



Supplementary Peer Review Report Phase 1 Legal and Regulatory Framework

TURKS AND CAICOS ISLANDS



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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 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 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 supplementary report on the legal and regulatory framework for transparency and exchange of information in the Turks and Caicos Islands complements the original Phase 1 Peer Review report on the Turks and Caicos Islands, which was adopted and published by the Global Forum in August 2011 (August 2011 report).

2. It reviews the legislative amendments made by the Turks and Caicos Islands since May 2011 (the date at which the legal and regulatory framework was previously assessed) to address the deficiencies identified in the August 2011 report. These amendments pertain to the determinations and recommendations made in respect of availability of ownership and identity information (element A.1); availability of accounting information (element A.2); access to information (element B.1); exchange of information mechanisms (element C.1); and, exchange of information mechanisms with all relevant partners (element C.2). The Turks and Caicos Islands was of the view that the amendments made to its legal framework were such that elements A.1, A.2, B.1, C.1 and C.2 should now be determined to be in place. Accordingly, it asked for a supplementary peer review report pursuant to paragraph 58 of the *Methodology for Peer Reviews and Non-member Reviews*.

3. The Turks and Caicos Islands is a small British Overseas Territory located in the North Atlantic Ocean. Tourism, fishing and offshore financial services are the primary drivers of its economy. Its main trading partners are the United States, United Kingdom and Canada, and its official currency is the US dollar (USD). In 2009, parts of the Turks and Caicos Islands Constitution were suspended by the British government. The power of the Turks and Caicos Government is currently vested in the Governor alone.

4. The Turks and Caicos Islands has worked with the OECD in respect of tax information exchange since 2002 and since 2006 has participated in all of the Global Forum's annual assessments. In 2009, it became a member of the Global Forum and committed to the international standard for transparency and exchange of information for tax purposes. As at 29 August 2011, it has signed EOI agreements with 16 jurisdictions, of which seven have been brought into force. The Turks and Caicos Islands has taken all steps on its

part which are necessary to bring all remaining agreements into force, and has notified its EOI partners accordingly.

5. The Turks and Caicos Islands has a network of EOI agreements with relevant partners. These EOI agreements are consistent with the international standard and are given full legal effect through the Turks and Caicos Islands' domestic legislation.

6. In terms of access to information, the Tax Information Exchange Ordinance, as amended, expressly empowers the competent authority to obtain, for the purposes of complying with a valid EOI request, any information under the possession or control of any person under the Turks and Caicos Islands' territorial jurisdiction. The rights and safeguards available under the Turks and Caicos Islands' legal framework are compatible with effective exchange of information.

7. The laws of the Turks and Caicos Islands ensure that ownership and identity information, as well as reliable accounting information, are mostly available for relevant legal entities and arrangements. The remaining gaps pertain to: (a) the availability of ownership information in respect of trusts that are professionally managed in by a category of trustees who are exempted from licensing; and (b) reliable accounting information in respect of ordinary partnerships and relevant trusts in the Turks and Caicos Islands. The legal framework ensures that relevant bank information for all account holders is available to the authorities.

8. The changes rapidly introduced by the Turks and Caicos Islands since the August 2011 report demonstrate its commitment to implementing the international standards for transparency and exchange of information. The Turks and Caicos Islands is encouraged to continue to review and update its legal and regulatory framework in line with the remaining recommendations made in the August 2011 report in respect of availability of ownership and identity information and accounting information. Any further developments in the legal and regulatory framework, as well as the application of the framework to the EOI practices of the Turks and Caicos Islands' competent authority will be considered in detail in the Phase 2 Peer Review which is scheduled for the first half of 2013.

Introduction

Information and methodology used for the peer review of the Turks and Caicos Islands

9. 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 the Turks and Caicos Islands 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*. 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 August 2011, and information supplied by the Turks and Caicos Islands. It follows the Phase 1 peer review report on the Turks and Caicos Islands which was adopted and published by the Global Forum in August 2011.

10. 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 the Turks and Caicos Islands' 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. This report considers changes in the Turks and Caicos Islands' legal and regulatory framework which relate to the availability of ownership and identity information, availability of accounting information and access to information.

11. The supplementary review was conducted by an assessment team which comprised two expert assessors: Mr Avvari Sreenivasa Rao, Director, Foreign Tax and Tax Research II of the Indian Ministry of Finance; and Mr

Philippe Cahanin, Deputy Director in the Large Business Audit Branch of the French Revenue Administration; and one representative of the Global Forum Secretariat, Mr. Guozhi Foo.

12. 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, is set out at the end of this report.

Compliance with the Standards

A. Availability of information

Overview

13. Effective exchange of information requires the availability of reliable information. This report reviews the amendments to the Companies Ordinance and Limited Partnerships Ordinance relating to the obligations of relevant foreign companies to maintain ownership information (element A.1), as well as obligations on companies and limited partnerships to keep relevant accounting records (element A.2).

14. These amendments partially address the recommendations made in the August 2011 report. Accordingly, the relevant recommendations have been removed and determination for element A.2 has been upgraded from “not in place” to “in place, but certain aspects of the legal implementation of the element need improvement”.

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 (ToR¹ A.1.1)

Foreign companies

15. Sections 38 and 38A of the Companies Ordinance require all companies to maintain an up to date register of shareholders and members. The register must include:

- name, address and occupation of all members;
- the date the person was entered on the register as, or ceased to be, a member; and
- in the case of a company limited by shares, a statement of the number of shares held by each member, distinguishing, save in the case of shares that are fully paid, each share by its number, and of the amount paid, or agreed to be considered paid, on the shares of each member.

16. The above obligations apply to all “companies”, which was defined under section 2 of the Companies Ordinance to include all companies *formed and registered* under the Companies Ordinance. It was not clear whether this definition covered foreign companies that are initially formed outside of the Turks and Caicos Islands, but subsequently registered there because they carry on a business there. This was identified as an issue in the August 2011 report because the ownership information of relevant foreign companies (those effectively managed *and* having a permanent establishment in the Turks and Caicos Islands) was made available through this requirement under the Companies Ordinance. The August 2011 report recommended that the Turks and Caicos Islands amend its legislation to clarify this obligation for relevant foreign companies.

17. The Turks and Caicos Islands amended the Companies Ordinance on 29 July 2011 to clarify that the definition of “companies” under section 2 of the Companies Ordinance would include all foreign companies that incorporated outside of the Turks and Caicos Islands, but subsequently registered there because they carry on a business there. This more than covers the scope of relevant foreign companies identified under the recommendation. The recommendation has therefore been removed.

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

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
It is not clear that the obligation to maintain a register of shareholders applies to all relevant foreign companies that are effectively managed and have a permanent establishment in the Turks and Caicos Islands.	The Turks and Caicos Islands should amend its legislation to clarify that the obligation to maintain a register of members also applies all relevant foreign companies that are effectively managed and have a permanent establishment in the Turks and Caicos Islands.
Professional trustees that meet the conditions for licensing exemption do not have clear obligations to maintain the identity of the settlors and beneficiaries of the trusts for whom they act as trustee. They are only subject to common law requirements and it is not clear that such requirements ensure identity information on the settlors and beneficiaries is available to the competent authorities.	The Turks and Caicos Islands should ensure that all professional trustees know the identity of the settlors and beneficiaries of the trusts for whom they provide services to.

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)

Accounting records to be kept in respect of companies

18. The August 2011 report noted that all companies registered under the Companies Ordinance must keep proper books of accounts including day books of account as to give a true and fair view of the state of the company's affairs and to explain its transactions. Such information includes:

- all sums of money received and expended by the company and the matter in respect of which the receipt and expenditure take place;

- all sales and purchases of goods by the company; and
- the assets and liabilities of the company

19. These books of account did not include underlying documents, and there was no requirement to keep the accounting records for at least five years. The above deficiencies were noted in a recommendation in the August 2011 report.

20. The Turks and Caicos Islands amended the Companies Ordinance on 29 July 2011 to include an express requirement for all companies to keep underlying documents such as invoices and contracts, and to keep all accounting records for at least five years from the date they are prepared. A company that does not keep the required accounting records is liable on summary conviction to a fine not exceeding USD 50 000 (EUR 34 785²).³

Accounting records to be kept in respect of partnerships

21. The August 2011 report noted that partnerships in the Turks and Caicos Islands did not have clear obligations to maintain comprehensive and reliable accounting records. The Turks and Caicos Islands amended the Limited Partnerships Ordinance on 29 July 2011 to require the general partners of all limited partnerships (including exempted limited partnerships) to keep proper books of accounts including day books of account and underlying documents as to give a true and fair view of the state of the partnership's affairs and to explain its transactions. This includes:

- all sums of money received and expended by the company and the matter in respect of which the receipt and expenditure take place;
- all sales and purchases of goods by the company; and
- the assets and liabilities of the company

22. All accounting information must be kept for at least five years, and a general partner that fails to maintain the required accounting records is liable on summary conviction to a fine not exceeding USD 50 000 (EUR 34 785).⁴

Conclusion

23. The above amendments effectively address the deficiencies relating to the maintenance of accounting records for companies and limited partnerships, which represent a significant portion of all business entities in the

2. www.xe.com, exchange rate as at 27 July 2011.

3. New section 57 of the amended Companies Ordinance.

4. New section 10A of the Limited Partnerships Ordinance.

Turks and Caicos Islands. Accordingly the determination for element A.2 has been upgraded from “the element is not in place” to “the element is in place, but certain aspects of the legal implementation of the element need improvement”. The recommendations have been amended to reflect the fact that deficiencies relating to trusts and ordinary partnerships still remain.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
Companies are not obliged to keep accounting records for at least five years, nor are they required to maintain underlying documentation.	The Turks and Caicos Islands should ensure that companies maintain relevant underlying documentation, and keep such documentation as well as other accounting records in line with the international standard for at least five years.
There is no consistent obligation for <u>ordinary</u> partnerships and trusts to keep reliable accounting records for at least five years.	The Turks and Caicos Islands should ensure that <u>ordinary</u> partnerships and trusts are required to keep reliable accounting records in all cases for at least five years.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

24. The August 2011 report found that the Turks and Caicos Islands had a legal framework in place to ensure the availability of relevant banking information for all account holders.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to information

Overview

25. 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, but is not limited to, 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.

26. The August 2011 report found that element B.1 was not in place as the competent authority's powers to obtain information for EOI purposes did not appear to be sufficiently comprehensive to meet the full requirements of the international standard. At that time, under the TIE Ordinance, the competent authority could only access information when at least one of the following conditions was met: (a) the information is held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee; or (b) the information relates to the beneficial ownership of a company, partnership or other person.

27. The TIE Ordinance was amended on 15 July 2011 to remove the above restrictions and to expressly empower the competent authority to obtain, for the purposes of complying with a valid EOI request, any information under the possession or control of any person under the Turks and Caicos Islands' territorial jurisdiction. Accordingly the determination for element B.1 has been revised to "the element is in place" and the recommendation removed.

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.)

28. The August 2011 report found that the Turks and Caicos Islands' competent authority's power to obtain information for EOI purposes appeared to be restricted to cases where: (a) the information is held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee; or (b) the information relates to the beneficial ownership of a company, partnership or other person. This arose from the wording of section 5 of the TIE Ordinance, which read:

The Competent Authority may, for the purposes of complying with a request under the Agreement, by notice in writing, require any person to provide such information as may be specified in the notice, provided that: (a) the person is reasonably believed to have the information to which the notice relates; and (b) the information requested is (i) information held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee; or (ii) information regarding the beneficial ownership of a company, partnership or other person.

29. The August 2011 report assessed that this was a serious deficiency as the international standard requires the exchange of all information foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction. This is not limited to beneficial ownership of legal persons and arrangements. This is clarified in Paragraph 47 of the Commentary to the OECD Model TIEA, which explains in respect of Article 5 (parenthesis added) that: *Sub-paragraph a)* (which refers to a jurisdiction's obligation to exchange ownership and identity information) *should not be taken to suggest that a competent authority is obliged only to have the authority to obtain and provide information from the persons mentioned.*

30. The Turks and Caicos Islands authorities took the view that they have full access powers to obtain full information from all entities on the following basis:

- the purpose of enacting the TIE Ordinance was to comply with the terms of the Turks and Caicos Islands' TIEAs;

- all TIEAs are implemented by way of a schedule to the TIE Ordinance and therefore become law. The TIEAs themselves oblige the Turks and Caicos Islands to exchange all information foreseeably relevant to the enforcement of the domestic tax laws of the requesting party. The access powers are not restricted⁵; and the words “fiduciary” and “agent” encompass the duties of a director to a company⁶, and a general partner to a partnership.

31. Nevertheless, it was recommended in the August 2011 report that the Turks and Caicos Islands amend the TIE Ordinance to expressly empower the Turks and Caicos Islands authorities to access all relevant information from all entities for EOI purposes.

32. The Turks and Caicos Islands amended the TIE Ordinance on 15 July 2011 to replace the above provision with the following:

The competent authority may, for the purposes of complying with a request under the Agreement, by notice in writing, require any person to provide such information as may be specified in the notice.

33. The new provision expressly empowers the competent authority to obtain, for the purposes of complying with a valid EOI request, any information under the possession or control of any person under the Turks and Caicos Islands’ territorial jurisdiction. The power of the competent authority to obtain information for EOI purposes is no longer conditional on the fact that a) the information is held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee; or (b) the information relates to the beneficial ownership of a company, partnership or other person. The amendment fully addresses the concerns raised in the August 2011 report. Accordingly the determination for element B.1 has been revised to “the element is in place” and the recommendation removed.

5. R v Chief Immigration Officer, Heathrow Airport & Anor, ex parte Salamat Bibi.

6. Regal (Hastings) Limited v. Gulliver and Others HL/PO/JU/4/3/973.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
The powers of the Turks and Caicos Islands competent authorities to obtain and exchange information under an information exchange agreement apply only to (a) information held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee, or (b) information that relates to the beneficial ownership of a company, partnership or other person.	The Turks and Caicos Islands should ensure that its competent authority has the power, for the purposes of tax information exchange, to obtain information from any person that may be in possession or control of information that is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction.

B.2. Notification requirements and rights and safeguards

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

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

34. The August 2011 report found that the rights and safeguards available under the Turks and Caicos Islands’ legal framework were fully compatible with effective exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C. Exchanging information

Overview

35. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In the Turks and Caicos Islands, the legal authority to exchange information is derived from Tax Information Exchange Agreements (TIEAs) as well as from domestic law.

36. The August 2011 report found that element C.1 was “not in place” and element C.2 was “in place but certain aspects of the legal implementation of the element need improvement”. These determinations arose from the assessment that the competent authority did not appear to have sufficiently broad powers to obtain all foreseeably relevant information for EOI purposes under the Turks and Caicos Islands’ domestic laws, therefore the Turks and Caicos Islands was unable to give full effect to its EOI agreements. This issue has been fully addressed by the amendment to the TIE Ordinance as described in Section B of this report. Accordingly the recommendations under C.1 and C.2 have been removed and the determination for both elements upgraded to “the element is in place”.

C.1. Exchange of information mechanisms

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

37. The August 2011 report found that the Turks and Caicos Islands’ arrangements providing for international exchange of information were not given full effect through domestic law as the Turks and Caicos competent authority could only obtain information for EOI purposes if the information was a) the information is held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee; or (b) the information relates to the beneficial ownership of a company, partnership or other person. As noted in Part B of this supplementary report, this issue has been fully addressed by the amendment to the TIE Ordinance.

Accordingly the recommendation under element C.1 has been removed and the determination changed to “the element is in place”.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
The Turks and Caicos Islands' arrangements providing for international exchange of information have not been given full effect through domestic law as there are limitations on the authorities' powers to obtain necessary information for the purpose of international information exchange.	The Turks and Caicos Islands should amend its domestic legislation so that it can give full effect to the terms of its EOI agreements.

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

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

38. The August 2011 report found that the Turks and Caicos Islands had a network of EOI arrangements with relevant partners, but those arrangements were not given full effect through domestic law due to the deficiencies in the Turks and Caicos authorities' power to obtain information. As noted in Part B of this supplementary report, this has been fully addressed by the amendment to the TIE Ordinance. Accordingly the related recommendation under element C2 has been removed and the determination changed to “the element is in place”.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain legal aspects of the legal implementation of the element require improvement.	
Factors underlying recommendations	Recommendations
The Turks and Caicos Islands has a network of EOI arrangements with relevant partners but they have not been given full effect through domestic law.	The Turks and Caicos Islands should ensure it gives full effect to the terms of its EOI arrangements in order to allow for full exchange of information to the standard with all its relevant partners.
	The Turks and Caicos Islands should continue to develop its EOI network with all relevant partners.

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)

39. The August 2011 report found that there were adequate provisions in the Turks and Caicos Islands to ensure the confidentiality of information received.

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.

40. The August 2011 report found that the Turks and Caicos Islands' EOI mechanisms contain relevant provisions that respect the rights and safeguards of taxpayers and third parties. These provisions are consistent with the international standard.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1), Organisational process and resources (ToR C.5.2) Absence of restrictive conditions on exchange of information (ToR C.5.3)

41. The August 2011 report did not identify any issues relating to the Turks and Caicos Islands’ ability to respond to EOI requests within 90 days, organisational process and resources, or any restrictive conditions on the exchange of information. There have been no new developments in the Turks and Caicos Islands on the above issues.

Determination and factors underlying recommendations

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	Professional trustees that meet the conditions for licensing exemption do not have clear obligations to maintain the identity of the settlors and beneficiaries of the trusts for whom they act as trustee. They are only subject to common law requirements and it is not clear that such requirements ensure identity information on the settlors and beneficiaries is available to the competent authorities.	The Turks and Caicos Islands should ensure that all professional trustees know the identity of the settlors and beneficiaries of the trusts for whom they provide services to.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	There is no consistent obligation for ordinary partnerships and trusts to keep reliable accounting records for at least five years.	The Turks and Caicos Islands should ensure that ordinary partnerships and trusts are required to keep reliable accounting records in line with the international standard in all cases for at least five years.
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i>		
The element is 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. <i>(ToR B.2)</i>		
The element is in place.		
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1)</i>		
The element is in place.		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
The element is in place.		The Turks and Caicos Islands should continue to develop its EOI network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i>		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
The assessment team is not in a position to 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 Supplementary Report⁷

The Turks and Caicos Islands is grateful that our Supplementary Report was considered by the Peer Review Group at very short notice – taking into account special circumstances in accordance with the procedure described in paragraph 58 of the Revised Methodology – and approved on 19 September 2011. This allows the Supplementary Report to be presented to the Global Forum in October 2011.

The Turks and Caicos Islands acknowledge the hard work of the assessors and the Global Forum Secretariat in preparing the Supplementary Report which takes into account the recent developments in the legal and regulatory framework in The Turks and Caicos Islands and we were pleased to confirm our agreement with its terms.

The provision of updates and ongoing monitoring of all jurisdictions is an important component of the peer review process and we welcome the revised methodology which is now being used as a tool to ensure that this process remains robust and credible.

The Turks and Caicos Islands also welcomes that the Supplementary Report determines that the changes to its legal framework were such that element A2 (Accounting Records) is now determined to be “in place but” and elements B1 (access to information) and C1 and C2 (mechanisms for information exchange) are now determined to be “in place”. Additionally, the Turks and Caicos Islands is satisfied with the final conclusion of the supplementary report that the Phase 2 review will take place during the first half of 2013, in accordance with the schedule of reviews adopted by the Global Forum.

Finally, the Turks and Caicos Islands reaffirms its commitment to the work of the Global Forum and will continue to devote serious consideration to the recommendations of the Supplementary Report in respect to elements A1, A2 and C2 and in this regard advises that a draft Partnerships Bill 2011

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

codifying the common law regarding ordinary partnerships and including accounting requirements in accordance with international standards has already been approved by the Governor on the advice of the Advisory Council and is set to be debated by the Consultative Forum shortly.

Annex 2: Request for a Supplementary Report Received from the Turks and Caicos Islands

22nd August 2011.

Mr. François d’Aubert

Chair

Global Forum on Transparency and Exchange of Information for Tax
Purposes

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VIA EMAIL

Dear François,

**RE: Follow-up to Turks and Caicos Islands Phase 1 Peer Review
Report**

The Turks and Caicos Islands submits this report in accordance with paragraphs 57 and 58 of the revised Methodology for Peer Reviews and Non-Member Reviews and the abbreviated procedure approved by the Bureau of the Peer Review Group during its meeting in Cayman Islands in August 2011.

On the basis that the Turks and Caicos Islands Phase 1 Peer Review Report contained determinations that three essential elements, namely A.2, B.1 and C.1 were “not in place” and that essential elements A.1 and C.2 were “in place, but”, this is the intermediary report for the Turks and Caicos Islands under paragraph 57. Furthermore, as the Turks and Caicos Islands has implemented changes which are likely to result in an upgrade of a determination of an essential element, this report also serves as a written report under paragraph 58 seeking a revision of the determinations of the essential elements A.1, A.2, B.1, C.1 and C.2 to “the element is in place” and the removal of all recommendations in respect of those essential elements.

Since the Phase 1 Report was completed and prior to the Report being approved by the PRG, the Turks and Caicos Islands took steps to address the recommendations contained in the Report. Whilst the principal focus has been on addressing the area for which a determination of “element is not in place” was given, all actions undertaken by the Turks and Caicos Islands to date in respect of all recommendations are set out in Appendix 1. Additionally, Appendix 2 sets out the relevant legislative changes made.

On the basis that the Turks and Caicos Islands have implemented the foregoing changes, we welcome the opportunity to have a supplementary report dealt with by the PRG at the earliest possible time.

The Turks and Caicos Islands is available to the assessment team for consultation/discussion regarding this supplementary report.

Yours sincerely,

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Appendix 1: Turks and Caicos Islands’ Follow Up Report on the Recommendations of the Phase 1 Peer Review Report

Determination	Factors underlying recommendations	Recommendations	Action undertaken
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1.)</i>			
The element is in place, but certain aspects of the legal implementation of the element need improvement.	It is not clear that the obligation to maintain a register of shareholders applies to all relevant foreign companies that are effectively managed and have a permanent establishment in the Turks and Caicos Islands.	The Turks and Caicos Islands should amend its legislation to clarify that the obligation to maintain a register of members also applies all relevant foreign companies that are effectively managed and have a permanent establishment in the Turks and Caicos Islands.	The Turks and Caicos Islands has amended the Companies Ordinance to clarify that the obligation to maintain a register of members also applies all relevant foreign companies that are effectively managed and have a permanent establishment in the Turks and Caicos Islands.
	Professional trustees that meet the conditions for licensing exemption do not have clear obligations to maintain the identity of the settlors and beneficiaries of the trusts for whom they act as trustee. They are only subject to common law requirements and it is not clear whether such requirements meet ToR A.1.	The Turks and Caicos Islands should ensure that all professional trustees know the identity of the settlors and beneficiaries of the trusts for whom they provide services to.	The Turks and Caicos Islands is currently reviewing legislation relating to professional trustees to ensure that all professional trustees know the identity of the settlors and beneficiaries of the trusts for whom they provide services to.

Determination	Factors underlying recommendations	Recommendations	Action undertaken
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2.)</i>			
The element is not in place	Companies are not obliged to keep accounting records for at least five years, nor are they required to maintain underlying documentation.	The Turks and Caicos Islands should ensure that companies maintain relevant underlying documentation, and keep such documentation as well as accounting records for at least five years.	The Turks and Caicos Islands has amended the Companies Ordinance to ensure that companies maintain relevant underlying documentation, and keep such documentation as well as accounting records for at least five years.
	There is no consistent obligation for partnerships and trusts to keep reliable accounting records for at least five years.	The Turks and Caicos Islands should ensure that partnerships and trusts are required to keep reliable accounting records in line with the international standard in all cases for at least five years.	The Turks and Caicos Islands has amended the Limited Partnerships Ordinance to ensure that limited partnerships are required to keep reliable accounting records in all cases. The Turks and Caicos Islands is currently reviewing legislation to codify the common law relating to the keeping of reliable accounting records in respect of trusts.
Banking information should be available for all account-holders. <i>(ToR A.3.)</i>			
The element is in place.			

Determination	Factors underlying recommendations	Recommendations	Action undertaken
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1.)</i>			
The element is not in place.	The powers of the Turks and Caicos Islands competent authorities to obtain and exchange information under an information exchange agreement apply only to (a) information held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee, or (b) information that relates to the beneficial ownership of a company, partnership or other person.	The Turks and Caicos Islands should ensure that its competent authority has the power, for the purposes of tax information exchange, to obtain information from any person that may be possession or control of information that is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction.	The Turks and Caicos Islands has amended the Tax Information Exchange Ordinance to ensure that its competent authority has the power to obtain and exchange all information that is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2.)</i>			
The element is in place.			

Determination	Factors underlying recommendations	Recommendations	Action undertaken
Exchange of information mechanisms should allow for effective exchange of information. (ToR C.1.)			
The element is not in place.	The Turks and Caicos Islands' arrangements providing for international exchange of information have not been given full effect through domestic law as there are limitations on the authorities' powers to obtain necessary information for the purpose of international information exchange.	The Turks and Caicos Islands should amend its domestic legislation so that it can give full effect to the terms of its EOI agreements.	The Turks and Caicos Islands has amended its Tax Information Exchange Ordinance so that it can give full effect to the terms of its EOI agreements.
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.	The Turks and Caicos Islands has a network of EOI arrangements with relevant partners but they have not been given full effect through domestic law.	The Turks and Caicos Islands should ensure it gives full effect to the terms of its EOI arrangements in order to allow for full exchange of information to the standard with all its relevant partners.	The Turks and Caicos Islands has amended its Tax Information Exchange Ordinance so that it can give full effect to the terms of its EOI agreements in order to allow for full exchange of information to the standard with all its relevant partners.
		The Turks and Caicos Islands should continue to develop its EOI network with all relevant partners.	

Determination	Factors underlying recommendations	Recommendations	Action undertaken
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3.)</i>			
The element is in place.			
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4.)</i>			
The element is in place.			
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5.)</i>			
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.			

Appendix 2: List of Laws

Companies (Amendment) Ordinance 2011

Limited Partnerships (Amendment) Ordinance 2011

Tax Information Exchange (Amendment) Ordinance 2011

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

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
1	Australia	Taxation information exchange agreement (TIEA)	30-Mar-10	01-Jul-10
2	Canada	TIEA	22-Jun-10	
3	Denmark	TIEA	07-Sep-09	25-Jan-11
4	Faroe Islands	TIEA	16-Dec-09	
5	Finland	TIEA	16-Dec-09	02-Apr-11
6	France	TIEA	24-Sep-09	
7	Germany	TIEA	04-Jun-10	
8	Greenland	TIEA	16-Dec-09	
9	Iceland	TIEA	16-Dec-09	
10	Ireland	TIEA	22-Jul-09	
11	Netherlands	TIEA	22-Jul-09	01-May-11
12	New Zealand	TIEA	11-Dec-09	
13	Norway	TIEA	16-Dec-09	09-Apr-11
14	Portugal	TIEA	20-Dec-10	
15	Sweden	TIEA	16-Dec-09	02-Apr-11
16	UK	TIEA	23-Jul-09	25-Jan-11

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

Limited Partnerships (Amendment) Ordinance 2011

Companies (Amendment) Ordinance 2011

Tax Information Exchange (Amendment) Ordinance 2011

