GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 1 Legal and Regulatory Framework

LIECHTENSTEIN

OECD

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PHASE 1

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About the Global Forum

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

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

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

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

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

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

Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information for tax purposes in Liechtenstein.

2. Liechtenstein committed to the international standards of transparency and exchange of information for tax purposes on 12 March 2009 and since then it has been actively engaged in developing a network of international agreements which allow for exchange of information for tax purposes. This has led to signing of 22[1] agreements since that time, taking the total to 23 agreements which provide for international exchange of information in tax matters. In general, these recent agreements provide for exchange of information to the international standards and 12 are currently in force. Nevertheless, some jurisdictions have reported that they have approached Liechtenstein requesting to enter into tax information exchange agreements but have had some difficulties progressing negotiations. Liechtenstein's authorities have indicated that they prefer to establish DTCs, but they are ready to sign TIEAs without any conditions.

3. Information on the ownership of companies (other than those holding bearer shares), partnerships, foundations, establishments (*Anstalt*) is available. However, the availability of information on all of the beneficiaries of trusts or trust enterprises (T*reuunternehmen*) is not ensured. Anti-money laundering legislation does ensure availability of information on beneficiaries of trusts and trust enterprises, if they hold more than a 25% interest in such entities. For foreign companies resident for tax purposes in Liechtenstein, information is only available under the tax law on those owners who are taxable in Liechtenstein. Concerns are expressed about the availability of ownership information on companies in the absence of adequate enforcement provisions ensuring the maintenance of share registers by companies.

1. Consisting of 4 double taxation conventions (DTCs) and 18 tax information exchange agreements (TIEAs). Additionally, a TIEA with the United States was signed in December 2008. Liechtenstein also has DTCs with Austria and Switzerland, but these do not contain provisions allowing for international exchange of information.

4. Liechtenstein allows for the issuance of bearer shares but the mechanisms in place to allow the identification of the owners of such shares are not sufficient. Due diligence legislation is applicable which imposes a requirement to identify the owners of such shares in many cases but it is flawed in that it does not provide a mechanism for identifying the owners.

5. While full accounting records and associated underlying documentation must be maintained by domestic as well as foreign entities carrying on commercial activities, accounting information in conformity with the international standards is not required to be maintained by all entities that are not engaged in commercial activities such as trusts, trust enterprises and establishments. Further, the period of time for retention of accounting records pertaining to some categories of entities not engaged in commercial activities is not specified in law.

6. In respect of access to information, the recently created domestic framework gives the Fiscal Authority strong powers to access and exchange information with its foreign counterparts. However, the affected party is in all cases to be notified of the international request for information, and this may unduly prevent or delay the effective exchange of information in urgent cases.

7. Liechtenstein's response to the conclusions and recommendations in this report, as well as its practical implementation of the legal framework, will be assessed during the Phase 2 Peer Review, scheduled for the second half of 2012, provided that Liechtenstein takes the necessary measures to address the deficiencies identified regarding availability of accounting information and takes significant steps to address the deficiencies identified regarding availability of ownership information. In the meantime, a follow up report on the steps undertaken by Liechtenstein to answer the recommendations made in this report should be provided to the PRG within six months of the adoption of this report.

Introduction

Information and methodology used for the peer review of Liechtenstein

8. The assessment of the legal and regulatory framework of the Principality of Liechtenstein (hereinafter 'Liechtenstein') was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at May 2011, Liechtenstein's responses to the Phase 1 questionnaire and supplementary questions, information supplied by partner jurisdictions and other relevant sources.

9. The *Terms of Reference* breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Liechtenstein's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. A summary of the findings against those elements is set out on pages 85-87 of this report.

10. The assessment was conducted by a team which consisted of two expert assessors and one representative of the Global Forum Secretariat: Ms. Sarita de Geus, Senior Policy Advisor, International Tax Law at the Directorate-General for the Tax and Customs Administration of the Netherlands Ministry of Finance and Mr. Mustupha Mosafeer, Director, Mauritius Revenue Authority, Mauritius; with Mr. Sanjeev Sharma from the Secretariat to the Global Forum.

Overview of Liechtenstein

11. Liechtenstein is situated between Austria and Switzerland. It is the fourth smallest State in Europe with an area of 160km^2. The capital is Vaduz. Liechtenstein's 11 municipalities have a total population of nearly 36 000, making it one of the world's least populous countries[2]. Liechtenstein's official language is German.

12. Since the conclusion of a Customs treaty in 1923, Liechtenstein has formed a common economic area with Switzerland. Liechtenstein does not have its own Central Bank and the Swiss franc (CHF) is the official currency of Liechtenstein (CHF 1 = EUR 0.78 as at 15 December 2010). Liechtenstein has been a member of the European Economic Area (EEA) since 1995.

13. Liechtenstein is a highly industrialised country with a well diversified economy consisting of a large number of small businesses. Services constitute about 54% of gross domestic product (GDP), which was USD 4.6 billion in 2007. Liechtenstein has the second highest gross domestic product per person in the world, at USD 122 100 in 2007.[3] In 2007, 57% of its employees worked in the commercial and services sector. Industry and manufacturing contributes a 39% share of GDP[4], with the financial services sector contributing about 30% to Liechtenstein's GDP.[5] These services are mainly offered in the areas of private asset management, international asset structuring, investment funds and insurance. Non-resident business constitutes more than 90% of the private banking activities conducted in Liechtenstein[6]. Liechtenstein's key trading partners (in order) are Switzerland, Austria, Germany, the United States, France, Italy and the United Kingdom.

14. The successful national economy of Liechtenstein has resulted in creation of approximately 33 400 jobs by the end of 2008[7], not all of which

2. World Bank data catalog, *http://data.worldbank.org/country/liechtenstein*, accessed 4 December 2010.
3. CIA, The World Fact book, *https://www.cia.gov/library/publications/the-world-factbook/geos/ls.html* and *https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html*, accessed 10 December 2010.
4. *www.state.gov/r/pa/ei/bgn/9403.html*, accessed 4 December 2010.
5. Portal of the Principality of Liechtenstein: *www.liechtenstein.li/en/eliechtenstein_main_sites/portal_fuerstentum_liechtenstein/fl-wuf-wirtschaft_finanzen/fl-wuf-finanzdienstleistungen.htm*.
6. *www.coe.int/t/dghl/monitoring/moneyval/Countries/Liechtenstein_fr.asp*, accessed 4 December 2010.
7. *www.liechtenstein.li/en/eliechtenstein_main_sites/portal_fuerstentum_liechtenstein/fl-wuf-wirtschaft_finanzen/fl-wuf-industrie/fl-wuf-industrie-internationales.htm*, accessed 4 December 2010.

can be filled with employees from Liechtenstein. The proportion of foreign employees is over 67%, primarily in the form of cross-border commuters from Austria and Switzerland.

General information on the legal system and the taxation system

Legal system

15. Liechtenstein is a constitutional hereditary monarchy with a democratic parliamentary system. The Government consists of a five-member cabinet nominated by Parliament and appointed by the reigning Prince for four years. To be valid, each new law enacted by Parliament requires the consent of the Prince.

16. The political and institutional system of Liechtenstein is governed by the Constitution of 5 October 1921, as amended by the Constitutional Act of 16 March 2003. The Constitution is the fundamental law and sets forth the nature of the government, the organisation of public powers and the relationship between them. The Liechtenstein legal system is based on civil law.

17. The Prince is the head of state and represents Liechtenstein in its international relations. The Prince may veto laws adopted by Parliament and can call referendums, propose new legislation and dissolve Parliament, though dissolution of Parliament may be subject to a referendum. Executive authority is vested in a collegiate government comprising the head of government (Prime Minister) and four government councilors (Ministers). The head of government and the other Ministers are appointed by the Prince upon the proposal and concurrence of Parliament

18. Legislative authority is vested in the unicameral Parliament, the Landtag, made up of 25 members elected for maximum four-year terms according to a proportional representation formula. Fifteen members are elected from the Oberland and ten members are elected from the Unterland.

19. Jurisdiction in civil and criminal matters is exercised in the first instance by the Court of Justice, in the second instance by the Court of Appeal, and in the third and last instance by the Supreme Court. The Administrative Court and the Constitutional Court are courts of public law. All courts sit in Vaduz. The National Tax Commission[8] is the first appellate body for tax matters. Appeals against the decisions of the National Tax Commission are heard by the Administrative Court.

8. Created by the Tax Law of 23 September 2010.

Taxation system

20. Liechtenstein introduced major tax reforms through the Law of 23 September 2010 on National and Municipal Taxes (Tax Act), effective from 1 January 2011[9]. Corporate income tax is now charged at a flat rate of 12.5%, with a minimum of CHF 1 200 (EUR 975). Minimum tax is not levied on taxpayers operating commercially with an average balance sheet total over the last three years, under CHF 500 000 (EUR 390 000). New Tax Act has abolished (with a three year grandfathering clause) domiciliary status, which exempted certain entities without business ties to the domestic market from corporate income tax. The new law provides for a new 'Private Asset Structure' (PAS) regime[10] which can be applied for by legal persons which are allowed to acquire, hold, administer or sell any kind of asset[11] but are not engaged in economic activities. Once PAS tax status is granted by the tax administration, they will pay minimum corporate tax of CHF 1200 (EUR 975) and do not file an annual tax returns. On an application of the legal person, the tax authority can transfer the inspection of compliance with the preconditions for granting the PAS status to a neutral auditor. A regime of 'special assets dedications without legal personality' applicable to trusts providing for a minimum tax of CHF 1 200 and no assessment is also introduced in the new Tax Act. For individuals, wealth tax is integrated into income tax, with personal tax rates from 3% to 21%. Dividends and capital gains from investments in movable property are tax exempt.

21. Natural persons having their residence or habitual abode in Liechtenstein are subject to tax on their world-wide wealth and income, whereas non-residents pay tax on domestic wealth and domestic income. Taxpayers subject to wealth tax, personal income tax and corporate income tax are required to submit annual tax returns (Art. 94(1) Tax Act).

22. Legal persons having their domicile or effective place of management in Liechtenstein are subject to unrestricted tax liability. Legal persons who have neither domicile nor effective place of management in Liechtenstein are

9. The law previously in force was Law of 30 January 1961 on National and Municipal Taxes. The new Tax Act is divided into chapters on taxes on natural persons (wealth tax, personal income tax and tax based on expenditure; Arts. 6-34); legal persons (Arts. 44-65); capital gains on the sale of real estate (Arts. 35-43) and the establishment of legal persons and insurance premiums (Arts. 66-72).
10. Articles 64 of the Tax Act and Articles 37 and 38 of the Tax Ordinance of 21 December 2010. The special tax regime is applicable to qualified legal persons. Once a legal person has been granted PAS status it enjoys a special tax status provided it does not engage in economic activities.
11. Assets may include financial instruments (*e.g.* futures, swaps, negotiable securities), liquid monies, bank account balances and shares in legal persons.

subjected to defined restricted tax liability. In 2004, Liechtenstein introduced the EU's *Savings Directive*[12] on the basis of a bilateral agreement with the European Union (EU) and imposes withholding tax on interest and other savings.

23. Liechtenstein's laws do not specify the rank of international treaties as compared with domestic law. According to the jurisprudence of the Constitutional Court, international treaties ratified by Parliament always enjoy at least the rank of a law within the domestic legal order. Liechtenstein's authorities have indicated that the Courts interpret domestic laws in conformity with international treaties.

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

Overview of financial sector and relevant professions

24. The business model of Liechtenstein's financial center focuses on private banking and wealth management. The financial sector in Liechtenstein comprises banks and finance companies, insurance, asset management companies, investment companies, trustees, lawyers and accountants. At the end of 2009, 16 banks were licensed in Liechtenstein; of these, 7 are affiliates of Swiss or Austrian institutions.[13] At the end of 2009, these banks had a balance sheet total of CHF 55 billion (EUR 42.9 billion). Liechtenstein also has 679 financial intermediaries such as trustees, trust companies, lawyers and accountants, 41 insurance companies, 27 fund management and investment companies with approximately 411 mutual funds. Liechtenstein does not have a stock exchange of its own but some of its companies are listed on the Swiss exchange.

25. Lawyers, legal agents, patent attorneys and patent companies are particularly prominent in the area of professional legal advice and representation of parties. There are several associations representing the different sectors of financial institutions and intermediaries. Liechtenstein has 395 registered professional trustees (including licensed trust companies).

12. Council Directive 2003/48/EC of 3rd June 2003 on Taxation of Savings Income in the Form of Interest Payments: *http://info.portaldasfinancas.gov.pt/NR/rdonlyres/7EA63C6F-0908-4CFE-85E8-0D964A469013/0/Council_Directive_200348EC.pdf.*

13. Portal of the Principality of Liechtenstein: *www.liechtenstein.li/en/eliechtenstein_main_sites/portal_fuerstentum_liechtenstein/fl-wuf-wirtschaft_finanzen/fl-wuf-finanzdienstleistungen/fl-wuf-finanzdienstleistungen-struktur/fl-wuf-finanzdienstleistungen-bankenplatz.htm*, accessed 4 December 2010.

26. The Financial Market Authority (FMA) is an integrated financial supervisory authority for institutions in all financial markets and well as financial intermediaries such as lawyers, professional trustees and auditors. The FMA is the supervisory authority for all persons subject to the Banking Act, Investment Undertakings Act, Asset Management Act, Insurance Supervision Act, Insurance Mediation Act, Occupational Pensions Act, Pension Funds Act, Professional Trustee Act, Auditors and Auditing Companies Act, Lawyers Act, Patent Attorney Act and is responsible for the enforcement of the Due Diligence Act. The Financial Intelligence Unit is responsible for obtaining and analysing information necessary for the recognition of money laundering and terrorist financing activities.

27. The Land and Public Registration Office (GBOERA) maintain a public register of commercial as well as non-commercial active entities. Entities which do not have registration obligations are obliged to submit some information or deposit deeds with the registry. The Public Registry is accessible to any member of the public.

28. The core of the anti-money laundering counter-financing of terrorism (AML/CFT) framework consists of the 2008 Due Diligence Act and the 2009 Due Diligence Ordinance which implemented the EU *Third Money Laundering Directive*.[14] The 2007 mutual evaluation of Liechtenstein (based on earlier legislation), conducted by the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL)[15] found *inter alia*:

- Liechtenstein has a broad framework for customer due diligence (CDD), though the provisions fall short of the international standard in some substantive and technical areas;
- Liechtenstein's laws governing legal persons and arrangements are liberal and offer many different forms of companies and legal arrangements. Most legal provisions are not mandatory and may be changed through founding deed or statute, allowing for any legal entity/arrangement to be custom-tailored to the parties' needs. It is estimated that 90% of all entities registered in Liechtenstein are not commercially active;

14. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing: *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:EN:PDF*, accessed 4 December 2010.

15. *www.coe.int/t/dghl/monitoring/moneyval/Countries/Liechtenstein_fr.asp*, accessed 10 December 2010.

- nominee directors, nominee shareholders, protectors/collators and letter of wishes are permitted and are frequently used in relation to trusts and foundations (stiftungen); and
- bearer shares may be issued by a large number of legal entities and there are no mechanisms in place to identify the owners of such shares.

29. The abovementioned shortcomings regarding the framework for CDD have been ameliorated to some extent by the Due Diligence Act 2008, according to the MONEYVAL progress report of 8 December 2010.[16] MONEYVAL also concluded that Liechtenstein's record keeping requirements are in line with the international AML/CFT standards.

Recent developments

30. The Law of 30 June 2010 on International Administration Assistance in Tax Matters created a domestic framework for implementing the obligations arising out of the international exchange of information agreements signed by Liechtenstein. This law designates the Fiscal Authority as the competent authority for the purposes of international exchange of information.

31. Liechtenstein also passed an ordinance on 31 August 2010 to implement the tax information exchange agreement and memorandum of understanding signed with the United Kingdom in August 2009, based on the related law of 30 June 2010. This ordinance obliges Liechtenstein's financial intermediaries to identify their clients who may have tax liability in the United Kingdom.

16. *www.coe.int/t/dghl/monitoring/moneyval/Evaluations*, accessed 10 December 2010.

Compliance with the Standards

A. Availability of information

Overview

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

33. Liechtenstein's laws provide for different types of corporate and non-corporate entities. The commonly used entities are companies limited by shares, trusts, foundations, establishments and trust enterprises. Establishments (Anstalten) which are a feature of Liechtenstein are generally used along with foundations and trusts to manage private assets.

34. There are obligations imposed on domestic companies, partnerships, establishments and foundations to keep ownership and identity information. However, companies can issue bearer shares and the mechanisms in place to identify the owner of such shares are inadequate. This is a significant deficiency which Liechtenstein should remedy quickly. Moreover, full ownership information on foreign companies resident for tax purposes in Liechtenstein is not required to be maintained.

35. While Liechtenstein's company law does not ensure the availability of information on all beneficiaries of trusts and trust enterprises, financial intermediaries must keep some identity information on beneficiaries of trusts and receipts are required to be maintained of any payments made to beneficiaries resident in Liechtenstein.

36. Relevant laws oblige all legal persons engaged in commercial activities to maintain proper accounting records and underlying documentation. The same apply to all companies limited by shares, limited liability companies, limited partnership with share capital, European companies and most limited and unlimited partnerships, even if they are not engaged in commercial activities. The law obliges all foundations to keep and maintain proper accounting records. Such records must also be retained for ten years. However, some categories of legal entities and legal arrangements not engaged in commercial activities are not required to keep full accounting records under commercial or tax laws. Such entities are also not explicitly obliged by law to maintain records for at least five years. This involves a significant proportion of the entities in Liechtenstein. The applicable provisions of the due diligence legislation stipulate however an obligation to keep transaction records.

37. Liechtenstein's laws ensure the availability of banking information in respect of all account holders.

38. In general, enforcement provisions ensure that obligations to maintain ownership and identity information are followed. However, the absence of suitable enforcement measures to ensure company share registers are kept up to date is an issue that should also be addressed quickly by Liechtenstein.

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.

39. The Law on Persons and Companies of 20 January 1926 (PGR) provides the legal framework for legal persons and arrangements. The PGR provides two types of legal persons: koerperschaften and korporationen (corporations), and, anstalten and stiftungen (establishments and foundations). A trust is a legal arrangement. A trust enterprise, however, can be established with or without legal personality (Art. 932a(1) PGR). The Office of Land and Public Registration (Grundbuch-und Offentlichkeitsregisteramt; GBOERA), is the competent authority charged with monitoring compliance with the PGR, particularly with respect to registration requirements.

40. Corporate forms can be either companies for carrying out commercial activities, holding companies or domiciliary companies (not having

trading activities inside Liechtenstein). For tax purposes, and, in accordance with the new Tax Act the only differentiation is between legal persons carrying out economic activities[17] and legal persons not carrying out economic activities.

41. Legal entities (corporations, establishments and foundations) can be formed by a natural or legal person. Companies limited by shares and limited partnerships with share capital must have a minimum of two founders, whereas, other entities can be founded by one person. Founders need not be resident or domiciled in Liechtenstein.

42. Corporations (associations, companies limited by shares, limited partnerships with a share capital, co-operative associations with limited liability, limited liability companies, co-operatives, mutual insurance and assistance associations, Societas Europea, Societas Cooperativa Europea, registered trust enterprises), establishments and foundations devoted to a specific object or purpose acquire legal personality through registration in the Public Register (Art. 106 PGR). Registration is not required for:

- corporate bodies and establishments under public law;
- associations (Art. 246 PGR) that do not pursue commercial activities and that are not obliged to have statutory auditors[18]; and
- where law provides an exception (for example, for certain foundations (Art. 552(20) PGR).

Companies (ToR[19] A.1.1)

43. The PGR provides for nine primary types of companies:

- **Aktiengesellschaft (AG) –** joint stock company (Arts. 261-367 PGR): Joint stock companies have capital divided into smaller amounts (shares). Only the company's assets are liable for the debts of the company. Founders can be shareholders also. Shareholders are not personally liable for the company's liabilities. Shares can have variable

17. According to Art. 64 of the Tax Act, non-economic activities are specially the acquisition, possession, administration and selling of financial instruments, liquid moneys, bank accounts and, in certain circumstances, participation in legal persons.
18. According to Art. 251 of the PGR, the accounts of the association must be audited if two of three parameters are satisfied (balance sheet total is above CHF 6 million, revenues are above CHF 12 million or 50 full time employees).
19. *Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information.*

voting rights. There were 6 931[20] such companies in Liechtenstein on 31 December 2010;

- **Gesellschaft mit beschränkter Haftung (GmbH) –** limited liability company (Arts. 389-427 PGR): One or more persons, natural or legal, can form a company with limited liability for any purpose with a predetermined capital. The liability of each participant is limited to a certain amount and they are not personally liable for the company's debts. Liechtenstein had 87 such companies on 31 December 2010;
- **Verein –** commercial or non-commercial association (Arts. 246-260 PGR): Associations created for political, religious, scientific, artistic, charitable, social or other non-economic purposes gain legal personality when the intention to exist as a corporation is evident from the articles of association. Liechtenstein had 217 registered associations on 31 December 2010;
- **Kommanditaktiengesellschaft (K-AG) – A** limited partnership with share capital (Arts. 368-374 PGR) is similar to a joint stock company (AG) in most respects, however, at least one partner has unlimited liability towards the company's creditors while others have limited liability. There were no such partnerships in existence in Liechtenstein on 31 December 2010;
- **Genossenschaft** – co-operative (Arts. 428-495 PGR): A company in this form is organised with an unlimited number of natural or legal persons as members for the purpose of promotion or protection of certain economic interests of members in mutual self-help. The amount of share capital cannot be determined in advance. Liechtenstein had 22 co-operatives on 31 December 2010;
- **Europaische aktiengesellschaft (Societas Europaea) –** European company (Law of 25 November 2005 on the Statute for a European Company as provided in the Council Regulation (EC) No. 2157/2001 of 8 October 2001): This is a new legal form for companies operating in different EU member States or which want to work in the EU. Liechtenstein had four European companies on 31 December 2010;
- **Europaische genossenschaft (Societas cooperativa europaea, SCE)** – European co-operative (Law of 22 June 2007 on the Statute for a European Co-operative as provided in Council Regulation (EC) No 1435/2003 of 22 July 2003): These are co-operatives of natural

20. Statistics on persons registered under the PGR as of 31 December 2010 are available at *www.llv.li/amtsstellen/llv-gboera-oera/llv-gboera-oera-amtsgeschaefte-statistik.htm*.

or legal persons engaged in cross-border business. Liechtenstein had one European co-operative on 31 December 2010;

- **Anteilsgesellschaft** – co-operative association with limited liability (Arts. 375-388 PGR): This is a special form of co-operative with no requirement to have paid capital. Liechtenstein did not have any of these co-operatives registered at the end of 2010; and
- **Versicherungsverein auf gegenseitigkeit and hilfskassen –** Mutual insurance associations and similar associations (Arts. 496-533 PGR): These associations organise the insurance of their members according to the principles of mutuality and attain their legal personality with the authorisation from the surveillance authority for insurance and incorporation in the Public Register. Liechtenstein did not have any such associations at the end of 2010.

Joint stock companies (Aktiengesellschaft –AG)

44. Joint stock companies (companies limited by shares) are one of the most commonly used forms of legal person in Liechtenstein. AG has a minimum share capital of CHF 50 000 or EUR 50 000 or USD 50 000, which must be paid in full at the time of registration.

45. A minimum of two natural or legal persons are required for forming an AG. The founders must draw up the articles of association in a public document (Arts. 279, 281 and 288 PGR). The members of the board of directors must submit an application for registration in the Public Register (Art. 290) accompanied by the original or a certified copy of the articles of association and the minutes of the general meeting or a certificate or declaration containing such information. After the formation of AG, all shares can be transferred to one shareholder, making it a single shareholder company (Implementation of the Twelfth Council Company Law Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies).

46. Information on a joint stock company to be registered in the Public Register includes (Art. 291 PGR):

- the name, legal form and domicile of the company;
- the number, the nominal value or quota and the legal form of the shares;
- the members of the board of directors and the supervisory board and the representatives (names, place of residence and nationality or the name of the company and domicile);
- the form in which the board of directors makes known its declarations of intent and the manner in which representation is exercised.

47. Information on the founders and their shares are part of the act of formation which must be notarized. The act of formation is kept in the Public Register, but it does not contain information on the founders. An extract of the information in the Public Register is published in the official gazette. The decisions of the General Assembly (supreme body) or administration resulting in amendment of the articles of association have legal effect only after entry in the Public Register (Art. 305 PGR).

48. Pursuant to Article 4 of the Securities Prospectus Act, the public can be invited to subscribe to the share capital of an AG after publication of an approved prospectus. At any time further new shares can also be issued (Art. 295 PGR) and this must be detailed in amended articles of association. The Board must, within three months after the end of the fiscal year, inform the Public Registry of such amendments to the articles of association and must submit the public document (Art. 305).

49. Joint stock companies are obliged to record the owners of registered shares (not bearer shares) in a share register (Art. 328 PGR). Any changes to the details in the register must be based on provision of identification documents. Information on shareholders is not required to be filed with GBOERA or any government authority.

Limited liability companies (GmbH)

50. A company with limited liability can be formed by one or more natural persons or legal persons. The minimum stock capital for GmbH is CHF 30 000 or EUR 30 000 or USD 30 000 paid in full at the time of registration. A maximum of 30 participants are allowed in these companies.

51. A company with limited liability is formed through notarised articles containing the signatures of all participants or their representatives and with incorporation in the Public Register (Art. 394 PGR). A certified copy of the articles of association (founding statute) and a list of all members and managing directors with names and residence, or business names and seat, as well as the capital contributions and amount paid, including the contributions in kind, must be submitted. The information is also required to be published (Art. 958). Any amendments made to the articles of association are similarly required to be registered and published.

52. Limited liability companies must maintain share registers containing the names and addresses, or business names and seats, of each member and the initial contributions and subsequent payments made by them. Assignment of shares is effective only if it has been communicated to other shareholders and registered in the share register (Art. 403 PGR). The GBOERA maintains the filed registration documents and updates the register as required. The filed documents are available for public inspection (Art. 402).

Limited partnerships with share capital (Kommanditaktiengesellschaft – K-AG)

53. A limited partnership with share capital is like a joint stock company in all respects except that one or more of the shareholders have unlimited liability towards creditors of the company and a supervisory board must be appointed. Therefore, while they are termed 'partnerships' they are a form of company. In order to form a K-AG, there must be at least two members, natural or legal persons, who may or may not be citizens of or domiciled in Liechtenstein.

54. The provisions of the PGR applicable to joint stock companies, including the obligation to maintain a share register, apply to limited partnerships with share capital unless otherwise provided. The articles of a limited partnership with share capital must contain the identification information on members having unlimited liability (Art. 369 PGR). This information is registered in the Public Registry and published. The Public Registry has up-to-date information on all the members with unlimited liability. No information on the shareholders/ members with limited liability is required in the articles or provided to the Public Registry, however, the owners of registered shares need to be recorded in a share register.

Co-operatives (Genossenschaft)

55. For the creation of a co-operative, articles of association must be drawn up in writing, signed by all founding members and these must be entered in the Public Register (Arts. 432-433 PGR).

56. Membership in a co-operative can be linked with share certificates. The membership can be transferred by transferring share certificates. These entities may issue certificates of participation to name or in bearer form (Art. 447 PGR) though bearer certificates cannot be issued for a shareholder with unlimited liability. The persons responsible for administration of a co-operative must submit a directory of members to the GBOERA for registration and must provide updates to this information within three months of any change (Art. 468).

Associations (Verein)

57. Associations can only be created for political, religious, scientific, social, artistic, charitable and other non-economic purposes only (Art. 246 Abs.1 PGR). Pursuing economic or commercial objectives is only possible to achieve the stated purposes (Art. 246(1)).

58. The articles of association must note the name, purpose, financial resources and organisation of the association. Associations attain legal

personality on the basis of intention as indicated in the articles of association and through an act of formation (Art. 246(1) PGR). The board of the association must keep an accurate list of members (Art. 253).

59. Associations are not required to register unless their object is to engage in commercial activities or is subject to revision. Any application for registration must include the statutes and list of all members of the board (Art. 247 PGR).

European companies (Europaische aktiengesellschaft [societas europaea])

60. Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE) is directly applicable in Liechtenstein. In addition, Law of 25 November 2005 on the Statute for a European Company (Societas Europaea, SE) (SE-Gesetz; SEG) is applicable. Further, the provisions for joint stock companies (Arts. 261-366 PGR) apply on a subsidiary basis to European companies domiciled in Liechtenstein (Art. 15 Council Regulation No. 2157/2001 and Art. 2 SEG). As a result, European companies domiciled in Liechtenstein are obliged to record the owners of registered shares (not of bearer shares) in a share register containing the names, addresses or company name and domicile of the shareholders (Art. 328 PGR).

61. A European company domiciled in Liechtenstein is required to be entered in the Public Register in accordance with the provisions applicable for joint stock companies (Art. 10ff Council Regulation No. 2157/2001 and Art. 6 SEG).

European co-operatives (Europäische genossenschaft (societas cooperativa europaea))

62. Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Co-operative Society (SCE) is directly applicable in Liechtenstein. In addition, the Law of 22 June 2007 on the Statute for a European Co-operative Society (Societas Co-operativa Europaea; SCE) (SCE-Gesetz; SCEG) is applicable. Further, the provisions for co-operatives (Art. 428-495 PGR) apply to such entities domiciled in Liechtenstein (Art. 17 Council Regulation No. 1435/2003 and Art. 2 SCEG). A European Co-operative Society domiciled in Liechtenstein is required to be entered in the Public Register in accordance with the provisions applicable to AG (Art. 11 Council Regulation No. 1435/2003 and Art. 6 SCEG).

Co-operative associations with limited liability (Anteilsgesellschaft)

63. Articles 375 to 388 of the PGR deal with co-operative associations with limited liability, which are formed by an unlimited number of persons as members, for promoting their common interests. All co-founders must sign the founding statute which must be adopted by their constituent assembly. It is then entered in the Public Register.

Mutual insurance and assistance associations (Versicherungsverein auf gegenseitigkeit and hilfskassen)

64. Articles 496 to 533 of the PGR provide the relevant rules, including those pertaining to registration. Mutual insurance and assistance associations are created to provide insurance for their members and any other persons on the principle of mutuality. The articles of association of these associations are required to be officially authenticated (notarised) and must contain, amongst other things, information concerning the start and termination of membership of all members.

Tax laws

65. Legal persons having domicile[21] or effective place of management in Liechtenstein are subject to unrestricted tax liability. Other legal entities have restricted tax liability in respect of income from agricultural operations, income from real estate and net corporate income of permanent establishment. These must file tax returns, but if they qualify and are approved for private asset structure (PAS) status, they neither file tax returns nor are assessed for taxation, but instead pay the minimum corporate tax of CHF 1 200 (EUR 936). In the case of taxpayers whose exclusive purpose is to operate commercially conducted business and whose average balance sheet total over last three business years did not exceed CHF 500 000 (EUR 390 000), minimum corporate tax is not levied and such entities are charged at the rate of 12.5%. Information on ownership (other than residents of Liechtenstein) of legal persons is not required to be filed in tax returns.

21. In case of legal persons, the place determined by law, company contract, articles or like (Art. 2(e) Tax Act).

Foreign companies

66. The registration and disclosure requirements for companies formed under the laws of other jurisdictions (foreign companies) which set up branches in Liechtenstein are prescribed in Articles 291a, 291b and 394a of the PGR.[22] The obligations relating to filing information with the GBOERA differ depending upon whether the location of the seat of the foreign company is in the European Economic Area (EEA) or outside of it. As of 31 December 2010, only two foreign companies having their head office in the EEA were registered in Liechtenstein. Additionally, 100 foreign companies having their head office outside the EEA were registered there.

67. Where the seat of the company (regardless of its original country of incorporation) is located in the EEA, information to be registered in the Public Registry, and published as an extract in the official gazette (Art. 291a PGR), includes the names of the board members of the foreign company and names of the representative of the branch but information on the shareholders need not be provided. A company which has its headquarters outside the EEA must also submit a copy of the articles of incorporation of the head office to the Public Registry (Art. 958(2)).

68. Legal persons having their effective place of management[23] in Liechtenstein are subject to unrestricted corporate income tax liability in Liechtenstein, meaning they are considered to be tax resident (Art. 44 Tax Act). Foreign companies, other than those having applied for benefits under the PAS, are obliged to complete and submit annual tax returns along with specified accompanying documents[24], which contain information on beneficial owners taxable in Liechtenstein (Art. 94(2)). Therefore, foreign companies having their place of effective management, though treated as tax resident, are not legally required to provide information on their non-resident owners to the Liechtenstein tax administration.

22. Iimplementation of the Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another state.
23. According to s. 2(d) of the Tax Act, the "effective place of management" means the place where the centre of the undertaking's supreme management is located.
24. Article 41 if the Ordinance of 21 December 2010 on the National and Municipal Taxes requires companies to submit the profit and loss statement, balance sheet and information on the beneficial owners taxable in Liechtenstein.

Ownership information held by service providers

69. Legal entities[25], other than those which pursuant to the commercial code or other special law are required to have a qualified manager (on these entities, see further below), are obliged to have at least one member of the administration to manage and represent them. This person must be an EEA citizen and a permanent resident of an EEA Contracting Party[26] and must have a professional license issued in Liechtenstein pursuant to the Professional Trustee Act[27] or must be an employee of a professional trustee with a specific qualification certificate (Art. 180a PGR).

70. Anyone who intends to perform this role of '180a Director' under Article 180a of the PGR is required to notify the GBOERA (Arts. 4-5 Ordinance of 8 April 2003 on the Performance of Activities under Article 180a PGR). Such a person is recognised as a member of the management of the legal entity after registration. Changes to this information must also be notified to GBOERA. The GBOERA has authorised 532 persons to perform activities under Article 180a of the PGR.

71. Liechtenstein has advised that 67 of these 532 180a Directors are not resident in Liechtenstein but resident in an EEA Member State and are in an employment relationship with an employer resident in Liechtenstein and have Liechtenstein as their place of duty. Chapter IX of the Trustee Act deals with "Freedom to provide services". Citizens of a contracting party of the EEA are authorised to be 180a Directors if they are authorised to carry out similar activities under the provisions of their country of origin. Such persons are not obliged to have an office in Liechtenstein (Art. 48 Trustee Act). However, the due diligence files they are obliged to maintain, containing *inter alia* customer due diligence (CDD) and transaction records, must be stored in a location in Liechtenstein that is accessible at any time (Art. 28(5) DDO) (as described below).

25. Companies, establishments, foundations and trust enterprises with legal personality.
26. If from non-EEA countries, these persons are required to hold an office and keep records in Liechtenstein.
27. A licence from the Financial Market Authority is required in order to work as a professional trustee (Art. 1 Trustee Act). Such a licence allows the holder to perform on a professional basis, amongst other activities, the board mandates in accordance with Article 180a of the PGR (Art. 7). An activity is deemed to be professional if it is undertaken independently, regularly, and for compensation or if profit-seeking intent can be deduced from the frequency of the activity or on other grounds (Art. 7(3)).

72. All Article 180a Directors are covered under the provisions of the Due Diligence Act (DDA) (Art. 3(1)(o)).[28] Professional trustees and trust companies licensed under the Professional Trustees Act are subject to the DDA (Art. 3(1)(k)). And professional trustees, natural or legal persons who, on a professional basis and on account of a third party, act as partners of a partnership or a governing body or general managers of a legal entity or carry out a comparable function on account of a third party are also subject to the DDA obligations (Art. 3(1)(t)).

73. Under the DDA, obliged entities, which includes financial institutions as well as 180a Directors[29], must identify the ownership and control structure of their customers and must take measures to verify this information (Art. 7). The definition of beneficial owner for different entities is given in Art. 3 of the Due Diligence Ordinance (DDO). In the case of companies, the obliged entity must identify natural persons who directly or indirectly: hold or control shares or voting power of 25% or more in the legal entity; receive 25% or more of the profits of the legal entity; or exercise control over the management of the legal entity in another way.

74. The obliged entities must keep the information and documents for at least ten years (Art. 20 DDA). The due diligence files, containing, amongst other documents, the records used to establish and verify the identity of the customer and its beneficial owners as well as transaction records, must be stored at a location within Liechtenstein that is accessible at any time (Art. 28(5) DDO).

75. Legal persons who, pursuant to the commercial code or other special law, are required to have a qualified manager, are exempt from the obligation to

28. As per Article 3(1)(o) of the DDA, the AML provisions apply to the holders of a certification under Article 180a of the PGR, to the extent that they act as a partner of a partnership or a governing body or general manager of a legal entity on the account of a third party or carry out a comparable function on the account of a third party.

29. The broad range of obliged entities includes: financial institutions; electronic money institutions; management companies; insurance companies; the Liechtenstein Post; exchange offices; insurance brokers; payment service providers; asset management companies; trustees and trust companies; casinos; lawyers and law firms insofar as they perform for their clients tax advice, or are involved in financial or real estate transactions; licensed auditors and special statutory auditors; 180a Directors (if they carry on an agency basis functions as a partner of a partnership or an institution or manager of a legal entity on behalf of others or carrying out a similar function on behalf of others); natural and legal persons who act professionally on behalf of others as a partner of a partnership or an institution or manager of a legal entity; natural and legal persons who on a professional basis accept or store or invest or transfer assets; and professional external accountants.

have an 180a Director. All such commercially active entities as well as all companies limited by shares, limited liability companies, limited partnerships with share capital, European companies and most limited and unlimited partnerships, even if they are not engaged in commercial activities are subject to compulsory annual audits (Art. 195 PGR). Audits must be conducted by licensed auditors or audit firms or licensed trustees or trust companies. Any person carrying out audits on a professional basis is an obliged entity under Art. 3(1)(u) of the DDA. As a result, the auditors of these entities must also maintain ownership information on their customers in accordance with the DDO

Nominees

76. Nominee ownership is subject to the provisions of the DDA. All natural and legal persons, to the extent that they act as nominee shareholders for persons other than companies listed on a regulated market that is subject to disclosure requirements in conformity with EEA law or subject to equivalent international standards, or to the extent that they provide the possibility for other persons to carry out that function, are obliged entities (Art. 3(1)(s) DDA). However, nominees in Liechtenstein are generally fiduciary companies.

77. Nominees must establish and verify the identity of the customer (person for whom they hold shares) and the beneficial owners (Arts. 6 and 7 DDA). Further, professional trustees and trust companies are subject to obligations under the DDA (Art. 3(1)(k)). Therefore, if a legal owner acts on behalf of any other person as a nominee, he must identify the person for whom he is acting. However, the PGR does not require such a nominee to disclose the fact that he acts on behalf of the beneficial owner and the register of shareholders does not identify nominee shareholders.

Conclusion

78. All forms of domestic companies are required to maintain information on their owners, except bearer shareholders, and/or submit this information to government authorities. Joint stock companies, limited liability companies, limited partnerships with share capital, associations and European companies domiciled in Liechtenstein are obliged to keep registers of shareholders/members. Co-operatives and European co-operative societies must submit directories of their members to the GBOERA for registration. Co-operative associations with limited liability must have a founding statute signed by all co-founders. The notarised articles of association of mutual insurance and assistance associations must contain, amongst other things, information concerning the members

79. Regarding ownership of foreign companies considered tax resident in Liechtenstein, only information on the owners taxable in Liechtenstein needs to be provided in the tax return, which requires to be filed by non PAS companies. There are no obligations on such companies to maintain further information. However, where foreign companies use licensed service providers these are obliged to identify the beneficial owners being natural persons who directly or indirectly hold or controls shares or voting rights amounting to 25% or more of such legal entities.

80. Moreover, under anti-money laundering legislation, nominees and professional trustees are required to identify their customers and the beneficial owners of their customers *i.e.* those natural persons who directly or indirectly hold/control at least 25% of the shares/voting rights in the entity. This requirement applies irrespective of whether the customers are domestic or foreign companies.

Bearer shares *(ToR A.1.2)*

81. The PGR provides that shares can be issued in the form of registered or bearer shares (Art. 263). Joint stock companies (Art. 323), limited partnerships with share capital, co-operatives (Art. 447), Societas Europaea, trusts (Art. 928(3)) and trust enterprises are allowed to issue bearer shares and bearer bonds, and trust certificates. No figures are available with regard to the number of entities which have issued bearer shares or the number of bearer shares in circulation. Registered shares can be converted into bearer shares or vice-versa, if the statutes of the company so provide. Bearer shares are transferable securities to the bearer (Art. 323). There is no obligation on companies or other entities to keep information about the owners of bearer shares in their share registers.

82. In the case of an EEA listed public companies, the holders of bearer shares are required to submit proof of ownership of such shares to exercise shareholders' rights during the general assembly of the shareholders (Art. 339C PGR[30]). Share ownership on the record date must be evidenced by a deposit certificates for such EEA listed public limited companies. However, there appear to be no such requirements prescribed for other entities.

83. In respect of commercially active entities that are not EEA listed public companies there does not seem to be any comparable mechanism to identify the owners of bearer shares, though these are subject to compulsory audits by licensed auditors who are obliged persons under AML laws. Non-commercial entities, on the other hand are required to have a 180a director which is an obliged person (Art. 3(1)(o) DDA) who is subject to AML

30. Article 339C of the PGR implemented the EC Directive 2007/36/EC.

obligations. However, the law does not require legal entities to immobilise bearer shares or require the holders to notify the issuer of their interest in the shares. Under these circumstances it is unclear how an entity can provide this information to a 180a director or an auditor. Further, the 180a directors or an auditor do not appear to have any independent power to obtain such information in respect of owners holding 25% or more of the shares or voting rights, or to ensure that the information that is held is accurate. It is unclear, therefore, how their legal obligations with respect to bearer shares can be adequately discharged.

84. Liechtenstein reports that, in practice, bearer shares are usually kept at the office, in Liechtenstein, of the 180a director so that he is in a position to fulfil his DDA duties. However, there is no legal obligation underpinning this practice leading to the conclusion that adequate mechanisms to identify the owners of bearer shares are not in place.

Partnerships *(ToR A.1.3)*

85. PGR recognises six types of partnerships: Einfache Gesellschaft (basic/default/ general partnership); Kollektivgesellschaft (unlimited partnership); Kommanditgesellschaft (limited partnership); Gelegenheitsgesellschaft (particular purpose partnership); Stille Gesellschaft (silent partnership); and Gemeinderschaft (special family partnership) (Arts. 779-793 PGR).

86. Partnerships, except limited and unlimited partnerships, have no legal personality (Art. 649 PGR) and are not obliged to register. Limited and unlimited partnerships are subject to registration requirements (Arts. 733 and 689), whether or not they carry on commercial activities. Liechtenstein has few registered partnerships. On 31 December 2010, only 9 unlimited partnerships, and 16 limited partnerships were registered.

87. An unlimited partnership consists of two or more partners, all of whom have unlimited liability for debts of the business. The identity of all partners must be submitted during registration of partnership (Art. 690 PGR). The partners can be one or more natural or legal persons or companies, and they may or may not be resident or domiciled in Liechtenstein.

88. A limited partnership must be registered in the Public Register and the registration must include information identifying each partner with unlimited liability and each limited partner. Any change of facts must also be registered (Arts. 734 and 735 PGR).

89. A partnership set up for a particular purpose is created when at least two or more natural and/or legal persons join according to a contract for particular purpose. It has no legal personality and cannot conduct business, hold real estate or own assets. A silent partnership (Arts. 768-778 PGR) is created

when a person makes an equity contribution into another person's business. This arrangement can be characterised as a contract, and like a contract, its existence is typically not disclosed to the public. Silent partnerships do not have any legal status and cannot hold real estate or own assets. They have no income or credits for tax purposes, do not carry on business and cannot be compared to a limited partnership. Therefore, these arrangements are not under the scope of the Global Forum's *Terms of Reference*.

90. A special family partnership may be established by family members for the joint management of assets (Art. 779 PGR). It must be registered in the Public Register and the registration application must *inter alia* detail all members of the partnership (Art. 792). When any registered details change, the GBOERA must be notified (Art. 792(4)).

Tax laws

91. Under the Tax Act, all partnerships are treated as transparent for tax purposes and are taxed at the level of partners. No tax returns are required to be filed by Liechtenstein partnerships. Pursuant to Article 94(1) of the Tax Act, all persons resident in Liechtenstein must file their tax returns. Accordingly, partners resident in Liechtenstein must submit annual tax returns detailing the source of their income, which would include income earned from a partnership. These returns do not need to indicate the names of the other partners in the partnership, which means that the tax authority has information on all partners resident in Liechtenstein who have earned income during the year but not on the partners who have not earned income during the year or are non-resident partners.

Ownership information held by service providers

92. Under the DDA, whenever financial institutions or other obliged entities have a business relationship with a partner or partnership, they are required to identify the partnership and also any partners holding a 25% or greater interest in the partnership.

Conclusion

93. To summarise, information on the partners of limited, unlimited and special family partnerships carrying on business in Liechtenstein is available to the competent authority, as these are obliged to register. Silent partnerships and partnerships set up for a particular purpose have no legal personality and cannot conduct business. Explicit obligations are not prescribed in the law requiring the maintenance of identity information on general partnerships. Partners resident in Liechtenstein will include income from such

partnerships in their tax return. A foreign partner is taxable in Liechtenstein only on his Liechtenstein sourced income, accordingly if a partnership only earns income outside of Liechtenstein, information on that partner would not be available. The gap is considered small, given the number of partnerships, but Liechtenstein should ensure that its competent authority has information identifying the partners of all the partnerships allowed under its law.

94. AML obligations also support the availability of information on partners as a wide range of entities are obliged to identify partnerships which are their customers and to identify partners holding at least a 25% interest in the partnership. Documents relating to due diligence must be kept within Liechtenstein.

Trusts (Treuhandverhältnis) (ToR A.1.4)

95. Provisions relevant to trusts are contained in the PGR and the Act on Trustees. Trusts may be established for charitable, social, cultural or similar purposes and also as family trusts. Liechtenstein is also a signatory to *The Hague Convention on the Recognition of Trusts*[31]. As on 31 December 2009, there were 3 113 trusts in Liechtenstein and only one of these had property from domestic (Liechtenstein) origin. Only four trusts were engaged in commercial activity.

96. A Liechtenstein trust comes into existence with the signing of the trust deed by settlor and trustee[32] or by means of a written declaration by the settlor and accepted by the trustee in writing (Art. 899 PGR). The trust deed provides information on the settlor, the trustees, name, date and domicile of the trust, amount of the trust assets, as well as rights and obligations reserved by the settlor. There is no legal requirement for the trust deed to detail the beneficiaries. The class of beneficiaries must be noted in the trust deed or in a schedule to the trust deed.

97. Trusts are irrevocable on the part of the settlor unless the settlor reserves such rights in the trust agreement or the unilateral trust instrument (trust note/escrow letter) (Art. 907 PGR). The settlor continues to have certain rights and liabilities after the trust is set up (unless the trust instrument

31. *www.hcch.net/index_en.php?act=conventions.text&cid=59*, accessed 10 December 2010.

32. A trustee is any natural person, company or legal entity to whom a trust settlor transfers movable or immovable assets or a right (as trust property), of whatever kind with the obligation to administer or use such property in his own name as an independent legal owner for the benefit of one or more third persons, the beneficiaries (Art. 897 PGR).

provides otherwise). The settlor or trustee may be one of the beneficiaries of the trust; however the trustee cannot be the sole beneficiary (Art. 927).

Information required to be provided to government authorities

98. Trusts are supervised by the Princely Liechtenstein Court of Justice. All trusts formed under Liechtenstein's law must be in the records of the registering authority if (Art. 900 PGR): (i) the trustee, or at least one of the co-trustees, is resident or domiciled in Liechtenstein[33]; and (ii) the trust is set up for duration of more than 12 months.

99. A trust must be registered or its deed deposited within 12 months of its creation. Registration requires a trustee to provide information on the name of the trust, the date of formation of the trust, the duration of the trust as well as the name and place of residence or business name and seat of the trustee (Art. 900 PGR). A copy of the trust deed is not required to be submitted and neither is information on the amendments to the formation deed, but changes in the person of the trustees are required to be provided. A trust opting for non-registration must deposit[34] the original or a certified copy of the trust deed with the Public Register (Art. 902). An original or certified copy of every document amending the formation deed must also be deposited with the Public Register (Art. 902). The deposited deed is not publicly available and only the name and address of the representative depositing the documents can be provided to the FIU, FMA and supervisory authorities. At the end of 2010, the Public Register had 218 deposited formation deeds and 2886 trusts were registered.

100. Liechtenstein's laws require that, where persons residing abroad are appointed as trustees of a Liechtenstein trust, then at least one person resident in Liechtenstein or a domestic legal entity is to be appointed as a co-trustee (Art. 905 PGR).

Tax laws

101. Special asset dedications without legal personality (*i.e.* trusts), whose domicile or effective place of management is in Liechtenstein, pay a minimum corporate income tax of CHF 1 200 (EUR 936) (Art. 65(1) Tax Act). These dedications neither file tax returns nor are they assessed. These entities are required to issue certificates showing payments to beneficiaries

33. The residence of settlor and the beneficiaries and the origin of trust property is not a material factor for the applicability of Liechtenstein law.

34. Where there is a legal obligation to report for corporations or the like to the GBOERA, it is possible to deposit the documents containing the facts and relationships to be reported instead (Art. 990 PGR).

resident in Liechtenstein regarding their payments (Art. 99). Therefore, the trustees must have information on payments to the beneficiaries resident in Liechtenstein. There is no requirement to proactively provide this information to tax authorities.

Foreign trusts

102. Liechtenstein has no restrictions with regard to its residents acting as trustees or administrators of trusts formed under foreign law. Liechtenstein law applies to a foreign trust if the trustees or more than half of the trustees are resident in Liechtenstein. It also applies to a foreign trust if the trust property is in Liechtenstein or the trust deed provides for this. These trusts are subject to the same obligations to register or deposit their trust deeds as Liechtenstein trusts. Some trusts administered in Liechtenstein (but with less than half of trustees resident in Liechtenstein) may fall outside these parameters and therefore not be obliged to register or submit their trust deed to the authorities. However, to the extent that any of the trustees are professional trustees they are subject to AML obligations (see below, service providers).

103. Trusts may be created in Liechtenstein pursuant to foreign law if the trust deed so provides or if a majority of the trustees are resident outside of Liechtenstein. In these cases, the relationship between the settlor, trustee and beneficiaries is subject to the foreign law governing the trust and if this choice is not apparent in the deed then the applicable law is that of the state in which the trustee or the majority of trustees have their residence or domicile. However, the relationships between any third parties and the trust are subject to Liechtenstein law (Art. 931 PGR).

Service providers

104. Professional trustees and trust companies must conduct CDD (Art. 3(1)(k) DDA)[35]. Liechtenstein authorities have indicated that the question of whether services are provided on a professional basis is assessed on a case-by-case basis and there are no quantitative thresholds. It is possible that a non-professional trustee can be in place and this type of trustee (*e.g.* a private individual managing a family trust) is not an obliged party under the DDA.

105. Where the trust conducts financial activity in Liechtenstein, the relevant financial institution with which it transacts business is also an obliged entity under the DDA and must therefore identify those natural persons who ultimately exercise direct or indirect control over the assets of the arrangement as well as the beneficiaries who have at least a 25% interest in the trust.

35. They are covered under the AML laws, if they perform the activities referred in paragraph 1(a), (b), (e), (f) or paragraph 2 of Article 7 of the Trustee Act.

Conclusion

106. For domestic trusts, the requirement that a trust deed be in place, specifying the settlor and trustee, coupled with registration requirements, ensures the availability of this information. Under tax laws, the trust, a special asset dedication, must keep information on the payments made to beneficiaries resident in Liechtenstein. Under tax laws no information on the non-resident beneficiaries needs to be kept and information on resident beneficiaries may also not be available if the trust accumulates the benefits and no distributions are made. Service providers are obliged to identify beneficiaries holding at least a 25% interest in the trust (AML law).

107. Liechtenstein recognises trusts and has an active regulated trust sector. As a result, trusts with both local and international beneficiaries are commonly managed by professional licensed fiduciaries situated in Liechtenstein. However, trustees can be unregulated persons if they are not doing so "by way of business". In those circumstances, the trust will still be subject to Liechtenstein's AML/CFT framework when trustee: (i) opens an account or establish a relationship related to the trust with a Liechtenstein bank or other licensed fiduciaries subject to the AML/CFT framework; or (ii) purchases or sells any real property for the trust via a lawyer or other professional who would also be subject to the AML/CFT framework. A potential narrow gap remains of those trusts which have a non-professional trustee and no financial activities in Liechtenstein. Liechtenstein should monitor this gap to ensure it does not in any way hamper the effective exchange of information in tax matters.

108. The availability of information on the trustees, settlor and beneficiaries of foreign trusts administered in Liechtenstein will depend on the application of AML obligations by service providers.

Foundations *(ToR A.1.5)*

109. A foundation is a legally and economically independent special-purpose fund, formed through a unilateral declaration of will of the founders to serve a specified purpose. This type of entity is commonly used for private wealth management of individuals and families. The minimum capital of a foundation is CHF 30 000 or EUR 30 000 or USD 30 000. Liechtenstein had 40 170 private–benefit foundations and 1 618 common-benefit foundations on 31 December 2009.

110. A private-benefit foundation, mainly in the form of family foundation, is intended to predominantly serve private or personal purposes (Art. 552(2) PGR). A common-benefit foundation is intended to predominantly serve non-profit purposes. Commercial activities are generally not permitted to be conducted by foundations, except in pursuit of non-commercial purposes.

111. A foundation can be established by one or more natural or legal persons. It can be formed *inter vivos* or *mortis causa*. Foundations in the former category are formed through a written declaration of establishment and authentication of the signatures of the founders. The latter category foundations are formed by way of last will and testament or contract of inheritance in accordance with the rules. Pursuant to Article 552(16) of the PGR, the founding deed must *inter alia* provide:

- the purpose of the foundation, including the designation of tangible beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or of the category of beneficiaries, unless the foundation is a common-benefit foundation or the beneficiaries are evident from the purpose of the foundation, or unless there is instead express reference to a supplementary foundation deed regulating this;
- information on the founder, foundation council and indication about the supplementary foundation deed;
- in case of indirect representation of founder, such person is obliged to notify the foundation council of the identity of the founder; and
- the reservation of the right of revocation of the foundation or amendment of the foundation documents by the founder; and the reservation of a right to amend the foundation deed or supplementary foundation deed by the foundation council or by another executive body.

112. The founder, if a natural person, may in the foundation deed reserve for himself the right to revoke the foundation or to amend the declaration of foundation (Art. 550(30)). These rights cannot be assigned or bequeathed. The exercise of these rights by a direct representative requires a special power of attorney referring to this transaction.

113. The founder may draw up a supplementary foundation deed if such a right is reserved. The founder or the foundation council or executive body of the foundation can issue internal directives for the execution of the foundation deed or the supplementary foundation deed. The founder loses all rights in relation to a foundation, unless the founding deed specifically reserves such rights. The foundation needs to have a foundation council (foundation board) to manage the foundation assets. The founder may belong to the foundation board and/or be a beneficiary himself/herself.

Information held by government agencies

114. Common-benefit foundations and private-benefit foundations carrying on business along commercial lines on the basis of special law, must be entered in the Public Registry and thereby acquire legal personality. There

is no obligation for other private-benefit foundations to register in the Public Registry (Art. 552(14)).

115. For registration, each member of the foundation council is under an obligation to make an application for the foundation to be entered in the Public Registry (Art. 552(19) PGR). The application must be submitted in writing together with the original or certified copy of the foundation deed.

116. Private-benefit foundations not carrying on commercial business are not required to register, but, if they chose to register, the foundation council must confirm that the tangible beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or category of beneficiaries, have been designated by the founder, unless it is evident from the notified purpose of the foundation. In Liechtenstein, 37 432 foundations, out of a total of 38 071, are engaged in non-commercial activities. This figure includes common benefit foundations, which are obliged to register, and private benefit foundations, which are not obliged to register and may opt to deposit the notification of foundation. As of 31 December 2010, Liechtenstein had 1 782 registered foundations, whereas, no-registered foundations were 37 228.

117. For foundations, the entries in the Public Register must *inter alia* include:

- organisation and representation, stating the last name, first name, date of birth, nationality and place of residence or registered office, or the corporate name and domicile of the members of the foundation council as well as the form of the signatory's power;
- the name, date of birth, nationality and place of residence or registered office of the legal attorney, or the corporate name and domicile of the audit authority and legal attorney.

118. If the foundation is not subject to an obligation to register[36], and chooses not to register, it must deposit, within 30 days following formation, notification of formation at the GBOERA. The accuracy of the information must be certified in writing by attorney at law admitted in Liechtenstein, trustee or holder of an entitlement in accordance with Article 180a of the PGR (Art. 552(20) PGR). The notification must *inter alia* contain:

- name, domicile, date of formation and purpose of the foundation;
- the name, date of birth, nationality and place of residence or registered office of the legal attorney or the corporate name of the members of the foundation council as well as the form of the signatory's power;

36. Foundations not obliged to register acquire legal personality without registration (Art. 552(20) PGR).

- the name, date of birth, nationality and place of residence or registered office of the legal attorney, or the corporate name and domicile of the legal representative; and
- confirmation that the tangible beneficiaries, or beneficiaries identifiable on the basis of objective criteria, or of the category of beneficiaries, have been designated by the founder, unless this is evident from the notified purpose of the foundation.

119. On each amendment or a circumstance contained in the notification of formation and on the existence of a reason for dissolution, the members of the foundation council are under an obligation, within 30 days, to deposit a notification of amendment at the Office of Land and Public Registration (Art. 552(20)(3)). The accuracy of the information in the notification of amendment must be certified in writing by an attorney at law admitted in Liechtenstein, trustee or holder of an entitlement in accordance with Article 180a of the PGR.

Tax laws

120. Legal persons, including foundations, are subjected to same requirements as discussed in case of companies. Foundations not carrying out any economic activity and thus potentially qualifying as PAS are subject to a minimum tax of CHF 1 200 (EUR 936) only and do not file annual tax returns[37], provided they have the necessary approval of the tax administration.

121. There is no withholding tax on the distributions by a foundation. However, Article 99 of the Tax Act obliges the foundations to issue certificates of payments to resident beneficiaries, similar to the obligation applicable to trusts.

Information available with service providers

122. As foundations are legal persons, the provisions of Article 180a of the PGR apply. Thus, a professional trustee who acts as a member of the foundation council or the foundation's 180a Director is obliged to conduct CDD. In addition, where the foundation conducts financial activity in Liechtenstein,

37. Under old tax law, the differentiating criteria were whether the foundation carried on business run along commercial lines. This criterion was broader than under the new Tax Act. Under the old tax regime, 639 foundations were engaged in commercial activities as against 37 432 performing non-commercial activities. These 37 432 foundations will become taxable, unless they fulfil requirements of a PAS *i.e.* do not carry out an economic activity but mainly exclusively acquire, possess, administer and sell investments. There are no numbers yet as to how many foundations will qualify as PAS and would not be filing tax returns.

the relevant financial institution with which it transacts business is an obliged entity under the DDA. These service providers must identify their customer (the foundation) and all natural persons who have at least a 25% interest in the foundation.

Conclusion

123. Foundations carrying on commercial business must be entered in the Public Registry and a copy of the foundation deed is required to be submitted. The foundations not obliged to register are required to deposit a notification of formation to the Public Registry. All foundations (including those not conducting commercial business) must have a founding deed which contains information on the founders, foundation council and the beneficiaries. Information on the payments made to beneficiaries resident in Liechtenstein is also required to be kept under tax law.

124. Supplementing this, obligations are imposed under the AML law for obliged entities to identify beneficiaries of their customer, which would result in identification of those persons holding at least a 25% interest in the foundation.

Other relevant entities and arrangements

125. Liechtenstein also has anstalts (establishments) and trust enterprises.

Anstalt (establishment)

126. This corporate form with legal personality appears to be unique to Liechtenstein and has no members or shareholders and is generally used as a legal form for a business enterprise or as a holding company for intangible assets or estate assets. Specific provisions are contained in Articles 534 through 551 of the PGR and have been part of this law since its inception in 1926. Establishments must have a minimum capital of CHF 30 000 or EUR 30 000 or USD 30 000. Establishments can engage in both commercial and non-commercial activities. Out of a total of 12 749 establishments in existence at the end of 2009, only 1 489 were engaged in commercial activities.

127. Establishments can be formed and operated by one or more founders, who may be natural persons, firms, communities or associations of communes or legal entities not otherwise entered in the Public Register. Written articles are required for the formation of the establishment, which must be signed by founders. The founding statute must explicitly designate the entity as an "Anstalt". Articles of association must include: name and designation of the establishment, the objects of the establishment, the powers of the supreme

body and the bodies for the administration and, if necessary, for the auditing and the manner in which representation is implemented (Art. 536 PGR).

128. The authority for an establishment rests with the founder(s). The founder's rights can be assigned or otherwise transferred and inherited, giving the current holder of the rights considerable power over the establishment. The holders of founder's rights determine the articles of association and have rights to revise, alter or amend them. The articles of association govern the operation of the establishment, including the scope of managerial authority, appointment of directors, use of profits and the rights of beneficiaries. The articles must determine (Art. 545 PGR) who shall benefit from the establishment and its possible net profit (beneficiaries) and the manner in which this is determined.

129. As long as no third parties have been appointed as beneficiaries, it must be presumed that the bearer of the founder's rights is the beneficiary (Art. 545 PGR). Pursuant to Article 540 of the PGR, establishments can issue shares to the founders if the articles of association provide for this.

Ownership and identity information required to be provided to government authorities

130. Establishments acquire legal personality upon entry in the Public Register. The application must include a certified copy of the articles and a formation deed, if that is not already included in the articles of association, the amount of Anstalt funds and a list of the members of the board of directors (giving the name and place of residence or name of the firm and registered office of the members).

131. The founder can at any time amend the articles and in particular, the objects, changing the governing bodies and other similar amendments; and instead of or in addition to the founder, the articles may empower other persons, legal entities, firms or authorities to amend the articles (Art. 549 PGR).

132. The bearers of founder's rights form the establishment's supreme body (Art. 543(1) PGR). The founders or bearers of founder's rights or the supreme body, as the case may be and provided in the articles, may make the changes in the founding deed. General provisions of the PGR applicable to all legal entities provide that every amendment to the articles, every change in the appointments to the bodies which are required to be stated at the time of registration and dissolution, must be reported to the Public Register (Art. 120). The same procedure is required to be followed by the persons entitled to sign for amendments to the articles as for the original articles, if those are changed. Liechtenstein has clarified that the resolution of the supreme body providing for the amendments to the articles as well as the information

on the persons who have been vested founders rights is required to be provided to the registration authority.

Information available with service providers

133. The provisions of AML law applies in the same way as for other legal persons (*e.g.* see the section on foundations, previously).

Conclusion

134. The articles of association contain information on the bodies for the administration of the establishment. The formation deed is signed by the founders. Regarding beneficiaries, the articles of association must detail the beneficiaries of the establishment, though the bearer of the founder's rights is deemed to be the beneficiary if no other entitled beneficiaries are appointed. The supreme body or the board of directors must have this information on the establishment and updated information on the bodies of the administration of the establishment must be provided to the public register. AML laws also provide for identification of the owners of the establishment and some beneficiaries.

Trust enterprise (treuunternehmen)

135. Provisions relating to trust enterprises, also known as business trusts, were incorporated in Article 932a of the PGR in 1928 under the title "Trust Enterprise Act". Trust enterprises can be set up purely for holding assets or for conducting commercial trading activities. Liechtenstein had 188 trust enterprises carrying on commercial activities and 1 996 were carrying on non-commercial activities at the end of 2009.

136. A trust enterprise's statutes may provide for the trust enterprise to have legal personality. In absence of such a provision, a trust enterprise is presumed to have no legal personality. Therefore, the legal personality is derived through the articles of the enterprise.

137. A trust enterprise comes into existence only upon entry in the Public Register. All trust enterprises must register and a copy of the trust articles is to be filed with the application (Art. 932a(15) PGR). Alternatively, a certified extract of the articles containing the information that is entered in the Public Register may be filed. Each subsequent amendment to the facts and relationships which are registered must also be notified to the Public Register. The trust enterprise's articles of association (founding statutes) detail *inter alia* the number and form of appointment of the trustees as well as a statement concerning the future appointment of trustees. The trust enterprise's articles contain detailed regulation of the beneficial interest. But, the articles may

also provide that further rulings may be reserved for an internal regulation (*i.e.* by-article).

138. The entry in the Public Register for a trust enterprise contains information on, amongst other things, the names, professions and places of residence, or the company names and domiciles, of the trustees of the trust enterprise.

139. Information on the settlor is contained in the articles. The articles of association of a trust enterprise are not required to contain information on the beneficiaries. Information on the settlors and beneficiaries may however be available in the by-laws, which are maintained by the trust enterprise.

140. Article 932a(102) of the PGR contains provisions dealing with the register of beneficiaries. Trust enterprises engaged in the conduct of business, particularly in the case of family trust enterprises must maintain an up-to-date register of the specifically designated entitled beneficiaries. The register must contain information on the holders of any beneficial interest. However, the obligation to maintain the register does not arise if the beneficial interest is combined with a bearer paper or the designation of the beneficiaries is left to the unqualified discretion of the trustees, other offices or third parties or a trust enterprise with a non-profit making object with undesignated recipients of beneficial interest is not otherwise present. Nevertheless, under AML Laws, the trustee is obliged to keep appropriate due diligence files. Article 932a(119) deals with the provisions relating to tracing beneficiaries who are unknown or uncertain according to their residence. These provisions provide for tracing beneficiaries, who are adequately defined in the articles or by-laws, but the trustee does not know the name or address of the persons.

Tax laws

141. Trust enterprises with legal personality are treated like companies for tax purposes. Trust enterprises engaged in economic activities are subject to a flat tax of 12.5% and are required to file annual returns. Such tax returns must contain information on the beneficial owners taxable in Liechtenstein (Art. 41 Tax Act of 21 December 2010). However, if the trust enterprise is exclusively engaged in private wealth administration and not in any other economic activity as defined in Article 64 of the Tax Act, it is subject to a minimum tax of CHF 1 200 (EUR 936) and does not file annual tax returns, provided it has the necessary approval by the tax administration. Trust enterprises without legal personality are subject to tax obligations similar to trusts.

Information available with service providers

142. A trust enterprise with legal personality is subject to provisions of Article 180a of the PGR. Only licensed trustees are allowed to establish trusteeships for third parties and assume trusteeships on a professional basis (Art. 7 Act on Trustees). As professional trustees are subject to the obligations under the DDA, they are required to identify the founder and the beneficiaries with an interest of at least 25% in the trust enterprise. Financial institutions through which the trust enterprise conducts business are also obliged to identify the founders, trustees and protectors of trust enterprises. The provisions of 180a do not apply to trust enterprises without legal personality but such enterprises will be required to have a professional trustee which is subject to the obligations of the DDA.

Conclusion

143. The articles of association of a trust enterprise contain information on its settlor(s) and trustee(s). Trust enterprises engaged in commercial activities must keep registers of beneficiaries. This obligation does not apply to the many trust enterprises which are not engaged in commercial activities *e.g.* those simply holding assets. Provisions of 180a Director do not apply to trust enterprises without legal personality.[38] In addition trust enterprises may allow use of bearer papers. AML laws also provide for identification of the ownership and some beneficiaries of trust enterprises.

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

144. If a person, company or any other entity obliged to register in the Public Registry does not meet that obligation, the Office of Land and Public Registration (GBOERA) will ask the person concerned by written order under reference to regulations and threat of a penalty to apply for registration within 14 days (Art. 967 PGR). If no application is filed within the stipulated time, the entry will be made ex-officio. An administrative fine is payable in person by the founders, representatives of the legal entities, business owners or shareholders who are required to register or who have other obligations to provided notifications to the Registry. The amount of the fine is up to CHF 5 000 (EUR 3 900). The fine can be imposed repeatedly until the application has been filed or it is proven that there is no obligation for application (Art. 977 and §65Abs.3 SchlT). The violations, if any, by the private

38. Trust enterprises can be without legal personality, if statutes do not provide otherwise. This is also recognised in Article 44 of the Tax Act.

foundations with regard to notification obligations attract penalties under §66cof up to CHF 50 000 or imprisonment of six months.

145. Ownership information on companies is maintained in the share register. No sanctions under public law have been prescribed for non-maintenance of share registers by joint stock companies or limited partnerships with share capital. There is no obligation to notify to the Public Register of any matters related to the share register or the ownership of these companies either. Liechtenstein is of the view that maintaining a share book for a joint stock company is a matter for the board of directors and, if the register is not maintained, the shareholders, who have an interest to be so registered, may demand such registration and if necessary pursue their claims by court procedure. However, due to the lack of statutory enforcement provisions, the availability of ownership information on companies is not guaranteed. Liechtenstein is also of the view that, sanctions in the form of the fines as described above apply. However these fines seem to apply only with respect to the registration process and not for failure to keep a shareholder register or to ensure that it is up to date.

146. Chapter V of Tax Act deals with penalty provisions. Monetary penalties ranging from CHF 1 000 to CHF 10 000 (EUR 780 to 7 800) are prescribed under Article 135 for violation of procedural duties, where the taxpayer wilfully or negligently fails to comply with or incorrectly complies with an obligations pursuant to the Tax Act or Ordinance, such as filing a correct tax return. Tax evasion is a civil offence in Liechtenstein punishable with a fine equal to evaded tax, which can be reduced by up to two thirds, depending on the circumstances or in case of a major fault may be increased up to three times.

147. Article 30 of the DDA prescribes punishment in the form of imprisonment of up to six months or a monetary penalty of up to CHF 360 (EUR 281) daily to be imposed by the Court of Justice on persons who intentionally do not fulfil the requirements of the act. Defaults inviting the fine include not meeting CDD or record keeping obligations.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
Joint stock companies, limited partnerships with share capital, co-operatives, Societas Europaea, trusts and trust enterprises are able to issue bearer shares, bearer bonds and trust certificates and there are currently insufficient mechanisms in place that ensure the availability of information allowing for identification of their owners.	Liechtenstein should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.
There are insufficient mechanisms for ensuring that companies keep share registers and update them.	Appropriate penalties should be provided for companies that fail to maintain share registers up to date and Liechtenstein should ensure that it can access information in these registers in a timely fashion.
Information regarding the ownership of foreign companies that are resident for tax purposes in Liechtenstein may, under certain circumstances, not be available.	Liechtenstein should ensure that identity information on the owners of foreign companies that are resident for tax purposes in Liechtenstein is available to its competent authority.
Information on beneficiaries with less than a 25% interest in trusts and trust enterprises is not required to be maintained.	Liechtenstein should ensure that information is maintained on all beneficiaries and settlors of trusts and trust enterprises.

A.2. Accounting records

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

General requirements (ToR A.2.1)

148. Requirements to keep accounting records are prescribed in the PGR and also in the Tax Act. All legal entities obliged to be registered in the Public Register and which operate according to commercial principles must undertake proper accounting (Art. 1045 PGR). Additionally, all joint stock companies (AG), limited partnerships with share capital (KG), companies

with limited liability (GmbH), European companies, unlimited partnerships (Kollektivgesellschaften) and limited partnerships (Kommanditgesellschaften) which have companies as unlimited partners are obliged to keep proper accounting records, even if they do not undertake commercial activities.

149. Neither the activities of investment and management of assets nor the holding of shares or other rights is considered commercial activity (Art. 107 PGR). Liechtenstein's authorities have advised that as at December 2009, 4 979 out of a total of 63 553 entities were engaged in commercial activities and subject to record keeping obligations of Article 1045 of the PGR. Details about the numbers of such entities are given below:

Entity type	Commercial activity	Non-commercial activity
Corporations	2 625	4 865
Partnerships	25	8
Trusts	4	3 013
Foundations	639	37 432
Establishments	1 489	11 260
Trust enterprises	188	1 996
Total	4 979	58 574

150. Article 1046 of the PGR lays down the principles for maintenance of (proper) accounting records and provides that the records must be such that a knowledgeable third person would be able to obtain an overview of the entity's transactions and its financial position within an adequate period of time. Transactions should be traceable to their origin and settlement. It is further provided that accounting entries must be complete, accurate, timely and orderly. It is necessary to create an accurate entry of all assets and liabilities at the end of each fiscal year. Further, all persons obliged to undertake proper accounting must prepare an accurate inventory of all assets and liabilities at the time of first entry in the Public Register and also at the end of each fiscal year (Art. 1047 PGR).

151. Articles 1048 to 1056 of the PGR contain provisions relating to financial statements. Entities required to undertake proper accounting must prepare financial statements, comprising a balance sheet, income statement and, if necessary, an appendix at the end of the fiscal year (Art. 1048). Accounts are required to be prepared in accordance with the principles of proper accounting (Art. 1050 PGR) and must give a true and fair view of the assets, liabilities, financial position and results of the company (Art. 1066).

152. The members of the administrative, management and supervisory organs of legal entities required to undertake proper accounting, as per Article 1045 of the PGR, have a collective duty to ensure that the necessary

accounting documents are maintained and available at the office of the company for official checks within a reasonable time (Art. 182a).

153. Article 182b of the PGR requires that legal entities not operating according to commercial principles must, within six months after the end of fiscal year, submit a declaration to GBOERA, signed or co-signed by the entity's member that meets the requirement of Article 180a of the PGR, that a statement of assets at the end of the preceding business year exists and the entity has not carried out commercial business. This obligation does not apply if financial statements are filed with the tax administration.

154. Article 21(2) and 21(3) of the new Tax Ordinance[39] further specifies that legal persons which are not required to prepare full accounting records under the PGR still have to produce to the tax administration an itemisation of assets and liabilities as well as of income and expenses, provided the financial consequences of their business activity can be presented simply and clearly without proper bookkeeping. If the financial consequences of a legal persons's business activity cannot be presented simply and clearly without proper bookkeeping, the tax law requires it to keep proper accounting records in line with Article 1045 of the PGR. This provision captures all legal persons unless they receive the approval to be taxed as a private asset structure (PAS[40]). A PAS only has to submit a declaration that a statement of

39. Article 21 of the Tax Ordinance reads: "1) Legal persons which are subject to proper accounting rules under the Law on Persons and Companies shall use the annual accounts prepared in accordance with the applicable rules to determine taxable net corporate income. 2) Legal persons which are not subject to proper accounting rules under the Law on Persons and Companies and the financial consequences of whose business activity can be presented simply and clearly without proper bookkeeping shall provide itemizations of assets and liabilities as well as of income and expenses. For determining accrual results, expenses and income shall be itemized on an accrual basis. Assets and liabilities shall in principle be valued according to market value or repayment value; investment assets may also be valued at amortized cost. The selected valuation method shall also be applied in the subsequent years. 3) Legal persons which are not subject to proper accounting rules under the Law on Persons and Companies, but which do not meet the preconditions set out in paragraph 2, shall be required to keep proper books of account in order to determine taxable net corporate income. The accounting shall be in accordance with the general accounting rules (article 1045 et seqq. PGR). 4) Contributions by a foundation, special asset dedication, and foundation-like establishment to its beneficiaries shall not be deemed an expense."

40. The conditions for being qualified as a PAS under tax laws are provided in Article 37 of the Tax Ordinance. The ordinance provides that, on an application of the legal person, tax authority can transfer the inspection of compliance with the preconditions for granting the PAS status to a neutral auditor.

assets exists (Art. 182b PGR, described previously). Provisions of Article 21 of the Tax Ordinance dealing with book keeping obligations do not apply to trusts and trust enterprises, which are not legal persons.

PGR requirements

155. Companies: As noted above, all joint stock companies (AG), limited partnerships with share capital (KG) and companies with limited liability (GmbH) must keep full accounting records. In addition, for other forms of companies, if they are required to be registered and operate according to commercial principles, they must keep full accounting records (Art. 1045 PGR). The board of an association (Verein) is responsible for the proper accounting of the association. It must ensure records for the receipts and expenditure (Art. 251a). In addition, the board of a co-operative must present to the general assembly the annual accounts (Art. 475). The respective rule for the co-operative is also applicable to co-operative associations with limited liability (Anteilsgesellschaft). Domestic branches of foreign companies are obliged to keep authentic business records (Art. 1062a). The obligations to keep accounting records, as prescribed in Article 1045 of the PGR, do not apply to companies such as co-operatives (Genossenschaft) and co-operative associations with limited liability if they do not operate according to commercial principles. They are however subject to the obligation under Article 182b of the PGR discussed above.

156. Partnerships: The accounting rules applicable to companies also apply to unlimited partnerships and to limited partnerships where all partners with unlimited liability are companies (Art. 1063(2) PGR). Similar requirements are not prescribed for limited partnerships where the unlimited liability partners are not companies. The obligations to keep accounting records are also not specified for other types of partnerships. The number of partnerships reported by Liechtenstein was 33 as of December 2010.

157. Trusts: The general account keeping obligations of Article 1045 of the PGR apply only to those trusts which choose to register and which conduct commercial activities. A trustee is obliged to prepare an inventory of the assets and liabilities of the trust and this must be revised annually (Art. 923). The trustee must render annual accounts and provide information at any time concerning the state of the trust affairs to the audit authority or to the settlor or to the beneficiary, unless the circumstances necessitate deviation. The trust instrument can however release the trustee from all of these requirements. The law further provides that, if the trust property is comprised of an undertaking which is subject to the provisions of law concerning commercial accounting (*e.g.* an entity operating according to commercial principles), the trustee must comply with the obligations for that entity as prescribed in the PGR. The provisions of Article 182b of the PGR do not apply to trusts as

these are not legal entities. Some 3 000 trusts not undertaking commercial activity may not be required to keep proper accounting records.

158. Establishment (Anstalt): The general account keeping obligations of Article 1045 of the PGR apply to those establishments which undertake commercial activities or whose articles of association allow them to pursue commercial objectives. These establishments are required to keep proper accounting records and must appoint an audit authority (Art. 192(8) PGR). Of the 12 749 establishments in Liechtenstein at the end of December 2009, only 1 489 were engaged in commercial activities. The remaining 11 260 establishments that do not undertake commercial activities are not covered by the accounting requirements of Article 1045 of the PGR, but are subject to the obligation to submit a declaration that a statement of assets exists (Article 182b of the PGR, discussed above).

159. Foundations: Foundations must take into consideration the principles of orderly book-keeping (Art. 552(26) PGR) and maintain appropriate records of the financial circumstances as well as keep documentary evidence presenting a comprehensible account of the course of business and movement of foundation assets. The obligations of Article 1059 of the PGR regarding duty to keep and retain business records apply to foundations also. Accordingly, all foundations, whether engaged in commercial activities or not, must keep and maintain proper accounting records.

160. Trust enterprises: A trust enterprise undertaking commercial activities must keep full accounting records in accordance with Article 1045 of the PGR. Only 188 of a total of 2 184 trust enterprises were carrying out commercial activities as at December 2009. If a trust enterprise has legal personality but does not carry commercial activities, the provisions of Art. 182b PGR apply. A trust enterprise which does not have legal personality and is not engaged in commercial activities is not obliged under the PGR to maintain accounting records.

161. Members of the administrative, management and supervisory organs of legal entities required to undertake proper accounting as per Article 1045 have a collective duty to ensure that the necessary accounting documents are maintained and available at the office of the company for official checks within a reasonable time (Art. 182a PGR). Article 1060 of the PGR prescribes obligations to submit accounting records and business correspondence to courts in proceedings related to business disputes. However, this obligation applies only to entities required to keep proper accounting records. The account books must be produced for inspection in official proceedings (Art. 1061). Article 1062 provides penalties for breaches of this obligation (also stipulated in Art. 66 of the final part of the PGR) and the district court can levy an administrative fine of up to CHF 10 000 (EUR 7 800).

162. Article 66 of the final part of the PGR provides for administrative fines up to CHF 10 000 (EUR 7 800) for defaults in relation to keeping of

books of account by the entities who are subject to such accounting obligations. The fines are imposed by the district court upon application or ex officio in extrajudicial proceedings.

Tax law requirements

163. Article 47 of the Tax Act requires determination of taxable net corporate income on the basis of the annual accounts prepared in accordance with the PGR. Further, Article 21(2) and 21(3) of the new Tax Ordinance expands and further specifies the accounting requirements (see footnote 39). Legal entities which are not required to prepare full accounting records under the PGR have to produce an itemisation of assets and liabilities as well as of income and expenses, provided the financial consequences of their business activity can be presented simply and clearly without proper bookkeeping. If the financial consequences of a legal entity's business activity cannot be presented simply and clearly without proper bookkeeping, the tax law requires it to keep proper accounting records in line with Article 1045 of the PGR. This provision captures all legal entities, including foundations, establishments and trust enterprises having legal personality, unless they receive the approval to be taxed as a private asset structure (PAS) (see footnote 40). A PAS only has to submit a declaration that a statement of assets exists (Art. 182b PGR, described previously). Liechtenstein could not submit information on the number of entities qualifying for PAS-status, as the PAS regime is only operative since 2011.

164. Domestic branches of foreign companies are obliged to keep authentic business records (Art. 1062a PGR). Domestic branches are only allowed under PGR if they undertake commercial activities, so they are required to keep full accounting records. The requirements of the Tax Ordinance apply to them too.

165. Taxpayers whose exclusive purpose is to operate a commercially conducted business and whose average balance sheet total over the last three business years did not exceed CHF 500 000 (EUR 390 000) do not pay the minimum tax and are charged at the standard rate of 12.5%. These provisions apply to all legal entities undertaking commercially conducted business.

166. The special regime of special asset dedications without legal personality (Art. 65 Tax Act) apply to all trusts and trust enterprises without legal personality, whether they carry on commercially conducted business or not. These pay minimum tax of CHF 1 200 (EUR 936), do not file tax returns and are not assessed. Therefore, record keeping requirements under tax law do not apply to them.

AML law requirements

167. Liechtenstein's AML requirements result in some partial obligations to maintain accounting records. Pursuant to Article 27 of the DDO,

obliged entities[41] must keep due diligence files which *inter alia* must contain the documents and records concerning their clients' transactions and asset balances (Art. 27(1)(d) DDO). The files must also contain a "business profile" on each customer, showing the customer and the beneficial owner, the economic background and origin of the assets deposited, the profession and business activity of the effective depositor of the assets, and the intended use of the assets (Art. 20). This information must be kept for at least ten years (Art. 21). The requirements to maintain records for AML purposes result in maintenance of detailed transaction records but may not capture all relevant accounting records[42], or associated underlying documentation, consistent with the *Terms of Reference*.

Other

168. When trustee for a foreign trust, Liechtenstein resident trustees will be subject to the obligations on trustees under the law governing the trust *(e.g.* UK law), and will thus be subject to the record-keeping requirements of the governing law.

Conclusion

169. All entities obliged to register and operate according to commercial principles are obliged to keep proper accounting records. Such records must also be kept by all joint stock companies (AG), limited partnerships with share capital (KG), companies with limited liability (GmbH), European companies, unlimited partnerships and limited partnerships having companies as unlimited partners, irrespective of whether they carry on commercial activities.

170. Other entities with legal personality, apart from foundations, which do not carrying on commercial activities are not obliged to keep and maintain proper accounting records under the PGR but are required to keep accounting records under s. 21 of the Tax Act or, in some cases are required to submit a

41. The entities obliged to conduct CDD include (Art. 3): (i) banks and investment firms licensed pursuant to the Banking Act; (ii) e-money institutions licensed pursuant to the E-Money Act; (iii) management companies licensed under the Law on investment undertakings; (iv) insurance companies licensed pursuant to the Insurance Supervision Act; (v) professional trustees and trust companies licensed under the Trustee Act; (vi) lawyers and law firms that are registered in the lawyers list and perform specified services for their clients; and (vii) auditors and auditing companies.

42. (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the relevant entity or arrangement.

statement under Article182b of the PGR (entities can apply to be recognised as PASs under tax laws[43] in which case they do not file tax returns and are not subject to record keeping requirements for tax purposes). Similarly, trusts and trust enterprises without legal personality are not subject to requirements of Article 182b of the PGR and can also pay minimum tax under the regime of special asset dedications without legal personality (Art. 65 Tax Act) in which case they are not subject to record keeping requirements for tax purposes.

171. In summary there are some gaps in the record keeping requirements for trusts, trust enterprises, establishments that do not carry on commercial activities and some forms of companies that qualify for PAS status.

172. Liechtenstein's AML requirements also result in financial institutions and designated categories of professionals having some partial obligations to maintain accounting records for at least ten years, notably records which relate to customers' transactions.

173. There is no requirement regarding the location at which records, other than the due diligence files under AML laws, must be kept in the case of entities that do not carry on commercial activities. Liechtenstein's authorities have clarified that while there are no requirements that accounting records be kept at all times within the territory of Liechtenstein, these records must be in the control of relevant person and provided to the authorities on request.

174. In some circumstances it can be expected that a Liechtenstein trustee of a foreign trust would have obligations to maintain some accounting records, in line with the law governing the trust.

Underlying documentation (ToR A.2.2)

175. The PGR and a related Ordinance provide for maintenance of underlying documentation related to the accounting records. Articles 1045 and 1046 of the PGR require the keeping of underlying documents by the entities subjected to requirements of proper accounting. Article 1059 mandates that business books, accounting documents and business correspondence be kept in writing, electronically or in a comparable manner. The ordinance of 19 December 2000 (LGBl.2000 No. 271), issued pursuant to the PGR, details the manner in which business records, business papers and accounting vouchers must be kept but does not further define exactly what types of documents this covers. Liechtenstein's authorities have indicated that it is read broadly and includes documentation such as invoices and contracts.

43. The criteria which will be verified by the tax administration to be recognised as a PAS are contained in Art. 37 of the Tax Ordinance.

176. As a result, where entities are obliged to keep full accounting records they must also keep all related underlying documentation. There are no obligations to maintain underlying documentation attached to the obligation in Article 21 of the Tax Ordinance to keep accounting records or to the obligation in Article 182b of the PGR to submit a declaration that a statement of assets exists.

177. Article 9 of the Tax Act provides that the tax authorities are authorised to place on all persons subject to Liechtenstein's tax jurisdiction the burden of proof to demonstrate the accuracy of their own tax affairs. In order to do so, legal and natural persons subject to tax in Liechtenstein must keep underlying documents related to their tax returns. The exact types of underlying documents to be kept are not specified.

178. As noted previously, Liechtenstein's AML requirements result in some partial obligations on financial institutions and other obliged entities to maintain accounting records, in particular relating to their customers' transactions and asset balances. It is not clear what underlying documentation would be required to be kept to meet these obligations.

5-year retention standard (ToR A.2.3)

179. Article 1059 of the PGR requires retention of business books, accounting documents and business correspondence for ten years by all legal entities required to undertake proper accounting. The obligations of Article 1059 also apply to all foundations (Art. 552(26) PGR). Additionally, the annual accounts, the consolidated financial statements, annual report and other business books, accounting documents and business correspondence, guaranteeing underlying transactions must be maintained and preserved for ten years. The 2000 Ordinance requires that the books, accounting records and business correspondence should be held in such a way that an authorised person can inspect them within a reasonable time until the end of the retention period.

180. The accounts and financial documents of a legal entity which has been wound up following a liquidator's application, are required to be deposited for safe-keeping in a place to be determined by the Registrar for a period of ten years and after the expiration of this period may be used at the discretion of the Registrar (Art. 142(1) PGR).

181. There are no obligations to retain accounting records for a specified period of time when these records are created in accordance with Article 21 of the Tax Ordinance or Article 182b of the PGR.

182. Legal entities not operating according to commercial principles or otherwise obliged to keep proper accounting records (see previous) must, within six months after the end of fiscal year, submit a declaration to GBOERA, signed or co-signed by the entity's member that meets the

requirement of Article 180a of the PGR, that a statement of assets at the end of the preceding business year exists and the entity has not carried out commercial business. This obligation does not apply if financial statements are filed with the tax administration. There is no specific retention period for the entities to keep related records, notably the statement of assets.

183. Pursuant to the Tax Ordinance, in respect of personal income tax and wealth tax, books and receipts must be kept for ten years (Art. 17 Tax Ordinance); however, with regard to corporate income tax such obligations are not explicitly stated.

184. Obliged entities must keep their due diligence files for at least ten years (Art. 21 DDO).

185. Accordingly, entities within the scope of Article 1045 of the PGR, *i.e.* entities required to keep proper accounting records, and obliged entities under the DDO are obliged to keep relevant records for a minimum period of ten years.

186. Entities subject to corporate income tax and obliged to file tax returns are subject to penalties for evasion of tax provided in the Tax Law (see discussion on Element A.1.6), which should ensure the keeping and maintenance of accounting records. Therefore, the available enforcement provisions are likely to ensure availability of accounting records by legal entities.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
Liechtenstein's laws do not ensure that full accounting records are kept for trusts, trust enterprises and establishments which are not carrying on commercial activities, nor for some forms of companies which may qualify for special status (PAS) under tax laws.	Liechtenstein should ensure that accounting records to the standards are kept in respect of all relevant entities and arrangements. Appropriate penalties should be provided for failure to maintain such records and Liechtenstein should ensure that it can access these records in a timely fashion.
Liechtenstein's laws do not ensure that underlying documentation is kept by trusts, trust enterprises, establishments not carrying on commercial activities and some forms of companies which may qualify for special status under tax laws.	Liechtenstein should amend relevant legislation to ensure that underlying documentation to the standard is kept by all relevant entities and that they retain accounting records and underlying documentation for a minimum five year period.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

187. Banks and other financial institutions are required to keep and retain accounting records and business papers, similar to other entities obliged to undertake proper accounting (Art. 1059 (1) PGR). The Banking Act does not contain specific requirements to keep and retain the transaction records of the customers.

188. Establishing and verifying the identity of the customer and the beneficial owners is a required part of CDD (Arts. 6 and 7 DDA). The entities obliged to conduct CDD include (Art. 3):

- banks and investment firms licensed pursuant to the Banking Act,
- e-money institutions licensed pursuant to the E-Money Act;
- management companies licensed under the Law on investment undertakings;
- insurance companies licensed pursuant to the Insurance Supervision Act;
- professional trustees and trust companies licensed under the Trustee Act;
- lawyers and law firms that are registered in the lawyers list and perform specified services for their clients; and
- auditors and auditing companies.

189. Article 5(2) provides for the exercise of CDD in the following cases:

- establishment of a business relationship;
- where an occasional transaction amounts to CHF 25 000 (EUR 19 500) or more;
- where there are doubts about the veracity or adequacy of previously obtained data on the identity of the contracting party or the beneficial owner; and
- in cases of suspected money laundering or terrorist financing transactions.

190. Under the DDA and DDO, the directors of these entities, including directors who are not Liechtenstein nationals, have to identify and verify the customers and the beneficial owners of customers (Art. 7 DDA).

191. Compliance with the customer due diligence (CDD) requirements, including in particular the identification of the customer and its beneficial owners, have to be documented (Art. 20 DDA). For that purpose, they must keep and maintain due diligence files. Pursuant to Article 27 of the DDO the due diligence files must contain the documents and records prepared and used in order to comply with the provisions of the DDA and DDO. They must include the transaction records and asset balance data (Art. 27(1)(d) DDO). The obliged entities must keep the information and documents for at least ten years (Art. 21). Another important element of the due diligence files is the "business profile". The "business profile" has to contain information regarding the customer and the beneficial owner, the economic background and origin of the assets deposited the profession and business activity of the effective depositor of the assets as well as the intended use of the assets (Art. 20).

192. In addition, Article 8f of the Banking Act requires banks to record the orders received and the transactions made on and outside regulated markets for all financial instruments. The obligation is further specified in Regulation (EC) No. 1287/2006 of the Commission of 10 August 2006 on the implementation of Directive 2004/39/EC (see Art. 8f(3) Banking Act). Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds is also directly applicable in Liechtenstein (due to EEA membership), which requires that banks must keep records of all transfers and mandatory accompanying information.

193. Article 13(3) of the DDA prohibits keeping passbooks, accounts, or custody accounts payable to bearer only. As a result, bearer passbooks no longer exist in Liechtenstein. Ownership information is available for all existing types of bank accounts.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to Information

Overview

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

195. The Fiscal Authority (FA), Liechtenstein's competent authority for international exchange of information in tax matters, has wide-ranging powers, including compulsory powers, to obtain information from information holders. These powers are contained in Articles 10 to 16 of the Law of 30 June 2010 on International Administrative Assistance in Tax Matters (LIAATM). They allow for gathering of information from persons who hold information which is the subject of a request and allow for gathering all necessary ownership and accounting information. These powers provide the ability to obtain information held by banks and other financial institutions. There is no requirement that there be a domestic tax interest in the matter in order for the information gathering powers to be exercised.

196. The FA may also obtain necessary information from domestic administrative authorities, with the exception of the Financial Intelligence Unit. The FMA is also exempted from providing the information collected solely for purposes of financial market supervision.

197. The LIAATM provides for notification of the affected party when there is an international request for information concerning the party. No exceptions are provided to this notification requirement and it is recommended that Liechtenstein permit certain exceptions from prior notification (*e.g.* in cases in

which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

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

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

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

198. Liechtenstein enacted the Law of 30 June 2010 on International Administrative Assistance in Tax Matters (LIAATM) to implement the obligations arising out of its double taxation conventions (DTCs) and tax information exchange agreements (TIEAs). This law is applicable to all TIEAs and DTCs, except those with the United States of America (USA) and the United Kingdom (UK), for which separate implementing laws were enacted.[44] The implementing legislation for the TIEAs with the USA and the UK are materially similar to the LIAATM, except as discussed in this report.

199. Liechtenstein's competent authority for international exchange of information in tax matters is the Fiscal Authority (FA) (Art. 4 LIAATM). The LIAATM provides that assistance is to be provided by the FA to its foreign counterparts with respect to information which is foreseeably relevant to the determination, assessment, enforcement or collection of taxes with respect to persons subject to such taxes, or the investigation or prosecution of criminal tax matters. It allows for international exchange of information held by domestic authorities or which is in the possession or control of persons who are within the territorial jurisdiction of the requested state (Art. 2). The form and content of requests is dealt with in Article 7, which provides that the request must be framed with the greatest degree of specificity possible and must specify, *inter alia*, the identity of the individual taxpayer whose tax or criminal liability is at issue. Article 9 refers to the verification of admissibility. The FA must verify whether a request meets the requirements of Article 7

44. The law on mutual assistance in tax matters with the USA was enacted on 16 September 2009 and the law for implementing the TIEA and MOU with the UK was enacted on 30 June 2010.

or whether there are grounds for declining a request under Article 8.[45] A request constituting an impermissible attempt to obtain evidence (*i.e.* a fishing expedition) does not meet the requirements of Article 7.

200. The official interpretation of various provisions of the LIAATM is available in a report[46] of the Liechtenstein Government submitted to the Parliament. It provides that Liechtenstein has to comply with an international request for information only if certain conditions are met, in particular only if the request includes detailed information on the identity of the taxpayer. The report does not indicate what constitutes sufficiently detailed information on the identity of the taxpayer. Protocols to the TIEAs with Andorra, Belgium and Ireland provide that "it is understood that it is not necessary to provide the name of the taxpayer in order to define its identity, if this identity can be determined from equivalent element". The protocol to the TIEA with the Netherlands contains an analogous provision. Liechtenstein's authorities have indicated that the identity of the taxpayer does not require the name of the taxpayer if his identity can be determined from other information.

201. The FA may already have the information requested by a foreign counterpart at its disposal. If not, it must obtain it from the holder of the information or from other government authorities. The scope of information which can be obtained by the FA is set out in Article 13 which indicates that, in particular, the following information may be obtained by the FA:

- information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- information regarding the ownership of legal entities, including information on all persons in an ownership chain;
- for partnerships; information regarding the identities of the members of the partnerships;
- for trusts; information on the settlors, trustees, and beneficiaries; and

45. A request may be refused if: (i) it is not made in conformity with this Act and, in particular, where the requirements of article 7 are not met; (ii) the sovereignty, security, or public policy of the Principality of Liechtenstein would be compromised; or (iii) the statute of limitations pertaining to the object of the request has expired pursuant to the laws of the requesting State.

46. Report and request of the Government to the Parliament of the Principality of Liechtenstein concerning the creation of a law on the implementation of the international assistance in tax matters (Administrative Assistance in Tax Matters; STeAHG), available at: *http://bua.gmg.biz/BuA/?erweitert=true*.

- for foundations; information on the founders, members of the foundation council, and beneficiaries.

202. While the scope of the information obtainable by the FA does not refer explicitly to accounting information. Liechtenstein's officials are of the view that, the above list is not exhaustive as the provision indicates that the FA may "in particular" obtain the listed categories of information. As a result, the FA is empowered to obtain accounting information and other types of information not specifically mentioned in Article 13.

203. The FA is empowered to 'demand' that the holder of the information provide it to the FA within 14 days (this time may be extended) (Art. 10(1) LIAATM). The holder of the information is defined as any person with the information at his/her disposal. In addition to this power to demand information from the holder, under Articles 14-16 of the LIAATM, the FA has a range of coercive measures at its disposal to ensure the provision of information needed in order to respond to an international request for information (see section B.1.4 of this report).

Declining a request

204. Article 8 refers to grounds for refusing a request. The grounds are consistent with the international standard, except possibly the possibility that the FA can refuse to provide information when the request is based on information obtained by means of an act that is judicially punishable in Liechtenstein (Art. 8(2) LIAATM). This ground for refusal of information is not covered in the implementing legislation for giving effect to the TIEA with the USA. The commentary to the LIAATM states that any request based on stolen data (data theft being a criminal act in Liechtenstein) would be against public policy would not be responded to. It is unclear whether all of Liechtenstein's EOI partners are aware of this restriction, and it is unclear how Liechtenstein would determine that a request was based solely on stolen data.

205. To the extent that Article 8(2) of the LIAATM may go beyond the concept of 'ordre public', it may create an additional threshold which is not consistent with the standard. Whether or not in practice this provision is applied inconsistently with the international standard will be considered in the Phase 2 review of Liechtenstein.

Co-operation with other authorities

206. Article 11 of the LIAATM deals with co-operation with domestic government authorities. Domestic authorities, with the exception of the Financial Intelligence Unit (FIU), are required to provide the FA with all information

necessary for execution of the Act. The Financial Market Authority (FMA) is also exempted from providing the FA with information that has been collected solely for the purpose of financial market supervision.

207. With respect to the GBOERA, Article 955a of the PGR allows disclosure of information to domestic criminal prosecution authorities, the FIU and the FMA. Although Articles 91a(2) and 100a(2) of the Ordinance[47] on the Public Registry require the GBOERA to provide information on the deposited foundations and deposited trusts to the Liechtenstein tax authorities, sharing of information in respect of other entities is not explicitly provided. However, Liechtenstein has confirmed that under the LIAATM the GBOERA has to provide all relevant information to the tax administration. This is corroborated by the Commentary on Article 11 of the LIAATM. Access to information held by the FIU and the FMA is important when such information is not available with any other authority or person and is the subject of a request from foreign tax authorities. In light of this, Liechtenstein could strengthen the information sharing between the FA and the FIU as well as the FMA to ensure that information needed to respond to an EOI request which might not be otherwise accessible can be obtained by the FA.

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47. Ordinance No. 66/2003 of 18 February 2003, in its current version (LR 216.012). The relevant portion of the ordinance reads:
Foundations:
Art. 91a (Information to third parties)
1) Not any information shall be given to third parties, with the exception of the existence of a non registered foundation. The disclosure of the legal representative or the person authorised to accept service to prosecution offices, the FIU and the FMA.
2) To perform its tasks, the Office of Land and Public Registration is entitled to electronically capture and manage the announced information on not registered foundations in accordance with paragraph 1. A transfer of this information and of any deposited documents to other authorities is not permitted; except with respect to the disclosure to the Liechtenstein Tax Administration.
Trusts:
Art. 100a (Information to third parties)
1) Not any information shall be given to third parties, with the exception of the existence of a non registered trust. The disclosure of the legal representative or the person authorised to accept service to prosecution offices, the FIU and the FMA.
2) To perform its tasks, the Office of Land and Public Registration is entitled to electronically capture and manage the announced information on not registered trusts in accordance with paragraph 1. A transfer of this information and of any deposited documents to other authorities is not permitted; except with respect to the disclosure to the Liechtenstein Tax Administration.

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

208. The LIAATM was specially enacted to implement the obligations arising out of Liechtenstein's DTCs and TIEAs. It specifically grants the FA the role (Art. 4) and powers (Art. 13) to obtain information and provide it to international counterparts. Before obtaining the information, the FA verifies whether the request meets the requirements of Article 7 or whether there are grounds for declining a request as mentioned in Article 8. The FA has power to obtain information from any holder of information irrespective of whether Liechtenstein has a domestic tax interest in the information.

Enforcement provisions to compel production and access to information (ToR B.1.4)

209. Articles 14 to 16 of the LIAATM establish the compulsory measures which can be used for obtaining information. If the holder does not provide information requested of him under Article 10 within the stipulated time, the FA can resort to coercive measures in the nature of searches of homes and persons (Art. 14(1)). Application of coercive measures occurs by way of a decree approved by a ruling from a judge of the Administrative Court.

210. The coercive measures, outlined in Article 15 of the LIAATM, consist of: searches of homes and persons (Art. 92 Criminal Procedure Code); seizure (Arts. 96-98); and coercive and contempt measures against witnesses (Arts. 113-114). These coercive measures are executed by the FA and it may request the assistance of the National Police in this regard (Art. 16).

211. The coercive measures in the form of search and seizure are strong in nature. If a request is not complied with, the next step is search, seizure or measures against witnesses. There is no option of monetary penalties or other means of ensuring compliance. It is difficult to assess the effectiveness of the coercive measures for exchange of information purposes, *e.g.* in a situation where information is not in the possession of persons resident in Liechtenstein. Liechtenstein's authorities have advised that in practice a decree for search and seizure acts like a production order as commonly the holder of the information is presented with a copy of this decree and immediately hands over all relevant information to the FA. Nevertheless, Liechtenstein should consider a more graduated system of monetary and other penalties tailored to specific circumstances.

212. Liechtenstein's Criminal Code prescribes various sanctions applicable where someone tampers, alters, damages or destroys the requested information. These are applicable where someone does not comply with the coercive powers exercised by the FA as the LIAATM specifically cross-references the Criminal Code when outlining the FA's coercive powers (Arts. 15 and 28). In

particular, s. 223 (forgery of documents), s. 229 (suppression of documents), s. 293 (forgery of evidence) and s. 295 (suppression of evidence) carry imprisonment of up to one year.

213. LIAATM is a new law and the effectiveness of these enforcement provisions to compel the production of information, including the need for a ruling by a judge of the Administrative Court, will be examined in Liechtenstein's Phase 2 review.

Secrecy provisions *(ToR B.1.5)*

214. Liechtenstein has a number of secrecy provisions in various pieces of legislation, primarily; the Tax Act, laws governing banking institutions, the DDA, the Law Governing Legal Assistance in Criminal Matters 2000 and the Banking Law 2001.

215. Members of the boards of banks and their employees and other persons working for banks are obliged to maintain confidentiality of facts that have been entrusted to them on the basis of business relations with customers or made available to them in connection with a customer relationship. This obligation also applies to members of the boards of investment firms and their employees and also to firms for such professionals (Art. 14 Banking Act). The obligations to maintain secrecy are not limited in time. Violations of secrecy provisions attract punishment in the form of imprisonment for up to one year or a daily fine of up to CHF 360 (EUR 280.10) (Art. 63).

216. Similar secrecy obligations are set out in laws governing the financial sector: Article 21 of the Asset Management Act; Articles 15 and 111 of the Investment Undertaking Act; Articles 44 and 64 of the Insurance Supervision Act; and, Articles 21 and 25 of Pension Funds Act. With regard to professionals, confidentiality provisions are also contained in the governing laws for each profession.

217. These secrecy provisions can be overridden in stated circumstances specified in the relevant legislation. For example, in the Banking Act, exceptions to the secrecy provisions apply with regard to testimony, information to be presented in criminal courts and information requested by supervisory bodies. Pursuant to Article 11 of the Trustees Act, trustees are obliged to secrecy on the matters entrusted to them and on the facts which they have learned in the course of their professional capacity and whose confidentiality is in the best interests of their client. They have the right to such secrecy subject to the applicable rules of procedure in court proceedings and other proceedings before government authorities.

218. For the purpose of international administrative assistance in tax matters, Article 12 of the LIAATM, which deals with confidentiality, provides that:

1. Legal provisions concerning professional or business secrecy shall not prevent the information from being obtained, except for the cases enumerated in paragraphs 2 and 3.
2. A lawyer subject to legal privilege is not required to divulge to the Fiscal Authority information that has been entrusted to him in his capacity as a lawyer for the purpose of legal advice or for the purpose of use in existing or contemplated legal proceedings. The lawyer must disclose any other information to the Fiscal Authority.
3. The holder of information is not required to disclose trade, business, industrial, commercial, or professional secrets or trade processes; but information shall not be deemed worthy of protection solely because it is in the possession of banks, other financial institutions, or persons acting as representatives or in a fiduciary capacity.

219. Liechtenstein advises that these specific provisions override the confidentiality provisions in other laws, including the Banking Act. However, there seems to be a conflict between these provisions and what is provided in the 1992 Banking Act. That act notes that bank secrecy (contained in Art. 14) can only be overridden for specific purposes.

1. The members of the governing bodies of banks and their employees and other persons working for such banks are obliged to maintain confidentiality of facts that have been entrusted to them on the basis of business relations with customers or made available. The secrecy is permanent.
2. This is subject to the statutory provisions relating to the testimony or information to be in the criminal courts and supervisory bodies and the provisions on cooperation with other supervisory authorities.
3. The provisions of paragraphs 1 and 2 apply to the members of the institutions of investment firms and their employees, and by analogy to other firms for such professionals.

220. The Banking Act permits disclosure of information needed for the courts or supervisory authorities. As 'supervisory authorities' is not defined in the Banking Act, it is not clear whether the FA would fall within the scope of this override. Liechtenstein's authorities have clarified that due to the applicability of the *lex posterior* and *lex specialis rules* the LIAATM provisions have proper effect as they outrank the earlier Banking Act. Liechtenstein has

provided copies of some decisions[48] explaining these principles. Moreover, Liechtenstein has confirmed that it has used these powers to obtain and exchange bank information. That said, it is recommended that Liechtenstein consider ways to make it clearer that bank secrecy can in fact be overridden when the FA needs information for the purposes of international exchange of information in tax matters.

221. Article 15 of the Lawyers Act states "Lawyers are obliged to secrecy on the matters entrusted to them and on the facts which they have learned in the course of their professional capacity and whose confidentiality is in the best interests of their client. They shall have the right to such secrecy subject to the applicable rules of procedure in court proceedings and other proceedings before Government authorities."

222. In terms of forms of professional secrecy, Article 12 of the LIAATM specifically provides that the legal provisions concerning professional or business secrecy shall not prevent the information from being obtained. Article 12(2) provides that a lawyer is not required to provide information that has been entrusted to him in his capacity as a lawyer for the purpose of legal advice or for the purpose of use in existing or contemplated legal proceedings. As the secrecy provisions under the Lawyers Act are overridden by the LIAATM, except in limited circumstances which are in line with the international standard, these provisions do not create any impediment in the matter of exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

48. These decisions are in German and the translation is not provided.

B.2. Notification requirements and rights and safeguards

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

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

Notification

223. After verification that the request is proper, the FA must notify the holder of the information "about receipt of the request and the information requested therein" (Art. 10(1)(a) LIAATM). This notification to the holder of the information is to occur regardless of whether the FA already has the information at its disposal (Art. 10(1)(b)).

224. In addition, the FA is required to mandate the holder of the information to notify any affected persons residing or domiciled abroad about the receipt of the request and the information requested (Art. 10(1)(c)). These affected persons have a right to participate in the domestic procedure. No exceptions to these notification procedures are provided in the LIAATM which may not be consistent with the terms of some of Liechtenstein's TIEAs which ensure that the rights and safeguards secured to persons by the laws or administrative practices of the requested Party remain applicable to the extent they do not unduly prevent or delay effective exchange of information. However, if there are exigent circumstances such as a danger of a delay in obtaining the information, the LIAATM in Article 14(5) allows the FA to order coercive measures to obtain the information without prior demand of information from the information holder under Art.(10)(1)(b). Nevertheless, the ordering of coercive measures does not relieve the FA of the obligation to notify the holder of information and to mandate the latter to notify the affected person as required under Article 10(1)(a) of the LIAATM. The holder of the information is in turn mandated to notify the affected person (Art. 10(1)(c)).

Other rights and safeguards

225. The holder of information is not required to disclose trade, business, industrial, commercial, or professional secrets or trade processes (Art. 12 LIAATM). These safeguards are reasonable and mirror the provisions in the DTCs and TIEAs.

226. As noted above, at any time while the FA is gathering the requested information, the holder of the information or other affected party have the right to participate in the domestic procedure. However, this right is not

absolute. Access to details and information concerning the EOI request and the FA's actions may be denied and right to appeal against the collection and sharing of information may be denied (Art. 24):

- in the interest of the foreign procedure;
- for the protection of an essential interest, if the foreign competent authority so requests;
- in light of the nature or urgency of the act of administrative assistance to be performed;
- for the protection of essential private interests; or
- in the interest of a Liechtenstein procedure.

227. Article 20 of the LIAATM also provides that, at any time before the conclusion of the procedure, the holder of the information and other affected parties may give consent in writing to transmit the information. If the consent only covers part of the information, the regular procedure must be continued for the remainder of the information.

228. After collecting the requested information, the FA issues a final decree concerning the information to be transmitted to the foreign competent authority (Art. 21 LIAATM). The holder of the information and also any affected party have a right to appeal this final decree by means of a complaint made to the Administrative Court within 14 days of the final decree (Art. 26). A ruling of the Administrative Court approving use of the coercive measures is also appealable, but the measure is executable immediately and the appeal is possible only with the final decree of the FA (Art. 27). These appeals can only be lodged within a seven day period after issuance of the final decree. Immediately following the 14 day period after issuance of the final decree has ended, the FA will send the response to the requesting authority. The FA can send information to the requesting authority only after the appeal has been decided.

229. While it appears the timeframes within which appeals may be lodged are tight, it is not known how long the Administrative Court decisions are likely to take as the rights available to taxpayers and their effect on the effective exchange of information have not yet been tested in practice. This matter will be examined further during Liechtenstein's Phase 2 review.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendation	**Recommendation**
There is no exception to the requirement that the person concerned be given prior notification before the information is exchanged with an EOI partner.	It is recommended that certain exceptions from prior notification be permitted (*e.g.* in cases in which the information requested is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).

C. Exchanging Information

Overview

230. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Liechtenstein, the legal authority to exchange information is derived from double taxation conventions (DTCs) and tax information exchange agreements (TIEAs) once they become part of Liechtenstein's domestic law. This section of the report examines whether Liechtenstein has a network of information exchange agreements that would allow it to achieve effective exchange of information in practice.

231. Liechtenstein committed to the internationally agreed tax standards for exchange of information on 12 March 2009, and has been actively engaged in extending its network of exchange of information agreements, which has resulted in signing of 23 agreements since December 2008, eleven of which are in force. In general, these agreements provide for exchange of information to the international standards. However, seven agreements deviate from the standards, *e.g.* with regard to restrictions on exchange of information in civil tax matters and criminal tax matters, thresholds or lack of exceptions to notification requirements. Liechtenstein also has treaties in force with Switzerland and Austria but these agreements do not contain an EOI article and hence do not meet the standard. A comprehensive list of Liechtenstein's information exchange agreements can be found in Annex 2.

232. Liechtenstein continues to negotiate agreements with a number of jurisdictions. Some Global Forum members have however raised concerns as they have approached Liechtenstein requesting to enter into an information exchange agreement but have not yet been able to successfully commence, or in some cases progress, negotiations.

233. Liechtenstein is taking important steps to develop its information exchange network, including with its key economic partners and other relevant jurisdictions. Liechtenstein should continue to develop this network with all relevant partners, should ensure that negotiations commence and progress effectively, and should continue to work to bring concluded agreements into force as quickly as possible.

C.1. Exchange of information mechanisms

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

234. Liechtenstein has signed DTCs allowing for exchange of information with four jurisdictions: Hong Kong, China; Luxembourg; San Marino; and Uruguay. All of these DTCs, signed during 2009 and 2010[49], provide for exchange of information to the international standards.

235. Liechtenstein has signed TIEAs with 19 jurisdictions: Andorra; Antigua and Barbuda; Belgium; Denmark; the Faroe Islands; Finland; France; Germany; Greenland; Iceland; Ireland; Monaco; the Netherlands; Norway; St. Kitts and Nevis; St. Vincent and Grenadines; Sweden; the United Kingdom; and, the United States of America. The provisions of seven of these 19 agreements[50] deviate from the standard in some matters.

236. Liechtenstein is also a party to the EU *Savings Directive*[51] and has opted to withhold tax instead of an automatic exchange of information relating to payments of interest to the residents of EU Member States. In addition, a multilateral agreement providing for exchange of information on request has been negotiated with the EU (the so called anti-fraud agreement that would apply to Liechtenstein and 27 EU member States), but it is not yet open for signature.

Foreseeably relevant standard (ToR C.1.1)

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

238. Liechtenstein's agreements provide for the exchange of information that is "foreseeably relevant" for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States.

239. However, some agreements provide specific circumstances under which the requested State may decline a request, and these limitations may

49. Only the DTCs with Hong Kong, China and Luxembourg have to date come into force.
50. Andorra, Antigua and Barbuda, Belgium, Monaco, Saint Kitts and Nevis, Saint Vincent and the Grenadines, the United Kingdom,
51. Council Directive 2003/48/EC of 3rd June 2003 on Taxation of Savings Income in the Form of Interest Payments:*http://info.portaldasfinancas.gov.pt/NR/rdonlyres/7EA63C6F-0908-4CFE-85E8-0D964A469013/0/Council_Directive_200348EC.pdf.*

result in a narrower scope of information exchange. Specifically, Liechtenstein's agreements with Andorra, St. Kitts and Nevis, Saint Vincent and the Grenadines and Monaco require that the requested state may decline a request if the amount of tax or duty in question does not exceed the threshold of EUR 25 000. Although these agreements allow an exception to this rule when the case is 'deemed to be extremely serious by the applicant party', there is no guidance as to what constitutes an 'extremely serious' case. It is also unclear how the requested party will determine the tax amount, as often the amount of tax involved can only be determined *after* information has been exchanged, and how this rule would be applied in a group of cases, where in each case the tax amount is less than the threshold but the overall tax effect might be large. As these agreements do allow an exception to the rule however, the practical effects of this rule are a matter to be examined in Liechtenstein's Phase 2 review. Liechtenstein has not included this wording in more recent agreements.

In respect of all persons (ToR C.1.2)

240. For exchange of information to be effective, it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standards for exchange of information for tax purposes envisages that exchange of information (EOI) mechanisms will provide for exchange of information in respect of all persons.

241. All 23 of Liechtenstein's TIEAs and DTCs that allow for exchange of information, contain articles providing for the exchange of information in respect of all persons.

Exchange of all types of information (ToR C.1.3)

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

243. All of Liechtenstein's TIEAs and DTCs that allow for exchange of information, provide for exchange of information held by financial

institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees and information regarding the ownership of companies, partnerships and other persons.

Absence of domestic tax interest (ToR C.1.4)

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

245. All 23 of Liechtenstein's EOI agreements contain explicit provisions obliging the contracting parties to exchange information without regard to whether the requested party needs such information for its own tax purposes.

Absence of dual criminality principles (ToR C.1.5)

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

247. None of Liechtenstein's EOI agreements provide for application of a dual criminality principle to restrict exchange of information and all contain positive statements that information must be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested party if such conduct occurred in the requested party.

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

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

249. All of Liechtenstein's exchange of information agreements provide for exchange of information in both civil and criminal tax matters.

250. Liechtenstein signed a TIEA[52] with the United Kingdom on 11 August 2009 and an accompanying Memorandum of Understanding which sets out the terms of a five year taxpayer assistance and compliance program by Liechtenstein and a five year special disclosure facility by the United Kingdom. Article 6(e) of the TIEA states that a requested State may *decline* a request if:

> *the request is made on or before 31 March 2015 and does not relate to a criminal tax matter in respect of which the requesting State has formally commenced a criminal investigation, and the person identified in a request according to Article 5(6)(a) has not applied to disclose under a tax disclosure facility of the requesting party where he is eligible to do so, accordingly, for avoidance of doubt, the competent authority of the requested party may not decline a request by the requesting party for information relating to a person who has applied to disclose under a tax disclosure facility of the requesting party.*

251. Therefore, in respect of requests in a civil tax matter or criminal tax matter where investigations have not commenced prior to 31 March 2015, the request may be declined unless the taxpayer has applied to disclose his tax position under the tax disclosure facility. The agreement, therefore, puts restrictions on exchange of information in civil tax matters and criminal tax matters until 31 March 2015. These restrictions will no longer be applicable after 31 March 2015. Accordingly, at present this agreement is not to the standard.

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

252. There are no restrictions in Liechtenstein's tax treaties or TIEAs that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices. Agreements provide that the information must be provided in the form specified by the competent authority of the requesting party, including depositions of witnesses and authenticated copies of original documents.

In force *(ToR C.1.8)*

253. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. The international standard requires that jurisdictions take all steps necessary to bring information arrangements that have been signed into force expeditiously.

52. Liechtenstein enacted the Law of 30 June 2010 on Administrative Assistance in Tax Matters with the United Kingdom of Great Britain and Northern Island and also the UK TIEA Ordinance of 31 August 2010.

254. Liechtenstein has signed bilateral tax treaties and TIEAs which allow for exchange of information with 23[53] jurisdictions as of 20 December 2010, 12 of which are in force.[54] It has taken on average one year for each of these agreements to come into force. Additionally, ratification procedures have been completed by Liechtenstein for TIEAs with Belgium and St. Vincent and Grenadines. Liechtenstein should take all necessary steps to bring the remaining agreements into force expeditiously.

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

255. For information exchange to be effective, the parties to an EOI arrangement need to enact legislation necessary to comply with the terms of the arrangement.

256. Liechtenstein's EOI agreements become part of domestic law after they are ratified by the Parliament. According to the jurisprudence of the Constitutional Court of Liechtenstein, international treaties ratified by Parliament always enjoy at least the rank of legislation within the domestic legal order. A ratified agreement becomes part of national law on the date of its entry into force. The agreement is also directly applicable, as long as its provisions are sufficiently specific.

257. The TIEAs and DTCs signed by Liechtenstein require that the contracting parties have legislation necessary to comply with, and give effect to, the terms of the agreement. Liechtenstein enacted the legislation creating the domestic mechanism to implement its international agreements (other than the United Kingdom and the United States) in June 2010. Separate implementing laws have been passed with regard to the agreements with the United Kingdom and the United States.

53. Agreements with Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden were signed on 17 December 2010.

54. As at the end of January 2011, the agreements with Andorra, Antigua and Barbuda, France, Germany, Ireland, Luxembourg, Monaco, the Netherlands, San Marino, Saint Kitts and Nevis, the United Kingdom and the United States of America have come into force.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Some of Liechtenstein's agreements are not to the international standard.	It is recommended that Liechtenstein bring these agreements up to the international standard as soon as practicable.

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

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

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

259. Liechtenstein's key trading partners are (in order) Switzerland, Austria, Germany, the United States, France, Italy and the United Kingdom. Liechtenstein's network of 23 information exchange arrangements covers Germany, the United States, France and the United Kingdom, but does not include Switzerland, Austria and Italy. Liechtenstein has indicated that negotiations to update the Liechtenstein-Austria tax treaty, which should result in it providing for exchange of information, started in December 2010. Similar negotiations with Italy are ongoing.

260. Most of Liechtenstein's 23 signed agreements (of which 12 are currently in force) provide for exchange of information to the international standards. The provisions of seven of these agreements[55] deviate from the standard in some matters.

55. Andorra, Antigua and Barbuda, Belgium, Monaco, Saint Kitts and Nevis, Saint Vincent and the Grenadines, the United Kingdom,

261. In addition to Liechtenstein's existing treaties, Liechtenstein has advised that it is actively working to expand its EOI network. Negotiations are underway with Australia, Austria, Canada, Hungary, Italy, South Korea, Poland, Singapore and the UAE for DTCs or TIEAs. Exploratory talks or negotiations have also begun with a number of countries including the People's Republic of China, India, Malta and South Africa.

262. However, seven[56] Global Forum members have indicated they have experienced difficulties negotiating TIEAs with Liechtenstein. This has been due to: (i) a lack of response from Liechtenstein; (ii) Liechtenstein has sought an assurance that a tax treaty will be negotiated after the TIEA is in place; (iii) Liechtenstein has indicated that it wants instead to negotiate a tax treaty rather than a TIEA. Thus, while Liechtenstein has not specifically refused to enter into negotiations with any jurisdiction, it has not responded to some requests to commence negotiations and some jurisdictions seeking to establish TIEAs with Liechtenstein have experienced difficulties progressing negotiations. Liechtenstein's authorities have indicated that they prefer to establish DTCs, but they are ready to sign TIEAs without any conditions.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
Liechtenstein has not on all occasions responded to or progressed negotiations to establish EOI arrangements when requested to do so.	Liechtenstein should enter into exchange of information agreements, regardless of their form, with all partners who are interested in entering into an information exchange arrangement with it and progress its negotiations effectively.

56. For two of these Global Forum members, negotiations resumed successfully subsequent to the jurisdiction's notification to the assessment team of its difficulty negotiating a TIEA with Liechtenstein. Liechtenstein has now signed a TIEA with one of these jurisdictions.

C.3. Confidentiality

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

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

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

264. All agreements concluded by Liechtenstein meet the standards for confidentiality including the restrictions on the disclosure of the information received and also use thereof by a contracting party. The agreements provide that any information received by a Contracting Party under the Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by the Contracting Party. The agreements also provide for the restriction on disclosure of information received and these provisions comply with the requirements of the international standards. The TIEA with the United States further provides that the information will not be disclosed to any other person, entity, or authority, or used for any other purpose other than for the purpose stated in Article 1 of the TIEA, except in the cases where the requested party provides prior, written consent.

265. Complementing this, Article 22 of the LIAATM contains provisions relating to confidentiality. The scope of confidentiality provisions in the domestic law is in line with the international standard. Further, an official or former official who discloses or uses a secret entrusted or made available to him solely in virtue of his office, where such disclosure or use is likely to violate a public or justified private interest, is punishable with imprisonment of up to three years, unless the offence is subject to more severe punishment pursuant to another provision (Art. 310 Penal Code).

All other information exchanged (ToR C.3.2)

266. The confidentiality provisions in Liechtenstein's agreements use the standard language of Article 26(2) of the OECD *Model Tax Convention* and Article 8 of the OECD *Model TIEA* and do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

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

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

268. All of the agreements concluded by Liechtenstein incorporate wording modelled on Article 26(2) of the OECD *Model Tax Convention* or Article 8 of the OECD *Model TIEA,* providing that requested jurisdictions are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney-client privilege/legal privilege or information the disclosure of which would be contrary to public policy.

269. As noted previously in Part B.1 of this report, the FA can refuse to provide information in response to a request when the request is based on information obtained by way of data theft, which is an act punishable in Liechtenstein, and therefore against public policy. This restriction is specifically referred to only in the agreement with Germany. Whether or not in

practice this provision is applied inconsistently with the standard should be considered in the Phase 2 review of Liechtenstein.

270. The scope of professional privileges in Liechtenstein is not so wide as to interfere with exchange of information to the standards (see section B.1 of this report).

271. Article 1 of Liechtenstein TIEAs with Andorra, Antigua and Barbuda, Belgium, Monaco, Saint Kitts and Nevis and Saint Vincent and Grenadines provide that "rights and safeguards secured to persons by the laws or administrative practices of the requested Party remain applicable". This provision misses the additional wording available in the Model TIEA that "… to the extent they do not unduly prevent or delay effective exchange of information", which is available in the TIEAs with France, the Netherlands, Ireland and seven Nordic jurisdictions. The absence of this additional provision has the potential to prevent or delay the exchange of information by Liechtenstein due to the lack of exceptions to the requirement to notify taxpayers of requests for information concerning them under the LIAATM, as discussed in Part B of this report.

272. Liechtenstein's TIEAs with Belgium, Germany, Ireland, Monaco, St. Kitts and Nevis, and St. Vincent and the Grenadines contain protocols to the agreements which *inter alia* provide that:

> *It is understood that the taxpayer, unless subject to criminal investigation, is to be informed about the intention to make a request for information. If the information of the taxpayer would jeopardise the purpose of the investigation, information is not necessary.*

273. The wording in this regard in the protocol to the TIEA with Antigua and Barbuda reads: "unless subject to criminal investigations, taxpayer is to be informed about the intention to make a request for information". The TIEA with Andorra requires the taxpayer to be informed about the intention to make a request for information.

274. These agreements oblige the requesting jurisdiction to inform the taxpayer of their intention to make a request. Liechtenstein is advised to provide for exceptions to this notification rquirement in these agreements.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
The absence of exceptions to the requirement in the TIEAs with Andorra and Antigua and Barbuda to notify taxpayers has the potential to prevent or delay the exchange of information by Liechtenstein.	It is recommended that the TIEAs with Andorra and Antigua and Barbuda be updated to allow exceptions to the requirement to notify taxpayers

C.5. Timeliness of responses to requests for information

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

Responses within 90 days *(ToR C.5.1)*

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

276. There are no provisions in Liechtenstein's agreements pertaining to the timeliness of responses or the timeframe within which responses should be provided. As such, there appear to be no legal restrictions on the ability of the competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. Further, Article 19 of the LIAATM provides for immediate notification to the foreign competent authority if request cannot be complied for the reason that the information is neither held by the domestic administrative authorities nor in the possession or control of a person within Liechtenstein.

277. As noted above, six of Liechtenstein's TIEAs have protocols which *inter alia* provide that "it is understood that the taxpayer, unless subject to criminal investigation, is to be informed about the intention to make a request for information. If the information to the taxpayer would jeopardise the purpose of the investigation, information is not necessary". This provision, coupled with the fact that rights available to the holder of information and other

persons with an interest in the information are very broad, has the potential to delay effective exchange of information (see Part B.1 of this report). This issue will be the subject of analysis in the Phase 2 review of Liechtenstein's exchange of information practices.

Organisational process and resources (ToR C.5.2)

278. Liechtenstein enacted Law of 30 June 2010 on International Administration Assistance in Tax Matters (LIAATM), creating a domestic framework for implementing the obligations arising out of the international exchange of information agreements signed by the Liechtenstein. Article 4 of the LIAATM provides that the Fiscal Authority (FA) is the competent authority for international administrative assistance pursuant to a DTC or TIEA. The FA accepts requests from foreign competent authorities and any requests received by other domestic authorities must be forwarded to the FA for action. A review of Liechtenstein's organisational process and resources will be conducted in the context of its Phase 2 review.

Unreasonable, disproportionate or unduly restriction conditions for EOI (ToR C.5.3)

279. There are no aspects of Liechtenstein's agreements or its laws that appear to impose additional restrictive conditions on the exchange of information.

Determination and factors underlying recommendations

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
The element is not in place.	Joint stock companies, limited partnerships with share capital, co-operatives, Societas Europaea, trusts and trust enterprises are able to issue bearer shares, bearer bonds and trust certificates and there are currently insufficient mechanisms in place that ensure the availability of information allowing for identification of their owners.	Liechtenstein should take necessary measures to ensure that appropriate mechanisms are in place to identify the owners of bearer shares in all instances.
	There are insufficient mechanisms for ensuring that companies keep share registers and update them.	Appropriate penalties should be provided for companies that fail to maintain share registers up to date and Liechtenstein should ensure that it can access information in these registers in a timely fashion.
	Information regarding the ownership of foreign companies that are resident for tax purposes in Liechtenstein may, under certain circumstances, not be available.	Liechtenstein should ensure that identity information on the owners of foreign companies that are resident for tax purposes in Liechtenstein is available to its competent authority.
	Information on beneficiaries with less than a 25% interest in trusts and trust enterprises is not required to be maintained.	Liechtenstein should ensure that information is maintained on all beneficiaries and settlor of trusts and trust enterprises.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
The element is not in place.	Liechtenstein's laws do not ensure that full accounting records are kept for trusts, trusts enterprises and establishments which are not carrying on commercial activities, nor for some forms of companies which may qualify for special status under tax laws.	Liechtenstein should ensure that accounting records to the standards are kept in respect of all relevant entities and arrangements. Appropriate penalties should be provided for failure to maintain such records and Liechtenstein should ensure that it can access these records in a timely fashion.
	Liechtenstein's laws do not ensure that underlying documentation is kept by: trusts, trust enterprises, establishments not carrying on commercial activities and some forms of companies which may qualify for special status under tax laws.	Liechtenstein should amend relevant legislation to ensure that underlying documentation to the standard is kept by all relevant entities and that they retain accounting records and underlying documentation for a minimum five year period.
Banking information should be available for all account-holders. *(ToR A.3)*		
The element is in place.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
The element is in place.		
The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	There is no exception to the requirement that the person concerned be given prior notification before the information is exchanged with an EOI partner.	It is recommended that certain exceptions from prior notification be permitted (*e.g.* in cases in which the information requested is of a very urgent nature or the notification is likely to undermine the chance of the success of the investigation conducted by the requesting jurisdiction).

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Some of Liechtenstein's agreements are not to the international standard.	It is recommended that Liechtenstein bring these agreements up to the international standard as soon as practicable.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Liechtenstein has not on all occasions responded to or progressed negotiations to establish EOI arrangements when requested to do so.	Liechtenstein should enter into exchange of information agreements, regardless of their form, with all partners who are interested in entering into an information exchange arrangement with it and progress its negotiations effectively.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
The element is in place.	The absence of exceptions to the requirement in the TIEAs with Andorra and Antigua and Barbuda to notify taxpayers has the potential to prevent or delay the exchange of information by Liechtenstein.	It is recommended that the TIEAs with Andorra and Antigua and Barbuda be updated to allow exceptions to the requirement to notify taxpayers
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction's Response to the Review Report[57]

Liechtenstein would like to thank the assessment team for its professional and conscientious work and the substantial amount of time and efforts they have invested in evaluating Liechtenstein's legal and regulatory framework. The assessment took place in a friendly atmosphere and in an open dialogue. The valuable discussions and comments received during the whole process will help Liechtenstein to further improve its implementation of the international standards for transparency and exchange of information.

Liechtenstein remains committed to the international standards on exchange of information in tax matters and will give high priority to its full implementation, by expanding Liechtenstein's network of agreements and by acting on the recommendations regarding its legal and regulatory framework.

The Liechtenstein Declaration of March 12, 2009 by which the Government adopted the international OECD standards on exchange of information for tax purposes and committed to implement them, was a historic step for Liechtenstein. While Liechtenstein had started to co-operate in fiscal matters to some extent in the years before, these efforts were reinforced and accelerated. The Government initiated a very intensive negotiation process and was able to conclude so far 24[58] EOI agreements (DTCs and TIEAs) within a short period of time. 13[59] of these agreements are already in force and the first requests for EOI have been dealt with by the competent authority. The Government will ensure an early ratification by Liechtenstein of the agreements signed recently.

When adopting the so-called Liechtenstein Declaration in 2009, the Government stated that it was prepared to do even more to tackle cross-border tax evasion than just concluding standard EOI agreements. Liechtenstein offered interested countries arrangements that would lead to a regularisation of undeclared assets and that would ensure future tax compliance. Already in 2009, Liechtenstein concluded a landmark agreement with the UK which will

57. This Annex presents the jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.
58. TIEA with Australia signed in June 2011.
59. DTA with Hongkong entered into force in July 2011.

lead to tax compliance of all UK clients in Liechtenstein by way of a specific disclosure and compliance program, in a balanced approach for all interests involved. Liechtenstein is in talks with some other countries on similar or other arrangements to regularise undeclared assets and on mechanisms ensuring that foreign clients be tax-compliant in their home countries.

As a highly diversified economy with a strong industrial sector, Liechtenstein prefers to conclude DTCs which comprehensively cover income tax matters between two countries and thus support and strengthen the development of economic relations and mutual investment. Liechtenstein has however confirmed that it is willing to negotiate TIEAs without any conditions.

The report demonstrates that Liechtenstein's legal and regulatory framework fulfils to a large extent the criteria established for an effective EOI. Liechtenstein acknowledges that its legal framework contains some deficiencies which need to be addressed. The Government will give careful consideration to the recommendations contained in the report and will make sure that the appropriate actions be taken.

Liechtenstein will give high priority to take necessary steps and measures regarding the availability of ownership information and accounting records. With respect to the availability of accounting information, Liechtenstein would like to stress that the shortcomings mentioned in the report have limited practical bearing because they concern only certain entities with a specific tax status where AML legislation will apply. However, to avoid any possible doubt and to introduce the necessary legal clarifications, the Government of Liechtenstein has already decided to introduce specific provisions in the company law to address the concerns. The respective official public consultation process on the necessary amendments has been launched in June 2011. With regard to the availability of ownership and identity information for all relevant entities, the Government will ensure that steps are taken to address the recommendations contained in the report, including to establish an appropriate mechanism to identify the owners of bearer shares.

Liechtenstein will continue to act expeditiously to even further improving its compliance with the standards. While Liechtenstein trusts that ensuring a level-playing-field will be an essential element in the peer review process, Liechtenstein will continue to play an active, cooperative and constructive role in the work of the GFTEI.

This shows the Liechtenstein government is seriously committed to ensure that the standards are complied with and applied correctly, thereby ensuring a level playing-field, which is an essential element of the peer review process.

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

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
1	United States of America	TIEA	08.12.2008	01.01.2010
2	United Kingdom	TIEA	11.08.2009	02.12.2010
3	Luxembourg	DTC	26.08.2009	17.12.2010
4	Germany	TIEA	02.09.2009	28.10.2010
5	Andorra	TIEA	18.09.2009	10.01.2011
6	Monaco	TIEA	21.09.2009	14.07.2010
7	France	TIEA	22.09.2009	19.08.2010
8	San Marino	DTC	23.09.2009	19.01.2011
9	St. Vincent and Grenadines	TIEA	02.10.2009	
10	Ireland	TIEA	13.10.2009	30.06.2010
11	Belgium	TIEA	10.11.2009	
12	Netherlands	TIEA	10.11.2009	01.12.2010
13	Antigua and Barbuda	TIEA	24.11.2009	16.01.2011
14	St. Kitts and Nevis	TIEA	11.12.2009	14.02.2011
15	Hong Kong, China	DTC	12.08.2010	
16	Uruguay	DTC	18.10.2010	
17	Denmark	TIEA	17.12.2010	
18	Faroe Island	TIEA	17.12.2010	
19	Finland	TIEA	17.12.2010	
20	Greenland	TIEA	17.12.2010	
21	Iceland	TIEA	17.12.2010	
22	Norway	TIEA	17.12.2010	
23	Sweden	TIEA	17.12.2010	

Annex 3: List of all Laws, Regulations and Other Relevant Material

Corporate Laws

Law of 20 January 1926 on Persons and Companies

Ordinance of 19 December 2003 on the Law on persons and Companies

Ordinance of 8 April 2003 on the Performance of Activities under Article 180a of the Law on Persons and Companies

Law of 9 December 1992 on Trustees.

Foundation Decree of 27 March 2009

Trust Enterprise Act

Ordinance on the Public Registry

Regulatory Laws

Law of 21 October 1992 on Banks and Investment Firms (Banking Act) Law of 6 December 1995 on the Supervision of Insurance Undertakings (Insurance Supervision Act; ISA)

Financial Market Authority Act

Taxation Laws

Law of 23 September 2010 on National and Municipal Taxes

Ordinance of 21 December 2010 on National and Municipal Taxes

Anti-Money Laundering /Counter-Terrorism Financing Laws

Due Diligence Act, 1996

Due Diligence Ordinance, 2005

Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organised Crime, and the Terrorist Financing (Due Diligence Act; DDA)

Ordinance of 17 February 2009 on Professional Due Diligence to combat money Laundering, Organised Crime, and Terrorist Financing (Due Diligence Ordinance; DO)

Information Exchange for Tax Purposes Laws

Law of 30 June 2010 on Administrative Assistance in Tax Matters

Law of 30 June 2010 on Administrative Assistance in Tax Matters with the United Kingdom of Great Britain and Northern Island (UK TIEA Act)

Law of 16 September 2009 on Administrative Assistance in Tax Matters with the United States of America

UK-TIEA Ordinance of 31 August 2010

Other Laws

Law of 9 December 1992 on Auditors and Audit Companies

Law of 9 December 1992 on Lawyers

Ordinance of 17 December 1996 on the Laws on Supervision of Insurance Undertakings (Insurance Supervision Ordinance; SO)

Criminal Procedure Code

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: LIECHTENSTEIN

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

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

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

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

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

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