no legal restrictions on the ability of San Marino's competent authority to respond to requests within 90 days of receipt by providing either the information requested or an update on the status of the request.

360. Article 11 of Law 106/2011 states that the CLO seek to provide the requested information normally within 90 days of receipt of request. If the CLO is unable to provide the information within the 90 day period due to complexity of the request, it is required to inform the competent authority of the requesting State accordingly.

361. San Marino has received three EOI requests from one partner in the three years ended 31 December 2011 under its network of TIEAs and DTCs.

An EOI request is counted as a single request even if it relates to more than one person although the database maintained by the CLO also contains the number of all persons involved. San Marino acknowledges receipt promptly and in any case no later than 15 working days. Before acting on an inbound request, the CLO analyses whether the request meets the requirements laid down in the relevant agreement. If these requirements are not met, the CLO will reject the request for assistance and will inform the requesting jurisdiction accordingly. The Sammarinese authorities have also indicated that, where the information provided in the request is incomplete, the CLO would immediately approach the requesting jurisdiction to provide more information which would allow the CLO to validate the request. In no cases thus far, has the CLO rejected a request for assistance or has it asked further clarifications.

362. For the three incoming requests, the CLO was in a position to provide a final response in 96 days on average. In two cases, San Marino provided an answer within 90 days, and in one case, it provided a final answer in 118 days, although a significant portion of the information was provided within 90 days. There are no cases pending.

363. In the one case where San Marino was not able to furnish the requested information within 90 days, the CLO transmitted to the requesting jurisdiction a significant portion of the information, also providing for an update on the status of the request, within 90 days. The reason for this slight delay was the complexity of the request.

364. San Marino has actively exchanged information in respect of VAT-matters with one partner under an administrative cooperation agreement. Since its establishment in 2009, the CLO has also been responsible for exchange of information with this partner on these matters. Information is exchanged on request, as well as automatically and spontaneously. It mainly concerns accounting documentation and ownership and identity information. During the period 2009-11, San Marino received from this partner 188 requests for exchange of information. A large number of these requests have been complied with. However, this exchange is limited in scope and so the experience cannot form the basis of an assessment of San Marino's ability to exchange of information to the standard.

Organisational process and resources *(ToR C.5.2)*

365. San Marino enacted legislation for creation of the Central Liaison Office (CLO), the competent authority, in 2008. The CLO includes two officials appointed by the Great and General Council upon proposal by the Congress of State. They are appointed for a three year term and can be reappointed for one additional three-year term only. The administrative staff

is assigned from the Department for Production Activity through public procedures.

366. The competent authority may rely on other public authorities for obtaining information for EOI purposes. Decree Law No.36/2011 creates obligations on the Tax Office, OCSEA and other bodies of the public administration to assist the CLO in its functioning of exchanging the information.

Resources

367. San Marino's competent authority, the CLO, is specifically tasked with implementing international administrative co-operation and exchange of information for tax purposes with partner jurisdictions pursuant to TIEAs and DTCs in force and also the unilateral mechanism. The CLO also acts as competent authority in relation to exchange of VAT-matters with one partner pursuant to an administrative cooperation agreement. The CLO consists of four persons: a Director, an Official, an Expert, and an Operator. The CLO has also at its disposal auxiliary staff, such as messengers and chauffeurs of the Public Administration. The CLO can collect information directly or can request the collaboration of other authorities in order to perform its functions. In practice, the CLO often relies on other authorities to access the information. The co-operation and exchange of information with four of these authorities is regulated by specific memoranda (see below and Section B.1 above).

368. The premises of the CLO are sufficient to accommodate all the officials and are equipped with the necessary infrastructure. The Sammarinese authorities maintains that the number of personnel and the resources are sufficient to service the current volume of EOI requests received by San Marino and the exchange of VAT-related information with one partner under an administrative cooperation agreement. Furthermore, the CLO is provided with a dedicated budget in the annual State Budget Law, and can request the Ministry of Finance to increase the annual budget. The Sammarinese authorities have indicated that, in the context of a public administration reform, the CLO's organisational structure may be expanded to include more personnel and bigger premises.

369. Staff members of the CLO are well qualified and sufficiently trained to deal with exchange of information matters. The official of the CLO has received trainings at various levels, including conferences and seminars concerning exchange of information, international taxation, tax transparency, and transfer pricing. In an international context, the official of the CLO has attended OECD and Global Forum training seminars covering exchange of information for tax purposes and is well informed of the exchange of information process.

370. The CLO is supported by computer software for managing the flow and timeliness of requests. The software, for example, includes the time-limit for the assessment of incoming requests, preliminary investigations, involvement of other authorities in the acquisition of information and documents, transmission of information, etc.). This software is used to process the requests for information in a timely manner and is also used to monitor the progress of requests. The CLO's staff attends periodical IT training courses.

371. The CLO's staff speaks and understands English, French, Italian, and Spanish. The majority of San Marino's EOI agreements do not specify the language to be used in EOI requests. So far, the requests received by San Marino have been in Italian and French.

372. San Marino has actively promoted understanding of transparency and exchange of information issues. Since 2009, the CLO has engaged with economic operators and professionals through meetings and seminars by explaining the main consequences of the legislative changes providing for more transparency in San Marino. The Foundation of Accountants has organised seminars and conferences on anti-money laundering. The Sammarinese authorities have indicated that an event will be organised on the occasion of the entry in force of the DTC with Italy in order to explain to the association of enterprises the main consequences for their work.

Organisational process

373. In December 2012, San Marino issued a manual named "Memorandum – Exchange of Information on Request: San Marino Principles and Practical Implementation". This manual illustrates the principles applied by San Marino concerning exchange of information on request, the operational stages of exchange of information, and the Memoranda of Understanding concluded by the CLO and other San Marino authorities. The operational stages of exchange of information reflect the procedures and guidelines established by the "OECD 2006 Manual on the Implementation of Exchange of Information Provisions for Tax Purposes – Module 1 on Exchange of Information on Request".

374. As soon as the CLO receives a request for information, such request is first validated by the Director, based on the provisions of the agreement. The Director verifies whether the request meets the "foreseeably relevant" standard and whether any clarifications are required from the requesting jurisdiction. The CLO then sends an acknowledgment of request. At a maximum, the acknowledgment of receipt was sent within 15 days.

375. Once the request has been validated by the Director, the CLO verifies the identity of the entity in the databases maintained by the public administration (including the Commercial Registry of the Single Court, the Tax

Office and the OCSEA). This process is very quick as the CLO has direct online access to these databases.

376. When the information needs to be further verified, and when the requesting party needs original copies or documents, the CLO requests the assistance of other authorities (see, gathering information in practice in Section B.1). The collaboration between the CLO and the Tax Office and the Fraud Squad of Civil Police is regulated by law (Law No.95/2008 and Decree Law 36/2011). The CLO has signed a memorandum with the Tax Office on 26 September 2012 dealing with Cooperation and Exchange of Information. This agreement requires the Tax Office to provide information within a reasonable time limit of 10 to 20 working days. The CLO has also established Memoranda of Understanding (MOU) regulating their mutual collaboration with the OCSEA, the FIA, and the Central Bank. In the MOU with the OCSEA and the FIA, the authorities undertake to provide assistance "as quickly as possible" (Art. 3), while the MOU with the Central Bank requires the authorities to exchange information within five working days (Art. 5). Another MOU was signed between the CLO and the OCSEA on 28 September 2012, which also specifies a time-limit of 15-20 days. In practice, the collaboration between the CLO and other authorities has been effective so far.

377. A person served with a notice from the CLO or the Fraud Squad of the Civil Police has a time limit of ten days to provide information. This deadline can be extended upon reasoned request.

378. With a view to enhancing cooperation between the offices involved in the exchange of information, "contact persons" have been designated within the offices with which the CLO collaborates more frequently and extensively.

379. The CLO analyses the completeness of the information and prepares the response. Afterwards, the information is sent to the requesting jurisdiction.

380. Throughout the process of handling an EOI request, the CLO keeps track of relevant dates, deadlines, and progress on a database.

Conclusion

381. San Marino has put in place a sound organisational process allowing to handle inbound EOI request timely.

382. Domestic laws as well EOI mechanisms to the international standard of San Marino are nonetheless very recent. The San Marino's competent authority, the CLO, commenced its activities in 2009 and has seen its powers and resources improve since. Even though San Marino has provided information to one partner in VAT matters in a large number of cases, San Marino received its first EOI requests pursuant to TIEAs and DTCs that meet the international

standard in 2011. In the period under review, San Marino received only three EOI requests. The resources of the CLO and procedures in place appear sufficient to handle the present level of requests in a timely manner and in these cases timely replies have been provided. Nonetheless, the very recent mechanism put in place by San Marino needs to be tested further, particularly in view of a possible increase of inbound EOI requests determined by the increasing number of agreements entering into force, in particular in respect of the DTC with Italy which has been ratified by San Marino and is in the process of ratification in Italy.[33] It is therefore recommended that the Sammarinese authorities monitor their resources and procedures so that its competent authority continues to provide complete and quality information to its partners in time.Unreasonable, disproportionate or unduly restrictive conditions for EOI (ToR C.5.3)

383. San Marino's domestic law has been aligned, particularly pursuant to Decree Law 36/2011 and Law 106/2011, to meet the standards for information exchange agreed to in with its EOI partners. There are no restrictive conditions on exchange of information in practice in San Marino.

Determination and factors underlying recommendations

Phase 1 Determination
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

Phase 2 rating	
Largely Compliant.	
Factor	**Recommendation**
San Marino has put in place a sound organisational process allowing to handle inbound EOI request timely. Nevertheless, this system has not been sufficiently tested in practice.	San Marino is recommended to monitor its resources and procedures so that its competent authority continues to provide complete and quality information to its partners in time

33. The ratification process is underway by the Italian Parliament. The relevant bill has already been sent to one House of the Italian Parliament for approval.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Largely Compliant.	Strong penalties under the Companies Law to keep accounting records were enacted in 2011.	San Marino should monitor the application of the enforcement measures so as to ensure the availability of accounting information consistent with the standard.
Banking information should be available for all account-holders. *(ToR A.3)*		
Phase 1 determination: The element is in place.		
Phase 2 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)*		
Phase 1 determination: The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Compliant.		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
Phase 1 determination: The element is in place.		San Marino should continue to develop its EOI network with all relevant partners.
Phase 2 rating: Compliant.		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant.		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		

Determination	Factors underlying recommendations	Recommendations
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: Largely Compliant.	San Marino has put in place a sound organisational process allowing to handle inbound EOI request timely. Nevertheless, this system has not been sufficiently tested in practice.	San Marino is recommended to monitor its resources and procedures so that its competent authority continues to provide complete and quality information to its partners in time

Annex 1: Jurisdiction's Response to the Review Report[34]

San Marino would like to thank the assessment team for its work, commitment and fairness in drafting and finalizing the Phase 2 Report on San Marino and the team of experts for their fair evaluation and assignment of the ratings to the report.

With reference to the latter, San Marino had submitted comments on one of the elements rated "largely compliant", as well as on the overall "largely complaint" rating, conveying its view that there was a margin for discussing an upgrade to "compliant" for both.

However, San Marino understands the reasons for which the experts decided to confirm these ratings, especially the cautious and prudential approach they adopted with a view to ensuring fairness and an equal treatment in their comparative exercise with respect of all jurisdictions.

With the adoption of the ratings in November 2013, yet another phase in San Marino's relationship and fruitful cooperation with the Global Forum will have been completed. This common path will however develop further. San Marino will continue to comply with the recommendations of the Global Forum, expanding its treaty network, which now includes a tax treaty in force with its relevant partner, and remaining firmly and unwaveringly committed to the internationally agreed standard in transparency and exchange of information for tax purposes.

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

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

	Jurisdiction	Type of agreement	Date signed	Date in force
1	Andorra	TIEA	21.09.2009	07.12.2010
2	Argentina	TIEA	07.12.2009	16.06.2012
3	Australia	TIEA	04.03.2010	11.01.2011
4	Austria	Double tax convention (DTC)	24.11.2004	01.12.2005
		Protocol	18.09.2009	01.06.2010
		Exchange of Letters	27.11.2012	Not in Force
5	Bahamas	TIEA	24.09.2009	10.11.2012
6	Barbados	DTC	14.12.2012	Not in Force
7	Belgium	DTC	21.12.2005	25.06.2007
		Protocol	14.07.2009	Not in Force
8	Canada	TIEA	27.10.2010	20.10.2011
9	China	TIEA	09.07.2012	Not in Force
10	Croatia	DTC	18.10.2004	05.12.2005
		Protocol	01.08.2012	Not in Force
11	Cyprus [34]	DTC	27.04.2007	18.07.2007
12	Czech Republic	TIEA	25.11.2011	06.09.2012

34. Footnote 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 United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Footnote 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.

	Jurisdiction	Type of agreement	Date signed	Date in force
13	Denmark	TIEA	12.01.2010	23.04.2010
14	Faroe Islands	TIEA	10.10.2009	03.06.2011
15	Finland	TIEA	12.01.2010	15.05.2010
16	France	TIEA	22.09.2009	02.09.2010
17	Germany	TIEA	21.06.2010	21.12.2011
18	Georgia	DTC	28.09.2012	12.04.2013
19	Greenland	TIEA	22.09.2009	Not in Force
20	Guernsey	TIEA	29.09.2010	16.03.2011
21	Hungary	DTC	15.09.2009	3.12.2010
22	Iceland	TIEA	12.01.2010	Not in Force
23	Ireland	TIEA	04.07.2012	12.05.2013
24	Italy	DTC	21.03.2002	Not in Force
		Protocol	13.06.2012	Not in Force
25	Liechtenstein	DTC	23.09.2009	19.01.2011
26	Luxembourg	DTC	27.03.2006	01.01.2007
		Protocol	18.09.2009	05.08.2011
27	Malta	DTC	03.03.2005	19.07.2005
		Protocol	10.09.2009	15.02.2010
28	Malaysia	DTC	19.11.2009	28.12.2010
29	Monaco	TIEA	29.07.2009	10.05.2010
30	Netherlands	TIEA	27.01.2010	Not in Force
31	Norway	TIEA	12.01.2010	22.07.2010
32	Poland	TIEA	31.03.2012	28.02.2013
33	Portugal	DTC	18.11.2010	Not in force
34	Qatar	DTC	17.03.2012	Not in force
35	Romania	DTC	23.05.2007	11.02.2008
		Protocol	27.07.2010	16.06.2011
36	Samoa	TIEA	01.09.2009	21.03.2012
37	St. Kitts and Nevis	DTC	20.04.2010	Not in Force
38	Seychelles	DTC	28.09.2012	Not in Force
39	South Africa	TIEA	10.03.2011	28.01.2012
40	Spain	TIEA	06.09.2010	02.08.2011
41	Sweden	TIEA	12.01.2010	01.07.2010
42	United Kingdom	TIEA	16.02.2010	27.07.2011
43	Vanuatu	TIEA	19.05.2011	Not in Force
44	Vietnam	DTC	14.02.2013	Not in Force

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

Commercial Laws

Law No.165/2005 – Laws on Companies and Banking, Financial and Insurance Services.

Law No.47/2006 – Company Law.

Law No.100 of 22 July 2009 – provisions on Holding and Transfer of Bearer Shares of Anonymous Companies.

Law No.5 of 21 January 2010 (Amendments to Law No.165/2005 – Laws on Companies and Banking, Financial and Insurance Services).

Law No.98 of 7 June 2010 – Provisions for the Identification of the Beneficial Ownership Structure of companies under San Marino Law.

Decision No.55 of Congress of State – Regulation governing the keeping of the electronic Register of Legal Persons.

Law No.42 of 1 March 2010 – Trust Act.

Delegated Decree No.49 of 16 March 2010 – Office of Professional Trustee.

Delegated Decree No.50 of 16 March 2010 – Registration and keeping of the Trust Register and procedure for the Authentication of the Book of Events.

Delegated Decree No.51 of 16 March 2010 – Identification of the Methods and Procedures necessary to keep the Accounts of Administrative Facts relating to Trust Assets.

Law No.129 of 23 July 2010 – Regulations Governing Licenses to Pursue industrial, Service, Handicraft and Commercial Activities.

Taxation Laws

Law No.91/1984 – Introduction to General Income Tax.

Law No.38/2005 – Taxation of trusts regulated by the Laws of the Republic of San Marino and Administered by Authorised trustees.

Banking Laws

Law No.165/2005 – "Law on Companies, Banking, Financial and Investor Services".

Law No.5 of 21 January 2010 – Amendments to Law No.165/2005 – overriding banking secrecy.

Delegated Decree No.136/2008 – Transitory Regulations in relation to Bearer Passbooks.

Law-Decree No.136/2009 – Abrogating Bank Bearer Passbooks.

Decree Law No.154/2009: Urgent provisions on Savings Deposits

Instruction No.2008-01 of the Central Bank.

Regulation No.3/2011 for Financing Operations (Financial Companies) of the Central Bank.

Decree Law No.54/2013

Anti-Money Laundering Act/Regulations

Law No.92/2008 – Provisions on Preventing and Combating Money Laundering and Terrorist Financing.

Law No.73 of 19 June 2009 – Adjustment of National legislation to International Conventions and Standards on Preventing and Combating Money Laundering and Terrorist Financing.

Decree – Law No.134 of 26 July 2010 (Ratifying Decree – Law No.126 of 15 July 2010)

Instruction No.06/2009 issued by the Financial Intelligence Agency in Relation to the Countering of Money Laundering and Terrorist Financing

Instruction No.02/2010 issued by the Financial Intelligence Agency: Provisions relating to Closure or Conversion of Bearer Passbooks and Other Bearer Instruments and Securities

Instruction No.05/2010 issued by the Financial Intelligence Agency with regard to identification of the beneficial owner of foundations and associations

Regulation 2011-06 – Regulation on Trusts and Supervision of Financial Trustees

Other

Law No.95 of 18 June 2008 – Re-organisation of the Supervisory Services over Economic Activities.

Decree No.79/2002 – Declaration of Citizen's Rights and Fundamental Principles of San Marino Constitutional Order.

3rd Compliance Report on San Marino by the Committee of Experts on the Evaluation of Anti-money Laundering Measures and the Financing of Terrorism (MONEYVAL).

Decree Law No.36 of 24 February 2011 (Decree 36/2011) – Urgent Provisions to Conform to International Standards on Transparency and Exchange of Information.

Law No.106 of 22 July 2011 – Provisions for the Implementation of International Tax Assistance through Exchange of Information.

Memorandum of Understanding between the Offices for Supervision over Economic Activities of the Republic of San Marino and the Financial Intelligence Agency of the Republic of San Marino concerning Collaboration and Exchange of Information concluded on 19 May 2011.

Memorandum of Understanding between the Offices for Supervision over Economic Activities of the Republic of San Marino and the Central Bank of the Republic of San Marino concerning Collaboration and Exchange of Information concluded on 26 May 2011.

Annex 4: Persons Interviewed During the Onsite Visit

Officials from the Ministry of Finance and Budget

Officials from the Ministry of Foreign Affairs

Officials from the Ministry of Industry, Handicraft and Trade

Officials of the Central Liaison Office (CLO)

Officials from the Central Bank of San Marino (CBSM)

Officials from the Financial Intelligence Agency (FIA)

Officials from the Court Registry

Officials from the Tax Office

Officials from the Office for Control and Supervision of Economic Activities (OCSEA)

Representatives of the Association of Lawyers and Notaries and Accountants Association

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: SAN MARINO

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

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by 120 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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