



# Supplementary Peer Review Report Combined Phase 1 + 2

## MAURITIUS



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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. The standards have also been incorporated into the UN *Model Tax Convention*.

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

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

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](http://www.oecd.org/tax/transparency).



## Executive Summary

1. This is a supplementary report on the amendments made by Mauritius to its legal and regulatory framework for transparency and exchange of information, as well as the practical implementation of that framework. It complements the Combined Phase 1-2 Review report which was adopted and published by the Global Forum on Transparency and Exchange of Information for Tax Purposes in January 2011 (the January 2011 Report).
2. This supplementary report considers the changes made by Mauritius since the date at which its system was previously assessed, August 2010, to address the recommendations made in the January 2011 Report. It considers in particular Mauritius' progress report sent to the Peer Review Group – see report in annex 2 – concerning the legislative amendments adopted and practices in place to address the determination and recommendations relating to element A.2 (availability of accounting information) which in the January 2011 Report was found to be “not in place”. Mauritius is of the view that the amendments made to its legal framework are such that this element should now be determined to be “in place”. Consequently, Mauritius has asked for a supplementary peer review report pursuant to paragraph 58 of the Global Forum's Methodology for Peer Reviews and Non-member Reviews.
3. The January 2011 Report includes a number of other recommendations, both concerning its legal and regulatory framework (Phase 1 recommendations on elements A.1, C.1 and C.2) and the practical implementation of that framework (Phase 2 recommendations on elements A.1, B.1, B.2, C.1 and C.5).
4. Mauritius is a small and open economy, dynamic, diversified and fully integrated into world markets. Financial services, including providers of services to the offshore sector, are the second pillar of the economy (in GDP). Mauritius has developed a legal and regulatory framework that gives its competent authority broad access to the full range of foreseeably relevant information.
5. In line with the international movement towards more transparency and exchange of information, Mauritius has taken significant steps to enhance

its exchange of information legal and regulatory framework. Mauritius is able to exchange information on non-resident individuals and companies. There are accounting requirements for all Mauritius entities, resident and non-resident.

6. Mauritius has exchange of information mechanisms signed with 38 jurisdictions, of which 35 are in force, including with most of its main trading partners, and continues negotiating new DTCs and TIEAs. Since the January 2011 report, Mauritius signed its first TIEA with a new partner. While some of its oldest treaties do not meet the standard, most of them are under renegotiation. Since the January 2011 report, Mauritius signed and ratified protocols to four of its DTCs. None of these instruments have entered into force yet. It is to be noted that Mauritius has never refused to sign an exchange of information agreement.

7. There remains a gap in the Mauritian legislation with regards to ownership and identity information where there are nominee shareholders in companies other than public companies and GBCs (Global Business Licence Companies). A gap regarding ownership and identity information also remains for non-resident foreign trusts with Mauritian trustees who are not management companies.

8. Mauritius has recently introduced legislation that addresses the considerable gap identified in the January 2011 Report regarding accounting requirements for GBC2s (non-tax resident Global Business Licence companies) as well as regarding an explicit requirement to keep underlying documentation for partnerships. However, there remains a gap regarding the requirement to keep underlying documentation for trusts with Mauritian trustees if these trusts are not resident in Mauritius for tax purposes. Based on the aforementioned changes, recommendations in the January 2011 report have been removed or amended correspondingly and element A.2 has been upgraded from “not in place” to “in place but needs improvement”.

9. As a result of the steps taken, the legal framework for exchange is now largely in place, but also largely untested in practice, particularly concerning ownership and accounting information in the case of some of its off-shore companies, since Mauritius did not exchange this type of information until July 2009 and enhanced again its accounting rules in December 2010 and July 2011.

10. Over the recent months, Mauritius has in several EOI cases been exchanging accounting information relating to a current accounting year and a recommendation in the January 2011 report regarding such information has therefore been removed. Further, the Mauritian authorities have made stakeholders aware of the competent authority’s powers to obtain bank information. Recently, on two occasions, the authorities obtained bank information directly from banks in order to respond to international requests for information in

tax matters. This is an encouraging development and Mauritius’s authorities should continue to exercise these powers where necessary. Based on the aforementioned developments, the Phase 2 recommendations in the January 2011 report have been deleted where appropriate. It is noted, however, that there still have been no cases where the Mauritian authorities exercised their compulsory powers to compel information and applied sanctions. The corresponding Phase 2 recommendation has therefore not been deleted.

11. Mauritius has recently updated its “Procedure Manual on Exchange of Information”, which now includes clear guidelines regarding exemptions from prior notifications in cases where a notification can unduly delay the exchange of information.

12. It is recognised that Mauritius is putting in place a national strategy for an efficient exchange of information system, and answers most requests within 90 days. The competent authority (Mauritius Revenue Authority) has created a team of professionals to answer exchange of information requests and is enhancing their professional capacities and methods to cope with difficult cases or complex requests. Mauritius’s competent authority has also signed memorandums of understanding with the public authorities that maintain relevant information. In particular, smooth communication and cooperation between the competent authority and the Financial Services Commission and the court will be key to address the two main issues of exchange of information on some offshore companies and bank information.

13. This supplementary report is prepared six months after the initial report was adopted. Even though Mauritius has already taken some actions, this short lapse of time is not sufficient for a complete assessment of all the Phase 2 recommendations. Mauritius is encouraged to continue to make improvements to its EOI framework and system for the exchange of information in practice to address any outstanding recommendations, and to provide follow-up reports one year after the present report is adopted by the Global Forum. In addition, considering that recent amendments made to the legal and regulatory framework have not materialised in EOI in practice, their implementation will also be followed up in one year’s time.





## Introduction

### Information and methodology used for the supplementary review of Mauritius

14. The assessment of Mauritius’s legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 58 of the Global Forum’s Methodology for Peer Reviews and Non-member Reviews, and considers recent changes to the legal and regulatory framework of Mauritius based on the international standards for transparency and exchange of information as described in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes. Mauritius informed the Peer Review Group (a subsidiary body of the Global Forum) in July 2011 of its important progress made as concerns the accounting rules for global business companies, a major feature of the Mauritian economy. These new legislative measures and other information provided by Mauritius appeared likely to lead to an upgrade of the determination to “the element is in place”, and triggered the present assessment.

15. The present report takes the opportunity to review the implementation of other recommendations as well, even though the progress made may not have been sufficient to form the basis for a supplementary report on their own. Similarly, this report also reviews to a lesser extent the practical implementation of Mauritius’s legal and regulatory framework. This supplementary report is prepared six months after the initial report was adopted. Even though Mauritius has already taken some actions, this short lapse of time is not sufficient for a complete assessment of all the Phase 2 recommendations. In addition, the amendments to laws and regulations assessed in the present report have not yet had an impact on exchange of information in practice and, considering that the review of Mauritius is a combined Phase 1 and Phase 2 review, it is not possible to draw conclusions on the implementation of these new legal provisions. This should be done in the course of the normal follow-up process, in accordance with the Methodology.

16. This supplementary report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at August 2011, and information supplied by Mauritius. It follows the Combined Review Report on Mauritius which was adopted and published by the Global Forum in January 2011.

17. The Terms of Reference breaks down the standards of transparency and exchange of information into ten essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information, and (C) exchanging information. This review assesses Mauritius'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 either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant.

18. The assessment was conducted by an assessment team, which consisted of two expert assessors and two representatives of the Global Forum Secretariat: Ms. Eng Choon Meng, Deputy Director, Department of International Taxation, Inland Revenue Board of Malaysia; Mr. Raul Pertierra, Revenue Service Representative, Internal Revenue Service of the United States; Mr. Richard Thomas, Attorney Advisor, Office of Associate Chief Counsel, Internal Revenue Service of the United States; Ms. Gwenaëlle Le Coustumer and Mr. Beat Gisler from the Global Forum Secretariat. The assessment team assessed the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Mauritius.

19. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the Terms of Reference, which takes into account the conclusions of this supplementary report, can be found in the annexes on page 21 of this report.

## Compliance with the Standards

### A. Availability of information

#### Overview

20. Effective exchange of information requires the availability of reliable information. This part of the report considers the legal and regulatory framework in place in Mauritius as of August 2011 with regards to the availability of ownership information, accounting records and banking information. The January 2011 Report found that element A.3 (bank information) was “in place” and no recommendations were made. Element A.1 (availability of ownership information) was found to be “in place, but certain aspects of the legal implementation of the element need improvement” due to the absence of obligations to maintain ownership information where nominee shareholdings existed, except for public companies and global business licence companies (GBCs), and the absence of identity information related to non-resident foreign trusts administered in or with a trustee in Mauritius, where these are not management companies. Element A.2 (availability of accounting information) was found to be “not in place” as non-tax resident global business licence companies were only required to keep such accounting records as the directors considered necessary or desirable in order to reflect the financial position of the company. Further, trusts and *sociétés de personnes* were not required to keep the underlying documents which relate to their accounts.

21. Regarding recommendations under element A.1, in its request for a supplementary report, Mauritius has indicated that the issue of nominee shareholding for companies other than public companies and GBCs is being discussed with all the stakeholders and the Mauritian authorities anticipate introducing relevant legislative amendments at the end of 2011. Further, regarding ownership

information on non-resident trusts with Mauritius trustees, Mauritius authorities have referred to tax and common law obligations. However, this was considered not to be sufficient in order to remedy the gap identified in the January 2011 Report. Also, the Mauritian authorities have referred to ongoing EOI work. None of the A.1 recommendations in the January 2011 Report have been amended as a result of information provided by Mauritius.

22. Mauritius has amended its legislation fully addressing the recommendations in the January 2011 Report regarding accounting requirements for GBC2s. Further, the recommendation regarding an explicit requirement for partnerships (*sociétés de personnes*) to keep underlying documentation has been addressed. However, this latter gap still exists in respect of trusts with Mauritian trustees if these trusts are not resident in Mauritius for tax purposes. Accordingly, the determination for element A.2 has been upgraded to “the element is in place, but certain legal aspects of the legal implementation of the element need improvement”.

23. Finally, considering that rules on the global sector have recently been amended, Mauritius should continue to monitor enforcement of the legal provisions on the availability of ownership and accounting information in the global business sector.

## A.1. Ownership and identity information

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

### *Companies (ToR<sup>1</sup> A.1.1)*

#### *Nominee identity information*

24. The January 2011 Report noted that there are no obligations for the owners of shares held through nominees to be identified except where the shares relate to public companies and GBCs. Mauritius has indicated that the issue of nominee shareholding is being discussed with all the stakeholders and the Mauritian authorities anticipate introducing relevant legislative amendments at the end of 2011. The recommendation is therefore unchanged.

### *Trusts (ToR A.1.4)*

25. The January 2011 Report noted that no identity information is required to be available on non-resident foreign trusts administered in Mauritius or in respect of which a trustee is resident in Mauritius, where

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

these are not management companies. It was recommended that an obligation should be established for all trustees and administrators resident in Mauritius to maintain information on the settlor, trustees and beneficiaries of their trusts.

26. In its request for a supplementary report, Mauritius repeats that identity information has to be provided according to the Income Tax Act. However, such obligations only apply to resident trusts, *i.e.* trusts that are administered in Mauritius and a majority of the trustees are resident in Mauritius, or trust where the settlor was resident in Mauritius at the time the instrument creating the trust was executed (Section 73 (d) Income Tax Act).

27. In its request for a supplementary report Mauritius further states that, under common law a trustee in Mauritius of a trust which is resident in Mauritius or elsewhere has a duty of care and diligence throughout the administration of the trust. Mauritius advised that the courts have interpreted this as a duty of care in the management of the affairs of the trust and that it is the view of the Mauritian authorities that the said duty necessarily will include the duty to keep records. Mauritius also advised that relevant case law has been codified in the Trusts Act (s.37 to 40).

### *Conclusion*

28. A gap exists in Mauritius statutory law with regards to ownership information on non-resident trusts with Mauritius trustees where the trustee is not a management company. There is not sufficient documentation that this gap is remedied by common law with clear requirements for trustees to keep identification information. The recommendation is therefore unchanged.

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

29. The January 2011 Report notes that Mauritius has no enforcement experience where provisions on the availability of information are recent. It was therefore recommended that enforcement of the legal provisions on the availability of ownership and accounting information in the global business sector should be monitored.

30. In its request for a supplementary report, Mauritius states that all EOI requests concerning entities in the global business sector are being duly attended to and responded in a timely manner. The short lapse of time is not sufficient for a complete assessment of Mauritius' actions with respect to the above Phase 2 recommendation. Mauritius should continue to monitor its EOI work and in particular enforcement of the legal provisions on the availability of ownership and accounting information in the global business sector. The recommendation is therefore unchanged.

### Determination and factors underlying recommendations

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
There are no obligations to maintain ownership and identity information in case of nominee shareholding, except for public companies and GBCs.	Mauritius should establish a requirement that information is maintained indicating the person on whose behalf any legal owner holds his interest or shares in any company or body corporate.
No identity information is available on non-resident foreign trusts administered in Mauritius or in respect of which a trustee is resident in Mauritius, where these are not management companies.	An obligation should be established for all trustees and administrators resident in Mauritius to maintain information on the settlor, trustees and beneficiaries of their trusts.

Phase 2 rating	
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	
Factors underlying recommendations	Recommendations
Mauritius has no enforcement experience where provisions on the availability of information are recent.	Enforcement of the legal provisions on the availability of ownership and accounting information in the global business sector should be monitored.

## 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), Underlying documentation (ToR A.2.2) and 5-year retention standard (ToR A.2.3)***

31. The January 2011 Report noted that the accounting obligations of GBC2s, trusts and *sociétés de personnes* were not sufficiently comprehensive to meet the requirements under the international standard. In particular, GBC2s only had to keep records that the directors consider necessary to

reflect the financial position of the company as well as financial summaries, and there were no obligations to keep underlying documents. Trusts and *sociétés de personnes* were not expressly required to keep underlying documents.

32. Mauritius amended the Companies Act, effective 12 July 2011, to impose clear obligations on GBC2s to maintain relevant accounting records. GBC2s are now required to keep “proper books, registers, accounts, records such as receipts, invoices and vouchers and documents such as contracts and agreements in order to give a full and true record of all transactions and other acts engaged in by the company”, and to keep the above records for a minimum of seven years (para.2 Part II Fourteenth Schedule).

33. In addition, Mauritius has amended the Income Tax Act, effective 24 December 2010, to impose clear obligations on every person carrying on business or deriving income other than emoluments to keep “proper books, registers, accounts, records such as receipts, invoices and vouchers, other documents such as contracts and agreements, and a full and true record of all transactions and other acts”, and to keep the above records for a minimum of five years (s.153). As this applies to every person carrying on business or deriving income other than emoluments, it is applicable to both trusts and *sociétés de personnes*.

34. The recommendation relating to accounting information to be kept by GBC2s as well as the recommendation regarding an explicit requirement for partnerships (*sociétés de personnes*) to keep underlying documentation have been fully addressed. On the other hand, the review of Mauritius is a combined Phase 1 and Phase 2 review but it is not possible to review the implementation in practice of laws that have just entered into force and their impact on EOI in practice. This aspect should be followed-up, given that GBC2s represent 25% of the Mauritian companies and a new Phase 2 recommendation is introduced.

35. A gap still exists in respect of a clear requirement for Mauritian trustees of foreign trusts that are not resident in Mauritius for tax purposes because Mauritian trustees do not represent a majority of trustees and the settlor was not resident in Mauritius at the time the instrument creating the trust was executed (see s.73(d) ITA). Since these trusts are not resident in Mauritius for tax purposes, the new tax obligation does not apply to them.

36. Accordingly, the recommendation in respect of accounting requirements for GBC2s has now been removed and the recommendation in respect of a clear requirement for trusts and *sociétés de personnes* to keep underlying documentation has been revised to reflect that a smaller gap remains. The determination for element A.2 is now “the element is in place, but certain legal aspects of the legal implementation of the element need improvement”.



**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is <del>not</del> in place <u>but certain legal aspects of the legal implementation of the element need improvement.</u></b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
A GBC2 keeps such accounting records that its directors consider necessary or desirable in order to reflect the financial position of the company. In addition, GBC2s will now be required to prepare annual financial summaries, but these will not explain all transactions of the company, and there is no obligation to keep underlying documentation.	GBC2s should be required to maintain accounting records and underlying documentation to the standard.
Underlying documentation is not explicitly required to be kept by Mauritian trustees for trusts <u>that are not considered resident for tax purposes and do not carry on a business or derive income in Mauritius and sociétés de personnes.</u>	Mauritius should ensure that all relevant entities and arrangements maintain underlying documentation, <u>for at least five years.</u>
<b>Phase 2 rating</b>	
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	
Mauritius has no enforcement experience where provisions on the availability of accounting information are recent.	Enforcement of the legal provisions on the availability of accounting information in the global business sector should be monitored.

**A.3. Banking information**

Banking information should be available for all account-holders.

37. The January 2011 Report did not raise any concerns with respect to bank information. The determination for A.3 was, and remains, “the element is in place”.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>



## B. Access to information

### Overview

38. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. Mauritius's January 2011 Report noted that elements B.1 (access to information) and B.2 (notification requirements and rights and safeguards) were "in place". Some Phase 2 (implementation in practice) issues were raised however. With respect to element B.1, it was found that Mauritius had never exercised its compulsory powers in practice, and thus their effectiveness could not be assessed. Similarly, the powers to access information directly from banks as well as the powers to access accounting records which relate to the current accounting year had not been exercised and thus their effectiveness could not be assessed. Under element B.2, it was found that some of the rights and safeguards that apply to persons in Mauritius had not yet been tested in practice, and thus it was not possible to determine whether these could unduly prevent or delay exchange of information. In particular, there were no clear guidelines regarding circumstances where prior notification to the person concerned should be prevented, in particular those relating to a court order to obtain information.

39. Mauritius's authorities advise that the competent authority in several recent EOI cases had been exchanging accounting information in relation to a current accounting year. Therefore, the recommendation made in the January 2011 Report regarding such information has been deleted. Further, since the adoption of the January 2011 Report, Mauritius has on two occasions, where the taxpayers refused to provide information, obtained relevant information directly from banks in order to respond to an EOI request. The previous recommendation has therefore been removed. However, given the small number of cases so far, Mauritius should monitor its ability to apply, where necessary, its powers to access bank information in order to assure effective exchange of

information and to report back on this issue in follow-up reports it provides as appropriate in accordance with the Methodology. Further, Mauritius has through public information ensured that stakeholders are fully aware of the competent authority's powers to obtain such information and of the procedure and timelines to be adopted in such cases. The corresponding recommendation has been amended in view of these steps taken. It is noted, however, that there still have been no cases where the Mauritian authorities exercised their compulsory powers to compel information and applies sanctions. Mauritius is therefore still recommended to do so whenever appropriate.

40. In its updated "Procedure Manual on Exchange of Information", the MRA has set clear guidelines regarding exemptions from prior notifications in cases where the treaty partner requests that the taxpayer should not be informed of the request or in other cases where a notification is likely to unduly delay the exchange of information with the treaty partner. As this new guidance has not yet been tested in practice, the recommendation now states that Mauritius should ensure that these new guidelines are applied in practice.

## **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)***

41. The January 2011 Report refers to EOI cases in the past where the Mauritian authorities have indicated that they were unable to access and exchange accounting information in relation to an ongoing year. During the review, the Mauritian authorities reviewed the basis of the decision and concluded that nothing in the law prevents the MRA to request such information, and partial accounting data should be available within companies and other entities. The competent authority therefore declared that it is prepared to require the production of partial or interim accounting data whenever requested by its EOI partners.

42. In its request for a supplementary report, Mauritius states that over the recent months, it had exchanged accounting information relating to the current year in more than 20 cases. No peer input has been received on this point. This shows that the Mauritius competent authority has implemented in practice the assurance it has given to the Global Forum to obtain and exchange accounting data in relation to a current year. Therefore, the recommendation addressing this issue has been deleted.

***Compulsory powers (ToR B.1.4) and Secrecy provisions (ToR B.1.5)***

43. The January 2011 report noted that Mauritius had never exercised its compulsory information gathering powers to obtain information, including bank information, and recommended that the Mauritian authorities do so whenever appropriate. The report also recommended that Mauritius continues its efforts to ensure that all stakeholders are fully aware of the competent authority's powers to obtain such information and of the procedure and timelines to be adopted in such cases.

44. Since then, Mauritius has encountered two cases where taxpayers refused to provide requested bank information. In these cases the Mauritian competent authority requested and successfully obtained information directly from the banks involved. The information has been transmitted to the requesting foreign authority. Mauritius has also issued a circular to all stakeholders informing them of the powers of the Mauritius Revenue Authority (MRA) to obtain, amongst other things, bank information, and of the procedure and timelines to be adopted in such cases. A notice has also been posted on the MRA's website.<sup>2</sup> The above two cases show that the Mauritian competent authority can exercise its powers to access information directly from banks. In addition, no peer indicated that they face difficulties to obtaining bank information since the initial review. Therefore, the corresponding recommendation in the January 2011 report has been deleted. Similarly, the recommendation for the Mauritian authorities to inform their stakeholders of its compulsory information gathering power has been removed in view of the clear steps taken by the Mauritian authorities to implement the recommendation.

45. Nevertheless, these two cases constitute a small sample over a limited period of time. Mauritius should monitor its ability to apply, where necessary, its powers to access bank information in practice in order to assure effective exchange of information and report back on this issue in follow-up reports it provides in accordance with the Methodology.

46. The Mauritian authorities did not apply sanctions in the two above mentioned cases as they have chosen an educative and awareness raising approach rather than a confrontational approach – dialogue rather than sanctions. It is expected that information provided to stakeholders and access to information from alternative sources in some cases (such as banks) will improve compliance in the future. Mauritius is still recommended to monitor the implementation of its access powers in practice, given the short period of time between this supplementary report and the January 2011 report.

2. <http://www.gov.mu/portal/sites/mra/download/ObligationExchange.pdf>.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Phase 2 rating	
To be finalised as soon as a representative subset of Phase 2 reviews is completed.	
Factors underlying recommendations	Recommendations
Mauritius has the legal framework in place to access information, including compulsory powers, but has never exercised its compulsory powers in practice, and their effectiveness cannot be assessed.	Mauritius should exercise its powers to compel information and sanction failure to provide information whenever appropriate. The implementation of these powers in practice should be monitored by Mauritius.
<del>Mauritius has the legal framework in place to obtain information directly from banks but has never exercised its powers in practice, and the effectiveness of these powers cannot be assessed.</del>	<del>Mauritius should exercise its powers to obtain bank information directly from the banks in all cases where such information is not obtained from the account-holder. Mauritius should also continue its efforts to ensure that all stakeholders are fully aware of the competent authority's powers to obtain such information and of the procedure and timelines to be adopted in such cases.</del>
<del>The Mauritian authorities have not accessed and exchanged accounting information in relation to a current year, despite the absence of legal impediment to do so.</del>	<del>The competent authority should implement in practice the assurance they have given to the Global Forum to obtain and exchange foreseeably relevant accounting data, even partial data, on a current basis.</del>

## 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)*

47. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit 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).

48. The January 2011 Report recommended that “Mauritius should set guidelines when a jurisdiction requires that the individual or entity concerned not be notified, e.g. in cases where the information requested from a third party record keeper 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”.

49. In its “Procedure Manual on Exchange of Information”, updated in February 2011, the MRA states that there is no legal requirement for prior notification of the taxpayer (section 5, first bullet point). The manual further states that such notification should not be given when accessing third party information if the treaty partner requests that the taxpayer should not be informed of the request (section 5, third bullet point) or in other cases where a notification is likely to unduly delay the exchange of information with the treaty partner (section 5, last bullet point).

50. Based on the above, the recommendation with respect to prior notification has been amended. As this new guidance has not yet been tested in practice, the recommendation now states that Mauritius should ensure that these new guidelines are applied in practice. This will be assessed at a later stage, when relevant cases are available.

### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>



Phase 2 rating	
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	
Factors underlying recommendations	Recommendations
<p>The rights and safeguards that apply to persons in Mauritius appear to be compatible with effective exchange of information. Some of them have not yet been tested in practice to assess whether they could unduly prevent or delay exchange of information. - In particular, there are no clear guidelines in relation to circumstances when prior notification to the person concerned should be prevented, in particular those relating to a court order to obtain information.</p>	<p><del>Mauritius should set guidelines when a jurisdiction requires that the individual or entity concerned not be notified, e.g. in cases where the information requested from a third party record keeper 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.</del> <u>Mauritius should ensure that its new guidelines regarding prior notification are applied in practice.</u></p>

## C. Exchanging information

### Overview

51. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Mauritius, the legal authority to exchange information is derived from bilateral mechanisms (double tax conventions and tax information exchange agreements), as well as domestic law. This section of the report examines whether Mauritius has a network of information exchange arrangements that allow it to achieve the effective exchange of information in practice. Mauritius’s January 2011 Report found elements C.2 (network of exchange of information mechanisms) C.3 (confidentiality) and C.4 (rights and safeguards of taxpayers and third parties) to be “in place”. Element C.1 (exchange of information mechanisms) was also found to be “in place”, though the report noted some minor factors of relevance. As with other reports, in respect of element C.5 the report noted that it involves issues of practice which prevent setting a Phase 1 determination. The January 2011 Report also raised some Phase 2 matters related to elements C.1 (questions regarding the foreseeably relevance of requests received) and C.5 (delayed responses).

52. The first recommendation under element C.1 refers to a DTC that limits exchange of information to information already at the disposal of the tax authorities. Mauritius has updated this DTC through the ratification of a protocol which introduces an EOI provision to the standard.<sup>3</sup> This treaty is therefore no longer mentioned in the factor underlying the first recommendation in C.1. Furthermore, Mauritius has negotiated a new agreement and signed and ratified protocols to four older agreements so that these agreements include the language of paragraphs 4 and 5 of Article 26 of the Model Tax Convention. This has been recognised in the second recommendation under element C.1.

53. Mauritius advised that it is implementing the Phase 2 recommendations included in the January 2011 Report regarding difficulties in some cases

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3. The protocol was ratified in Mauritius by Government notice published in the Government Gazette dated 28 May 2011. The protocol is awaiting ratification by the other partner.

to decide if a request meets the foreseeably relevance standard (C.1) as well as recommendations regarding delayed responses (C.5). However, it is too early to assess whether Mauritius's actions sufficiently incorporate the recommendations regarding these issues and Mauritius is recommended to continue its work on implementing the recommendations.

### C.1. Exchange of information mechanisms

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

54. The January 2011 report noted that two double tax conventions (DTCs) did not meet the international standard: one limited EOI for the purposes of carrying out the provisions of the DTC and the other limited international exchange of information in tax matters (EOI) to information already at the disposal of the tax authorities. The report recommended that Mauritius upgrade its DTCs with partners where the EOI article of these DTCs do not explicitly provide for the exchange of information in the absence of domestic interest or the exchange of bank information. It also recommended that Mauritius continue to negotiate and bring into force new EOI arrangements where existing treaties do not meet the international standard.

55. Since then, Mauritius has taken active steps to update its network of EOI agreements by signing new agreements and protocols to existing agreements:

- the agreement with the United Kingdom has been updated through a protocol which introduces an EOI provision with the language of the most recent OECD Model Tax Convention. This treaty is therefore no longer mentioned in the factor underlying the first recommendation in C.1; and
- the present DTC with Germany, which limits exchange of information to the carrying out of the provisions of the Convention and does not extend to the administration and enforcement of domestic laws of the contracting states, has been re-negotiated though it has not yet been signed.

56. Further, the DTCs with France, Italy and the Seychelles have been updated through protocols that introduce the language of Article 26 of the OECD Model Tax Convention. Also, Mauritius has signed its first tax information exchange agreement (TIEA), with Australia. The language of this TIEA follows the standard set in the OECD Model TIEA. In addition, Mauritius is currently negotiating protocols to DTCs and new agreements (including TIEAs) with a number of jurisdictions in order to establish a clear legal basis for exchange of information to the standard. TIEA negotiations

have been finalised with the Nordic jurisdictions. As a result, the second recommendation under C.1 has been amended to acknowledge that the process for including paragraphs 4 and 5 in Mauritius’s EOI agreements is underway.

***Foreseeably relevant standard (ToR C.1.1)***

57. In the Phase 2 recommendation under C.1 in the January 2011 Report, Mauritius was encouraged to communicate quickly with its treaty partners when the competent authority is unsure that the received request meets the foreseeably relevance standard. The Mauritian authorities advised in their request for a supplementary report that such communication now takes place. No further peer input has been received on this point.

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

58. The January 2011 Report points out that the DTC with Germany restricts exchange of information to residents. The Mauritian authorities assure that this issue will be resolved with the entry into force of the new DTC which is still awaiting signature.

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

***Bank information***

59. The January 2011 Report pointed out that only one of Mauritius’ DTCs contained paragraph 26(5) of the OECD Model Tax Convention. Mauritius stated during the review that it could exchange bank information notwithstanding reciprocity. During summer 2011, Mauritius reports that it sent a letter to all its treaty partners, stating that it is able and willing to exchange bank information even in the absence of any explicit provisions to that effect in the treaty, and whether or not the partner provides a reciprocal treatment to Mauritius’s EOI requests.

60. Since January 2011, Protocols have been signed with the Seychelles, France and Italy introducing this paragraph in its EOI provision. India, Mauritius’s main EOI partner has contacted Mauritius about updating the EOI provision of the DTC and no negotiation has yet started but Mauritius informed that it is willing to negotiate a TIEA with India. It should be noted that the existing agreement does conform to the standard although it does not contain paragraphs 4 and 5 of the OECD Model Tax Convention. Mauritius reports that it does exchange bank information with India. Concerning in particular treaty partners that are not able to exchange banking information absent paragraph 26(5), Mauritius has started negotiations with Luxembourg and Botswana with the intention to include *inter alia* this paragraph. Also,

because Belgium is now able to exchange bank information despite the absence of an explicit provision in the treaty, its agreement with Mauritius now meets the standard.

*Information at the disposal of tax authorities only*

62. The January 2011 Report addressed the fact that the DTC with the United Kingdom contains a restrictive EOI provision, which only covers information already “at the disposal of the tax authorities”, limiting EOI to information already held by the tax authorities. This treaty has now been renegotiated and no longer includes this restrictive condition.

*Absence of domestic tax interest (ToR C.1.4)*

63. As indicated above, Mauritius’s DTC with the UK, which contains a very restrictive EOI provision covering only information already at the disposal of the tax authorities, has now been amended by a protocol introducing paragraph 26(4). Thus this domestic tax interest issue will be resolved with the entry into force of the protocol.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
<p>One DTC limits exchange of information to the carrying out of the provisions of the Convention and does not extend to the administration and enforcement of domestic laws of the contracting states.</p> <p><del>One DTC limits exchange of information to information already at the disposal of tax authorities.</del></p>	<p>Mauritius should continue to negotiate with existing partners (or take steps to expedite entry into force of) new exchange of information arrangements where the existing treaties do not meet the international standard.</p>

<p>Most of Mauritius's DTCs do not include paragraphs 4 and 5 of Article 26 of the Model Tax Convention in its treaties, but Mauritius has indicated that it is ready to exchange bank information even in the absence of reciprocity.</p>	<p>Exchange of bank information should be ensured with all Mauritius's treaty partners. Although Mauritius is willing to exchange information even in the absence of paragraphs 4 and 5 of Article 26 of the Model Tax Convention and reciprocity, Mauritius is encouraged to <u>continue upgrading</u> <del>upgrade</del> the exchange of information provision <u>in its treaties</u> <del>in its treaties</del>, to secure the benefit of reciprocity from its treaty partners, especially those jurisdictions that are unable to do so without paragraphs 4 and 5 being explicitly provided.</p>
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Phase 2 rating	
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	
Factors underlying recommendations	Recommendations
<p>The Mauritian competent authority has faced difficulties in some cases in deciding whether a request meets the foreseeably relevance standard.</p>	<p>Mauritius is encouraged to <u>continue communicating</u> <del>communicate</del> quickly with its treaty partners when the competent authority is unsure that the received request meets the foreseeably relevance standard.</p>

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

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

64. Since the January 2011 Report, Mauritius has taken active steps to update its network of EOI agreements by signing protocols to existing agreements and a new agreement. The DTCs with France, Italy, the Seychelles and the United Kingdom have been updated through protocols that introduce the language of Article 26 of the OECD Model Tax Convention. Also, Mauritius has signed and ratified its first tax information exchange agreement (TIEA), with Australia, which follows the standard set in the OECD Model TIEA.

65. In addition, Mauritius is currently negotiating protocols to DTCs and new agreements (including TIEAs) with a number of jurisdictions in order to establish a clear legal basis with additional partners for exchange of information to the standard. Mauritius's authorities advised that they are currently negotiating DTCs with Algeria, Burkina Faso, the Czech Republic, Greece, Iran, Monaco, Portugal, Saudi Arabia, Vietnam and Yemen. Further, TIEAs with the Nordic jurisdictions, including Finland, one of its major trading partners, are negotiated. Further, TIEA negotiations are underway with Argentina, Austria, Botswana, Greece, Guernsey, the Netherlands, Samoa and St. Lucia.

66. No changes have been made to the recommendation in the January 2011 Report under C.2, as Mauritius is still encouraged to continue to develop its EOI network.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Mauritius is actively negotiating a number of new treaties, protocols or TIEAs (Tax Information Exchange Agreements) to upgrade its oldest treaties that do not meet the standard. Although Mauritius has a wide treaty network, it does not have a DTC with some of its important trade partners.	Mauritius should continue to develop its EOI network with all relevant partners.

<b>Phase 2 rating</b>
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>

### **C.3. Confidentiality**

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

67. 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, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

68. The TIEA and protocols signed by Mauritius since the January 2011 Report include confidentiality provisions in line with Article 26(2) of the Model Tax Convention or Article 6 of the Model TIEA.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>
<b>Phase 2 rating</b>
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>

#### **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.
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69. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise.

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

70. Mauritius's new agreement and protocols signed since August 2011 include the relevant language of the OECD Model Tax Convention and Model Tax Information Exchange Agreement. This includes the DTC with the United Kingdom which now explicitly covers commercial secrets and public policy.



### Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
To be finalised as soon as a representative subset of Phase 2 reviews is completed.

## 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)*

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

72. The January 2011 Report recommends that “Mauritius should respect the deadlines recently introduced in its new Procedure Manual for Exchange of Information and ensure responses or updates are received by treaty partners within 90 days of receipt. In addition, the competent authority should monitor the implementation of the Manual as practice develops, and improve it where needed”.

73. Mauritius’s authorities inform that these recommendations are being incorporated. Mauritius keeps detailed statistics on the time the competent authority needs to answer requests and on the type of information requested. From this self-monitoring, it appears that the Mauritian competent authority systematically sends acknowledgement letters when receiving a new request for information. It has answered a number of requests from various treaty partners within 90 days of receiving the request. In other instances, the competent authority sent partial information within 90 days and informed the treaty partners that further information would follow, or requested further particulars. Nevertheless, it is too early to assess whether Mauritius’s actions sufficiently implement the recommendation and no changes were made to the recommendation.

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

74. As mentioned above, Mauritius was recommended to monitor the implementation of its Procedure Manual on Exchange of Information practice develops, and improve it where needed. A first update had taken place in August 2010, following the on-site visit. The latest update took place in February 2011 (see section B.2). It is too early to assess whether Mauritius's actions sufficiently incorporate the recommendation and Mauritius should continue its work on implementing the recommendation.

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

75. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

76. The restriction identified in the January 2011 in the UK treaty currently in force, has been removed through a protocol signed on 10 January 2011.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>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.</b>	
<b>Phase 2 rating</b>	
<b>To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
In the past, when the information requested was not available in Mauritian tax files or the person concerned did not provide the information, it has taken too long to obtain information from third parties. The competent authority has adopted a Procedure Manual recently. It sets new deadlines for different steps of an exchange of information procedure but it is too recent for its implementation to be assessed at this stage.	Mauritius should <u>continue respecting</u> the deadlines recently introduced in its new Procedure Manual and ensure responses or updates are received by treaty partners within 90 days of receipt. In addition, the competent authority should <u>continue monitoring</u> the implementation of the Manual as practice develops, and improve it where needed.



## Summary of Determinations<sup>4</sup> and Factors Underlying Recommendations

Determination/rating	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
<b>Phase 1 determination: The element is in place, but certain aspects of the legal implementation of the element need improvement</b>	There are no obligations to maintain ownership and identity information in case of nominee shareholding, except for public companies and GBCs.	Mauritius should establish a requirement that information is maintained indicating the person on whose behalf any legal owner holds his interest or shares in any company or body corporate.
	No identity information is available on non-resident foreign trusts administered in Mauritius or in respect of which a trustee is resident in Mauritius, where these are not management companies.	An obligation should be established for all trustees and administrators resident in Mauritius to maintain information on the settlor, trustees and beneficiaries of their trusts
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	Mauritius has no enforcement experience where provisions on the availability of information are recent.	Enforcement of the legal provisions on the availability of ownership and accounting information in the global business sector should be monitored.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
<b>Phase 1 determination: The element in place but certain aspects of the legal implementation of the element need improvement.</b>	Underlying documentation is not explicitly required to be kept for those trusts that do not carry on a business or derive income in Mauritius.	Mauritius should ensure that all relevant entities and arrangements maintain underlying documentation, for at least five years.
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	Mauritius has no enforcement experience where provisions on the availability of accounting information are recent.	Enforcement of the legal provisions on the availability of accounting information in the global business sector should be monitored.

4. The ratings will be finalised as soon as a representative subset of Phase 2 reviews is completed.

Determination/rating	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i>		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	Mauritius has the legal framework in place to access information, including compulsory powers, but has never exercised its compulsory powers in practice, and their effectiveness cannot be assessed.	Mauritius should continue exercising its powers to compel information and sanction failure to provide information whenever appropriate. The implementation of these powers in practice should be monitored by Mauritius.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i>		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	The rights and safeguards that apply to persons in Mauritius appear to be compatible with effective exchange of information. Some of them have not yet been tested in practice to assess whether they could unduly prevent or delay exchange of information.	Mauritius should ensure that its new guidelines regarding prior notification are applied in practice.

Determination/rating	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information. (ToR C.1)		
<b>Phase 1 determination: The element is in place.</b>	One DTC limits exchange of information to the carrying out of the provisions of the Convention and does not extend to the administration and enforcement of domestic laws of the contracting states.	Mauritius should continue to negotiate with existing partners (or take steps to expedite entry into force of) new exchange of information arrangements where the existing treaties do not meet the international standard.
	Most of Mauritius's DTCs do not include paragraphs 4 and 5 of Article 26 of the Model Tax Convention in its treaties, but Mauritius has indicated that it is ready to exchange bank information even in the absence of reciprocity.	Exchange of bank information should be ensured with all Mauritius's treaty partners. Although Mauritius is willing to exchange information even in the absence of paragraphs 4 and 5 of Article 26 of the Model Tax Convention and reciprocity, Mauritius is encouraged to continue upgrading the exchange of information provision in its treaties to include paragraphs 4 and 5, to secure the benefit of reciprocity from its treaty partners, especially those jurisdictions that are unable to do so without paragraphs 4 and 5 being explicitly provided.
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>	The Mauritian competent authority has faced difficulties in some cases in deciding whether a request meets the foreseeably relevance standard.	Mauritius is encouraged to continue communicating quickly with its treaty partners when the competent authority is unsure that the received request meets the foreseeably relevance standard.

Determination/rating	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
<b>Phase 1 determination: The element is in place.</b>	Mauritius is actively negotiating a number of new treaties, protocols or TIEAs (Tax Information Exchange Agreements) to upgrade its oldest treaties that do not meet the standard. Although Mauritius has a wide treaty network, it does not have a DTC with some of its important trade partners.	Mauritius should continue to develop its EOI network with all relevant partners.
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i>		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
<b>Phase 1 determination: The element is in place.</b>		
<b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b>		

Determination/rating	Factors underlying recommendations	Recommendations
The jurisdiction should provide information under its network of agreements in a timely manner. ( <i>ToR C.5</i> )		
<p><b>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.</b></p>		
<p><b>Phase 2 rating: To be finalised as soon as a representative subset of Phase 2 reviews is completed.</b></p>	<p>In the past, when the information requested was not available in Mauritian tax files or the person concerned did not provide the information, it has taken too long to obtain information from third parties. The competent authority has adopted a Procedure Manual very recently. It sets new deadlines for different steps of an exchange of information procedure but it is too recent for its implementation to be assessed at this stage</p>	<p>Mauritius should continue respecting the deadlines recently introduced in its new Procedure Manual and ensure responses or updates are received by treaty partners within 90 days of receipt. In addition, the competent authority should continue monitoring the implementation of the Manual as practice develops, and improve it where needed.</p>





## **Annex 1: Jurisdiction’s Response to the Supplementary Review<sup>5</sup>**

We would like to express our gratitude to the Global Forum Secretariat for having acceded to our request for a supplementary report. We are also thankful to the assessing team, comprising Ms. Eng Choon Meng, Mr. Raul Pertierra, Mr. Richard Thomas, Ms. Gwenaelle Le Coustumer and Mr. Beat Gisler for their understanding and cooperation and appreciate the professionalism and the excellent work carried out in evaluating the exchange of information framework in place in Mauritius.

Mauritius has always adopted a co-operative approach towards international organisations and has ensured over the years that the country is fully compliant with norms prescribed by international standard setters like the OECD, IOSCO, IAIS, FATF and the Basel Committee. Consultation with stakeholders is the backdrop of good governance. With a view to strengthening its international commitments, the Government continuously calls upon all parties concerned to examine their approach and identify areas that would warrant improvement.

The initial Peer Review Report on Mauritius was published in January 2011 and the Global Forum had undertaken to reassess Mauritius after a period of 6 months. In the meantime Mauritius has taken measures, both legislative and administrative, to implement the recommendations of the Global Forum and subsequently requested for the supplementary report. On the whole we are satisfied with the supplementary report and welcome that element A2 relating to the keeping of reliable accounting records by all relevant entities and arrangements has now been determined to be in place.

Mauritius will thoroughly examine the recommendations included in the supplementary report with a view to determining how best they can be implemented. Our understanding remains that all jurisdictions that have the same issues as Mauritius would be required to implement proper measures, so as to ensure a global level playing field.

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

## **Annex 2: Request for a Supplementary Report Received From Mauritius**

### **TOR A.1 – The element is in place, but certain aspects of the legal implementation of the element need improvement**

#### ***(i) Nominee Shareholding***

*Recommendation:* – Mauritius should establish a requirement that information is maintained indicating the person on whose behalf any legal owner holds his interest or shares in any company or body corporate.

**Action:** –

The issue of nominee shareholding is being discussed with all the stakeholders.

#### ***(ii) Foreign Trusts***

*Recommendation:* – An obligation should be established for all trustees and administrators resident in Mauritius to maintain information on the settlor, trustees and beneficiaries of their trusts.

**Action:** –

Under section 73(d) of the Income Tax Act, a foreign trust is considered resident in Mauritius where the trust is administered in Mauritius.

A trust is included in the definition of “company” in section 2 of the Income Tax Act and is taxable as a company.

It therefore follows that a trust has all the tax obligations that a company has under the income tax legislation.

A resident trust is taxable on its worldwide income as a company and has to furnish annual returns of income together with all relevant accounts. Section 119 of the Income Tax Act requires in particular a trustee to submit to the Tax Authorities (Mauritius Revenue Authority) the full name of the trust’s beneficiaries and such other particulars as may be required by the Director-General of MRA.

We are of the view that there is already an obligation under the Income Tax Act for foreign trusts administered in Mauritius (which are considered as resident) to maintain and furnish to MRA the information on settlor, trustee and beneficiaries.

Furthermore, under common law a trustee in Mauritius of a trust which is resident in Mauritius or elsewhere has a duty of care and diligence throughout the administration of the trust. The Courts have interpreted this as a duty of care in the management of the affairs of the trust. We are of the view that the duty will necessarily include the duty to keep records because management must entail record keeping as well.

***(iii) Enforcement of Legal provisions on availability of ownership and accounting information in the global business sector***

*Recommendation: – Enforcement of the legal provisions on the availability of ownership and accounting information in the global business sector should be monitored.*

**Action: –**

All EOI requests concerning entities in the global business sector are being duly attended to and responded in a timely manner.

**TOR A.2 – The element is not in place.**

***(i) Maintenance of accounting records by GBC2 companies***

*Recommendation: – GBC2s should be required to maintain accounting records and underlying documentation to the standard.*

**Action: –**

Discussions have already been held with all stakeholders.

The Fourteenth Schedule to the Companies Act is being amended to require the keeping of accounting records and underlying documentation by GBC2 companies for a period of at least 7 years.

The amendment is being made through regulations by the Minister of Finance.

Please find attached (Annex 1\*) the draft amendment.

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\* PDF copies of the amended laws referred to above, were also provided by Mauritius with their letter to the Chair of the PRG dated 11 July 2011.

The draft text is presently at the State Law Office for vetting. It will then be presented to the Minister for signing and will eventually be published in the Government Gazette. The whole process is expected to be completed by the end of this month or much earlier.

**(ii) Underlying documentation**

*Recommendation:* – Mauritius should ensure that all relevant entities and arrangements maintain underlying documentation.

**Action:** –

The Income Tax Act has already been amended in December 2010 to explicitly require the keeping of proper books, registers, accounts, records such as receipts, invoices and vouchers, other documents such as contracts and agreements, and a full and true record of all transactions and other acts engaged in by any person carrying on business or deriving income other than emoluments – please see Annex 2\*.

**TOR B.1 – The element is in place**

**(i) Legal framework to access information**

*Recommendation:* – Mauritius should exercise its powers to compel information and sanction failure to provide information whenever appropriate. The implementation of these powers in practice should be monitored by Mauritius.

**Action:**

Information required for exchange purposes, unless they are already available in file, are requested in the first instance from the taxpayers themselves. In practice, all taxpayers (except the 2 cases relating to bank information mentioned below) have so far responded positively to our request. There has not been any need to apply any sanction as provided in the law.

**(ii) Banking information**

*Recommendation:* – Mauritius should exercise its powers to obtain bank information directly from the bank in all cases where such information is not obtained from the accountholder. Mauritius should also continue its efforts to ensure that all stakeholders are fully aware of the competent authority's powers to obtain such information and of the procedure and timelines to be adopted in such cases.

**Action: –**

At the time of the on-site visit of the assessors in June last year, there was no case where request for information was made directly to bank because all taxpayers had been complying with our requirement.

We afterwards had two cases of non-compliance by the companies involved. We therefore wrote directly to the relevant banks for bank statements in respect of those account holders.

We can now report that the two banks (of international standing) have positively replied and have submitted the relevant bank statements which have already been sent to the treaty partner.

The provisions of section 124(1)(b) have now been tested and proved to be effective.

A circular letter has already been issued to all stakeholders informing them, inter alia, of the powers of MRA to obtain bank information. A notice to that effect is also posted on the MRA website.

**(ii) Accounting information for current year**

*Recommendation: – The competent authority should implement in practice the assurance they have given to the Global Forum to obtain and exchange foreseeably relevant accounting data, even partial data, on a current basis.*

**Action: –**

In the recent months we have had 25 cases where accounting information relating to current year have been exchanged with our treaty partner.

**TOR B.2 – The element is in place.**

*Recommendation: – Mauritius should set guidelines when a jurisdiction requires that the individual or entity concerned not be notified, e.g. in cases where the information requested from a third party record keeper 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.*

**Action: –**

The Procedure Manual on Exchange of Information has already been amended to include guidelines with regard to notification to taxpayers and confidentiality.

**TOR C.1 – The element is in place.*****(i) New exchange of information arrangements***

*Recommendation: – Mauritius should continue to negotiate with existing partners (or take steps to expedite entry into force of) new exchange of information arrangements where the existing treaties do not meet the international standard. Exchange of bank information should be ensured with all Mauritius's treaty partners. Although Mauritius is willing to exchange information even in the absence of paragraphs 4 and 5 of Article 26 of the Model Tax Convention and reciprocity, Mauritius is encouraged to upgrade the exchange of information provision to include paragraphs 4 and 5 in its treaties, to secure the benefit of reciprocity from its treaty partners, especially those jurisdictions that are unable to do so without paragraphs 4 and 5 being explicitly provided.*

**Action: –**

The existing DTC with Germany limits exchange of information to the carrying out of the provisions of the Convention. A new DTC has already been concluded with Germany with an upgraded article on exchange of information. Formalities are under way for the bringing into force of the new DTC.

The DTC with UK which limits exchange of information already at the disposal of tax authorities has been amended to upgrade the article on exchange of information. The Protocol has already been signed by the two countries.

Efforts are ongoing to upgrade other DTC's and to enter into new DTC's and TIEA's to ensure effective exchange of information. The position may be summarised as follows –

**• DTCs being negotiated**

1. Canada
2. Greece
3. Portugal
4. Czech Republic
5. Iran
6. Burkina Faso
7. Algeria
8. Yemen
9. Saudi Arabia
10. Vietnam
11. Monaco

- **Upgrade of Article 26 in DTC**

**Upgraded**

1. UK (signed)
2. Seychelles (signed)
3. France (signed)
4. Italy (signed)
5. Malaysia
5. Germany (new DTC)
6. South Africa (new DTC)
7. Sweden (new DTC)

**Being upgraded**

1. Belgium
2. Luxembourg

- **TIEA's finalised / being negotiated**

**Finalised**

1. Australia
2. Denmark
3. Finland
4. Faroe Islands
5. Greenland
6. Iceland
7. Norway

**Being negotiated**

1. Botswana
2. Netherlands
3. Guernsey
4. St. Lucia
5. Argentina
6. Samoa Island
7. Austria
8. Greece

***(ii) Communication with treaty partners***

*Recommendation: – Mauritius is encouraged to communicate quickly with its treaty partners when the competent authority is unsure that the received request meets the foreseeably relevance standard.*

**Action: –**

Being done

**TOR C.2 – The element is in place.**

***Developing treaty network***

*Recommendation: – Mauritius should continue to develop its EOI network with all relevant partners.*

**Action: –**

Please see actions being taken under C.1.



## TOR C.5

### *Implementation of Procedure Manual*

*Recommendation: – Mauritius should respect the deadlines recently introduced in its new Procedure Manual and ensure responses or updates are received by treaty partners within 90 days of receipt. In addition, the competent authority should monitor the implementation of the Manual as practice develops, and improve it where needed.*

**Action: –**

Being implemented.

### Annex 3: List of all Exchange-of-Information Mechanisms in Force

	Treaty partner	Type of Eol arrangement	Date signed	Date in force
1	Germany	DTC	15-Mar-78	1-Jan-81
2	France	DTC	11-Dec-80	17-Sept-82
		protocol	23-Jun-11	Ratified by Mauritius on 6-Aug-11
3	United Kingdom	DTC	11-Feb-81	26-Oct-87
		protocol	10-Jan-11	Ratified by Mauritius on 28-May-11
4	India	DTC	24-Aug-82	11-June-85
5	Italy	DTC	09-Mar-90	28-April-95
		protocol	09-Dec-10	Ratified by Mauritius on 28-May-11
6	Zimbabwe	DTC	06-Mar-92	5-Nov-92
7	Sweden	DTC	23-Apr-92	21-Dec-92
8	Malaysia	DTC	23-Aug-92	19-Aug-93
9	Swaziland	DTC	29-Jun-94	8-Nov-94
10	China (People's Rep.)	DTC	01-Aug-94	4-May-95
		protocol	05-Sept-06	25-Jan-07
11	Madagascar	DTC	30-Aug-94	4-Dec-95
12	Pakistan	DTC	03-Sep-94	19-May-95
13	Luxembourg	DTC	15-Feb-95	12-Sept-96
14	Namibia	DTC	04-Mar-95	25-July-96
15	Belgium	DTC	04-Jul-95	28-Jan-99
16	Singapore	DTC	19-Aug-95	07-June-96

	Treaty partner	Type of Eol arrangement	Date signed	Date in force
17	Russia	DTC	24-Aug-95	
18	Botswana	DTC	26-Sep-95	16-March-96
19	Sri Lanka	DTC	12-Mar-96	2-May-97
20	South Africa	DTC	05-Jul-96	20-June-97
21	Mozambique	DTC	14-Feb-97	8-May-99
22	Kuwait	DTC	24-Mar-97	1-Sept-98
23	Lesotho	DTC	29-Aug-97	9-Sept-04
24	Thailand	DTC	01-Oct-97	10-June-98
25	Oman	DTC	30-Mar-98	20-July-98
26	Nepal	DTC	03-Aug-99	11-Nov-99
27	Cyprus	DTC	21-Jan-00	12-June-00
28	Rwanda	DTC	30-Jul-01	14-April-03
29	Senegal	DTC	17-Apr-02	15-Sept-04
30	Croatia	DTC	06-Sep-02	9-Aug-03
31	Uganda	DTC	19-Sep-03	21-July-04
32	Barbados	DTC	28-Sep-04	28-Jan-05
33	Seychelles	DTC	11-Mar-05	22-June-05
		protocol	03-Mar-11	Ratified by Mauritius on 28-May-11
34	United Arab Emirates	DTC	18-Sep-06	31-July-07
35	Tunisia	DTC	12-Feb-08	28-Oct-08
36	Qatar	DTC	28-Jul-08	28-July-09
37	Bangladesh	DTC	21-Dec-09	
38	Australia	TIEA	08-Dec-10	Ratified by Mauritius on 11-Feb-11

The text of most DTCs is available on the website of the Mauritius Revenue Authority at <http://www.gov.mu/portal/sites/mra/dta.htm>.

## **Annex 4: List of all Laws, Regulations and Other Relevant Material**

### **Request for supplementary report**

Companies Combined Phase 1 and 2 Peer Review – Follow-up actions  
taken on recommendations

### **Amended legislation**

Amendments to Section 153 of the Income Tax Act (24 December 2010)

Amendments to the 14th Schedule to the Companies Act (12 July 2011)

### **Exchange of Information Agreements**

TIEA with Australia

Protocol to DTCs with

France;

Italy;

Seychelles; and

United Kingdom

### **Guidelines, manuals**

Procedure Manual on Exchange of Information (updated February 2011)

