

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

MONACO



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Monaco 2010

PHASE 1

September 2010
(reflecting the legal and regulatory framework
as at June 2010)



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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 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 refer to www.oecd.org/tax/transparency.

Executive Summary

1. This report summarises Monaco's legal and regulatory framework for transparency and exchange of information for tax purposes. It conveys no information about the actual implementation of that framework, which will be covered in a subsequent review.
2. The absence of a formal pledge by Monaco to implement the principles of transparency and exchange of information had prompted the Principality's inclusion on the list of non-co-operative tax havens established by the OECD in 2002. The commitment to endorse these principles that was made on 24 March 2009 and the subsequent conclusion of 12 agreements calling for exchange of tax information (23 at the time the Peer Review Report was sent) enabled Monaco on 21 September 2009 to be placed on the list of jurisdictions that have effectively implemented these international standards.
3. This initial assessment of the legal and regulatory framework in force in Monaco shows that, on the whole, the Principality's legal framework meets the required international standards for transparency and exchange of information with the exception of the requirement to keep accounting records available for non-trading partnerships and Monaco network of information exchange mechanisms which needs to be extended, in particular with Italy.
4. Administrative authorisation to engage in an activity, as well as registration in the Monegasque Directory of commerce and industry, provide broad assurance that information about commercial companies and partnerships is available, that the information covers the ownership of these firms or accounting elements. The Monegasque authorities can, in addition, access this information for purposes of international information exchange. The same holds true with regard to banking information, the availability of which is assured under the legislation on the fight against money laundering.
5. Likewise, the absence of any reference to the national interest, whether domestically or in the treaties concluded by Monaco, ensures that the Monegasque competent authorities can exercise their powers to collect information for exchange purposes.

6. In contrast, the Monegasque legal framework could be improved with regard to the availability of information on non-commercial entities, and especially trusts and foundations. In the case of foundations, the obligations imposed by Monegasque law in respect of the availability of information can, in certain situations, make it difficult to access and subsequently convey information that is up-to-date and of good quality. For trusts, Monegasque law does not require trustees to hold identity information on settlors and beneficiaries of express trusts in all circumstances.

7. Monegasque legislation also authorises the holding of bearer shares in companies listed officially on a regulated market. Since Monaco does not have a stock exchange, these companies are listed in France, and Monegasque legislation does not provide a means whereby the information would be accessible to its tax authorities. While this situation applies only to two companies registered in Monaco, and thus remains limited in its impact, and even though there is some information to be kept by these two Monegasque companies, it does not comply with current standards of transparency.

8. In the area of access to information, Monegasque legislation provides for access to available information held by any person when such information is required under an EOI arrangement, including information that is required to be kept in Monaco for anti-money laundering purposes.

9. The network of information exchange mechanisms instituted by Monaco has recently been extended to Australia and the Nordic jurisdictions (Finland, Sweden, Denmark, Norway, Iceland, Greenland and the Faeroe Islands). Though Monaco is currently negotiating agreements with Mexico, New Zealand, Portugal, India and Cyprus, it has not yet agreements with all relevant partners, and in particular with Italy.

10. Lastly, the assessment team observed that Monaco instituted a taxpayer notification procedure at the same time as its TIEA with the United States entered into force. This procedure is not applicable with respect to the exchange of information procedure in the France – Monaco double tax convention. The impact of this new procedure could not be evaluated since there were no guidelines regarding the conditions under which this new procedure would be managed and put into practice by the Monegasque competent authority.

11. Monaco's response to the determinations, factors and recommendations in this report, as well as the application of the legal framework to the practices of its competent authority, will be considered in detail in the Phase 2 Peer Review, which is scheduled for the second half of 2012.

Introduction

Information and methodology used for the peer review of Monaco

12. The evaluation of Monaco's legal and regulatory framework is based on the international standard for transparency and exchange of information as set forth in the terms of reference of the Global Forum and has been prepared in accordance with the Forum's methodology for peer and non-member reviews. The evaluation is based on the laws, regulations and information exchange mechanisms in force and effect as at May 2010, and other documents provided by Monaco and on information provided by partners of this jurisdiction.

13. The terms of reference of the international standard for transparency and exchange of information can be broken down into 10 essential elements with 31 specific aspects in three large categories: (A) availability of information, (B) access to information, and (C) exchange of information. This review evaluates Monaco's legal and regulatory framework with regard to the essential elements and specific aspects. With respect to each essential element, the review concludes (i) the element is in place, (ii) the element is in place but requires improvement with respect to its implementation, or (iii) the element is not in place. These conclusions are accompanied by recommendations regarding the means by which certain aspects of the system could be reinforced.

14. The review was conducted by an assessment team comprised by two assessors and a representative of the Global Forum Secretariat: Shauna Pittman, advisor in the Canadian tax administration; Kamlesh Varshney, Director in the Indian tax administration; and Rémi Verneau for the Global Forum Secretariat. The team evaluated the legal and regulatory framework for transparency and exchange of information and Monaco's relevant information exchange mechanisms.

15. The evaluation of Monaco's practical implementation of its information exchange mechanisms has been scheduled to take place during the latter half of 2012.

Overview of Monaco

General information on Monaco's legal and tax system

16. An enclave on the French Riviera, the Principality of Monaco is a sovereign and independent State on the shores of the Mediterranean Sea, half-

way between the French city of Nice and the Italian border. On an area of 195 hectares, the Principality of Monaco has a population of 35 352 (as estimated in 2008), including 10 029 French citizens (30% of the population), 7 634 Monegasques (22%), 6 596 Italians (19%) and 2 666 Britons (7.5%).

Legal system

17. The Principality's political and institutional system is governed by the Constitution of 17 December 1962 (as amended by Law No. 1 249 of 2 April 2002). As the fundamental law of the State, the Constitution sets forth the nature of the Government, the organisation of public powers and the relationships between them. The Principality is a hereditary and constitutional monarchy which proclaims the primacy of the law over all other institutions.

18. The Monegasque legal system is based on civil law.

19. According to the Constitution, legislative power is wielded by the Prince and the National Council, insofar as laws require the agreement of the Prince and the elected assembly. The initiative for lawmaking lies with the Prince, but the assembly has exclusive power to adopt a law. The Government operates under the high authority of the Prince. It is made up of the Minister of State and five Government Counsellors, each of whom heads a Department (Interior; External Relations; Facilities, Environment and Town Planning; Finance and Economy; Health and Social Affairs). It is the Government's mission to enforce the law, deliver public services and keep the peace. The judiciary is independent.

20. The hierarchy of Monegasque legal instruments is as follows: Constitution, treaties and international agreements, laws, sovereign orders, orders (issued by the Minister of State or other administrative authorities) and other administrative decisions.

Tax and customs system

21. The Fiscal Affairs administration – the Monegasque competent authority for information exchange – operates under the authority of the Department of Finance and Economy, which also oversees the Department of economic development (in charge of managing the Directory of commerce and industry, see below) and the Financial Information and Monitoring Department (*Service d'Information et de Contrôle des Circuits Financiers*, SICCFIN), which enforces anti-money laundering legislation.

22. The Monegasque tax system relies especially on indirect taxes. Value added tax (VAT) is imposed on the same bases and at the same rates – 5.5 % for the reduced rate, 19.6 % for the standard rate – as in France (Article 15 of the Franco-Monegasque Tax Convention of 18 May 1963). The VAT

regime in force within the European Union has been applicable in Monaco since 1 January 1993.

23. There is no personal income tax in Monaco. Pursuant to Article 7 of the Franco-Monegasque Tax Convention of 18 May 1963, French nationals who transferred their domicile to Monaco after 13 October 1957 are subject to French income tax as though they had maintained their domicile or tax residence in France.

24. Monegasque businesses engaging in an industrial or commercial activity and deriving more than 25 % of their turnover outside of Monaco are subject to corporate profit tax. The applicable tax rate is 33.33 %, it being understood that capital gains from the sale of fixed assets by an ongoing concern may, with some exceptions, be tax exempt if reinvested. Other companies are not subject to any tax on profits.

25. Inheritance and transfer taxes are levied on goods located within the Principality or having their base there, irrespective of the domicile, residence or nationality of the deceased or the donor. The rate of tax, which is levied on the market value of assets, varies according to the closeness of the relationship between the deceased and his or her heir (from 0 % between parents and children or between spouses to 16 % between unrelated persons).

26. There is no wealth tax, nor are any taxes levied for the benefit of local authorities in Monaco.

27. Duties and taxes on alcoholic beverages and precious metals are subject in the Principality of Monaco to the identical regulations as in France. Since 1 January 1993, the general arrangements applicable to intra-EU trade in products subject to excise duty have been in force in Monaco as well.

28. French territory and Monegasque territory, including the territorial waters thereof, form a customs union set up by the Customs Convention of 18 May 1963. The French Customs Code is directly applicable in the Principality of Monaco, and French customs officials are authorised to operate in Monaco.

Overview of commercial law, the financial sector and other factors relevant to the exchange of information

Commercial law

29. Monegasque legislation (the Commercial Code) provides for five types of commercial undertakings (see below for explanations in English): *société anonyme monégasque* (SAM); *société en commandite par actions*

(SCA); *société à responsabilité limitée* (SARL); *société en commandite simple* (SCS); and *société en nom commercial* (SNC), the last two being partnerships. Pursuant to Monegasque legislation (Sovereign Order of 1895 applicable to SAMs and SCAs and Law No. 1 144 of 26 July 1991 applicable to SARLs, SNCs and SCSs), prior authorisation from the authorities is required in order to engage in an activity independently or in the form of a company.

30. A SAM is a joint stock company composed of at least two associates. Its share capital, which must be at least EUR 150 000, must be fully paid up. Shares and coupons are negotiable only after the company's incorporation has been finalised, and shares are registered until fully paid up. Founders' shares and shares representing contributions to be fully paid up at the time the company is constituted may not be traded until two years after the company is constituted.

31. For the purposes of applying Monegasque legislation, an SCA is also considered a joint stock company. Associates in such companies are therefore liable for losses only up to the amount of their investments in the business.

32. A SARL is made up of two or more persons whose liability for losses is limited to the amount of their investments in the company. Share capital must be at least 15 000, comprising contributions in kind or contributions in cash. A company may only be incorporated as a SARL if it engages in a commercial activity.

33. An SNC is a partnership formed by two or more persons, and its purpose is to do business under a company name. The partners listed in the partnership statutes have unlimited joint liability for all of the firm's commitments.

34. An SCS is formed between one or more partners having unlimited joint liability for debts and one or more limited partners whose liability is limited to the amounts of their investments in the business.

Banking and financial activities

35. The Principality of Monaco and France constitute a relatively homogenous market for banking activities. Indeed, under the Franco-Monegasque Convention of 14 April 1945 and exchanges of letters with France in 1963 and 1987, French rules for the organisation of the banking sector are applicable in Monaco, and credit establishments located in the Principality are placed under the jurisdiction of the French supervisory authorities.

36. Financial activities in Monaco are governed by Law No. 1 338 of 7 September 2007 as implemented by Sovereign Order No. 1 284 of 10 September 2007, while collective investment undertakings are governed by Law No. 1 339 of 7 September 2007 and Sovereign Order No. 1 285 of 10 September 2007.

37. The independent administrative authority instituted by Law No. 1 338, the Financial Activities Audit Committee (*Commission de Contrôle des Activités Financières*, CCAF), issues licences, monitors compliance with regulatory provisions and ensures that the companies concerned take the necessary measures. It also conducts documentary and on-site audits of those entities. It co-operates with its counterparts on the basis of bilateral memoranda of understanding, which to date have been signed with Belgium, France, Germany, Italy and Luxembourg.

38. Aggregate turnover for the banking sector in 2008 amounted to 4 billion EUR, or 14.6 % of Monegasque GDP. At year-end 2008, the sector comprised 39 entities, all of which were subsidiaries or branches of European banks. Assets kept in Monaco totalled 75.3 billion EUR, rising by 0.5% over the course of the year. Outstanding loans totalled 10 billion EUR.

39. In addition, as of 31 December 2008 there were 45 financial activities firms in the Principality. These manage 62 Monegasque funds (there are no investment companies with variable capital in Monaco), whose assets on that same date totalled 5.2 billion EUR, and in respect of a roughly equivalent amount they also provided advisory, contract management and foreign fund management services.

40. Over the past nine years, the Monegasque banking sector has evolved as follows:

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Turnover ⁽¹⁾	1.913	1.833	1.575	1.272	1.426	1.630	2.102	2.894	4.080
Deposits ⁽¹⁾	18	20	18	16.3	16.9	19.78	23.45	28.72	30.48
Securities ⁽¹⁾	32	33	30	40.1	42.4	49.11	47.94	49.96	44.54
Total assets ⁽¹⁾	50	53	48	56.4	59.3	58.89	71.39	89.68	75.02
Banks	44	46	48	45	43	39	40	41	39

(1) billion

The fight against money laundering

41. The backbone of Monaco's anti-money laundering arsenal is Law No. 1.362 of 3 August 2009 and Sovereign Order No. 2.318 of 3 August 2009. Among the requirements imposed on professions are:

- to identify and check the identity of customers and beneficial owners;
- constant vigilance, including reviews of all transactions and operations;
- regular updating of records;
- internal organisational measures (including designation of a person in charge of the fight against money laundering, terrorist financing and corruption);
- to report any suspicion of money laundering, terrorist financing or corruption to the Financial Information and Monitoring Department (SICCFIN).

42. Evaluations of this legislation were conducted in 2003 and 2008 by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), which assesses compliance with international standards in these areas by Member States of

the Council of Europe not belonging to the Financial Action Task Force (FATF). A progress report was published in 2009.¹

43. The report published in 2008 states, *inter alia*, that Monaco's legal and regulatory provisions governing the vigilance obligations of financial institutions with regard to customers and transactions are on the whole satisfactory, although they are phrased in generally succinct terms that frequently entail interpretation to determine the actual scope of requirements. These provisions appear fully compliant with FATF requirements as to the scope of the obligation to identify and check the identification of customers, as well as the obligation to obtain information on the purpose and proposed nature of business relationships (including the updating of customer records).

Transparency and exchange of information

44. Pursuant to the tax treaty concluded with France on 18 May 1963, and more specifically Article 20 of the treaty, Monaco is committed to exchanging information with France so that French income tax can be levied on individuals and companies exactly as specified.

45. Given the rules in force in the Principality with regard to value added tax, Monaco also takes part in the European system for exchanging VAT-related information. In this connection, the Principality receives and processes about twenty information exchange requests per year.

46. In addition, Monaco has concluded an agreement with the European Union calling for the imposition within Monaco of measures equivalent to the ones instituted by the Directive on taxation of savings income in the form of interest payments (Directive 2003/48/EC, the "Savings" Directive). As a result, Sovereign Order No. 101 of 20 June 2005, implementing the Directive, provides that as from 1 July 2005 withholding tax shall be levied on interest payments issued by Monegasque paying agents to beneficiaries residing in a Member State of the European Union. 75 % of the revenue from this withholding tax is refunded annually to the States of residence of the said beneficiaries. If they so choose, however, residents of Member States of the European Union may opt out of the withholding tax in Monaco. In this case, the beneficiary of the interest requests the paying agent established in Monaco to advise the Principality's tax authorities of the details of the payment. This information is then passed along by the Department of Finance and Economy of the Principality of Monaco to the competent authority of the State of residence of the beneficiary of this income. According to the Monegasque authorities, such information has been

¹ These reports are available on the following web site:
<http://www.coe.int/moneyval>.

exchanged with Italy, the United Kingdom, Belgium and Germany. Actual figures have not, however, been provided.

47. Lastly, and as specified in both of the tax treaties concluded with France, automatic exchanges of information take place between the two States, and these include the turnover reported in Monaco by businesses established in France, the amounts paid by Monegasque employers to French residents and the annual amount of securities income paid out by Monegasque banking institutions. No figures could be provided to the assessment team in this area since this information is covered by tax secrecy laws and could only be provided with the express agreement of France.

Recent developments

48. The absence of a formal pledge by Monaco to implement the principles of transparency and exchange of information had prompted the Principality's inclusion on the list of non-co-operative tax havens established by the OECD in 2002. On 24 March 2009, Monaco committed itself to applying those standards and was consequently withdrawn from the list of non-co-operative tax havens.

49. Since that date, Monaco has signed 22 agreements making arrangements for exchanging tax information. The jurisdictions concerned are as follows: Belgium, Luxembourg, San Marino, the United States, Austria, Liechtenstein, Andorra, the Bahamas, Samoa, Qatar, Saint Kitts and Nevis, Argentina, the Seychelles, the Netherlands, Australia, Finland, Sweden, Denmark, Norway, Iceland, Greenland and the Faeroe Islands. As a result of those signatures, Monaco joined the list of jurisdictions having effectively implemented the international tax standard in the progress report that was published on 23 September 2009.

50. Lastly, the regulations on administrative co-operation were recently amended with the enactment of Sovereign Order No. 2.693 of 23 March 2010 on international tax cooperation, as implemented by Ministerial Order No. 2010-159 of 23 March 2010, establishing internal arrangements for tax co-operation. Among the provisions of these orders is the institution of a procedure to notify taxpayers about whom information has been requested. These provisions do not, however, apply to relations with France.

Compliance with the Standards

A. Availability of Information

Overview

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.

Analysis and assessment

51. In Monaco there are two requirements on trading companies at the time of their incorporation – administrative authorisation to do business, and registration in the Directory of Commerce and Industry. Because of these two requirements, information on the ownership of Monegasque joint stock companies – SAMs (limited companies), SCAs (partnerships limited by shares) and SARLs (limited liability companies) – is available when such a company is set up. If there is a legal requirement to disclose to the administrative authorities any change in SARLs shareholding, there is no possibility to obtain access to permanently updated information on the shareholders of SAMs and limited partners in SCAs, insofar as the level of Monegasque legislative requirements does not mandate that updated information be disclosed to the Monegasque administrative authorities or maintained by these companies themselves.

52. With the exception of companies that are listed on a regulated foreign stock exchange, Monegasque companies are not allowed to issue

bearer shares. As a result, the two Monegasque companies that are traded on the French regulated market are able to issue bearer shares, and Monegasque legislation makes no legal provision for a mechanism – except in a Franco-Monegasque framework – to ensure that information about bearers is available.

53. In respect of trading partnerships – SNCs and SCSs – Monegasque legislation ensures that information on the ownership of such businesses is available, since each member of a partnership bearing unlimited personal liability for company debts must be registered in the Directory of Commerce and Industry or receive administrative authorisation to do business. Partners bearing limited liability are not registered in this directory. This information is, however, held by the Department of Economic Development and is therefore available to the competent authority.

54. Regarding partnerships set up for non-trading purposes – *société civile immobilière* and *société civile de moyens* – the registration requirements of the Special Directory of Non-Trading Companies (*Répertoire spécial des sociétés civiles*) do not make ownership information available. Nevertheless, the obligation to register articles of association and all subsequent share sales for tax purposes makes it possible to obtain this information directly from the Monegasque tax authorities.

55. While no trust may be created in Monaco under Monegasque law, the legislation nevertheless allows trusts established under foreign law to be constituted in or transferred to Monaco. Here, information may be partially available under the law on the fight against money laundering, which expressly covers trustees. However, the information that must be kept when a business relationship is established between the trust and the trustee does not appear to be sufficient to be able to ascertain the exact beneficiaries of a trust.

56. With respect to foundations, there is no formal requirement as such under Monegasque law that they be registered in a directory. Nevertheless, the way in which they operate, notification of any changes thereto and continuous monitoring of such entities by a special commission ensures that information on their founders is available at all times.

57. Lastly, the penalties for non-compliance with the obligation to report an activity or to retain information that the law on the fight against money laundering requires be kept would seem sufficiently dissuasive to ensure compliance therewith by persons and all sorts of entities established

in Monaco.² In contrast, fines for non-compliance with the rules on registration in the Directory of commerce and industry are disproportionate to the task of ensuring the availability of quality information that is updated in real time. Similarly, there is no sanction in Monegasque law for failure to provide ownership information on foundations to the special commission.

Companies (ToR³ A.1.1)

58. Monegasque legislation provides for three types of companies: *société anonyme monégasque* (SAM); *société en commandite par actions* (SCA); and *société à responsabilité limitée* (SARL).

59. Companies wishing to do business in Monaco require authorisation from the Minister of State, under either the Sovereign Order of 5 March 1895 (for SAMs and SCAs) or Law No. 1 144 of 26 July 1991 (for SARLs). Monegasque branches of foreign companies are required to obtain this authorisation as well.

60. Pursuant to Law No. 721 of 27 December 1961 as supplemented by Sovereign Order No. 2 853 of 22 June 1962, any legal person legally deemed a trader is required to register with the Directory of Commerce and Industry, which is administered by the Department of Economic Development, which registers companies, amends their registration and strikes them from the Directory.

Issuance of administrative authorisation to do business

61. The legislation requiring companies to be authorised to do business specifies no particular form, and there is thus no particular information that must necessarily be submitted in order to obtain such authorisation.

62. In practice, however, the Department of economic development requires the following information before it grants authorisation:

- for associates who are natural persons: identity of the associate and the associate's spouse (if applicable), personal address, criminal record, curriculum vitae, interests in other trading companies in Monaco or abroad.

² Pursuant to this legislation, penalties can include a fine of up to 1.5 million EUR or the withdrawal of the administrative authorization to do business.

³ *Terms of Reference to monitor and review progress towards transparency and exchange of information for tax purposes.*

- for associates that are legal persons: excerpt from the minutes of the board of directors' meeting at which it was decided to subscribe to the capital of the company to be formed, a copy of the company's articles of association, excerpt from the registration in the trade directory of the country of origin, copies of the balance sheets and profit and loss accounts for the last three financial years, an economic information sheet indicating the date of incorporation, the main lines of business, the countries in which company facilities are located, employees and an individual information sheet on the person representative of the legal person.

Registration in the Directory of Commerce and Industry

63. The regulations relating to the Directory of commerce and industry, which according to Article 1 shall be applicable to any person deemed by law to be a trader and doing business in Monaco, requires that certain information about a company be reported at the time of its registration (Sovereign Order No. 2.853 of 22 June 1962). SARLs, which can be trading companies only, are therefore required to be registered in the Directory. SAMs and SCAs that engage in trading activities must also be registered. In contrast, if such companies are non-trading they must be registered in the Directory of non-trading companies. The same registration requirements are applicable to branches of foreign companies.

64. For legal persons and foreign establishments, the registration report must be signed by the company's legal representative and indicate the company's legal form and official name, its main line of business, its head office and main operating location, the surnames, given names and personal domiciles of associates holding unlimited personal liability for company debts, the surnames, given names and personal domiciles of associates or third parties invested with management or administrative power and the details of members of the supervisory board of SCAs. No mention of associates other than those referred to above is to be made in this Directory. There is also no requirement to disclose beneficial ownership information in the Directory as the legal owner is, under Monegasque legislation, deemed to be the beneficial owner as well.

65. The Department of economic development keeps information regarding shareholders and associates over the entire lifetime of companies and for five years after their removal from the Directory of commerce and industry.

Subsequent changes

66. Over the lifetime of a SARL, any new associate is required to file a report with the Minister of State if he or she is a Monegasque citizen, or request authorisation if he or she is a foreigner (Articles 4 and 7 of Act No. 1.144 of 26 July 1991), and be registered in the files of the Department of economic development. This information is not, however, recorded in the Directory of commerce and industry.

67. Regarding joint stock companies (SAMs and SCAs), Act No. 721 of 27 December 1961 requires that any changes involving shareholders invested with administrative power be recorded. Consequently, members of the supervisory board of an SCA are known at all times to the Department of economic development by virtue of the requirements that the Directory of commerce and industry be kept up to date.

68. According to the Monegasque authorities, changes in the shareholders of SAMs and SCAs may be ascertained from the attendance lists of general shareholders' meetings imposed by Article 12 of the Sovereign Order of 12 March 1985, which must show the names and addresses of shareholders and the number of shares each one owns. However, the assessment team was unable to ascertain the exact legal requirements as to the listing of persons absent or represented, insofar as the aforementioned Order refers only to an "attendance list" and not a "list of shareholders".

Information held by other persons

69. With regard to shares in companies traded on a regulated market, shareholders' names are known to the financial intermediary responsible for keeping the shares. However, only two Monegasque companies fall into this category.

70. Law No. 1 362 of 3 August 2009 on the fight against money laundering, terrorist financing and corruption requires a number of professional categories, including service providers, to identify customers and check their identities against documentary evidence.

71. Pursuant to this Law, as supplemented by Sovereign Order No. 2 318 of 3 August 2009, service providers and certain professions duly stipulated in Article 2 of the Law are in particular required to keep certain information about their customers:

- If they are regular customers, when a business relationship is established (Article 3 of the Law); or,

- If they are occasional customers, when there is a transfer of funds, an operation involving 15,000 or more, or an operation involving any amount when there is suspicion of money laundering or corruption.

72. Article 7 of the aforementioned Order lists the information that must be provided when a professional enters into a business relationship with a customer that is a legal entity. Among the required information are the articles of association of the legal person as well as documentary evidence of the list of officers. In this case, however, there is no obligation to provide a detailed list of shareholders.

73. When a transaction or operation is carried out, Article 5 of Law 1.362 of 3 August 2009 in conjunctions with Article 13 of the Order stipulates the elements to be covered by the identification of beneficial owners within the meaning of Article 14, in respect of both legal persons and natural persons who ultimately possess or control, directly or indirectly, at least 25 % of the shares or voting rights of the legal person, as well as natural persons who effectively exercise control over the management of the legal person. These elements are:

- in respect of natural persons: surname, given name, date of birth and address;
- in respect of legal persons, legal entities and trusts: the official name, head office, list of officers, knowledge of provisions governing the power to make commitments on behalf of the legal person.

74. Professionals subject to Law No. 1.362 of 3 August 2009 on the fight against money laundering, terrorist financing and corruption must keep all information about their customers at their head office.

Nominee ownership

75. Monaco's legislation does not allow nominee ownership. When there is a contract or the legal owner is mandated by another person who would be the beneficial owner, the information would be maintained by the legal owner.

Bearer shares (ToR A.1.2)

76. Pursuant to Law No. 1.282 of 7 June 2004 amending certain provisions on joint stock companies and amending Article 8 of the Order of 5 March 1895 on *sociétés anonymes* and *sociétés en commandite par actions*: “Shares issued by joint stock companies must be in nominative form, except for those that are eligible for trading on a regulated market,

which may be in bearer form”. It is therefore possible for the two Monegasque companies listed on the French market to issue bearer shares without the Monegasque authorities’ having any means of obtaining information about the holders thereof.

77. In the Franco-Monegasque case, in application of Order No. 222 of 6 May 1950, paying agents are obliged to make annual reports to the Monegasque tax authorities of the amounts of securities income paid to shareholders who are resident in France for tax purposes, irrespective of the form of the shares they own. In addition, it has been informed by the Monaco authorities that the two Monegasque companies allowed to issue bearer shares must, in order to send personal convocation to their shareholders to attend the annual general meeting, know all details on the identity of these shareholders.

Partnerships (ToR A.1.3)

78. Two types of trading partnerships may be created under Monegasque legislation (see paragraphs 33-34):

- société en nom collectif (SNC);
- société en commandite simple (SCS).

79. In addition, Monegasque legislation provides for creation of two types of non-trading partnerships:

- société civile immobilière (SCI);
- société civile de moyens (SCM).

Information held by the administrative authorities about trading partnerships

80. Under Articles 4 and 7 of Law No. 1.144 of 26 July 1991, partners in trading partnerships who are Monegasque citizens must file yearly trading reports, and foreign partners must obtain personal authorisation to do business.

81. The following information about partners who are natural persons is required when a partnership is established: identity of the partner and the partner’s spouse (if applicable), personal address, criminal record, curriculum vitae, and any interests in other trading companies in Monaco or abroad. In the case of legal persons, the following information must be

provided: excerpt from the minutes of the board of directors' meeting at which it was decided to subscribe to the capital of the company to be formed (translated into French), a certified copy of the company's articles of association (translated into French), excerpt from the registration in the trade directory of the country of origin, copies of the balance sheets and profit and loss accounts for the last three financial years, an economic information sheet indicating the date of incorporation, the main lines of business, countries in which facilities are located, employees and an individual information sheet on the person representing the legal person, a less-than-three month-old copy of that person's criminal record and a photocopy of his or her identity card or passport.

82. Because authorisations are issued *intuitu personae*, when shares are sold to a third party, any new associate must file a report if he or she is a Monegasque citizen or obtain personal authorisation if he or she is a foreigner.

83. Except for limited-liability partners in SCSs, for whom the information is available only through the Department of economic development, the information concerning the identity of partners in SNCs and full-liability partners in SCSs is recorded in the Directory of commerce and industry if the partners who are fully and personally liable for debts are required to be listed therein [Article 1 b) 6 of Sovereign Order No. 2 853 of 22 June 1962].

84. In addition, Monegasque legislation stipulates that all changes concerning partners in partnerships should be noted in this Directory. As a result, the identity of partners is always known, both when a partnership is established and during its lifetime.

85. The Department of economic development keeps information on partners throughout the entire lifetime of partnerships and for five years after a partnership's removal from the Directory of commerce and industry.

Information held by the administrative authorities on non-trading partnerships

86. Pursuant to Articles 2 and 3 of Law No. 797 of 18 February 1966, contracts creating non-trading companies must be registered with the Monegasque tax authorities. The same holds true for any sale of shares. This information is set out in the '*registre de recettes*'⁴ and is available to the tax authority willing to access it for EOI purposes.

⁴ The '*registre de recettes*' is a public record maintained at the local tax office. All deeds and some private contracts are subject to a stamp tax and are registered in this book.

87. Pursuant to Article 5 of this same law, non-trading partnerships must register with the Special Directory kept by the Directory of commerce and industry within two months of being established. In accordance with these same provisions, this filing contains a number of details about the partnerships, including the amount of its share capital and the number of shares outstanding. However, this report contains no information about the holders of the shares themselves. The Monegasque authorities clarified that a copy of the constituent act would also be provided.

88. Over the lifetime of a partnership, any change in the information that must be recorded in the Special Directory of non-trading partnerships must be reported. If the identity of shareholders is not part of the information listed in the Directory, then no updating of that same information is required under Monegasque legislation.

Information held by other persons

89. The prudential rules instituted by Law No. 1.362 of 3 August 2009 on the fight against money laundering, terrorist financing and corruption also apply in respect of services provided to partnerships. The requirements described above (paragraphs 69 to 74) are applicable *ipso facto*.

Trusts (ToR A.1.4)

90. Under Monegasque law, provisions relating to trusts are contained in Law No. 207 of 12 July 1935 as amended by Law No. 1.216 of 7 July 1999.

91. While no trust *per se* can be constituted under Monegasque law, it is possible to create a trust in Monaco under foreign law. Such a creation is subject to the formal requirements imposed by Monegasque law on wills and gifts and is required to be done before a notary established in Monaco. A certificate that the act complies with the substantive requirements of the foreign law under which the trust is being established must also be furnished at that time.

92. Trusts that are duly constituted under foreign law may be transferred in the same way as they are created. The settlor and the trustee have an original of the foreign law trust's act of creation recorded by a Monegasque notary.

93. "Only legal persons shall be authorised to act as trustees, and if applicable any natural person taken from a special list compiled and updated by the Chief Justice of the Court of Appeal on the proposal of the

Public Prosecutor may be authorised to act as co-trustee or local representative (Article 3 of the Law of 1935). [...] If the trustee is not established in the Principality, he must designate a local representative.” Only with such prior registration may trustees act to manage assets entrusted to them by virtue of a foreign-law trust constituted in or transferred to Monaco.

Information held by the administrative authorities

94. The legal acts constituting or transferring trusts in or to Monaco must be registered with the tax authorities. Registration entails payment of a registration fee proportional to the trust’s assets. Information contained in the founding act is therefore available from the tax authorities on the basis of the applicable foreign law. Monegasque law imposes no other requirement for the updating of this information.

Information held by trustees and service providers

95. Under Monegasque legislation, the prudential rules instituted by Law No. 1.362 of 3 August 2009 on the fight against money laundering, terrorist financing and corruption described in paragraphs 69 to 74 apply to trustees, subject to the following reservations.

96. When a business relationship is established with a trustee, pursuant to Article 2 of the Law as supplemented by Article 8 of Sovereign Order No. 2.318, the identification obligations imposed on professionals consist in ascertaining the existence, the nature, the intended aims and the management and representation arrangements of the legal entity or trust in question. This identification process also includes ascertaining and checking the list of persons authorised to administer the assets or to represent the customers. Information relating to settlors and beneficiaries is not collected at this time.

97. Whenever a transaction or an operation is carried out, Article 5 of Law 1.362 in conjunction with Article 13 of Sovereign Order No. 2.318 of 3 August 2009 stipulates the component elements of the identification of the beneficial owners within the meaning of Article 14 of that same Order, in respect of legal persons and natural persons that ultimately possess or control, directly or indirectly, at least 25% of the shares or voting rights of the legal person as well as the natural persons who effectively wield controlling power over the management of the legal person. These are:

- in respect of natural persons: surname, given name, date of birth, address;

- in respect of legal persons, legal entities and trusts: the official name, head office, list of officers, knowledge of provisions governing the power to commit the legal person.

98. In respect of express trusts, under Article 15 of the Sovereign Order, trustees are not required to hold identity information regarding beneficiaries in all circumstances.

Foundations (ToR A.1.5)

99. In the Principality of Monaco, foundations are governed by Law No. 56 of 29 January 1922. The law provides for only one type of foundation. Foundations, which may not pose a threat to the peace and must be in the public interest, must receive prior authorisation from the government, after it receives the opinion of the Foundations Supervisory Commission, the Municipal Council and the Council of State. They must be constituted via a notarial act and are subject to a registration requirement.

100. The constituent act and the articles of association are published in the *Journal de Monaco* at the same time as the authorising Sovereign Order. Any change to the articles of association or to the way in which a foundation operates must also be authorised by a Sovereign Order. Directors must have been habitually resident in the Principality for at least one year. If the directors are appointed by the founder him or herself, then only two-thirds of them need satisfy that condition.

101. Foundations are administered under the supervision of the Supervisory Commission, which operates under the aegis of the Minister of State and was instituted by Article 13 of Law No. 56 of 29 January 1922, and which meets at least once a year.

Information held by the administrative authorities

102. Throughout the entire lifetime of a foundation, the Supervisory Commission is in possession of information about the identity of founders and beneficiaries, since foundations are subject each year to the Commission's supervisory procedure. Moreover, by law, any changes in this area must receive administrative authorisation and be published in the *Journal de Monaco* (Article 22 of the Law).

103. Each year the Commission reports to the Minister of State on the activity and financial position of each foundation. To this end, it is entitled to be informed of and receive a copy of any evidence, decisions or

documents involving the foundation's administration and bookkeeping (Article 17 of the Law).

Information held by other persons

104. The prudential rules instituted by Law No. 1.362 of 3 August 2009 on the fight against money laundering, terrorist financing and corruption also apply to services provided by foundations. The requirements described above in paragraphs 69 to 74 apply here *ipso facto*.

Provisions instituted to ensure the availability of information (ToR A.1.6)

105. Any person who engages in an activity in Monaco without first having reported that activity or obtained administrative authorisation is subject, under Article 26-4 of the Criminal Code, to a fine of between EUR 18 000 and EUR 90 000, up to the amount of profit made, and/or imprisonment for six months.

106. For their part, Articles 22 to 25 of the law instituting a Directory of commerce and industry provide for fines for non-registration of FRF 16 to 22 (EUR 2.44 to EUR 3.35) and from FRF 24 to 100 (EUR 3.66 to EUR 15.24) for failure to update information that must be recorded in the Directory.

107. While Monegasque legislation imposes no penalties if foundations fail to supply all the information required by law, it must be noted that any such failure would lead to an absence of administrative authorisation and, as a direct result, the foundation would be unable to pursue its objective.

108. Non-compliance with these identification and verification of identity requirements is also addressed in Article 39 of Law No. 1.362 on the fight against money laundering, terrorist financing and corruption, which provides that any infringements of these obligations shall be punishable by one of the following:

- a warning;
- a reprimand;
- a fine proportional to the seriousness of the infringement, the maximum amount of which cannot exceed EUR 1.5 million ;
- prohibition from carrying out certain operations;

- temporary suspension of the authorisation to exercise;
- withdrawal of that authorisation.

109. Any sanction imposed by virtue of Article 39, with the exception of a warning, shall be published in the *Journal de Monaco*. Over the past six years, eight penalties have been imposed, including five reprimands and three warnings.

110. The effectiveness of the enforcement provisions which are in place in Monaco will be considered as part of the Phase 2 review.

Other entities and relevant arrangements

111. By virtue of the legislation governing associations (Law No. 1.355 of 23 December 2008), any association wishing to acquire legal personality and legal capacity must be reported and made public. In this case, and if composed of Monegasque citizens, it must file a report with the Minister of State within one month of its constitution, along with a copy of its articles of association and a list of its directors or officers. If the association is constituted between Monegasque citizens and foreigners, it must obtain administrative authorisation.

112. These documents and the receipt for the report issued by the Administration are kept at the Department of the Interior.

113. To ensure that the public has information on groups like these, a computer file accessible to third parties via the government's internet site compiles all associations constituted under Monegasque law. Information on the purpose, date of authorisation or issue of a receipt, the head office and telephone/electronic contact information is included in the database.

114. An association is required to report any change regarding the address of its head office or its articles of association.

Conclusion and elements underlying the recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement	
Factors underlying recommendations	Recommendations
In Monaco there is no requirement and no legal	Monaco must ensure that its competent authorities have

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement	
Factors underlying recommendations	Recommendations
mechanism for keeping information available and up to date with regard to the shareholders of SAMs and SCAs.	continuous access to information on the shareholders of trading companies, irrespective of the type of company in question.
Monegasque legislation allows companies traded on a foreign stock exchange to issue bearer shares but contains no mechanism that would ensure the availability of ownership information. There are, however, only two companies in this situation.	
While Monegasque legislation authorises the creation in or transfer to Monaco of foreign trusts, the record-keeping requirements of the law on the fight against money laundering do not ensure that information on the settlors and beneficiaries of trusts is available in all circumstances.	Monaco should ensure that trustees are required to hold identity information on settlors and beneficiaries of express trusts in all circumstances.

A.2. Accounting records

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

Analysis and assessment

115. With regard to the keeping of accounting records, Monegasque legislation subjects legal persons and entities having trader status to transparency obligations that comply with international standards, with respect to the level of formalism imposed on accounting systems and the

records to be kept as well as the length of time during which they must be kept.

116. In contrast, the lack of accounting requirements for trusts, non-trading partnerships - *sociétés civiles immobilières* and *sociétés civiles de moyens* - and associations, and the absence of formal requirements concerning the accounting records to be kept and reported by foundations, make it impossible to accurately trace the operations carried out by these types of entities. The consequence of this deficiency is that this element is not in place.

General requirements (ToR A.2.1)

Trading companies and partnerships

117. Under Articles 10 of the Commercial Code, any trader, which includes joint stock trading companies and trading partnerships, is required to keep a ledger book and an inventory book which are referenced, initialled and approved either by a judge of the Court of First Instance or by the Mayor or Deputy Mayor.

118. Joint stock companies (SAMs and SCAs) are also required to establish a balance sheet and a profit and loss account for each financial year. It is imperative that these documents be filed with the Department of economic development within three months after the general meeting at which the accounts for the year are approved, along with the external auditors' report and a copy of their certification that the company's activity is compliant and its accounts in order (Law No. 408 of 20 January 1945 as amended). The penalty for a company's non-compliance with these obligations may rise to withdrawal of its administrative authorisation to do business.

119. For their part, managers of SARLs, SNCs and SCSs must convene a general shareholders' meeting within six months of the close of the financial year in order to submit for approval the company's inventory, balance sheet, profit and loss account, annual report, procurement report and a listing of contracts and undertakings, either directly or through an intermediary, between the company and any of its officers or associates (Article 22 of Law No. 1.331 of 8 January 2007; Article 51-6 of the Commercial Code). Within three months after that general meeting is held, the manager must file the balance sheet and the profit and loss account

with the Directory of Commerce and Industry (Article 51-7 of the Commercial Code).

120. In the event a manager refuses or neglects to prepare accounting statements, or if the statements are not filed with the Directory of commerce and industry, the manager is liable for a fine of between 18 000 and 90 000 and/or imprisonment for six months (Article 26-4 of the Criminal Code).

121. With regard to taxation, firms subject to corporate profit tax must file an annual tax return with the Fiscal Affairs Department within three months of the close of each financial year, or, if no financial period ends within a given calendar year, by 1 April of the following year (Article 23 of Sovereign Order No. 3.152 of 19 March 1964). Among other requirements, the accounting systems of Monegasque companies must be able to determine net earnings for the year and the base for the tax liability. It must be noted here, however, that this requirement applies only to firms that derive over 25 % of their turnover from outside Monaco.

122. In respect of turnover tax, businesses are required to maintain an accounting system or, as the case may be, to keep a ledger with numbered pages containing daily entries, with no blanks or erasures, of the amounts of each operation, distinguishing between those that are taxable and those that are not.

123. Associations that are not non-profit are subject to the same accounting requirements as trading companies.

Non-trading partnerships and associations

124. Non-trading partnerships - 80% of the partnerships established in Monaco hold real estate — are not subject to accounting requirements under the regulatory provisions in force in Monaco. The same can be said for non-profit associations.

Trusts

125. Monegasque legislation imposes no accounting requirements on such entities or trustees.

Foundations

126. Each year, foundations must submit their accounts to the Foundations Supervisory Commission. Nevertheless, Monegasque legislation makes no particular stipulations as to the form these accounts must take. According to the Monegasque authorities, the only requirement

is that the information provided be sufficiently specific so that the Foundations Supervisory Commission can prepare its annual report. The assessment team noted, however, that there are no penalties for non-compliance with this obligation and that a bill to introduce penalties into the legislation on foundations has been under examination by the Monegasque National Council since 2002.

Underlying documentation (ToR A.2.2)

Trading companies and partnerships

127. With regard to accounting, and as stipulated in Articles 10ff of the Commercial Code, all traders, which includes joint stock companies and partnerships engaging in trade, are required to keep a ledger containing day-to-day records of trading operations, negotiations, occupations or endorsements of instruments and, generally, everything that the trader receives and disburses for any purpose, as well as an inventory book establishing an annual list of moveable and immoveable assets and active and passive debts. Sovereign Order No. 3.167 of 29 January 1946 defines and lays down rules for the preparation of balance sheets and profit and loss accounts and provides a model format for these documents.

128. With regard to taxation, and more specifically turnover tax, businesses are required under Articles 66ff of the Tax Code to:

- maintain an accounting system or, as the case may be, keep a ledger with numbered pages containing daily entries, with no blanks or erasures, of the amounts of each operation, distinguishing between those that are taxable and those that are not;
- file monthly or quarterly reports including a breakdown of tax bases by rate;
- file reports of their trade in goods with Member States of the European Union other than France;
- submit invoices or a substitute document listing information on goods delivered and services rendered, and on the calculation of VAT (pre-tax base, rate, amount of tax).

129. Profit-making associations are subject to the same record-keeping requirements as any other Monegasque undertaking.

Non-trading partnerships and associations

130. Insofar as they are under no obligation to maintain an accounting system or to file returns with the tax authorities, such firms and associations are subject to no record-keeping obligation.

Trusts

131. Since Monegasque legislation imposes no accounting or tax requirement – other than registration – on them, trustees have no legal obligation to keep their underlying documentation.

Foundations

132. Monegasque legislation imposes no requirements as to the form of the accounting documents that foundations must keep. According to the Monegasque authorities, the only requirement is that the information provided be sufficiently specific so that the Foundations Supervisory Commission can prepare its annual report.

Five-year record-keeping standard (ToR A.2.3)

133. For trading companies, the Monegasque Commercial Code imposes a 10-year record-keeping requirement. Because they are not subject to any accounting requirements, trusts and non-trading companies and associations have no record-keeping obligations. In the case of foundations, the law specifies no minimum record-keeping period, at the level of the foundation itself or the Supervisory Commission, to which accounting records are submitted.

Determination and elements underlying the recommendations

Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
No accounting obligation is imposed under Monegasque legislation on non-trading partnerships or companies that are not deemed traders under the Commercial Code. And yet 80 % of Monegasque partnerships fall into this	Monaco should ensure that reliable accounting records be kept for all relevant entities and arrangements that may be created in Monaco, among which, <i>inter alia</i> , are trusts, foundations and non-trading partnerships, and these records should be accessible for at least five

Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
category.	years, in compliance with the terms of reference.
Monegasque legislation imposes no bookkeeping or record-keeping obligations on foreign-law trusts established in or transferred to Monaco.	
Monegasque legislation imposes no requirements as to form and makes no reference to an international accounting standard in respect of the accounting records to be kept and supplied by foundations.	

A.3. Banking information

Banking information should be available for all account-holders.

Analysis and assessment

134. With regard to banking, Monegasque legislation, under the aimed at combating money laundering, ensures the availability during 5 years of financial or transactional information, including copy of records, account books and business correspondence.

Requirements regarding data conservation (ToR A.3.1)

135. Like any commercial company, banks are obliged to keep accounts and to conserve all their accounting documents for 10 years. Furthermore, in application of the Franco-Monegasque Convention of 14 April 1945 and the exchanges of letters in 1963 and 1987 between Monaco and France, Monegasque banks are subject to French regulations regarding financial statements and statistics and are required, in accordance with those regulations, to provide the French Prudential Control Authority with the relevant statements.

136. In addition, under Article 10 of Law No. 1.362 of 3 August 2009 on Money Laundering, Financing of Terrorism and Corruption, financial institutions must in particular:

- keep a copy for at least five years after ending relations with habitual or occasional customers of all probative documents successively used to establish and verify customer identity, as well as all documents collected for identification purposes;
- keep, for a period of at least five years from the time of performing the operations, a copy of records, account books, business correspondence and documents relating to the operations carried out to ensure that they can be accurately reconstituted.

Determination and elements underlying the recommendations

Determination
The element is in place.

B. Access to Information

Overview

B.1. Ability of the competent authority 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).

Analysis and assessment

137. There is no legislation in Monaco which grants specific powers to the competent authorities to collect information that should be exchanged as part of the international exchange of information. The reason for this is that the lack of reference to domestic interest allows the competent authorities in Monaco to use domestic information-gathering powers granted to tax administration officials under Sovereign Order No. 3.085 of 25 September 1945 for the purposes of administrative co-operation.

138. The text of the Sovereign Order thus allows the tax authorities to obtain:

- under Article 2 bis, any information held by government administrations and establishments and enterprises under the control of the administrative authority;
- under Article 3, any information held in particular by firms, companies, insurers, bankers, business agents, and estate agents so that officials from the tax administration can check that the legislation for which they are responsible is properly enforced. This provision also enables them to

receive information held by the same persons under legislation relating to money laundering.

139. Even though this Sovereign Order does not explicitly mention that information maintained by other persons such as foundations and individuals acting as trustees can be accessed by the Monegasque authorities, there is, in Article 7 of Sovereign Order of 23 March 2010 a clear reference to the possibility, for the Monegasque authorities, to use the information gathering powers granted by Order 3085 to access all types of information requested by a treaty partner. Therefore, the Monegasque authorities can access all type of information to be kept by persons situated within the Monegasque territory.

140. Furthermore, under Sovereign Order No. 2.693 of 23 March 2010, persons providing information for the purposes of an international exchange of information cannot be subject to the sanctions regarding professional confidentiality provided for in Article 308 of the Monegasque criminal code which guarantees free access to information.

141. For the application of this Order, the sanctions for failure to disclose information to the tax authorities would seem to be a sufficiently severe deterrent to ensure that information is supplied to the Monegasque authorities. Even though no provision exists to sanction an administration which refuses to provide information, it would seem reasonable to think that such situations do not arise since all the administrations are dependent on and are part of the hierarchy of the Minister of State.

Information regarding ownership and identity (ToR B.1.1)

142. In the Principality of Monaco, information regarding the ownership of companies, limited partnerships and foundations can be obtained from the Monegasque authorities in charge of issuing operating licences, from the Department of economic development, which is responsible for managing the Directory of commerce and industry or directly from the company. Banking information is available from banks and financial intermediaries. Lastly, a certain amount of information is available under Law No. 1.362 of 3 August 2009 on the fight against money laundering, terrorist financing and corruption.

143. There is no legislation in Monaco granting specific powers to the competent authorities to collect from third parties the information needed to respond to requests for administrative assistance. Accordingly, the provisions of Sovereign Order No. 3.085 of 25 September 1945, which sets out the general conditions for access by the tax authorities to information held by taxpayers or third parties, apply. These search powers, which are primarily used by the Monegasque tax authorities to meet their own domestic needs, are

also used to deal with requests for exchanges of information received from Monaco's partners.

144. Article 2 bis of this Order permits access to all documents held by government administrations, the Commune, firms sold or controlled by the State or the Commune, as well as all establishments or bodies of any kind subject to oversight by the administrative authority. Article 3 provides for access by tax officials, , to information held by firms, companies, insurers, exchange agents, money changers, bankers, discounters, public or ministerial officers, carriers, business agents, and estate agents, so that the tax officials can ensure that the legislation which the tax authority is responsible for applying is properly enforced.

145. This Order therefore provides for access to all information held by firms, of whatever nature, and information held by the administrative authorities in charge of issuing administrative licences to exercise an activity, managing the Directory of commerce and industry, or overseeing the operation of foundations. Even if not explicitly mentioned in this Sovereign Order, information maintained by other persons and, in particular foundations and natural persons acting as trustees, can be accessed as well, as Article 7 of Sovereign Order 2.693 of 23 March 2010 states that the Monegasque authorities, to answer an incoming request made pursuant to an EOI arrangement, have the same information gathering powers as those granted by Sovereign Order 3.085 of 25 September 1945.

146. Furthermore, this Order does not prohibit the collection of information held in application of the Law on the fight against money laundering, provided that the tax authorities are required to have access to such information in order to comply with commitments entered into under international treaties signed by the Principality of Monaco. In such situations, Article 3 of the Order explicitly provides for the possibility of gaining access to all information held by the persons listed in this Article.

Accounting records (ToR B.1.2)

147. Accounting records, in cases where Monegasque legislation requires that such data be held and conserved, can be obtained in Monaco either from the administrative authority responsible for issuing licences to exercise an activity – as in the case of companies with a commercial activity – or from the overseeing authority – as in the case of foundations – or directly from firms and companies themselves.

148. The conditions for obtaining the above-mentioned records apply here under the same conditions, and are subject to the same provisions for access and the same limits.

Use of information-gathering instruments without reference to domestic interest (ToR B.1.3)

149. To ensure compliance with bilateral agreements on information exchanges, the Fiscal Affairs Department has the rights of disclosure and investigation set out in the provisions of Sovereign Order No. 3.085 of 25 September 1945 (see above). Monegasque legislation relating to access to information does not require that there be a domestic interest with regard to the gathering of information for the purposes of information exchange.

Enforcement powers (ToR B.1.4)

150. Articles 3 and 4 of Sovereign Order 3.085 of 25 September 1945 state that any refusal to provide information must be recorded in a report which, after notification, is submitted to the Public Prosecutor's office which refers the matter to the criminal court for prosecution. Moreover, Article 6 of this Sovereign Order provides that any refusal to provide information may be punished by a fine (from 10 000 to 50 000) and if legal action is taken, offenders are served with a court order to resubmit the documents or items they had failed to provide (20 fine per day of lateness).

151. In contrast, Monegasque legislation makes no provision for sanctions with regard to information which State administrations, the Commune, firms licensed or controlled by the State or the Commune, as well as all establishments or bodies of any nature subject to the oversight of the administrative authority, are obliged to provide. Since these are public entities or entities controlled by the public authority and consequently dependent on the Secretary of State, the risk of such entities refusing to provide information would appear to be non-existent.

Provisions regarding secrecy (ToR B.1.5)

152. The rules on professional secrecy in Monaco are set out in Article 308 of the Criminal Code. This Article provides that “any person who, by his position or profession, is the depository of the secret entrusted to him, and who discloses that secret information, other than in cases where the law obliges or permits him to do so, shall be punished by one to six months of imprisonment and fined the amount provided for in figure 2 of Article 26 (from 2 250 to 9 000), or to only one of these two penalties”.

153. However, Article 11 of Sovereign Order No. 2.693 of 23 March 2010 provides that any person holding information who in good faith provides the Director of the Fiscal Affairs Department with documents and information requested by the latter in order to respond to a request for

exchange of information is not liable to prosecution for breach of secrecy under Article 308 of the Monegasque Criminal Code.

Determination and elements underlying the recommendations

Determination
The element is in place.

B.2. Requirements regarding notification, 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.

Analysis and assessment

154. Under Sovereign Order No. 2 693 of 23 March 2010, the Monegasque authorities have put in place a new procedure for prior notification of taxpayers in the event that the authorities receive a request for an exchange of information. This new procedure (it does not apply in relations with France) does not conflict with international standards regarding transparency and information exchange. Solely a phase 2 review will allow an assessment to be made of the impact of this procedure on timely access by the Monegasque administration to the information to be exchanged.

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

155. Under Sovereign Order No. 2.693 of 23 March 2010 on international co-operation, as amended by the Journal de Monaco on 4 June 2010, Monaco has put in place a notification procedure. The exchange of information with France is not affected by these new rules.

156. The procedure can have up to four stages:

- notification of the taxpayer upon receipt of a request for exchange of information and request for his comments. The competent authority must issue a decision on whether the request is accepted or rejected within a period of 45 days, which can be reduced to 20 days if the requesting State indicates that the request is urgent.

- issuing of a second notification to the person concerned and to the person holding the information once the request has been judged to be admissible (Section IV, Article 6). The information must then be provided by the person concerned within a period of 30 days.
- the person concerned by the exchange of information has a period of 30 days in which to make an appeal to the Court of First Instance. The competent authority must then submit its comments within a period of 30 days and the ruling must be made within the following 30 day period.
- the ruling made in the first instance can be appealed within the same time limits.

157. The Order does not allow for any exceptions to this prior notification and it may be contrary to the standard. Indeed, when a prior notification would jeopardize or unduly delayed the procedure followed in the requesting State, it should be suspended

Determination and elements underlying the recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need to be improved.	
Factors underlying recommendations	Recommendations
The prior notification procedure does not allow for any exception and therefore apply to any incoming requests sent by Monaco's partners, to the exception of the ones sent by France.	Monaco should examine the conditions under which the new notification procedure that applies in Monaco is compatible with an effective exchange of information.

C. Exchanging Information

Overview

C.1. Exchange of information mechanisms

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

Analysis and assessment

158. The network of tax conventions and tax information exchange agreements signed by Monaco at the time this report was drafted cover the following jurisdictions: France, Luxembourg, Seychelles, Saint Kitts & Nevis, Qatar (States with which Monaco has signed tax conventions – DTCs), Andorra, Argentina, Austria, Bahamas, Belgium, United States, Liechtenstein, San Marino, Samoa, Netherlands, Australia, Finland, Sweden, Denmark, Norway, Iceland, Greenland and the Faeroe Islands (States with which tax information agreements – TIEAs – have been signed).

159. The 23 information exchange mechanisms that Monaco has put in place with its partners meet international standards in that they allow all types of foreseeably relevant information to be exchanged, with no domestic restrictions or formalities that might curtail the provisions agreed to in recently signed agreements.

Standard of foreseeable relevance (ToR C.1.1)

160. All TIEAs and DTCs signed by Monaco contain provisions capable of allowing the exchange of foreseeably relevant information for the application of domestic legislation. The treaties signed with Argentina, France, Qatar and Seychelles refer to “relevant” or “necessary” information which makes it possible to conclude, on this point, that the Monaco’s network of treaties meets international standards on the exchange of tax information.

In respect of all persons (ToR C.1.2) / Obligation to exchange all types of information (ToR C.1.3)

161. The agreements signed with Austria, the Bahamas, Liechtenstein, Netherlands, Samoa, the United States and the seven Nordic jurisdictions contain provisions similar to those in Article 5 (4) of the Model TIEA, while the provisions made in the treaties with Belgium, San Marino and Andorra are broader than those in the Model TIEA in that they explicitly provide for the possibility of exchanging information regarding shares, units and other interests held in companies listed on the stock exchange and in collective funds and investment vehicles.

Lack of domestic tax interest (ToR C.1.4)

162. With regard to either Monegasque domestic legislation or international treaties providing for mutual assistance mechanisms, the exchange of tax information is not restricted by any references to domestic tax interests.

Lack of dual criminality principles (ToR C.1.5) / Exchange of both civil and criminal tax information (ToR C.1.6)

163. The assessment team found no provisions aimed at restricting exchanges through application of the dual criminality principle in the network of treaties for the exchange of information signed by Monaco. Moreover, the agreements signed by Monaco allow both civil and criminal tax information to be exchanged.

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

164. Since this is an issue addressed in phase 2, the assessment team was unable to determine whether Monaco was in a position to provide information in the form requested by States.

Be in force (ToR C.1.8)

165. At the time this report was drafted, the tax conventions and tax information exchange agreements concluded with France, the United States, Luxembourg and San Marino had entered into force. The TIEA with Austria will enter into force on 1 August 2010. Monaco stated that its domestic procedures for the entry into force of the agreements with Andorra, Argentina, Liechtenstein, the Netherlands, Seychelles, and Samoa had been

completed. Monaco is waiting for these procedures to be completed in their treaty partners' jurisdictions.

Be effective (ToR C.1.9)

166. The agreement reached between France and Monaco has been given effect in that the Monegasque authorities are providing the French authorities with the information requested for the application of French tax legislation. The publication of a new taxpayer notification procedure to accompany the entry into force of the TIEA between Monaco and the United States does not allow an opinion to be given regarding the effectiveness of this agreement in that the conditions applicable to the exchange of information will be different from those that currently apply in the agreement with France. Assessing the effectiveness of these agreements is an issue that falls within the scope of phase 2.

Determination and elements underlying the recommendations

Determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Although 22 information exchange agreements have been concluded since July 2009, to date only three have entered into force.	Monaco must ensure that information exchange mechanisms permit the effective exchange of information by ensuring that the relevant legislation is swiftly enacted.

C.2. Mechanisms for exchanging information with all relevant partners

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

Analysis and assessment

167. Monaco's information exchange network currently covers the following 23 jurisdictions:

Jurisdiction	Type	Date of signature	Date of entry into force
France	DTC	18 May 1963	1 September 1963
USA	TIEA	8 September 2009	23 March 2010
Luxembourg	DTC	27 July 2009	3 May 2010
San Marino	TIEA	29 September 2009	3 May 2010
Austria	TIEA	15 September 2009	1 August 2010
Belgium	TIEA	15 July 2009	
Samoa	TIEA	7 September 2009	
Qatar	DTC	17 September 2009	
St-Kitts and Nevis	DTC	17 September 2009	
Andorra	TIEA	18 September 2009	
Bahamas	TIEA	18 September 2009	
Liechtenstein	TIEA	21 September 2009	
Argentina	TIEA	30 October 2009	
Seychelles	DTC	4 January 2010	
The Netherlands	TIEA	11 January 2010	
Australia	TIEA	1 April 2010	
Sweden	TIEA	23 June 2010	
Finland	TIEA	23 June 2010	
Norway	TIEA	23 June 2010	
Denmark	TIEA	23 June 2010	
Iceland	TIEA	23 June 2010	
Greenland	TIEA	23 June 2010	
Faroe islands	TIEA	23 June 2010	

168. Monaco's relations with France are longstanding and are covered by two tax treaties relating to inheritance taxes (1950 treaty) and to direct taxes and wealth tax (1963 treaty).

169. Since committing itself to apply international standards on transparency and exchange of information on 24 March 2009, Monaco has signed 4 tax conventions with Luxembourg, Seychelles, Saint Kitts & Nevis and Qatar. Furthermore, Monaco has signed 11 information exchange agreements with Andorra, Argentina, Austria, Bahamas, Belgium, the United States, Liechtenstein, San Marino, Samoa, Netherlands, Australia and the seven Nordic jurisdictions.

170. In addition, Monaco has entered into negotiations with Mexico, New Zealand, Portugal, India, Cyprus, Greece and Bahrain.

171. The assessment team nevertheless noted that the Monegasque economy is particularly dependent on banking and finance, and that this sector ranks after trade as the second largest sector of activity in Monaco accounting for almost 15 % of Monaco's GDP and 25 % of total business turnover in Monaco. In terms of foreign trade, Monaco's main suppliers are Italy, the United Kingdom, China, Belgium and Germany⁵. In terms of Monaco's population, 20 % of Monaco's inhabitants are Italian, 7.5 % British, 2.8 % are Belgian, and 2.5 % are German and Swiss.

172. Of the 23 jurisdictions currently covered by the Monegasque network, the number of jurisdictions with either a significantly large economy or capital that could be invested in Monaco which have signed an agreement with provisions for exchanging information with the Principality remains particularly limited. The Monegasque authorities have stated that, in view of the limited resources available internally and the deadlines imposed by the OECD, priority had initially been given to countries whose institutions would allow the rapid signing of an agreement. However, even though the threshold of twelve agreements needs to be reached in order to be classed in the category of jurisdictions that have effectively implemented international standards regarding transparency and exchange of information, in accordance with the terms of reference, the network of information exchange mechanisms must nonetheless cover all relevant partners, which is not the case at present for the Monegasque network.

173. The threshold of 12 agreements that has been set to determine whether or not a jurisdiction has substantially implemented the standard on transparency and exchange of information should not be taken to mean that a given jurisdiction can hold back from entering into negotiations with its most relevant partners on the grounds that this threshold is the sole objective that needs to be met. In this respect, the assessment team notes that:

- despite the fact that Monaco has now reached this threshold and although negotiations aimed at signing TIEAs are proceeding, no negotiations have been entered into with several of Monaco's relevant economic partners;
- Monaco's letter of commitment to adhere to international standards regarding transparency stated that the Principality was willing to

⁵ These figures do not include information relating to France in that France and Monaco are in a customs union. However, the Monegasque authorities stated trade with France represents more or less half of business turnover in Monaco.

negotiate with all states which so desired. This no longer appears to be the case;

- the Monegasque authorities have indicated that they would like to enter into relations with countries such as Italy in the form of a tax convention, which would seem to be in contradiction with Monaco’s apparent lack of negotiating resources, whereas an instrument which would allow the rapid deployment of an information exchange mechanism that seems better suited to the circumstances already exists.

Conclusion and elements underlying the recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
The network of treaties containing provisions regarding the exchange of information does not currently cover all of those jurisdictions who have indicated that they would like to enter into such a relationship with the Principality.	Monaco must ensure that its network of information exchange mechanisms covers all relevant partners, that is to say all jurisdictions which have indicated that they would like to enter into such a relationship with the Principality, in particular Italy.
No priority has been given in Monaco’s negotiating policy to the rapid signing of information exchange agreements with these partners.	Monaco must ensure that its negotiating policy and the priorities set internally are such that it can obtain, as rapidly as possible, a network of information exchange mechanisms which covers all relevant partners.

C.3. Confidentiality

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

Analysis and assessment

174. The rules provided for in the applicable international agreements and domestic legislation in Monaco ensure the confidentiality of information received in.

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

175. The information exchanged is subject to the rights and safeguards that are given priority in the wording of information exchange agreements. From this standpoint, all agreements signed by the Principality of Monaco with its partners follow the principles set out in international standards regarding the exchange of information, with the notable exception of the tax convention between Monaco and France.

176. Article 1 of Sovereign Order 3.085 of 25 September 1945 states that the tax officials are bound by professional secrecy under the conditions and subject to the sanctions set out in article 376 of the penal code. Article 376 of the penal code is now codified in Article 308 of the penal code, which provides that all persons entrusted, by state or by profession, with secrets and who, with the exception of cases in which the law requires or authorizes the disclosure of the secret, reveal the secret will be liable to imprisonment for a term of six months and a fine set out in Article 26, number 2, or to one of these two punishments.

Other information exchanged (ToR C.3.2)

177. With regard to other information exchanges, the provisions described above apply *ipso facto*.

Determination and elements underlying the recommendations

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.

Analysis and assessment

178. The mechanisms provided for in international agreements and the applicable domestic legislation in Monaco allow the rights and safeguards of taxpayers and third parties to be guaranteed.

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

179. The bilateral agreements on the exchange of information for tax purposes provide that the competent authority may refuse assistance in cases where the provision of information would be contrary to public policy. Moreover, they do not oblige a requested party to provide information which would disclose a commercial, industrial or professional secret or a commercial process.

180. Sovereign Order No. 2.693 of 23 March 2010 on international co-operation in tax matters sets out a notification procedure for use in Monaco. This procedure provides for a number of safeguards protecting the taxpayer in that the latter:

- must be informed of the receipt by the Monegasque authorities of a request for information concerning him and may make his comments known during the initial examination of the request by the competent Monegasque authority. At this stage it might be argued that the information request received does not comply with the limits set on exchanges of information under international treaties;
- if the taxpayer does not agree that the Monegasque authorities are obliged to provide the third party with information, he can pursue the matter in the Court of First Instance which will rule on the lawfulness of the injunction to provide information. The ruling handed down by this Court may give rise to an appeal.

181. The provisions mentioned above do not apply within the framework of relations between France and Monaco.

Determination and elements underlying the recommendations

Determination
The element is in place.

C.5. Speed of response to requests for information

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

Response within 90 days (ToR C.5.1)

Organisational process and resources (ToR C.5.2)

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

182. This area of investigation typically falls within the scope of a Phase 2 review. The assessment team is therefore not in a position to comment on the measures put in place by the Principality of Monaco to ensure a swift response to a request for information received from Monaco's partners. Accordingly, it was not possible to assess the impact of the new taxpayer notification procedure introduced under the Sovereign Order of 23 March 2010 on the speed with which a response can be made to incoming requests. It should be noted that to date, guidelines which would permit tax officials to ensure the optimal management of this new procedure have not been published.

Conclusion and elements underlying the recommendations

Determination
The assessment team is not in a position to comment on this element which typically falls within the scope of a Phase 2 assessment.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities (ToR A.1.)		
The element is in place, but certain aspects of the legal implementation of the element need improvement	In Monaco there is no requirement and no legal mechanism for keeping information available and up to date with regard to the shareholders of SAMs and SCAs.	Monaco must ensure that its competent authorities have continuous access to information on the shareholders of trading companies, irrespective of the type of company in question.
	Monegasque legislation allows companies traded on a foreign stock exchange to issue bearer shares but contains no mechanism that would ensure the availability of ownership information. There are, however, only two companies in this situation.	
	While Monegasque legislation authorises the creation in or transfer to Monaco of foreign trusts, the record-keeping requirements of the law on the fight against money laundering do not ensure that information on the settlors and beneficiaries of trusts is available in all circumstances.	Monaco should ensure that trustees are required to hold identity information on settlors and beneficiaries of express trusts in all circumstances.

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.	No accounting obligation is imposed under Monegasque legislation on non-trading partnerships or companies that are not deemed traders under the Commercial Code. And yet 80% of Monegasque partnerships fall into this category.	Monaco should ensure that reliable accounting records be kept for all relevant entities and arrangements that may be created in Monaco, among which, <i>inter alia</i> , are trusts, foundations and non-trading partnerships, and these records should be accessible for at least five years, in compliance with the terms of reference.
	Monegasque legislation imposes no bookkeeping or record-keeping obligations on foreign-law trusts established in or transferred to Monaco.	
	Monegasque legislation imposes no requirements as to form and makes no reference to an international accounting standard in respect of the accounting records to be kept and supplied by foundations.	
Banking information should be available for all account holders (<i>ToR A.3.</i>)		
The element is in place.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1.</i>)		
The element is in place.		
The rights and safeguards (<i>e.g.</i> 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, but certain aspects of the legal implementation of the element need to be improved .	The prior notification procedure does not allow for any exception and therefore apply to any incoming requests sent by Monaco's partners, to the exception of the ones sent by France.	Monaco should examine the condition under which the new notification procedure that applies in Monaco is compatible with effective exchange of information.

Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1.</i>)		
The element is in place	Although 22 information exchange agreements have been concluded since July 2009, to date only three have entered into force.	Monaco must ensure that information exchange mechanisms permit the effective exchange of information by ensuring that the relevant legislation is swiftly enacted.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2.</i>)		
The element is in place, but certain aspects of the legal implementation of the element need to be improved.	The network of treaties containing provisions regarding the exchange of information does not currently cover all all of those who have indicated that they would like to enter into such a relationship with the Principality.	Monaco must ensure that its network of information exchange mechanisms covers all relevant partners, that is to say all jurisdictions which have indicated that they would like to enter into such a relationship with the Principality, in particular Italy.
	No priority has been given in Monaco's negotiating policy to the rapid signing of information exchange agreements with these partners.	Monaco must ensure that its negotiating policy and the priorities set internally are such that it can obtain, as rapidly as possible, a network of information exchange mechanisms which covers all relevant partners.
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 comment on this element which typically falls within the scope of a Phase 2 assessment.		

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

After reading the final report adopted by the Global Forum, Monaco has the following details:

Monaco is pleased to note that the first assessment of the legal and regulatory framework in Monaco showed that the Principality of Monaco has overall legal framework in line with required international standards for transparency and exchange of information.

On the points considered for improvement, Monaco would provide the following details.

With regard to trusts, Monaco recalls that Article 5 of Law No.1362 of 3 August 2009 applies where the trustee enters into a relationship with a client who is a legal person, legal entity or trust. The obligations imposed by law upon the creation or transfer of a trust can thus ensure the availability of information concerning the identity of settlors and beneficiaries of legal arrangements.

Regarding the lack of information on people who own or control less than 25% of the shares, it is recalled that this limit was chosen by Monaco when it met the European standards in this area during drafting this law.

Regarding foundations, the assessment team’s reservations might be addressed by the enactment of Law No.1373 of 5 July 2010 amending Law No.56 of 29 January 1922 on foundations.

About the two listed companies in France, Monaco notes that all the shares of Monegasque companies are registered with the exception of the portion of those two companies listed in France. Like all companies listed internationally, shares of both companies traded on the Monegasque market are bearer shares. Their owners are well known, however, to the credit institutions in charge of securities accounts of holders.

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

In terms of global knowledge of all shareholders including those located outside of Monaco, the company may at any time request a list from the Central Depository of Securities, which it does for example for meetings of shareholders at Annual General Meetings or Extraordinary meetings. This same list can be requested and obtained by the Monegasque authorities as part of a request for exchange of information in tax purposes.

With regard to civil partnerships, Monaco confirms that access to information by the Department of Fiscal Services is assured.

Regarding mechanisms for exchanging information with relevant partners, as noted by Monaco at the Peer Review Group meeting on 21 July, a 24th agreement was signed with Germany on 27 July 2010.

Similarly, following the enactments announced in the Journal de Monaco on 23 July 2010, the table in annex 2 can be completed as follows:

Jurisdiction	Type	Date of signature	Date of entry into force
Qatar	DTC	17 September 2009	15 June 2010
Argentina	TIEA	30 October 2009	7 August 2010
Germany	TIEA	27 July 2010	

Monaco has entered a consolidation phase with the signing of agreements with the OECD members and is now focusing negotiations on double taxation conventions which are more appropriate to develop economic exchange and in conformity with the level playing field principle and in particular Italy.

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

	Jurisdiction	Type of agreement	Date of signature	Date in force
1	France	DTC	18 May 1963	1 September 1963
2	Belgium	TIEA	15 July 2009	
3	Luxemburg	DTC	27 July 2009	03 May 2010
4	Samoa	TIEA	7 September 2009	
5	United States	TIEA	8 September 2009	23 March 2010
6	Austria	TIEA	15 September 2009	1 August 2010
7	Qatar	DTC	17 September 2009	
8	St-Kitts et Nevis	DTC	17 September 2009	
9	Andorra	TIEA	18 September 2009	
10	The Bahamas	TIEA	18 September 2009	
11	Liechtenstein	TIEA	21 September 2009	
12	San-Marino	TIEA	29 September 2009	03 May 2010
13	Argentina	TIEA	30 October 2009	
14	Seychelles	DTC	4 January 2010	
15	The Netherlands	TIEA	11 January 2010	
16	Australia	TIEA	1 April 2010	
17	Denmark	TIEA	23 June 2010	
18	Finland	TIEA	23 June 2010	

	Jurisdiction	Type of agreement	Date of signature	Date in force
19	Greenland	TIEA	23 June 2010	
20	Faroe Islands	TIEA	23 June 2010	
21	Iceland	TIEA	23 June 2010	
22	Norway	TIEA	23 June 2010	
23	Sweden	TIEA	23 June 2010	

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

Constitution of 17 December 1962 (as amended by Act n°1.249 of 2 April 2002)

International treaties

Conventions concluded with France

Convention entre la France et la Principauté de Monaco tendant à éviter les doubles impositions et à codifier les règles d'assistance en matière successorale du 1er avril 1950

Convention fiscale entre la France et la Principauté de Monaco du 18 mai 1963 :

- a. échange de lettres du 18 mai 1963 relatif à la réglementation bancaire dans la Principauté
- b. échange de lettres du 6 avril 2001

Convention franco-monégasque sur le contrôle des changes du 14 avril 1945 et échanges de lettres

Convention douanière franco-monégasque du 16 mai 1963

Échange de lettres du 27 novembre 1987

Convention monétaire conclue le 24 décembre 2001

Tax treaties and TIEAs, entered into force or not, signed with others States

Accord d'échange de renseignements conclu entre la Principauté de Monaco et le Royaume de Belgique le 15 juillet 2009

Convention fiscale conclue entre la Principauté de Monaco et le Grand-duché de Luxembourg le 27 juillet 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et Samoa le 7 septembre 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et les États-Unis le 8 septembre 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et la république d'Autriche le 15 septembre 2009

Convention fiscale conclue entre la Principauté de Monaco et l'État du Qatar le 17 septembre 2009

Convention fiscale conclue entre la Principauté de Monaco et St-Kitts et Nevis le 17 septembre 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et la Principauté d'Andorre le 18 Septembre 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et le Commonwealth des Bahamas le 18 septembre 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et la Principauté du Liechtenstein le 21 septembre 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et la République de Saint-Marin le 29 septembre 2009

Accord d'échange de renseignements conclu entre la Principauté de Monaco et la république Argentine le 30 octobre 2009

Convention fiscale conclue entre la Principauté de MC et la République des Seychelles le 4 janvier 2010

Accord d'échange de renseignements conclu entre la Principauté de Monaco et le Royaume des Pays-Bas le 11 janvier 2010

Codes

Article 10 du Code de Commerce

Article 308 du code de pénal

Tax legislation

Annexe au Code des Taxes sur le chiffre d'affaires

Ordonnance Souveraine n°3152 du 19 mars 1964 instituant un impôt sur les bénéfiques

Ordonnance Souveraine n°10.324 du 17 octobre 1991 relative à l'impôt sur les bénéfiques - régime des entreprises nouvelles

Ordonnance Souveraine n°10.325 du 17 octobre 1991, modifiée, relative à l'impôt sur les bénéfiques - crédit d'impôt recherche

Ordonnance Souveraine n° 373 du 26 janvier 2006 relative aux rémunérations des dirigeants

Ordonnance sur l'enregistrement, le timbre, le droit de greffe et les hypothèques du 29 avril 1828

Ordonnance-loi n°155 portant simplification de certaines formalités en ce qui concerne l'enregistrement et les hypothèques du 17 juin 1931

Loi n°223 portant codification et modification des droits d'enregistrement, de timbre et d'hypothèque du 27 juillet 1936

Loi n°276 portant réforme en matière de droits de mutation par décès du 2 octobre 1939

Ordonnance-loi n°389 sur la déclaration des successions en ligne directe du 20 juin 1944

Loi n°474 portant réforme en matière de droit d'enregistrement et de timbre du 4 mars 1948

Loi n°580 portant aménagement des droits d'enregistrement et d'hypothèques du 29 juillet 1953

Loi n°704 modifiant le régime fiscal des mutations à titre gratuit entre époux du 5 juin 1961

Loi n°842 tendant à modifier le régime des droits d'enregistrement applicable aux opérations immobilières soumises à la taxe sur la valeur ajoutée du 1^{er} mars 1968

Ordonnance n°101 du 26 juin 2005 portant application de l'accord conclu entre la Principauté de Monaco et la Communauté Européenne prévoyant des mesures équivalentes à celles que porte la directive 2003/48/CE du Conseil en matière de fiscalité des revenus de l'épargne sous forme de paiement d'intérêts signé à Bruxelles le 7 décembre 2004

Loi n°1.300 relative à l’escroquerie fiscale applicable aux revenus de l’épargne payés sous la forme d’intérêts du 15 juillet 2005

Ordonnance n°3085 du 25 septembre 1945 relative aux droits et devoirs des agents des services fiscaux

International tax co-operation legislation

Ordonnance souveraine n°2.693 du 23 mars 2010 relative à la coopération internationale en matière fiscale

Arrêté ministériel n°2010-159 du 23 mars 2010 portant application de l’Ordonnance Souveraine n°2.693 du 23 mars 2010 relatif à la coopération internationale en matière fiscale

Companies legislation

Ordonnance du 05 mars 1895 sur les sociétés anonymes et en commandite par actions

Loi n°408 du 20 janvier 1945 complétant l’ordonnance sur les sociétés anonymes et en commandite par actions, du 5 mars 1895, notamment en ce qui concerne la nomination, les attributions et la responsabilité des commissaires

Ordonnance n°3.167 du 29 janvier 1946 réglant l’établissement du bilan des sociétés anonymes et en commandite

Loi n°721 du 27 décembre 1961 instituant le Répertoire du Commerce et de l’Industrie

Ordonnance Souveraine n°2853 du 22 juin 1962 portant application de la loi n°721 du 27 décembre 1961 instituant un Répertoire du commerce et de l’industrie

Loi n°1.144 du 26 juillet 1991 concernant l’exercice de certaines activités économiques et juridiques

Loi n°1.282 du 7 juin 2004 modifiant certaines dispositions relatives aux sociétés par actions,

Loi n°1.331 du 8 janvier 2007 relative aux sociétés

Financial activities legislation

Loi n°1.338 du 9 juillet 2007 sur les activités financières

Loi n°1.339 du 9 juillet 2007 relative aux fonds communs de placement et aux fonds d’investissement

Ordonnance Souveraine n° 1.284 du 10 septembre 2007 portant application de la loi n°1.338 du 7 septembre 2007 sur les activités financières

Ordonnance Souveraine 1.285 du 10 septembre 2007 portant application de la loi n°1.339 du 7 septembre 2007 relative aux fonds communs de placement et aux fonds d'investissement

Anti-money laundering legislation

Loi n°1.362 du 3 août 2009 relative à la lutte contre le blanchiment de capitaux, le financement du terrorisme et la corruption

Ordonnance Souveraine n° 2.318 du 3 août 2009 fixant les conditions d'application de la loi n°1.362 du 3 août 2009 relative à la lutte contre le blanchiment de capitaux, le financement du terrorisme et la corruption

Trusts legislation

Loi n°214 du 27 février 1936 (portant révision de la loi n° 207 sur les trusts du 12 juillet 1935) modifiée par la loi n°1.216 du 7 juillet 1999

Ordonnance souveraine n°14.346 du 2 mars 2000 portant application de la loi n°1.216 du 7 juillet 1999 portant modification de la loi n°214 du 27 février 1936 sur les trusts,

Foundations legislation

Loi n°56 du 29 janvier 1922 sur les fondations

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: MONACO

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.

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