

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report
Phase 1
Legal and Regulatory Framework**

THE SEYCHELLES



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: The Seychelles 2011

PHASE 1

January 2011
(reflecting the legal and regulatory framework
as at July 2010)



This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD or of the governments of its member countries or those of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

Please cite this publication as:

OECD (2011), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: The Seychelles 2011: Phase 1: Legal and Regulatory Framework*, Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer Reviews, OECD Publishing.
<http://dx.doi.org/10.1787/9789264096929-en>

ISBN 978-92-64-09691-2 (print)

ISBN 978-92-64-09692-9 (PDF)

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

ISSN 2219-4681 (print)

ISSN 2219-469X (online)

Corrigenda to OECD publications may be found on line at: www.oecd.org/publishing/corrigenda.

© OECD 2011

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at info@copyright.com or the Centre français d'exploitation du droit de copie (CFC) at contact@cfcopies.com.

Table of Contents

About the Global Forum	5
Executive Summary	7
Introduction	11
Information and methodology used for the peer review of the Seychelles	11
Overview of the Seychelles	12
Recent developments	17
Compliance with the Standards	19
A. Availability of Information	19
Overview	19
A.1. Ownership and identity information	21
A.2. Accounting records	39
A.3. Banking information	43
B. Access to Information	45
Overview	45
B.1. Competent Authority’s ability to obtain and provide information	46
B.2. Notification requirements and rights and safeguards	51
C. Exchanging Information	53
Overview	53
C.1. Exchange-of-information mechanisms	54
C.2. Exchange-of-information mechanisms with all relevant partners	58
C.3. Confidentiality	60
C.4. Rights and safeguards of taxpayers and third parties	61
C.5. Timeliness of responses to requests for information	62

Summary of Determinations and Factors Underlying Recommendations. . . .	65
Annex 1: Jurisdiction’s Response to the Review Report	71
Annex 2: List of All Exchange-of-Information Mechanisms in Force	73
Annex 3: List of All Laws, Regulations and Other Material Received.	74

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

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in the Seychelles.
2. A small jurisdiction – 87 000 inhabitants, 451 km² – situated in the Indian Ocean some 1 500 kilometres East of mainland Africa, the Seychelles is one of the most developed African countries, with a GDP per capita close to USD 10 000.
3. If the Seychellois economy is mainly driven by tourism and fishing exports (together these sectors represent 83% of GDP), the Seychelles is also one of the most active offshore centres in the world, offering a wide range of products such as international business companies, limited partnerships, international trusts and, since 2009, foundations. The Seychelles currently has more than 75 000 registered international business companies, more than triple the number which existed just 5 years ago. In addition, the Seychelles is active in strengthening its offshore industry, developing new legislation to allow for the establishment of international corporate vehicles.
4. The main feature of this offshore sector is the tax free or low tax environment offered by the Seychelles, the flexibility of the products (with the possibility to transfer into the Seychelles a legal entity set up abroad), and the possibility, in some cases, to cumulate the benefits of a low tax environment and the Seychelles' treaty network developed in the last years.
5. The Seychelles committed to the international standards of transparency and effective exchange of information in 2002 and has signed 16 double tax conventions (DTCs) since 1998 with jurisdictions mainly situated in Africa, Asia and the Arab peninsula. The Seychelles is seeking to expand its DTC network. However, to date, the Seychelles has no arrangement into force providing for EOI to the standard.
6. This report highlights substantial weaknesses in Seychelles' legal and regulatory framework in the field of exchange of information.
7. The availability of ownership information, in particular in relation to offshore entities, is not ensured in the Seychelles. This is particularly the

case with regards to, international business companies, trusts and foundations as there is no requirement for these entities to make ownership information available to government authorities or, in some cases, there are strong secrecy provisions that prevent the disclosure of such information.

8. Ownership information on onshore companies and partnerships is available either in the hands of the Seychelles Revenue Commission or in the hands of the entities themselves. However onshore companies are also allowed to issue bearer shares and there are limited mechanisms to ensure that information on holders of such shares will be available to government authorities. International business companies were in the same situation until 2009 but now are required to maintain a complete shareholder register, though this is not open to inspection for government tax authorities.

9. While accounting information is available for onshore companies and partnerships incorporated under the civile code of the Seychelles, there is no requirement for offshore entities to keep accounting records and the accompanying underlying documentation in accordance with the international standards or to fill out tax returns describing precisely the transactions realised by the entity. Considering the increasing number of offshore entities incorporated in the Seychelles and in particular the 75 000 international business companies, this absence of accounting requirements is an important deficiency in the Seychelles' legal and regulatory framework.

10. The powers of the Seychelles Revenue Commission to access ownership and accounting information are very broad. However, it is unclear whether the Seychelles' competent authority can use these powers for the purpose of accessing information for exchange of information (EOI) purposes as the relevant legislation indicates that these powers can only be used for the administration of revenue laws and there is no clear provision stating that they can, in addition, be used to answer incoming international requests for information. Of the existing 16 DTCs, only three meet the international standard, and this is largely due to this limitation in the Seychelles' powers to gather information for the purpose of responding to international requests for information in tax matters. Considering this deficiency, it is recommended that the Seychelles consider relevant legislative reform and also include the provision of Article 26(4) of the *OECD Model Tax Convention* in all of its international agreements allowing for exchange of information for tax purposes.

11. In addition, the assessment team notes that the co-ordination of the Seychelles' various laws could be improved to ensure that the provisions granting access by government authorities to information needed in support of international co-operation in tax matters supersede any other provisions contained in other laws. This is notably the case regarding the secrecy provisions contained in the *Financial Institution Act, 2004*.

12. As a number of elements which are crucial to achieving effective exchange of information are not yet in place in the Seychelles, it is recommended that the Seychelles not move to a Phase 2 Review until it has acted on the factors highlighted in this report and improved its legal and regulatory framework. The question of moving to a Phase 2 review will be reconsidered when the Seychelles provides a detailed written report to the Peer Review Group within 12 months of the adoption of this report.

Introduction

Information and methodology used for the peer review of the Seychelles

13. The assessment of the legal and regulatory framework of the Seychelles was based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference*, and was prepared using the Global Forum’s *Methodology for Peer reviews and Non-Member Reviews*. The assessment was based on the laws, regulations, and exchange-of-information mechanisms in force or effect as at July 2010, other materials supplied by the Seychelles, and information supplied by partner jurisdictions.

14. The Terms of Reference breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses the Seychelles’ legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant.

15. The review was conducted by a team comprising two expert assessors and one representative of the Global Forum Secretariat: Mr Jose Ivan Cavalcanti Ramos, Tax Auditor in the Brazilian Federal Revenue Service for Brazil; Mr Philippe Cahanin, Deputy Director in the Large Businesses Audit Branch of the French Revenue Administration for France and Mr Rémi Verneau from the Global Forum Secretariat. The assessment team assessed the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in the Seychelles.

Overview of the Seychelles

16. The Seychelles (officially the Republic of Seychelles) is an archipelago of 115 islands in the Indian Ocean some 1 500 kilometres east of mainland Africa, northeast of the island of Madagascar. Other nearby island countries and territories include Mauritius and Reunion to the south, and Comoros and Mayotte to the southwest. The Seychelles, with an estimated population of 87 000 inhabitants on 451 km², has the smallest population of any African state. Creole, English and French are the three official languages of the Seychelles.

General information on legal system and the taxation system

Legal system

17. A former British Colony, the Seychelles has been an independent State since 1976. The basic law of the Seychelles is the *Constitution of the Republic of the Seychelles* which took effect on 21 June 1993. This law declared the Sovereign Democratic Republic of the Seychelles as a Unitary State.

18. The Seychelles President, who is both head of state and of government, is elected by popular vote for a five-year term. The unicameral Seychellois Parliament, the National Assembly (or Assemblée Nationale), consists of 34 members, of whom 25 are elected directly by popular vote, while the remaining nine seats are appointed proportionally according to the percentage of votes received by each party. All members serve five-year terms.

19. The legal system looks partly to the civil law and partly to the common law tradition. The Law of Persons, the Law of Contract and the Law of Torts look to the civil law tradition (in particular, the Napoleonic Code) and the laws of commerce and banking are mainly based on statutes which originated in the common law system. Public law areas are governed by statutes based on common law principles. The legal Codes come first in the Seychelles hierarchy of laws, followed by the Acts and Regulations, all three being instruments issued by the Parliament. Other official instruments under various names, including manuals and guidelines, may also be issued by government authorities, and are binding and enforceable.

20. The judicial system consists of magistrates' courts, the Supreme Court, and a Court of Appeal. The Court of Appeal hears appeals from the Supreme Court in both civil and criminal cases (including civil and criminal cases related to taxation matters). The Supreme Court has jurisdiction of first instance and acts as court of appeal in respect of cases from the magistrates' courts.

Customs and tax systems

21. The Seychelles' tax system is based on direct taxes such as the income tax on individuals and the business tax, as well as consumption taxes (goods and services tax, GST). Direct taxes include business tax and social security contributions, accounting for 40% of total tax revenues and 11% of GDP during the past five years. Indirect taxes include the GST which has accounted for 43% of the total revenue collection and 12% of GDP for the past five years, while import duties include trades tax with 17% of the total revenue collection and 5% of GDP for the past five years.¹

22. Recently, the Government has started implementing far-reaching tax reforms:

- with the *Business Tax Act, 2009*, Corporate tax is now charged on a progressive system, the lowest rate that applies to domestic companies or sole traders being 0% and the highest being 33%. In addition, a 15% rate of withholding tax applies to interest and dividend income from 1 January 2010;
- a personal income tax system at a flat rate tax of 18.75% was introduced in July 2010 to replace the Social Security Contribution. This rate will be reduced to 15% by January 2011. Currently the employer's contribution is 20% while the employee's is 2.5% of salary;
- regulations issued under the *Goods and Services Tax Act, 2005* provide for the levy of GST on local manufacturers, service providers and imports. Depending on the goods and services, a 7% to 15% rate applies. The Seychelles plans to move to a full VAT system by 2012;
- in January 2010, the Seychelles revised its rates of taxation on imports and introduced an excise tax regime. The excise tax covers oil, motor vehicles, alcohol and tobacco.

23. To the contrary, offshore entities such as companies incorporated under the *International Business Companies Act, 1994* or companies registered under the *Companies Ordinance, 1972* and *Protected Cell Companies Act, 2003* benefit from a tax free environment. Companies incorporated under the *Companies Ordinance, 1972* and licensed under the *Companies (Special Licences) Act, 2003* are subject to a 1.5% corporate tax on their worldwide income.

1. Information provided by the Seychelles' authorities. Information also available on the African Economic Outlook Website.

24. Administrative responsibility for revenue law is under the management of the Revenue Commissioner at the Seychelles Revenue Commission (SRC), an independent body responsible to the Minister of Finance which was established under the *Seychelles Revenue Commission Act, 2009*. The SRC is involved in the design of tax policies, assessing, collecting and accounting revenue. While the competent authority for the exchange of information in the Seychelles is the Ministry of Finance, requests for exchange of information are administratively dealt with by the Seychelles Revenue Commission.

25. Acting under the control of the Ministry of Finance, the Seychelles International Business Authority (SIBA) is an independent body established under the *Seychelles International Business Authority Act, 1994* to manage and operate international business activities within the Seychelles. SIBA aims primarily to promote and develop the Seychelles offshore sector. But SIBA acts also as the regulatory and supervisory authority of the offshore sector as well as being the registration authority for the implementation of the *International Business Companies Act, 1994*, the *International Trust Act, 1994*, the *International Corporate Service Providers Act, 2003* and the *Foundations Act, 2009*.

Overview of the Seychelles' economy, financial sector and relevant professions

26. In 2009, the Seychelles' GDP was SCR 10 276 million (USD 822 million) with a GDP per capita of SCR 122 865 (USD 10 000). The Seychelles economy is driven by tourism and fishing exports. After three years of positive growth averaging 8.4% during the period between 2005 and 2007, the economy contracted: from a negative rate of 0.9% in 2008 to an estimated negative 6.8% in 2009. The country's economy regained a level of stability during 2009, after the economic shocks of 2008, following the implementation of economic reforms in November 2008. The economy is projected to attain a growth rate of 3.9% in 2010 and 4.2% in 2011.²

27. The services sector, which includes transport, communications, commerce and tourism accounted for about 83% of GDP in 2008 (26% of which was in the tourism sector, which employs 30% of the Seychelles' labour force). Fishing accounts for 8% of GDP with an important contribution by the tuna canning factory. Given the shortage of arable land, agriculture, forestry, and fishing (excluding tuna canning) make a small contribution to national output, accounting for 2.7%.

2. Information available on the African Economic Outlook Website.

Offshore sector

28. The growing offshore industry has over the years played an increasingly important role in the development of the Seychelles economy. The Seychelles renewed its commitment to developing its financial services sector through the passage of the revised *Mutual Fund Act 2007*, *Securities Act 2007* and *Insurance Act 2007*. According to a government press release published on 31 October 2008, it is the Seychelles' intention to pursue its continuing efforts to grow the Seychelles as an offshore financial centre of substance and integrity.

29. Between 2005 and 2010 the number of international business companies incorporated in the Seychelles increased from 25 000 to 75 000, the number of special license companies from 31 to 206 and the number of trusts from 135 to 405. In 2009, the Seychelles was the second jurisdiction in the world, after the British Virgin Islands, for the number of international business incorporated companies.

30. SIBA grants authorisations to qualified intermediaries³ (international corporate service providers, international trustee service providers and foundation service providers) which become then the interlocutors of SIBA for all offshore businesses. The Code of Practice⁴ provides obligations and duties licensees have to comply with. Further, SIBA may issue binding guidelines and give directions for proper conduct of business by a licensee.⁵ Annual audits are conducting by SIBA to ensure observance of these rules.

31. Tied to this offshore industry, 2 foundations service providers, 24 trusts service providers and 64 corporate service providers are licensed by SIBA. In addition, 22 attorneys, 8 accountants, 20 notaries, 17 auditors are covered by the customer due diligence requirements stated by the anti-money laundering legislation.

-
3. Which can only be companies incorporated under the *Companies Ordinance, 1972*.
 4. Established under schedule 3 of the *International Corporate Service Providers Act, 2003*.
 5. SIBA has published Guidance Notes for Corporate Service Providers. The directions and guidelines are binding on licensees and should a licensee act in contravention to any direction or guidelines or the Code of Practice, it commits an offence (Art 16 of the *International Corporate Service Providers Act, 2003*).

	2005	2006	2007	2008	2009	2010
International business companies (IBCs)	24 924	33 161	43 456	47 205	69 609	75 787
Trusts	135	163	211	312	367	405
Special licences companies (CSLs)	31	77	114	153	192	206
International corporate service providers	29	35	47	56	64	64
International trustee service providers	14	18	22	23	22	24
Limited partnerships	5	6	7	14	17	19
Protected cell companies	1	1	1	1	2	4
Foundations	-	-	-	-	-	3
Foundation service providers	-	-	-	-	-	2

Financial sector

32. Banking and financial matters, including insurance, are controlled by the *Financial Institutions Act, 2004* and *Insurance Act, 2008* under the supervision of the Central Bank of the Seychelles (governed by the *Central Bank of the Seychelles Act, 2004*). The anti-money laundering legislation is also under the control of the Central Bank, as is the financial intelligence unit. The financial services sector in the Seychelles is relatively small with, in 2006, six commercial banks, two insurance companies, two insurance brokers, two money transmitters and one credit union. Since 2007, the Seychelles have developed a new securities market. In 2008 finance and business services represented 17% of the GDP.

33. The securities industry and the mutual fund and hedge fund industry are controlled by individual Acts which are also administered by SIBA. These industries are relatively new and more active licensing of these activities is expected to occur in the near future.

Anti-money laundering legislation

34. The Seychelles' anti-money laundering and counter-terrorist financing (AML/CFT) systems were evaluated against the agreed international standards by ESAAMLG⁶ in 2008. This evaluation describes the Seychelles as “committed to expanding its offshore financial services sector, needs to take concerted actions to address the AML/CFT deficiencies identified to

6. Eastern and Southern Africa Anti-Money Laundering Group, www.esaamlg.org.

enable the country to benefit from a well regulated offshore sector in the years ahead. The capacity of the institutions involved in the fight against money laundering and terrorist financing to implement all the AML/CFT measures on their own is limited. They will therefore require technical assistance to build this capacity over time”.

35. Regarding the availability of ownership information, the report highlights deficiencies in the access to accurate and up to date beneficial ownership information for all companies and entities, included IBCs, CSLs and trusts.⁷ The report also underlines that competent authorities (other than the FIU) cannot access accurate and current information on the beneficial ownership and control of trusts.

Recent developments

36. As part of a programme of far-reaching tax reforms commenced in 2010, the Seychelles recently introduced several laws that contain, *inter alia*, provisions to facilitate monitoring of entities operating in the Seychelles and to enhance transparency and exchange of information for a range of purposes. In particular, the *Revenue Administration Act, 2009* grants to the Seychelles Revenue Commission very broad powers to collect information for revenue administration.

37. Regarding international agreements which allow for the exchange of information for tax purposes, since 2009 the Seychelles has only signed one treaty, with Monaco. Many negotiations of DTCs and TIEAs are currently being conducted, particularly with countries situated in Africa or in the Indian Ocean area (see section C.2 below). In addition, protocols to bring DTCs to the international standard were concluded last year with Belgium and Malaysia.

38. Finally, there is an ongoing process to strengthen the Seychelles legal framework related to both the financial and offshore sectors. New acts concerning securities and mutual and hedge funds were respectively adopted in 2007 and 2008 and, since 2009, it is possible to set up foundations in the Seychelles. Simultaneously, the *International Corporate Service Provider Act, 2003* was updated.

7. It was not possible, at the time ESAAMLG report was published, to set up foundations in the Seychelles as this possibility was set forth by a legislation enacted in 2009.

Compliance with the Standards

A. Availability of Information

Overview

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

40. There are in the Seychelles two separate sectors, governed by two different sets of rules:

- “domestic entities” such as companies incorporated under the *Companies Ordinance, 1972* or partnerships set up under the *Civil Code of the Seychelles, 1976*; and
- “offshore entities” comprising international business companies, protected cell companies, special license companies, limited partnerships, international trusts and foundations.

41. Ownership and accounting information is available with respect to the two categories of domestic entities. The exception is that companies

incorporated under the *Companies Ordinance, 1972* may issue bearer shares and there are no adequate mechanisms to allow the holders of such shares to be identified.

42. The situation of offshore entities is far less favourable. International business companies are not required to provide information to the SIBA nor to the Seychelles' Revenue Commission, and if a shareholder register must be maintained by the company it cannot be opened for public inspection. In addition, until 2009, IBCs were allowed to issue bearer shares without any requirement to keep ownership information. If a new legislation enacted in 2009 now prevents the issuance of bearer shares by IBCs, the question of disclosing the identity of holders of bearer shares issued under the previous legislation is still not solved.

43. For foundations, there is no requirement under Seychelles legislation to disclose beneficiaries' identities in the foundation charter or otherwise provide this information to government authorities. If this information is nevertheless mentioned in the foundation charter, strong secrecy provisions would prevent registration authorities from providing this information to other government authorities. The situation is the same for international trusts, where there is no requirement to make ownership information available to the registration authorities and, in addition, secrecy provisions do not allow trustees to disclose the identity of beneficiaries and settlors of trusts.

44. The discrepancy between "domestic" and "offshore" entities is the same when the obligation to keep accounting information is considered. Such obligations are in place for domestic entities but there is no legal requirement for international business companies (IBCs), trusts and foundations to keep accurate accounting records and underlying documentation. It is the responsibility of these entities themselves to determine the level of accounting records necessary. Moreover these entities are not required to fill out annual tax returns or to provide accounting information to the Seychelles Revenue Commission.

45. Finally, there are in the Seychelles, under the *Financial Institutions Act*, requirements to make bank information available. These requirements seem to be consistent with the international standards of transparency and exchange of information in that all transaction records are maintained by financial institutions and are available to government authorities.

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 (ToR⁸ A.1.1)

46. Based on the English company law, the *Companies Ordinance, 1972* is the main statute providing obligations for companies, proprietary and other companies. The *International Business Companies Act, 1994*, *Companies (Special Licences) Act, 2003* and *Protected Cell Companies Act, 2003* provides for the registration of offshore businesses under a separate authority.

47. The main types of companies that can be incorporated in the Seychelles are:

- companies incorporated under the *Companies Ordinance, 1972* where the liability of a member of the company is limited to the nominal value of the shares registered in his name;
- proprietary companies incorporated under the *Companies Ordinance, 1972* which are companies without preference shares, comprising not more than 50 members where at least three quarters of the issued shares are held by the directors and where neither members nor directors are corporations and where the proprietary company has no holding company;
- companies registered under the *Companies Ordinance, 1972* and *Protected Cell Companies Act, 2003* create one or more cells for the purpose of segregating and protecting cellular assets according to the Act (for example, different classes of insurance), without the need to set up different legal entities;
- companies incorporated under the *International Business Companies Act, 1994* which are designed to conduct business outside of the Seychelles and are not allowed to carry on business within the country or own any substantial property there. These companies are tax-exempt in the Seychelles. Dividends may be distributed without any withholding tax;
- companies incorporated under the *Companies Ordinance, 1972* and licensed under the *Companies (Special Licences) Act, 2003* carrying on offshore banking, offshore insurance, reinsurance, investments, holding marketing, holding intellectual property, acting

8. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.*

as a headquarters company, human resource company, franchise company, or conducting business under an ITZ license. This special status provides confidentiality, a corporate tax at a 1.5% and lower withholding tax rates on dividends and interest.

Domestic companies incorporated under the Companies Ordinance 1972

48. For a company registered under *the Companies Ordinance, 1972*, the memorandum and articles of association must be delivered to and registered by the Registrar of Companies. Pursuant to section 4 paragraph 4 of the Ordinance, the memorandum and articles must state the number of shares the company may issue, the nominal value of those shares, and whether each of those shares has the same nominal value or if different nominal values are attributed to shares of different classes. However, there is no requirement to disclose ownership information for these documents. The Registrar of Companies then certifies that the company is incorporated and certifies the date of the incorporation (sections 10(1) and 11(1) of the *Companies Ordinance, 1972*).

49. The following information is maintained by the Registrar of Companies:

- name of company and company number;
- date of registration and certificate of registration;
- memorandum of association and, if provided, articles of association;
- declaration of compliance with the *Companies Ordinance, 1972*;
- annual return and audited accounts;
- particulars of directors and secretary and registered office; and
- registered charges.

50. There is no ownership information maintain in this register, and accordingly, no obligation to update this information. However, pursuant to section 114 of the *Companies Ordinance, 1972*, all companies incorporated under this Ordinance are required to file an annual return to the Seychelles Revenue Commission that includes, pursuant to the fifth Schedule of this Ordinance, a list containing the names and addresses of all the members of the company.

51. In addition, every company is required to keep a register of its members including their names and addresses, a statement of their shareholdings, the date at which they became or ceased to be members. This register must be kept at the registered office of the company and a notice of its location must be sent to the Registrar of Companies (sections 102(1), 102(2) and 102(3) of

the *Companies Ordinance, 1972*). Nevertheless this requirement does not apply to publicly traded companies as these companies are not required under that ordinance to keep such a register.

52. Considering the annual tax return to be submitted to the Seychelles Revenue Commission, the additional information to enclosed to this return and the shares register to be kept at the registered office of the company, ownership information regarding companies incorporated under the *Companies Ordinance, 1972* is available in the Seychelles.

Protected cell companies (PCC)

53. Pursuant to section 3 (3) of the *Protected Cell Companies Act, 2003*, the provisions of the *Companies Ordinance, 1972* apply to PCCs unless the context requires otherwise.

54. There is in the *Protected Cell Companies Act, 2003* no specific provision stating that such a company desiring to be registered in Seychelles would be required to disclose information on its shareholders. It means that neither pursuant to the *Companies Ordinance, 1972* nor the *Protected Cell Companies Act, 2003*, is it required that ownership information be disclosed to a registration authority.

55. However, annual returns must be filed with the Registrar of Companies in accordance with the *Companies Ordinance, 1972*. These annual returns must be in the form prescribed in the fifth schedule of the *Companies Ordinance, 1972* and include, according to these provisions, information detailing the identity of shareholders.

Special license companies (CSL)

56. For companies registered under the *Companies Ordinance, 1972* and licensed under the *Companies (Special Licenses) Act, 2003* (the CSL Act), information to be provided to the Registrar of Companies is the same as mentioned above in paragraphs 47 to 49. It means that there is no need to disclose ownership information to the Registrar of Companies. However in addition to this registration requirement, a CSL must apply for a special licence delivered by SIBA and must provide, to this end and *inter alia*:

- the names and addresses of shareholders and where such shareholder is a nominee, the name and address of the person on whose behalf the shares are held by the nominee; and
- the memorandum and articles of association duly signed and dated.

57. As a result the SIBA has records of shareholders' identities.

58. Annual tax return must be submitted by CSLs and filed to the SIBA, and not to the Seychelles Revenue Commission. The annual returns must contain, pursuant to the fifth schedule to the *Companies Ordinance, 1972* a document mentioning the identity of the CSL's shareholders.

International business companies (IBCs)

59. According to the information publicly available on the website of SIBA, the main features of an international business company include the absence of requirement to disclose the identity of the shareholders except under a court order, the lack of obligation to provide accounts to the registrar and confidentiality guaranteed by law.

60. For registration of a company under the *International Business Companies (IBC) Act, 1994*, the memorandum and articles of associations must be delivered and registered by the Registrar of International Business Companies (maintained by SIBA). If not provided initially as part of registration, the articles must be submitted within 30 days following the date of incorporation. The Registrar of International Business Companies then certifies that the IBC is incorporated and the date of the incorporation (section 14).

61. The IBC register contains the following information:

- the name and registration number of the company;
- the date of its incorporation;
- its authorised share capital and/or guarantee amount;
- the name and address of its registered agent and the address of its registered office;
- the date and description of any hypothecation, mortgage or charge registered;
- the date of last payment of annual fees; and
- the status of the company.

62. Under Seychelles' legislation, there is no requirement to mention details of ownership in the memorandum or the articles of association. Ownership information is not required to be disclosed to the Registrar of IBCs, and there is in addition no need to provide this information to the Seychelles Revenue Commission as IBCs are not liable to tax and are therefore not required to file tax returns.

63. All IBCs incorporated under the *International Business Companies Act, 1994* are required to keep a share register containing the names and addresses of the persons who hold registered and bearer shares in the

company, the number of each class and series of shares held by each person, the date the person became and ceased to be a member. A company which contravenes this provision is liable to a penalty of USD 25 for each day or part thereof during which the contravention continues (section 28).

64. However, pursuant to section 66 of the *International Business Companies Act, 1994*, only members of the IBC can access books and records kept at the registered office. Therefore, there is within the Seychelles' territory no possibility for government authorities to get information on the identity of an IBC's shareholders as this information, even though available in the hands of IBCs themselves, can be disclosed only under restrictive conditions. As noted in section B.1 of this report, the domestic gathering measures set forth in the *Revenue Administration Act, 2009* can only be used for the purpose of administering any revenue law (see section 33 and 34 of the *Revenue Administration Act*) and IBCs are currently not under the scope of any revenue law.

Registration of foreign companies

65. A foreign company that establishes a place of business or carries on business in the Seychelles must register with the Registrar of Companies (section 310(1) of the *Companies Ordinance, 1972*) under the same conditions as apply for domestic companies (see previously).

66. It means, in particular, that these companies must file an annual tax return by the Seychelles Revenue Commission disclosing the identity of the companies' shareholders and, if these are not publicly traded companies, must keep a register of shareholders.

Information held by service providers/anti-money laundering legislation

67. The Guidance Notes for Corporate Service Providers, which are legally binding under section 13(1)(b) of the *International Corporate Service Providers Act, 2003*, require service providers to have a written undertaking in all instances where a professional intermediary carries out and retains records regarding ownership information on behalf of the corporate service provider. Entities covered by the provisions of this Act, pursuant to its section 2, are, *inter alia*,

- services connected with the formation, management or administration of a specified entity;
- serving as registered agent, director or other similar officer of a specified entity;
- serving as a nominee shareholder in a specified entity;

- serving as international trustee services providers;
- providing foundation services.

68. This written undertaking must at a minimum:

- bind the professional intermediary to carry out the necessary customer due diligence obligations, importantly including identification and verification of the client’s identity;
- bind the professional intermediary to provide the service provider the required information on request;
- bind the professional intermediary to not knowingly permit a client company of the service provider to be used for any criminal purpose; and
- state that the professional intermediary is lawfully entitled to carry out the business it carries on (Paragraph 3.12 of the *Guidance Notes for Corporate Service Providers*).

69. International corporate service providers are required by Schedule 3 (Code of Practice) of this Act (under which they are licensed), to know and be able to identify their principal clients and owners of client companies. According to the Seychelles authorities, “principal owners” means owners of the shares who therefore have power to control the company that is, persons who together own more than 50% of the shares.

70. To this extent, company service providers are also required to ascertain, within a reasonable time – a factor that must be determined in the light of all circumstances – after entering into a business relationship, the identity of their customers. In the case of a natural person, the service provider is required to gather information relating to the person’s name, address and occupation, the national identity card or passport or other applicable official identification and the source of the wealth and property of the person.

71. In addition, in the case of legal entities, reporting entities are required to be able to identify the principal owners and beneficiaries of the entity (section 4 of the *Anti-Money Laundering Act, 2006*, the AML Act). According to this Act, the following are deemed to be reporting entities:

- financial institutions licensed under the *Financial Institutions Act, 2004*,
- offshore banks,
- foundations, trust and company service providers
- attorney, accountants and notaries.

72. The concept of principal owners and beneficiaries is not defined *per se* in the AML Act. Nevertheless, according to the Seychelles authorities, principal owners must be understood as persons who together own more than 50% of the shares of the company and beneficial owners are defined as persons entitled to benefit from the income and capital gains of a company.

73. Therefore, if service providers are subject to a “customer due diligence” obligation and then required to keep ownership information, there are two main deficiencies in the Seychelles CDD rules:

- timeframe, as the concept of reasonable time is not defined as such in the Seychelles’ legal or regulatory framework; and
- definition of beneficial ownership, which is not broad enough to oblige service providers to identify all shareholders and in particular persons in an ownership chain.

Nominees

74. Nominee ownership is regulated in Seychelles by the *International Corporate Service Providers Act, 2003* which defines international corporate services as *inter alia* “serving as a nominee shareholder in a specify entity” (section 2 of the Act).

75. Pursuant to section 8 of the same Act, any service provider is obliged to maintain such documents relating to its business or client as may be required by or under this Act or any other law of Seychelles. In particular, as regard nominee shareholdings, an international corporate service provider is required, pursuant to the anti-money laundering legislation to ascertain, within a reasonable time after entering into a business relationship, the identity of its customers.

76. In the case of a natural person, these entities are required to gather information relating to the person’s name, address and occupation, the national identity card or passport or other applicable official identity document and the source of the wealth and property of the person.

77. While there is an obligation to ascertain the identity of the customers, the Seychelles’ legislation does not define the timeframe within which this nominee ownership information must be provided. Therefore, although regulated in the Seychelles, the current legal framework does not ensure the identity of real holders of shares being available in all situations.

Bearer shares (ToR A.1.2)

78. For domestic companies, section 104 of the *Companies Ordinance, 1972* allows for the issuance of bearer shares. This provision does not apply to CSLs as section 11 of the *Companies (Special Licences) Act, 2003*, clearly states these companies cannot issue bearer shares.

79. For companies incorporated under the *Companies Ordinance, 1972*, the identity of bearer shareholders is not included in the register of members. Nevertheless subject to the company articles, a bearer shareholder may be entitled to be registered in the register of members.

80. Pursuant to section 9(1)(a) of the *International Business Companies Act, 1994*, IBCs can also issue bearer shares. However, according to amendments to the IBC Act, enacted in June 2009, where an IBC issues bearer shares, it must maintain details in its share register on the persons holding the bearer shares (section 28 of the amended Act). Information to be kept in that situation includes:

- the name and address of the holder of bearer shares in the company;
- the number of each class and series of bearer shares held by each holder;
- the date on which the name of each holder of bearer shares was entered in the share register;
- the date on which any holder of bearer shares ceased to be a member.

81. However, these rules do not apply to bearer shares issued before the enactment of this new legislation. Further, this new mandatory register can only be accessed by the IBC's shareholders (section 28 of the IBC Act) and not by government authorities.

82. Therefore, considering the current legal framework, bearer shares may be issued by companies incorporated under the *Company Ordinance, 1972*. With respect to IBCs, the identity of holders of IBCs' bearer shares issued before 2009 is not available and information on holders of IBCs' bearer shares issued since 2009 is not available to government authorities.

Partnerships (ToR A.1.3)

83. Four types of partnerships may be set up under the *Civil Code of the Seychelles, 1976*:

- universal partnerships of property;
- universal partnerships of profit;

- particular partnerships; and
- commercial partnerships.

84. In addition, under the *Limited Partnership Act, 2003*, Seychelles law also allows for setting up limited partnerships. These partnerships generally have one or more general partners who are liable for all debts and obligations of the partnership and one or more limited partners who are not liable for debts or obligations. Limited partnerships may not carry on business in the Seychelles.

Partnerships set up under the Civil Code of the Seychelles, 1976

85. Every firm⁹ having a place of business in the Seychelles and carrying on business under a business name is required to register under the *Registration of Business Names Act, 1972*. Due to this requirement, partnerships incorporated under the *Civil Code of the Seychelles, 1976* must register with the Registrar of Companies and file, within 3 months after they commence to use the business name, a statement containing the names, former names, nationality, age, sex, the usual residence and any other business occupation of each of the individuals who are partners, and the corporate name and registered and principal office of every corporation which is a partner (section 6(1) of the *Registration of Business Names Act, 1972*).

86. If the partnership carries on business under the names of its partners, there is no requirement to be registered. If in that case partners' names and former names may be directly known from the partnership name itself, this information is not sufficient to ascertain partners' identity.

87. When there is an obligation under the *Registration of Business Names Act, 1972* to be registered, partnerships set up under the *Civil Code of the Seychelles, 1976* are required within 28 days to notify the Registrar of any change in the business name, the address of the principal or any other place of business, the nature of business and the names of the partners.

88. Section 39 of the *Business Tax Act, 2009* provides for the taxation of partnerships. The partnership's income is taxed in the hands of the partners and not the partnership itself. The partner's share of partnership income is set out in the partnership agreement. The assessable income of the partnership is computed in the same manner as it was a taxable entity. Therefore, though the partnership is not required to file a tax return, information about the ownership of the partnership should be available with the tax authorities by means of the tax returns submitted by each partner.

9. A firm must be understood as a body of two or more individuals or corporate bodies who have entered into partnership to carry on business for profit.

89. Finally, the composition of partnerships formed under the *Civil Code of the Seychelles, 1976*, including the identity of partners, can also be determined from the partnership deed which currently governs the partnership. While there is no requirement to make this partnership deed available and in particular to provide it to administrative authorities, according to the Seychelles' authorities, under normal circumstances, this deed must be kept either at the partnership's registered address, principal place of business or with one of the partners and can be requested by government authorities.

90. The identity of partners can therefore be known as this information is available within the hands of registration authorities or the Revenue Commission or at least in the partnership deed to be kept by the partnership itself.

Limited partnerships set up under the Limited Partnership Act, 2003

91. Limited partnerships under *the Limited Partnership Act, 2003* are required to register with the SIBA and, pursuant to section 9(1) of the same Act, file a statement containing:

- the name of the limited partnership;
- the general nature of the business of the limited partnership;
- the address in the Seychelles of the registered office of the limited partnership;
- the full name and address of the designated general partner and of other general partners; and
- a declaration that the limited partnership will not carry on business in Seychelles except as necessary for the business of that limited partnership outside the Seychelles.

92. For registration, disclosure of information regarding both general partners – with the exception of the designated general partner – and limited partners is not required.

93. Pursuant to the *Limited Partnership Act, 2003* section 10, any changes to the information contained in the statement submit to SIBA for registration need to be provided to the Registrar specifying the nature of the change within 60 day of such change. When the changes relate to persons ceasing to be a general partner, the updated information must however, be provided within 15 days.

94. As regards tax requirements, a limited partnership is not liable to business tax and is therefore, not obliged to fill out a tax return including, in particular, the identity of the partners.

95. While ownership information is not directly available to registration authorities and the Revenue Commission as part of registration, pursuant to section 11 of the *Limited Partnerships Act, 2003* the designated general partner is required to maintain or cause to be maintained at the limited partnership's registered office in the Seychelles a register containing the partners' names and addresses. This Register must be updated within 21 days of any change in the particulars therein. However, this register is only available for inspection at the request of a partner (section 11(2)). It means that information on limited partners' identity is not available to government tax authorities. In addition, as described in section B.1 of this report, domestic gathering measures set forth in the *Revenue Administration Act, 2009* can only be used for the purpose of administering any revenue law (see section 33 and 34 of the *Revenue Administration Act*); limited partnerships are currently not under the scope of any revenue law.

Information held by service providers

96. As described above in paragraphs 71 to 76, international service providers must know and be able to identify their principal clients. However, while there is a "customer due diligence" duty pursuant to the Seychelles' anti-money laundering legislation, this requirement does not ensure the retention of accurate ownership information, in particular due to the fact that the timeframe within which such identification must occur is not specified.

Trusts (ToR A.1.4)

97. While there are no domestic trusts under the Seychelles' law, the *International Trust Act, 1994* allows international trusts to be set up where the settlor is not at any time during the life of the trust resident in the Seychelles and where at least one trustee is resident in the Seychelles and no trust property is situated there (section 4(1)(a)(b)(c)). The settlor also has the power to choose the proper law of the international trust (section 6).

98. International trusts may be set up by an oral declaration, a written instrument (a deed) or by will (section 15(1)) but the normal procedure is by deed.

99. Section 17(1) of the *International Trusts Act, 1994* requires that a beneficiary of a trust must be identifiable by name or ascertainable by reference to a class or a relationship to another person, whether or not living at the time of creation of the trust or at the time of reference to which, under the terms of the trust, members of a class are to be determined. In addition section 8(1) states that a trustee must not disclose to any person any information or document identifying the name of the settlor or of any beneficiary. It means that there is no requirement under Seychelles legislation to disclose the names of settlors and beneficiaries involved in a trust.

100. This analysis is confirmed by the information publicly available on SIBA's website, which mentions that the features of a trust set up under the *International Trust Act, 1994* are, amongst other things: the lack of requirement to mention the names of the settlor and beneficiary, unless the latter is a Seychellois; and, the fact that the disclosure of information or document relating to an international trust can only be effected in extenuating circumstances involving criminal activity.

Registration requirements

101. When creating an international trust, it is a requirement that the settlor go through a local international trustee service provider licensed to conduct international trust business under the *International Corporate Service Providers Act, 2003*. Such licenses can only be granted to domestic companies which are required to maintain their place of business in the Seychelles (sections 3(2)(a) and 8(1)(a) of this Act).

102. A declaration must be made to the SIBA by the resident licensed trustee in order for the international trust to be registered. Pursuant to section 75(1) of the *International Trusts Act, 1994* this declaration contains the following information:

- the settlor is not a resident of the Seychelles;
- the trust property does not include any immovable property situated in the Seychelles; and
- the trust qualifies as an international trust.

103. Details on settlors, beneficiaries or other trustees are not required to be registered and consequently not required to be updated, except where the beneficiary is a person or body corporate resident in the Seychelles (section 76 of the *International Trusts Act, 1994*). Thus, other than a declaration by the resident trustee that the trust conforms to the Act (section 75(1)) and the issuance of a registration number by SIBA, no details of the parties to a trust are registered with registration authorities.

104. With regard to tax obligations, an international trust is not liable to tax and is, as a consequence, not required to file a tax return unless requested to do so by the Revenue Commissioner. It means that no information on settlors, trustees or beneficiaries of trusts is held on a regular basis by the Seychelles Revenue Commission.

Information held by trustees and international service providers

105. It is a requirement for trusts wishing to be registered in the Seychelles to go through an international service provider acting, in this context, as a trustee.

106. However according to section 8(1) of the *International Trust Act 1994*, a trustee shall not disclose to any person not legally entitled to it or be required to produce or divulge to any court, tribunal, committee of enquiry or other authority in the Seychelles, any information or document which disclose the name of the settlor or of any beneficiary. It means that trustees, whatever the level of documentation and knowledge they have cannot be required to disclose any piece of information.

107. Pursuant to section 8(3) of the same Act, only a court may make an order for disclosure or production of an information or document. Nevertheless, this disclosure can only be required for the purpose of an inquiry or trial into or relating to the trafficking of narcotics and dangerous drugs, arms trafficking or money laundering on application by the Attorney General on satisfaction of the court that the information or document is *bona fide* so required.

108. Due to these secrecy provisions, no ownership information would be disclosed by a trustee on request of the Seychelles Revenue Commission acting as competent authority for EOI purposes.

Foundations (ToR A.1.5)

109. The Seychelles has enacted a new *Foundations Act, 2009* providing for the establishment and regulation of foundations established in the Seychelles and also those established overseas which operate in the Seychelles. The legislation provides for the creation of foundations for the benefit of beneficiaries or to carry on a specified purpose. Foundations can be established for charitable or non-charitable purposes, or for both purposes.

110. A foundation is a separate legal entity which the founder transfers assets to. When transferred, these assets are the sole property of the foundation and no longer form part of the founder's personal estate. The assets of a Seychelles foundation cannot include any movable property situated within the Seychelles territory. A Seychellois foundation may hold interests in Seychelles IBCs or limited partnerships or be a beneficiary of a Seychelles' trust or foundation.

111. According to the SIBA website, the main features of a foundation include:

- possibility to have nominee founders;
- no requirement to state the name of any beneficiaries in the foundation charter; and
- a foreign foundation may operate in the Seychelles.

112. Pursuant to section 3 of the *Foundation Act, 2009*, a foundation is established by a charter made in writing and signed by one or more founders. Section 4 of the same Act states that the charter must specify, amongst other things:

- the name and address of the founders;
- the object of establishing the foundation;
- the establishment of the foundation council;
- the name and address of the foundation’s registered office and its registered agent in the Seychelles;
- the names and address of each of the initial members of the foundation council.

113. The charter may also provide, but it is not mandatory, the name and address of the beneficiaries, or alternatively beneficiaries may be designated at a later date and identified upon the winding up of the foundation (section 4(2) of the *Foundations Act, 2009*).

114. Where the identity of beneficiaries is disclosed in the charter, section 59 of the *Foundations Act, 2009* requires that a beneficiary must, by reference to the charter or regulations, be identifiable by name or ascertainable by reference to a class or a relationship to another person, whether or not living at the time of establishment of a foundation or at the time by reference to which, under the terms of charter or regulations, members of a class are to be determined.

115. Pursuant to section 21 of the *Foundation Act, 2009*, after being set up, foundations are required to be registered with SIBA, which is the registration authority. For registration, the registered agent is required to submit the foundation charter, which must be signed by one or more founders. As mentioned above, the disclosure of foundations’ beneficiaries is not a requirement.

116. Part IX of the Act (section 78 and 79) deals with overseas foundations. It provides that an entity registered or organised in a jurisdiction other than the Seychelles which has the legal characteristics necessary for establishing as a foundation in the Seychelles may conduct business as a foundation as per the provisions of the Act. The overseas foundation is required to approve the articles of continuation so as to meet various requirements.

117. Articles of continuation of overseas foundations must also be registered with the Registrar. The registration of articles of continuation makes the overseas foundation a foundation to which *Foundations Act, 2009* applies. There is no legal requirement to disclose the identity of founders or the name of beneficiaries in these Articles.

118. The Registrar is required to keep a register having information about each foundation established under the *Foundations Act, 2009* (section 107). This register, *inter alia*, contains the name and address of each member of the foundation council, if applicable, and also the name and address of the registered agent. This register is open to public inspection.

119. As the registration authority, the SIBA does not keep any records relating to founders' and beneficiaries' identities. In addition, no information is to be disclosed to the Revenue Commission by foundations as these entities are expressly outside the scope of the *Business Tax Act, 2009*. As a consequence, foundations do not have any tax obligations.

120. The foundation is required to maintain at its registered office a register of councillors (members of the foundation council) which specifies, for natural persons; the name, address, nationality and date of birth and for legal persons; the name and registered office or principal address (section 77 of the *Foundations Act, 2009*). This register is open to public inspection (section 77(3)).

121. A foundation is required to keep minutes of all meetings of councillors and copies of all written resolutions consented to by the councillors at the registered office or in such other place as the councillors deem fit (section 46(1) of the *Foundations Act, 2009*). The minutes of council meetings and copies of all written resolutions are required to be kept for at least seven years irrespective of any subsequent event (section 46(5)).

122. Pursuant to Seychelles legislation, information on a foundation's beneficiaries is likely to be found in the foundation's charter which the SIBA has access to. However, section 109 of the *Foundations Act, 2009* also requires that the Registrar or a member of staff or agent of the Registrar shall not disclose to a third party any information or documents acquired in the performance of functions of the Registrar, member of staff or agent of the Registrar under the Act except:

- if the disclosure is required by the court;
- in respect of the affairs of a foundation, with the prior written consent of the foundation;
- where the information disclosed is in statistical form or is otherwise disclosed in a manner that does not enable the identification of any foundation to which the information relates;
- in accordance with any disclosure under a written law; or
- otherwise permitted under the Act.

123. These criteria do not allow governmental authorities to access this information. Indeed, schedule 2 of the *Foundations Act, 2009*, specifically

states that the *Business Tax Act, 2009* does not cover foundations. As a consequence the *Revenue Administration Act, 2009* is not applicable to foundations as well (see analysis in section B1). It can therefore be concluded that no information on foundations beneficiaries is available within Seychelles territory.

Information held by service providers

124. All foundations are required to have a registered agent in the Seychelles, licensed under the *International Corporate Services Providers Act, 2003* to conduct foundation services. This Act requires them to know and be able to identify all parties to a foundation (paragraph 1, Schedule 3).

125. However, as mentioned above in subsection A.1.1 while there is a “customer due diligence” duty pursuant to the Seychelles’ anti-money laundering legislation, this requirement does not ensure the retention of accurate ownership information, in particular due to the absence of a specified timeframe within which service providers must ascertain the identity of their clients.

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

126. Every company incorporated under the *Companies Ordinance, 1972* is required to keep a register of its members including their names and addresses, a statement of their shareholdings, the date at which they became or ceased to be members. This Register must be kept at the registered office of the company and a notice of its location must be sent to the Registrar of Companies (sections 102(1), 102(2) and 102(3)). In case of non-compliance with these requirements, the company and every one of its officers who are in default are liable to a small default fine not exceeding SCR 100 (USD 8) per day during which the contravention continues (sections 102(4) and 336(1)).

127. All companies that are required to file a return shall do it on an annual basis and include a list containing the name and addresses of all the members of the company. Any company in default of this is liable to a small fine not exceeding SCR 100 (USD 8) for every day during the first month of the default and SCR 250 (USD 20) for each day thereafter that the default continues (art 114 and paragraph 5(a) of Schedule 5 of the *Companies Ordinance 1972*).

128. All IBCs are required to keep a share register containing the names and addresses of the persons who hold registered and bearer shares in the company, the number of each class and series of shares held by each person, the date the person became and ceased to be a member. A company which contravenes this provision is liable to a penalty of USD 25 for each day or

part thereof during which the contravention continues (section 28 of the *International Business Companies Act, 1994*).

129. Partnerships under the scope of the *Civil Code of the Seychelles, 1976* must update the ownership information maintained in the business Register, where registration requirements exist. When failing to comply, every partner is guilty of an offence and liable on conviction to a fine not exceeding SCR 10 000 (USD 800) and, in default of payment, to imprisonment for up to six months.

130. With regards to international trusts, a service provider acting as trustee and providing to SIBA a declaration with false information or asserting that requirements to be recognised as an international trusts are met while they are not is guilty of an offence and on conviction liable to a fine of SCR 200 000 (USD 16 000) and to imprisonment for 10 years (sections 75 and 77 of the *International Trusts Act, 1994*).

131. There are no penalties for a foundation failing to be registered. Any amendments to the charter must however be submitted to the Registrar within fourteen days of the amendment. A foundation that contravenes this is liable to a penalty of USD 50 per day for each day during which the contravention continues.

132. Operation of the Seychellois offshore system is based on the intermediation of licensed service providers. These agents are licensed and monitored by SIBA. The directions and guidelines are binding on the licensee and should licensee acts in contravention to any direction or guidelines or the Code of Practice, it commits an offence and is liable on conviction to a fine of SCR 300 000 (USD 24 000) and where the offence continues subsequent to the conviction, that person is liable to a fine of SCR 6 000 (USD 500) for each day that the offence is continued (section 16 of the *International Corporate Service Providers Act, 2003*).

133. Sections 14 and 15 of the *International Corporate Service Providers Act, 2003*, make provision for the suspension and revocation of a license. SIBA has in the last five years suspended 12 licenses, revoked 3 licenses and refused to grant license to 5 applications.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
The Seychelles does not have appropriate mechanisms in place that allow the identification of owners of bearer shares in domestic companies and international business companies established before 2009.	The Seychelles' authorities should ensure that the issuance of bearer shares without reporting obligations is no longer possible under the <i>Companies Ordinance, 1972</i> . Appropriate mechanisms to identify holders of bearer shares issued by IBCs before the 2009 amendment of the <i>IBC Act</i> should also be established.
There is no need in the Seychelles to make IBCs shareholding information available to governmental tax authorities in charge of EOI.	The Seychelles' authorities should amend the Seychelles legal and regulatory framework to ensure that IBCs' shareholding information is available to governmental tax authorities for the purpose of EOI.
There is no need in the Seychelles to make information on limited partners in a limited partnership available to government authorities. This information can only be disclosed to the partners themselves.	The Seychelles' authorities should amend the <i>limited partnership Act, 2003</i> to open the limited partners register to be kept by the designated general partner to public inspection of governmental authorities.
There is no need in the Seychelles to maintain and keep up to date information on settlors and beneficiaries of trusts, nor to disclose this information to government authorities. In addition, the disclosure of documents relating to an international trust can only be effected in cases of criminal activity.	It is recommended that the <i>International Trust Act, 1994</i> be amended to ensure the availability of information on settlors and beneficiaries of trusts and to ensure this information is updated in a timely fashion.

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Designation of the beneficiaries of international foundations is optional, not obligatory.	The Seychelles authorities should amend the <i>Foundations Act, 2009</i> to ensure that information is available to identify the founders, members of the foundation council, and beneficiaries (where applicable), as well any other persons with the authority to represent the foundation.
The “customer due diligence” rules provided for by the Seychelles anti-money laundering legislation does not ensure the retention of accurate ownership information, in particular due to the fact that the timeframe within which such identification must occur is not specified and that the definition of beneficial ownership, is not broad enough to oblige service providers to identify all shareholders and in particular persons in an ownership chain.	The Seychelles authorities should amend the anti-money laundering legislation to ensure the retention of accurate ownership information.

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)

134. Pursuant to Article 139 of the *Company Ordinance 1972*, every company incorporated under that Ordinance (including CSLs) is required to keep proper books of accounts with respect to:

- all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place; and
- the assets and liabilities of the company.

135. The directors of every company are required to prepare before each annual general meeting of the company a profit and loss account as well as a balance sheet. No internal standard is required for the preparation of these accounts.

136. The books of account must be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open to public inspection (section 139 of the *Companies Ordinance, 1972*).

137. With respect to partnerships incorporated under the *Civil Code of The Seychelles, 1976*, pursuant to section 32(1)(a) of the *Revenue Administration Act, 2009*, every taxpayer must, for the purposes of a revenue law maintain such accounts, documents and records as may be required under the revenue laws. As taxpayers in the Seychelles, partnerships incorporated under the civil code are submitted to these requirements.

138. The *International Business Companies Act, 1994* requires that an IBC must keep such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the company (section 65(1) of the *International Business Companies Act, 1994*). The books, register, records and minutes, as required under the *International Business Companies Act, 1994* should be kept at the registered office of the company or such other place as the directors decide provided the Registrar is informed of the address (section 65 of the *International Business Companies Act, 1994*). No further rules or guidelines were issued by the Seychelles' authorities.

139. For partnerships incorporated under the *Limited Partnerships Act, 2003*, no obligation exists under this act for the maintenance of any accounting information. The limited partnership is not liable to business tax and therefore does not need to fill out a tax return.

140. A licensed resident trustee is required to keep accurate accounts and records of the trusteeship (section 29 of the *International Trusts Act, 1994*). This will involve both financial records and also records relating to the administration of the trust. However, there is no precise definition in the Seychelles' legislation of the implication of this requirement. Moreover a trust is tax exempted in the Seychelles and it, as a consequence, is not required to fill out a tax return.

141. Pursuant to article 75 (1) of the *Foundations Act, 2009*, a foundation is required to keep such proper books of account and records that its council considers necessary in order to reflect its financial position about:

- all sums of money received, expended and distributed by the foundation, and the matters about which the receipt, expenditure and distribution took place;
- all sales and purchases by the foundation; and
- the assets and liabilities of the foundation.

142. Accounting records are required to be kept at the Registered Office situated in the Seychelles or such other place as the councillors deem fit (may be outside of the Seychelles) (Art 75(2) of the *Foundations Act, 2009*).

Tax Law

143. All businesses liable for business tax, including companies incorporated under the *Companies Ordinance, 1972* and partnerships set up under the *Civil Code of Seychelles, 1976*, are required to furnish an annual business tax return to the Seychelles Revenue Commission, within three months after the end of the tax year (sections 6(1) and 57(1) of the *Business Tax Act, 2009*). Any company in default of this is liable to a fine not exceeding SCR 100 (USD 8) for every day during the first month of the default and SCR 250 (USD 20) for each day thereafter that the default continues (section 114 and paragraph 5(a) of Schedule 5 of the *Companies Ordinance 1972*).

144. To this extent, every taxpayer for the purposes of revenue law is required to maintain in the Seychelles “accounts, documents, and records as required under the revenue law” (Article 32(1) of the *Revenue Administration Act 2009*). Taxpayer is defined in this Act as a person liable for revenue under a revenue law. Revenue means any tax, withholding tax, duty, contribution, fee, levy, charge, additional tax, interest, and other monies liable or payable under a revenue law.

145. However, under the applicable revenue law (*Business Tax Act, 2009*) there is no provisions stating the level of details businesses must comply with.

146. Pursuant to the same provisions, limited partnerships, trusts and foundations, as tax exempt entities, do not have any requirements under the tax laws related to maintenance of accounting records.

Underlying documentation (ToR A.2.2)

Companies registered under the Companies Ordinance, 1972

147. While companies registered under the *Companies Ordinance, 1972* are required to keep proper accounts of all sums received and expended and as well as account for all the assets and liabilities of the company, the requirements focus on maintaining all transactions records in order to derive assessable income and thus corroborating transactions and tax implication of transactions.

IBC, limited Partnerships, international trusts and foundations

148. With regards to these entities, there are no legal requirements others than those described above in paragraphs 139 to 147 and consequently no obligations to keep underlying documentation such as invoices, contracts, *etc.* which reflect details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all

sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangement.

5-year retention standard (ToR A.2.3)

149. As taxpayers, these entities are subject to the *Revenue Administration Act, 2009* and are obliged pursuant to Article 32(1)(b) to keep their accounting records as well as the underlying documentation for 7 year period.

150. Where a company has gone into liquidation and has been finally dissolved or where the Revenue Commissioner has notified the taxpayer that he is not required to retain the documents, the accountings records are not longer required to be retained (Art 32 of the *Revenue Administration Act, 2009*).

151. There is no need under the *Companies Ordinance, 1972* to keep accounting records for a certain period of time.

152. No specific provisions exist in other legislation with respect to the retention period for accounting records and underlying documentation. However, when accounting information must be kept by service providers, the AML Act, requires that all information recorded be kept for a minimum period of 7 years (Art6(2)).

Determination and factors underlying recommendations

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
The Seychelles legislation does not ensure that reliable accounting records, or underlying documentation, are kept by IBCs, limited partnerships, trusts or foundations.	The Seychelles should amend relevant legislation to ensure that reliable accounting records and underlying documentation which meet the international standards are kept by IBCs, limited partnerships, international trusts and foundations.
International business companies, limited partnerships, international trusts and foundations are not required to keep accounting records and underlying documentation for a period of 5 years or more.	The Seychelles should require that accurate accounting records and underlying documentation are kept by all relevant entities for at least 5 years.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

153. Banks are required pursuant to section 39 of the *Financial Institutions Act, 2004* to maintain records as necessary to exhibit, clearly and correctly, the state of its business affairs and to explain its transactions and financial position for a period of at least 7 years. Records should in particular include:

- customer identification records (during and after termination of the customer relationship);
- transaction records showing, for each customer, at least on a daily basis, particulars of its transactions, and the balance owing to or by that customer;
- application and contract documents pertaining to a transaction and a signed written record of the decision approving the transaction;
- financial records concerning counterparts (including borrowers and guarantors) and any documentary evidence on which the financial institution relied in approving the transaction;
- other documents as the Central Bank may specify by regulation.

154. In addition, under Section 7(1) of the AML Act, financial institutions are required to maintain accounts in the true names of the account holders. Pursuant to the provisions of section 7(2) of the AML Act, they are not permitted to open, operate or maintain any anonymous accounts or any account which is in a fictitious, false or incorrect name. Furthermore, Section 48 of the AML Act provides for a criminal offence for breach of the above mentioned provision.

155. Pursuant to section 4(1) of the AML Act, a financial institution must before or within a reasonable time after entering into a business relationship ascertain the identity of a customer on the basis of any official or other identifying document and verify such identity on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer. Section 2 of the AML Act defines a customer in relation to a transaction or an account as including:

- a person (defined in section 2 of the AML Act as any natural or legal person and includes body of persons whether it has legal personality or not) in whose name a transaction or account is arranged, opened or undertaken;

- a signatory to a transaction or account;
- any person to whom a transaction has been assigned or transferred;
- any person who is authorised to conduct a transaction; or
- such other person as may be prescribed.

156. Where the transaction is conducted by a natural person, adequately identify and verify his/her identity including information relating to his name, address and occupation, the national identity card, passport or other applicable official identifying document and the source of wealth and property of the person.

157. Where the transaction is conducted by a legal entity, identify it and verify its legal existence and structure, including information relating to:

- the customer’s name, legal form, address and directors;
- the principal owners and the beneficiaries and the control structure; and
- provisions regulating the power to bind the entity and verify that any person purporting to act on behalf of the customer is so authorised, and identify such person.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

B. Access to Information

Overview

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

159. Since the enactment of the *Revenue Administration Act, 2009*, the Seychelles Revenue Commission has broad powers to collect information for “the purpose of administering any revenue law”. All accounts, documents and records, in respect of any person can be accessed by the tax authorities. This covers both ownership and accounting information.

160. Even though, according to the Seychelles authorities, there is no domestic tax interest in the Seychelles, the extent to which domestic powers may be used for the purpose of answering incoming requests is limited as the powers under the *Revenue Administration Act* may be used for the administration of the revenue law and nowhere in the revenue laws is there mention of international exchange of information or international co-operation.

161. Another potentially serious deficiency arises from the authorities' capacity to collect bank information. Until January 2010, this access was only possible under an express order of the Supreme Court. Even though legislative amendments mean the Revenue Commission can now collect this information, information published by the SIBA on its website indicates that access to information held by offshore banks is still not possible. As a consequence, the conditions under which this information could be accessed by the Revenue Commission remain unclear. This can jeopardize access to this information and its exchange with counterparts.

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).

162. In the Seychelles' legislation, there is no specific provision dedicated to the access to information for the purpose of international EOI. Thus, to answer an incoming request for information sent by a treaty partner, the Seychelles Revenue Commission, as the competent authority for EOI, uses the powers granted by legislation for the collection of information for domestic purposes.

163. In December 2009, the Seychelles enacted a new *Revenue Administration Act*, the purpose of which was to renovate the management of the revenue administration and in particular, grant new powers to the Seychelles Revenue Commission to gather information. Pursuant to section 34(1), the Revenue Commissioner may for the purpose of administering any revenue law require any person to:

- furnish such information as the Revenue Commissioner may require;
- attend and give evidence concerning that person's or any other person's revenue affairs; and
- produce all accounts, documents and records in the person's custody or under the person's control relating to that person's or any other person's revenue affairs.

164. Moreover, section 33 of the same Act deals with investigation powers of the Revenue Commissioner for the purpose of administering any revenue law. It provides, in particular, that the Revenue Commissioner or a revenue officer authorised by him:

- has the right, at all times and without notice to full and free access to any premises, place, property, data storage device, accounts, documents, or records and has further powers relating to making extracts and seizing the records and documents;
- may make an extract of copy of any accounts, documents, records or information stored on a data storage device;
- may seize any documents or records; and
- may retain any accounts, documents, or records seized as long as they may be required for determining a taxpayer's revenue liability or for any proceeding under a revenue law.

165. As a result, the powers of the Seychelles Revenue Commission to access ownership and accounting information are very broad. Still, it is necessary to determine the persons covered by the abovementioned stipulations and therefore to clearly delimit the scope of the *Revenue Administration Act, 2009* as regard access to information.

166. Under the *Revenue Administration Act, 2009*, “revenue law” is defined as to mean the *Revenue Administration Act* itself and any Act listed in the Schedule to the *Seychelles Revenue Commission Act*. This Schedule lists, amongst other things, the *Business Tax Act 2009* which provides for fiscal rules applicable to businesses liable to tax. All entities subject to the *Business Tax Act, 2009* are, as a consequence, subject to the powers contained in the *Revenue Administration Act, 2009*. Companies incorporated under the *Companies Ordinance, 1972* and partnerships incorporated under the *Civil Code of Seychelles, 1976* are clearly in the scope of the *Business Tax Act, 2009*. The situation is the same for international trusts and CLS which are expressly mentioned in schedules to the *Business Tax Act, 2009*. However, the situation of IBCs is far less clear and foundations are out of the scope of this Act pursuant to the *Foundation Act, 2009*.

167. Section 13(2) of the *Business Tax Act, 2009* requires that the exemption of any income from tax does not exempt a person from furnishing any return or information that is required by the Revenue Commissioner. Therefore, even tax exempt entities could be required to submit tax returns to the Revenue Commissioner. It is nevertheless noted that this requirement is subject to the discretion of the Seychelles Revenue Commissioner and that tax exempt entities do not always have to fill out tax returns and provide information to the Revenue Commission.

168. At the same time, section 78 states that entities subject to specific provisions and listed in Schedule 7 of the same Act are deemed to be liable to tax for the purpose of the *Business Tax Act, 2009*. This concerns, in particular, the CSLs and the international corporate service providers because these persons are subject to specific tax rates. However, there is no mention of IBCs, trusts or foundations in this Schedule even though their incomes are tax exempt.

169. Therefore, the extent to which these specific entities and arrangements, in particular IBCs, trusts and foundations are, or are not, covered by the provisions of the *Business Tax Act, 2009* is not clear and, as a consequence, it is not clear whether or not the Revenue Commission acting as competent authority can use its powers to access information to be kept by offshore entities. The assessment team notes, however, that several items of information related to ownership are also kept by the international service providers and that the Seychelles Revenue Commission can access all information held by these persons.

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

170. To access ownership information, the Seychelles authorities mentioned they use their domestic powers granted by section 34 of the *Revenue Administration Act, 2009*, outlined above. The gathering of accounting information can be made by using the same powers.

171. In its supervisory and registration mission, the SIBA collects much ownership information which is, in most cases, not made publicly available. Nevertheless, it is not easy to determine the extent to which this information could be accessed by the Revenue Commission when collecting the information to answer incoming requests as powers granted by section 34 of the Revenue Administration Act do not seem to cover the SIBA.

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

172. 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.

173. It can be recognised that in the Seychelles, the powers granted by section 34 of the *Revenue Administration Act, 2009* are very broad and these powers can be used for “the purposes of administering any revenue law”. However, there is no provision in this or any other revenue law concerning international co-operation, international liaison or international information sharing. In addition, the *Revenue Commission Act, 2009* ensures that information gathered by tax officials in the course of their functions will be kept confidential but does not expressly allow them to disclose this information to answer a request made by a treaty partner. As a result, the powers to access information cannot be exercised in order to answer an EOI request unless the information may also be needed for a (domestic) purpose of a review law.

Compulsory powers (ToR B.1.4)

174. As noted above, the Revenue Commissioner has a broad range of powers to access information and these powers include production, search and seizure powers.

175. Pursuant to Section 47 of the *Revenue Administration Act 2009*, a person who without reasonable cause fails to, along with others, comply with a notice under section 34 is guilty of an offence and on conviction is liable to a fine of no less than SCR 50 000 (USD 4 000).

176. Pursuant to section 48 of the same Act, a taxpayer who fails to keep and maintain accounts, documents or records as required under a revenue law is guilty of an offence and on conviction is liable to a fine of no less than SCR 10 000 (USD 800) for small business, no less than SCR 50 000 (USD 4 000) for medium business and no less than SCR 100 000 (USD 8 000) for large business.¹⁰

177. In addition, section 51 of the *Revenue Administration Act 2009* states that a person who obstructs or hinders a revenue officer in the performance of duties under a revenue law is guilty of an offence and is liable on conviction to a fine of SCR 100 000 (USD 8 000) or to imprisonment of not less than one month but not more by three months or to both a fine and imprisonment. This applies, *inter alia*, in the case of failure to provide bank information.

Secrecy provisions (ToR B.1.5)

178. The *Constitution of the Republic of the Seychelles* provides for the right to privacy (*Art 20*). Further, pursuant to section 49 of the *Financial Institutions Act, 2004*, no person who has acquired knowledge in a capacity as:

- administrator, officer, employee or agent of a financial institution; or
- auditor, member of the audit committee, reorganising agent, liquidator or supervising agent of a financial institution, shall disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a customer except:
 - when required to make disclosure by any court of competent jurisdiction in the Seychelles; ...
 - pursuant to the provisions of the Anti-Money Laundering Act; ...
 - notwithstanding anything in the *Business Tax Act* or the *Social Security Act*, to the Commissioner of Taxes or the Director of Social Security when authorised by a judge on proof on oath to the satisfaction of the judge that the information is required for any investigation under the *Business Tax Act* or the *Social Security Act*, as the case may be.

179. When it comes to Central Bank, section 50(2) of the *Financial Institutions Act, 2004* states that except where ordered by the Supreme Court, the Central Bank, its officers and employees cannot be required to produce

10. Small business: annual turnover less than SCR 1 000 000 (USD 80 000). Medium business: annual turnover between SCR 1 000 000 (USD 80 000) and 50 000 000 (USD 4 000 000). Large business: annual turnover over SCR 50 000 000 (USD 4 000 000).

or disclose to any court, tribunal, committee of inquiry or other authority in the Seychelles or elsewhere any information required to be dealt with as confidential under subsection (1) (*articles 50 and 51 of the Financial Institution Act*), excepted, in particular, for criminal investigations.

180. Until 1 January 2010 the *Financial Institutions Act, 2004* restricted the type of information accessible even for a tax compliance activity. The recent *Revenue Administration Act 2009* and particularly its section 34 would displace previous limitations on obtaining or disclosing information if the request is made pursuant to a revenue law. Therefore, the access to information held by bank would now be possible under the same conditions as those described above in subsection B.1.1.

181. It is however noted that according to the information publicly available on the website of SIBA, one of the key features of the Seychelles offshore banking sector is the full confidentiality, except in the case of criminal investigations. As EOI is, in most cases, without any direct ties with criminal investigations, the availability of bank information may, in many cases, be jeopardized.

182. Indeed, the powers to collect information granted by the *Revenue Administration Act, 2009* have strong ties with the administration of any revenue law. Section 2 of this Act gives a precise list of all laws covered by the wording “revenue law” and the *Financial Institution Act* is not part of it. Thus, it remains unclear the conditions under which the provisions of the *Financial Institutions Act, 2004* could be superseded by the provisions of the *Revenue Administration Act, 2009* and then, the possibility, for the Revenue Agency to access this information without any consent given by a judge.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
The broad powers of the Revenue Commission to access all types of information can only be used “for the purpose of administering any revenue law” and international co-operation, including international exchange of information, is not a stated purpose of any of the revenue laws.	The <i>Revenue Administration Act, 2009</i> should be amended to indicate that one of the roles of the Revenue Commission is in the field of international co-operation.

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
When read together, the <i>Financial Institutions Act, 2004</i> and the <i>Revenue Administration Act, 2009</i> effectively result in a secrecy provision which restricts the access to information held by offshore banks.	The Seychelles should ensure the authorities have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any bank within their territorial jurisdiction.

B.2. Notification requirements and rights and safeguards

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

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

183. Under the Seychelles' *Revenue Administration Act, 2009*, there is no prior notification procedure to inform the taxpayer that he will be required to produce accounts and records or that a third party will be required to provide such information. While taxpayers have rights of appeal under the *Revenue Administration Act, 2009*, none of these may be invoked in order to halt the exchange of information in accordance with an international agreement.

184. Under the *Anti-Money Laundering Act, 2006* (as amended), no notification is required to customers when government authorities request information from obliged entities including where the information is requested to respond to an international request for information for tax purposes.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

C. Exchanging Information

Overview

185. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In the Seychelles, the legal authority to exchange information derives from double tax conventions. This section of the report examines whether the Seychelles has a network of information exchange that would allow it to achieve effective exchange of information in practice.

186. The Seychelles has a treaty network that covers 16 jurisdictions, with 13 of these treaties currently in force. Only three of the treaties which are in force include wording corresponding to both paragraphs 4 and 5 of Article 26 of the OECD Model Taxation Convention. In addition, one treaty contains paragraph 4 of this Article without paragraph 5.

187. Considering the difficulties the Seychelles authorities may encounter in accessing information, in particular with respect to offshore entities and arrangements (see section B previously), only treaties containing paragraph 4 of Article 26 can be seen as meeting the international standards on transparency and exchange of information. The Seychelles' authorities have indicated that all treaty partners have been contacted to update these treaties.

188. The network of agreements built by the Seychelles mainly covers jurisdictions situated in the Arab peninsula, Asia and Africa. While this network is not irrelevant as regards the location of the archipelago, considering the Seychelles' offshore industry, this network must be strengthened with the conclusion of EOI arrangements with countries using in the Seychelles' offshore products. Even if the Seychelles has to date focussed on concluding DTCs, due to the no tax or low tax status of offshore entities in the Seychelles it is noted that some jurisdictions would prefer to establish TIEAs with the Seychelles.

C.1. Exchange-of-information mechanisms

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

Foreseeably relevant standard (ToR C.1.1)

189. The international standard for exchange of information envisages information exchange to the widest possible extent. Nevertheless it does not allow “fishing expeditions,” *i.e.* speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in paragraph 1 of Article 26 of the OECD Model Taxation Convention as below:

The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out of the provisions this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation there under is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

190. Two treaties – with Belgium and Monaco – and one protocol – with Malaysia – signed by the Republic of the Seychelles refer to ‘exchange of information where it is foreseeably relevant’ and none of these three treaties and protocol is currently in force.

191. All the other treaties make reference to “exchange of information as if necessary” or “as is necessary relevant” (Barbados). As such, these agreements also meet the “foreseeably relevant” standard, as the term “necessary” is recognised in the commentary to Article 26 (Exchange of Information) of the *OECD Model Tax Convention* to allow for the same scope of exchange as does the term “foreseeably relevant”.

In respect of all persons (ToR C.1.2)

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

193. In all conventions signed by the Republic of the Seychelles, the exchange of information provision is written in very general terms. All of these provisions provide for exchange of information in respect of all persons

(exchange of information is not restricted by article 1 of the convention): Barbados, Belgium (not in force), Botswana, China, Cyprus,^{11, 12} Indonesia, Malaysia, Mauritius, Monaco (awaiting ratification), Oman, Qatar, South Africa, Thailand, UAE, Vietnam, and Zimbabwe.

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

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

195. Two of the Seychelles’ treaties (with Belgium, and Monaco) and one protocol amending an existing treaty (with Malaysia) include the provision contained in paragraph 26(5) of the *OECD Model Tax Convention*, which states that a contracting state may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. None of these treaties are currently into force. As there are restrictions in the Seychelles legislation limiting authorities’ access to bank information, in particular offshore bank information, the other treaties do not meet the international standard.

Absence of domestic tax interest (ToR C.1.4)

196. 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. An

11. Note by Turkey:

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

12. Note by all the European Union Member States of the OECD and the European Commission:

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.

inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party

197. The Seychelles’ recent DTCs with Barbados, Belgium and Monaco and the protocol amending the treaty with Malaysia include wording corresponding to paragraph 26(4) of the *OECD Model Tax Convention*. None of the others contain such a provision.

198. However, the investigative powers of the Seychelles Revenue Commission are limited to the administration of any revenue law. This could prevent the exchange of information in cases where the information is not publicly available or already in the possession of the Seychellois authorities (see section B.1.3 above). A direct consequence is that no treaties, except the four mentioned above, of which only one is in force, meet the international standard.

Absence of dual criminality principles (ToR C.1.5)

199. 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.

200. The assessment team found no provisions which restrict exchanges through application of the dual criminality principle in the network of treaties for the exchange of information signed by the Seychelles. Nor are there any limitations apparent in the domestic legislation of the Seychelles.

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

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

202. There is no distinction drawn in all Seychelles’ DTCs between civil and criminal matters as far as taxation is concerned. All DTCs are entitled “Agreement for avoidance of double taxation and prevention of fiscal evasion with [name of counterparty]”. In addition, the first paragraph of the exchange of information article with China, Cyprus,¹³ Indonesia, South Africa, specifically

13. See notes 11 and 12.

mentions that the information exchange will occur *inter alia* “for the prevention of evasion or avoidance of, or fraud in relation to, such taxes”.

203. The relevant exchange of information article in all double taxation conventions signed by the Seychelles may be used to obtain information to look into both civil and criminal tax matters.

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

204. Even though there are no specific provisions in DTCs signed by the Seychelles mentioning that information must be provided in the specific form requested, section 34(3) of the *Revenue Administration Act, 2009* foresees the possibility for the Revenue Commissioner to require the information or evidence to be given on oath, verbally or in writing.

205. Thus, to the extent that the information is available and can be accessed by the Seychelles authorities, it appears information can be provided in the form requested.

In force (ToR C.1.8)

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

207. Thirteen of the Seychelles’ 16 agreements are currently in force (see table below). The treaty with Monaco was signed recently in 2010 and has not yet been ratified by either party. The treaties with Belgium – signed in 2006 and ratified by the Seychelles the same year – and Zimbabwe – signed in 2002 and ratified by the Seychelles in 2004 – have not entered into force as they are awaiting ratification by the treaty partners.

208. The Seychelles has taken less than a year to ratify all but two of its treaties and certainly since 2004 has clearly taken all steps necessary to bring its agreements into force expeditiously.

In effect (ToR C.1.9)

209. For information exchange to be effective the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement.

210. First it is worth mentioning that 7 of the 16 treaties concluded by the Seychelles (Malaysia, Oman, Qatar, UAE, South Africa, Viet-Nam, Zimbabwe) include a provision stating that “the competent authorities shall, through consultations, develop appropriate conditions, methods and

techniques, concerning the matters in respect of which such exchange of information shall be made, including where appropriate, exchanges of information regarding tax avoidance’ or a similar provisions”.

211. This report raises a number of issues concerning the Seychelles’ capacity to use its powers to obtain the information needed to give effect to the terms of arrangements that it is currently entering into (see section B of this report). It is particular, the lack of legal provisions enabling the Seychelles Revenue Commission to collect information for the purpose of EOI. As a result, the Seychelles has not given effect to its treaties by the enactment of legislation necessary for the jurisdiction to comply with the terms of the agreements.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Only 3 of the treaties signed by the Seychelles meet the international standards and provide for exchange of all types of information without regards to domestic tax interest.	The Seychelles authorities should commence negotiations with partners to amend their current agreements to bring them to the standard.
The existing treaties are not in effect as there is no provision in the domestic law allowing the Revenue Commission and its employees to exchange information with treaty partners.	The Seychelles’ legislation should be amended to provide for the exchange of information between the Revenue Commission and counterparties to agreements.

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

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

212. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

213. The Seychelles’ treaty network¹⁴ covers 16 countries, with 13 agreements currently in force (see Annex 2). This network covers:

- 4 counterparties in Africa, 5 in Asia, 3 from the Arab peninsula, 3 in Europe, 1 Caribbean
- 11 of the 92 Global Forum member jurisdictions;
- 1 of the 31 OECD member economies; and
- 2 of the G20 members – China and Indonesia.

214. The treaty network of the Seychelles mainly covers jurisdictions situated in the Indian Ocean area or in Africa which are, with respect to the economic relationships, clearly relevant. Only the conclusion of treaties with Barbados and Monaco could be seen as less relevant in this sense. This is however not the case, when considering the treaties meeting the international standard of transparency, as the network of agreements to the standard only covers Monaco, Belgium and Malaysia.

215. The Seychelles’ policy in the field of EOI agreements is, wherever possible, to establish DTCs in order to provide for a more comprehensive relationship. It is actively working to expand its network of agreements. In this context, the Seychelles authorities have indicated that negotiations of Double Taxation Conventions have been concluded (though the agreements have not yet been signed) with Egypt, Lesotho, Namibia, Zambia and Sri Lanka. Currently, negotiations are in progress with Uganda, Pakistan, Jamaica, Spain, Burundi, Ivory Coast, Morocco, Israel, Portugal, Turkey, Kenya, Malta, Philippines, Benin, Comoros Island, Congo, Rwanda, Chad, Ethiopia, Republic of Central Africa, and Madagascar. These negotiations would reinforce the Seychelles’ treaty network, both in Africa and the Indian Ocean.

216. The Seychelles has also attempted to negotiate DTCs with Australia, Denmark, Greece, Italy, Luxemburg, Spain, Sweden, Switzerland, Turkey, the United Kingdom and France. The Seychelles authorities have indicated that getting positive answers from these jurisdictions has not been possible. However one of the abovementioned Seychelles’ partners also mentioned that in response to the Seychelles proposal for a DTC the conclusion of a TIEA was proposed but that this counter-proposal was refused by the Seychelles.

217. The assessment team notes the more recent negotiation of TIEAs. Regarding Tax Information Exchange Agreements (TIEAs), an agreement was signed with The Netherlands on 4 August 2010 and negotiations have started with the Nordic jurisdictions (Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway, and Sweden) and New Zealand. Requests

14. All treaties are considered in this paragraph whether they are to the standard or not.

for negotiations have also been sent to Germany, the Republic of Korea, Luxembourg, the Slovak Republic, Switzerland and Turkey.

218. Considering the increasing number of offshore entities registered within the Seychelles' territory and the Seychelles actions to strengthen its offshore sector, it is crucial for the Seychelles to expand its network of EOI arrangements to cover all jurisdictions that may have an interest in entering in such relationships with the Seychelles.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Over the last three years only treaties with Barbados and Monaco and a protocol with Malaysia were concluded to the standard.	It is recommended that the Seychelles expand its EOI arrangements network to the standard.

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)

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

220. Treaties signed by the Seychelles contain provisions aimed at keeping confidential all information received from a treaty partner. Moreover, they specify that this information cannot be used for other purposes than those expressly mentioned in the incoming request.

221. In addition, section 11 of the *Seychelles Revenue Commission Act, 2009* stipulates that "a person being officer shall not either directly or

indirectly, except in the performance of any duty as an officer, and either while the person is or after the person ceases to be an officer, make a record of, or divulge or communicate to any other person any such information so acquired by the person”.

222. Paragraph 2 of section 12 of the same Act stipulates that any revenue officer who reveals to any person any document or information which has come into the possession or knowledge of that person in the course of performing official duties, or permits other persons to have access to any document in the possession or custody of the Commissioner in that official capacity is guilty of an offence and on conviction is liable to a fine of not less than SR 10 000 (USD 800) and to imprisonment for not more than one month.

All other information exchanged (ToR C.3.2)

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

224. The rights and safeguards described in the previous section apply equally to information provided in a request, information transmitted in response to a request and any background documents to such requests.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

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

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

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

225. 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 the attorney-client privilege. Attorney – client privilege is a feature of the legal systems of many countries.

226. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that, the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where attorney – client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

227. Each of the Seychelles’ exchange of information mechanisms ensure that the parties 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.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

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

229. While a review of the practical ability of the Seychelles’ tax authorities to respond to requests in a timely manner will properly be conducted in the course of its Phase 2 review, there are no provisions in the Seychelles’ treaties or laws that appear to prevent the delivery of information within 90 days.

Organisational process and resources (ToR C.5.2)

230. Administrative responsibility for revenue law is under the management of the Revenue Commissioner at the Seychelles Revenue Commission (SRC), an independent body responsible to the Minister of Finance which was established under the *Seychelles Revenue Commission Act, 2009*. The SRC is involved in the design of tax policies, assessing, collecting and accounting revenue. While the competent authority for the exchange of information in the Seychelles is the Ministry of Finance, requests for exchange of information are administratively dealt with by the Seychelles Revenue Commission.

231. A review of the Seychelles' organisational process and resources will be conducted in the context of its Phase 2 review.

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

232. There are no provisions in the Seychelles' laws or in its treaties which apply conditions to the exchange of information above those in accordance with Article 26 of the OECD *Model Tax Convention*.

Determination and factors underlying recommendations

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (<i>ToR A.1</i>)		
The element is not in place.	The Seychelles does not have appropriate mechanisms in place that allow the identification of owners of bearer shares in domestic companies and international business companies established before 2009.	The Seychelles' authorities should ensure that the issuance of bearer shares without reporting obligations is no longer possible under the <i>Companies Ordinance, 1972</i> . Appropriate mechanisms to identify holders of bearer shares issued by IBCs before the 2009 amendment of the <i>IBC Act</i> should also be established.
	There is no need in the Seychelles to make IBCs shareholding information available to governmental tax authorities in charge of EOI.	The Seychelles' authorities should amend the Seychelles legal and regulatory framework to ensure that IBCs' shareholding information is available to governmental tax authorities for the purpose of EOI.
	There is no need in the Seychelles to make information on limited partners in a limited partnership available to government authorities. This information can only be disclosed to the partners themselves.	The Seychelles' authorities should amend the <i>limited partnership Act, 2003</i> to open the limited partners register to be kept by the designated general partner to public inspection of governmental authorities.

Determination	Factors underlying recommendations	Recommendations
<p>The element is not in place.</p>	<p>There is no need in the Seychelles to maintain and keep up to date information on settlors and beneficiaries of trusts, nor to disclose this information to government authorities. In addition, the disclosure of documents relating to an international trust can only be effected in cases of criminal activity.</p>	<p>It is recommended that the <i>International Trust Act, 1994</i> be amended to ensure the availability of information on settlors and beneficiaries of trusts and to ensure this information is updated in a timely fashion.</p>
	<p>Designation of the beneficiaries of international foundations is optional, not obligatory.</p>	<p>The Seychelles authorities should amend the <i>Foundations Act, 2009</i> to ensure that information is available to identify the founders, members of the foundation council, and beneficiaries (where applicable), as well any other persons with the authority to represent the foundation.</p>
	<p>The “customer due diligence” rules provided for by the Seychelles anti-money laundering legislation does not ensure the retention of accurate ownership information, in particular due to the fact that the timeframe within which such identification must occur is not specified and that the definition of beneficial ownership, is not broad enough to oblige service providers to identify all shareholders and in particular persons in an ownership chain.</p>	<p>The Seychelles authorities should amend the anti-money laundering legislation to ensure the retention of accurate ownership information.</p>

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)		
The element is not in place.	The Seychelles legislation does not ensure that reliable accounting records, or underlying documentation, are kept by IBCs, limited partnerships, trusts or foundations.	The Seychelles should amend relevant legislation to ensure that reliable accounting records and underlying documentation which meet the international standards are kept by IBCs, limited partnerships, international trusts and foundations.
	International business companies, limited partnerships, international trusts and foundations are not required to keep accounting records and underlying documentation for a period of 5 years or more.	The Seychelles should require that accurate accounting records and underlying documentation are kept by all relevant entities for at least 5 years.
Banking information should be available for all account-holders (<i>ToR A.3</i>)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>)		
The element is not in place.	The broad powers of the Revenue Commission to access all types of information can only be used “for the purpose of administering any revenue law” and international co-operation, including international exchange of information, is not a stated purpose of any of the revenue laws.	The <i>Revenue Administration Act, 2009</i> should be amended to indicate that one of the roles of the Revenue Commission is in the field of international co-operation.
	When read together, the <i>Financial Institutions Act, 2004</i> and the <i>Revenue Administration Act, 2009</i> effectively result in a secrecy provision which restricts the access to information held by offshore banks.	The Seychelles should ensure the authorities have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any bank within their territorial jurisdiction.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>)		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>)		
The element is not in place.	Only 3 of the treaties signed by the Seychelles meet the international standards and provide for exchange of all types of information without regards to domestic tax interest.	The Seychelles authorities should commence negotiations with partners to amend their current agreements to bring them to the standard.
	The existing treaties are not in effect as there is no provision in the domestic law allowing the Revenue Commission and its employees to exchange information with treaty partners.	The Seychelles' legislation should be amended to provide for the exchange of information between the Revenue Commission and counterparties to agreements.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>)		
The element is not in place.	Over the last three years only treaties with Barbados and Monaco and a protocol with Malaysia were concluded to the standard.	It is recommended that the Seychelles should expand its EOI arrangements network to the standard.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received (<i>ToR C.3</i>)		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>)		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>)		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction’s Response to the Review Report*

After careful consideration of the Phase I report the government of Seychelles, whilst appreciating the care taken by the assessors in the literal and careful analysis of the law, and having had the opportunity to correct some factual errors, would like to draw the Global Forum’ attention to the following comments which are pertinent to the overall assessment of Seychelles’ intention to conform to the exchange of information and transparency criteria.

The outcome of discussions on this Report, and its amendments, are likely to be short-lived; Seychelles is in the course of some substantial legislative changes which have been brought about partly with a continuing desire to conform with the principles of transparency and also to comply with suggestions of other international agencies and to respond to the growing demands for Seychelles offshore services.

Foremost amongst these is a proposed new Companies Act which will unify the existing “dual” system of the Companies Act 1972 for internal companies and International Business Companies Act 1994 around which much of Seychelles international business has centred. This is due for introduction early in 2011.

In addition to this unification, the new proposals aim to provide a strong regulatory framework and to make Seychelles corporate law more comprehensive and address existing issues including international compliance and remove ambiguities. By creating a single Act, record-keeping and the making of annual returns will be more comprehensive and any variations will be within that overall scope and easier to fulfil Seychelles obligation for transparency.

Of similar significance is the ongoing complete reform of the tax regime and the introduction of a revised Business Tax Act, the introduction of an Income and Non-Monetary Benefits Tax to replace the current Social Security Contribution Act and the introduction of a Value Added Tax to replace the current GST system. A significant further addition will be the introduction of

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

a Revenue Administration (Exchange of Information with Third Countries) Regulation under the Revenue Administration Act, the draft form of which is being considered but will codify Seychelles obligations to exchange information with third countries.

Having concentrated on the formation of double taxation treaties, the tax authorities are now pushing ahead with obtaining TIEAs. An agreement has been entered into with the Netherlands and six Nordic countries are likely to follow fairly quickly and other countries are in negotiation, including India and Liberia.

Amongst other proposals a new International Corporate Service Providers Law is relevant. This will clarify the Authorities ability to request documents and information. The Regulatory Authorities will also be subject to a new expanding law to accommodate new aspects of international business. This will strengthen Seychelles position and consolidate its conformity with international standards. This amending legislation is required for Seychelles long-term development.

At the same time new legislation will be to enhance Seychelles reputation as a well regulated and supervised international centre: a reputation which Seychelles regards as essential to expand the country's international standing.

In addition to the proposed legislation mentioned above, which is directly relevant and which will modify the Phase 1 Report, further proposals are in hand in connection with a complete new International Trust Act – the existing one needs so much modification to bring it up to date that the best way is to have a completely new Act; a law relating to the control of legal practitioners which will, I hope, clarify the position of international lawyers in Seychelles. And, overall, a new Act to introduce a Financial Services Commission to reflect the increased responsibility of the Seychelles International Business Authority (SIBA), the opportunity for which will be to clarify the regulatory responsibilities which will reflect upon Seychelles willingness and ability to put into legislation its current transparency practices. It is relevant that many requests for information are put into a money laundering context which are responded to by the FIU and only a small number (in fact only one request) for tax information has ever been received.

*John Goldsworth
Chairman, SIBA
Republic of Seychelles
1st December 2010*

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

Country	Date signed	Date ratified	Date entered into force
BARBADOS	19/10/2007	24/12/2007	28/02/2008
BELGIUM ¹²	27/04/2006	26/06/2006	
BOTSWANA	26/08/2004	06/12/2004	22/06/2005
CHINA	26/08/1999	04/10/1999	17/01/2000
CYPRUS ^{16, 17}	28/06/2006	14/08/2006	02/11/2006
INDONESIA	27/09/1999	10/04/2000	16/05/2000
MALAYSIA	03/12/2003	29/11/2004	10/07/2006
MAURITIUS	11/03/2005	30/05/2005	22/06/2005
MONACO ¹³	04/01/2010		
OMAN	13/09/2003	19/01/2004	20/01/2004
QATAR	01/07/2006	21/08/2006	01/01/2008
SOUTH AFRICA	26/08/1998	30/11/1998	03/07/2002
THAILAND	26/04/2001	06/12/2004	14/04/2006
UAE	18/09/2006	11/12/2006	23/04/2007
VIETNAM	04/10/2005	12/12/2005	07/07/2006
ZIMBABWE ¹⁴	06/08/2002	01/03/2004	

15. A protocol of exchange of banking information has been annexed to the agreement and endorsed by the The Seychelles Cabinet. Awaiting ratification on the Belgium side.
16. Note by Turkey:
The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.
17. Note by all the European Union Member States of the OECD and the European Commission:
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.
18. Awaiting ratification on both sides.
19. Agreement ratified on The Seychelles’ side. Awaiting ratification on Zimbabwe’s side.

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

Constitution of the Republic of Seychelles, 1993

Tax system

Income and non monetary benefits tax Bill (draft), 2010

Revenue Administration Act, 2009

Business tax act, 2009

Excise Tax Act, 2009

Social Security (contributions) (Amendment) Regulations, 2007

Goods and Service Tax Regulation, 2003

Laws governing companies

Commercial Code Act, 1976

Companies ordinance, 1972

Registration of Association Act, 1959

Registration of Business Names Act, 1991

Laws governing the offshore sector

International corporate service providers Act, 2003

International corporate service providers (amendment) Act, 2009

International Business Companies Act, 1994
International Business Companies (amendment) Act, 1995
International Business Companies (amendment) Act, 1997
International Business Companies (amendment) Act, 2000
International Business Companies (amendment) Act, 2009
IBC (Amendment of Schedule) Regulations 1996
IBC (Amendment of Schedule) Regulations 2005
IBC (Amendment of Schedule) Regulations 2007
Limited Partnerships Act, 2003
International Trusts Act, 1994
Companies (special license) Act, 2003
Protected Cell Companies Act, 2003
Protected Cell Companies (amendment) Act, 2004
Foundations Act, 2009

Financial sector

Financial Institutions Act, 2004
Insurance Act, 2009

Anti-money laundering legislation

Anti-money laundering Act, 2006
Anti-money laundering (amendment) Act, 2008

Administrative documentation

AML&CFT Procedures Guidelines, 2007
Application Form for CSL
Business Activity Statement
CSL Application Guidelines
“Due diligence” and “know your customer” declaration for CSL application
Guidance note for ICSP

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Commission takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: THE SEYCHELLES

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 90 jurisdictions which participate in the work of the Global Forum on an equal footing.

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

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

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

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

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

Please cite this publication as:

OECD (2011), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: The Seychelles 2011: Phase 1: Legal and Regulatory Framework*, Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer Reviews, OECD Publishing. <http://dx.doi.org/10.1787/9789264096929-en>

This work is published on the OECD *iLibrary*, which gathers all OECD books, periodicals and statistical databases. Visit www.oecd-ilibrary.org, and do not hesitate to contact us for more information.