



Supplementary Peer Review Report Phase 1 Legal and Regulatory Framework

VIRGIN ISLANDS (BRITISH)



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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 and 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.

Executive Summary

1. This is a supplementary report on the legal and regulatory framework for transparency and exchange of information in the Virgin Islands.¹ It complements the Phase 1 Peer Review report on the Virgin Islands (the Phase 1 report) which was adopted and published by the Global Forum in August 2011.

2. This supplementary report reviews the legislative amendments made by the Virgin Islands since May 2011 (the date at which the legal and regulatory framework was previously assessed) to address some of the recommendations made in the Phase 1 report. It considers the request for a supplementary report made by the Virgin Islands pursuant to paragraph 58 of the *Revised Methodology* (see Annex 2) concerning further developments and legislative amendments introduced to address recommendations under elements B.1 (Competent authority’s ability to obtain and provide information), C.1 (Exchange of information) and C.2 (Exchange of information mechanisms with all relevant partners). The Virgin Islands is of the view that these developments and legislative amendments are such that elements B.1, C.1 and C.2 should now be determined to be in place.

3. Since May 2011 no changes have occurred in the legal and regulatory framework of the Virgin Islands in respect of the availability of information. The determinations and recommendations under elements A.1, A.2 and A.3 therefore remain unchanged. The Phase 1 report concluded that ownership and identity information in respect of companies and partnerships is available in the Virgin Islands. Despite the immobilisation of bearer shares through a custodial arrangement, full information on the owners of bearer shares may not be available in all cases. Also, information on the identity of the beneficiaries of a trust is only required to be kept where the trust presents a “higher level of risk” in terms of money laundering or terrorist financing, which will not always be the case. A clear obligation to keep comprehensive accounting records only exists for companies and persons carrying on financial services

1. The name of the Territory is the “Virgin Islands”, but since 1917 the Territory has been universally referred to as the “British Virgin Islands” (BVI) to distinguish the islands from the American Territory, the United States Virgin Islands.

business. Except in some limited cases, no express requirements are in place to keep underlying documentation or to keep accounting records for a period of at least five years with respect to any relevant entity or arrangement. Banking information for all account-holders is available.

4. In respect of access to information, the Virgin Islands has passed important legislative amendments, effective from 13 July 2011, which ensures that its competent authority has powers to obtain any information held by any person believed to be in possession or control of that information. This fully addresses the recommendation made in the Phase 1 report based on the assessment that the Virgin Islands competent authority only had powers to obtain ownership information and information from certain specified persons. As a result, the determination under element B.1 has been changed from “not in place” to “in place”.

5. In addition to the powers of the Virgin Islands competent authority, a legislative amendment also effective from 13 July 2011 introduced a provision providing the Financial Services Commission with powers to obtain information on its own from any person reasonably believed to have the information in case the FSC receives a request for information from the Virgin Islands competent authority on the basis of an information request under an exchange of information agreement.

6. The legislative amendments regarding the access powers of the Virgin Islands competent authority also remove the limitations to fully comply with the terms of its exchange of information agreements, as identified under elements C.1 and C.2 in the Phase 1 report. The respective recommendations pertaining to this issue have therefore been removed and the determinations for both elements have been changed to “in place”.

7. Another recommendation made in the Phase 1 report concerned the fact that the Virgin Islands had not taken all necessary steps to bring its Tax Information Exchange Agreements into force. Since May 2011, the Virgin Islands has taken these steps including the notification of all their treaty partners (including in respect of the newly signed TIEA with the Czech Republic) that it has. The recommendation under element C.1 has therefore been removed. All Tax Information Exchange Agreements concluded by the Virgin Islands contain provisions sufficient to allow the Virgin Islands to exchange all foreseeably relevant information.

8. The changes rapidly introduced by the Virgin Islands since the Phase 1 report demonstrate its commitment to implementing the international standards for transparency and exchange of information. The Virgin Islands is encouraged to continue to review and update its legal and regulatory framework in line with the remaining recommendations made in the Phase 1 report in respect of availability of ownership and identity information

(element A.1) and accounting information (element A.2). Any further developments in the legal and regulatory framework, as well as the application of the framework to the EOI practices of the Virgin Islands competent authority will be considered in detail in the Phase 2 Peer Review which is scheduled for the second half of 2012.

Introduction

Information and methodology used for the peer review of the Virgin Islands

9. The assessment of the Virgin Islands 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 the Virgin 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*. It also reviews to a lesser extent the implementation of this framework. 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 the Virgin Islands. It follows the Review Report on the Virgin 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 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 the Virgin 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.

11. The assessment was conducted by an assessment team, which consisted of one expert assessor, Mr Richard Green, States of Guernsey Income Tax Department, and a representative of the Global Forum Secretariat, Mr. Mikkel Thunnissen. The assessment team assessed the legal and regulatory framework

for transparency and exchange of information and relevant exchange of information mechanisms in the Virgin Islands.

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, can be found in the table on pages 29-31 of this report.

Compliance with the Standards

A. Availability of information

Overview

13. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons.

14. Since May 2011 (the date at which the legal and regulatory framework was previously assessed) no changes have occurred in the legal and regulatory framework of the Virgin Islands in respect of the availability of information. The determinations and recommendations under elements A.1, A.2 and A.3 therefore remain unchanged. A brief description of the issues raised can be found below.

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 A.1.1), Bearer shares (ToR A.1.2), Partnerships (ToR A.1.3), Trusts (ToR A.1.4), Foundations (ToR A.1.5) and Enforcement provisions to ensure availability of information (ToR A.1.6)

15. The Phase 1 report concluded that ownership and identity information in respect of companies and partnerships is available in the Virgin Islands. Both companies and limited partnerships are required to keep a register of shareholders or partners, and both entities must also have a registered agent in the Virgin Islands who has to carry out customer due diligence under the AML/CFT legislation.

16. Recommendations were made in respect of two issues. In respect of bearer shares it was found that information concerning the holder of the shares may not always be available. While bearer shares must be immobilised and all Virgin Islands companies must have a registered agent, some gaps may exist due to the facts that the custodian of the shares is not required to be a resident of the Virgin Islands and the requirements on the registered agent under the AML/CFT legislation are unclear. In respect of trusts information on the identity of the beneficiaries is only required to be kept where the trust presents a “higher level of risk” in terms of money laundering or terrorist financing, which will not always be the case. The Virgin Islands has not yet taken steps to address these issues. The determination and recommendations made in the Phase 1 report under element A.1 therefore remain unchanged.

17. The Virgin Islands law does not allow for the establishment of foundations. Enforcement provisions to ensure the availability of ownership and identity information are in place.

Determination and factors underlying recommendations

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 under the Virgin Islands Anti Money Laundering legislation whether service providers are required to identify all beneficial owners or only certain owners. Consequently, full ownership information may not be available where a company has issued bearer shares.	The Virgin Islands should clarify its laws to ensure availability of full ownership information where a company has issued bearer shares.
It is only in relation to trusts which the trusts service provider regards as presenting a “higher level of risk” in terms of money laundering or terrorist financing, that beneficiaries with a vested right in the trust have to be identified.	The Virgin Islands should ensure that information that identifies the beneficiaries of a trust is available in all cases.

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)

18. In the Phase 1 report it was found that rules to keep reliable accounting records, including underlying documentation, for a period of at least five years are not consistently in place. Companies are required to keep reliable accounting records, but for partnerships and trusts no consistent obligations to maintain reliable accounting records, including underlying documentation, exist. Also, except in the limited cases of persons licensed to carry on financial services business, no express obligation exists to keep all records and documentation for a period of at least five years with respect to any relevant entity or arrangement. Element A.2 was therefore found to be not in place.

19. The Virgin Islands has stated that it has undertaken to review its current legislative regimes governing the entities concerned as per the recommendations

made in the Phase 1 report. The Virgin Islands authorities consider that addressing these recommendations requires elaborate legislative changes affecting different legislation, and so have not yet been finalised, but the Virgin Islands is committed to implement such changes as soon as possible. As no change is effective yet, the determination and recommendations made in the Phase 1 report under element A.2 remain unchanged.

Determination and factors underlying recommendations

Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
There is no consistent obligation for partnerships and trusts to keep reliable accounting records.	The Virgin Islands should ensure that reliable accounting records are required to be kept by partnerships and trusts in all cases.
Consistent requirements for companies, partnerships and trusts to keep underlying documentation are not in place.	The Virgin Islands should ensure that underlying documentation is required to be kept by all relevant entities and arrangements.
Except in limited cases pertaining to persons licensed to carry on financial services business, no minimum retention period to maintain accounting records and underlying documentation exists.	The Virgin Islands should ensure that all relevant entities and arrangements maintain accounting records and underlying documentation for a period of at least five years.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

20. The Phase 1 report found that the Virgin Islands has a legal framework in place to ensure the availability of relevant banking information for all account holders.

Determination and factors underlying recommendations

Determination
The element is in place.

B. Access to information

Overview

21. 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.

22. The Phase 1 report found that element B.1 was not in place as the competent authority's powers to obtain information for exchange of information purposes was limited to ownership information and information held by certain persons. Access to information (other than ownership information) that had to be obtained from persons other than a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee, was not guaranteed. An amendment to the Mutual Legal Assistance (Tax Matters) Act which became effective on 13 July 2011 has extended the Virgin Islands competent authority's access powers to include any information held by any person believed to be in possession or control of that information. This is clearly in line with the standard, resulting in the deletion of the recommendation and the revision of the determination for element B.1

23. In addition, a general provision has been introduced in the Mutual Legal Assistance (Tax Matters) Act clearly indicating that the competent authority's access powers are meant to be sufficient to comply with a request for information under an information exchange agreement, which should avoid any possible interpretational issues. Finally, the penalty for not complying with a request from the Virgin Islands competent authority to provide information has been increased.

24. Amendments have also been made to the Financial Services Commission Act (effective from 13 July 2011). These amendments include the introduction of a provision which provides the Financial Services Commission (FSC) with powers to obtain information on its own from any person reasonably

believed to have the information in case the FSC receives a request for information from the Virgin Islands competent authority on the basis of an information request under an exchange of information agreement.

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), Accounting records (ToR B.1.2.) and Compulsory powers (ToR B.1.4)

25. The Phase 1 report found that, following section 5(1) of the Mutual Legal Assistance (Tax Matters) Act (MLAA), the power of the Virgin Islands competent authority to obtain information for exchange of information purposes could only be used to obtain (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. This resulted in the fact that access to any information other than ownership information (most notably accounting information) is not guaranteed in all cases. This is especially true where such information must be obtained from persons other than a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee; such other persons include companies and partnerships. It was considered that this deficiency should lead to a recommendation and the determination that element B.1 is “not in place”.

26. The Virgin Islands amended the MLAA through Act No.11 of 2011. This Act became effective on 13 July 2011. Section 5(1) MLAA now reads as follows (amendments in strikethrough or bold and underscored).

The 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~~ **be in possession or control of** 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 and trustee, or any other person or entity; or

(ii) information regarding the beneficial ownership of a company, partnership or other person or entity.

27. The addition to section 5(1)(b)(i) MLAA lifts the restriction that information (other than ownership information) can only be required from a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee. This means that the amended provision now ensures that the Virgin Islands competent authority has access powers in respect of any information held by any person believed to be in possession or control of that information, without any further conditions. This is in line with the standard.

28. It is noted that with the replacement of the word “have” with the words “be in possession or control of”, section 5(1) MLAA uses the exact same wording as the ToR for element B.1, confirming the Virgin Islands interpretation of the word “have” as being in accordance with the standard.

29. In addition to the amendments to section 5(1) MLAA, a new provision was added as section 3(4) MLAA. This new provision reads as follows:

For the avoidance of any doubt and notwithstanding anything to the contrary contained in this Part, anything required of the Authority [= the competent authority] pursuant to a request made under or in accordance with a provision of an Agreement [= any information exchange agreement to which the MLAA applies] shall be dealt with in such manner as would be consistent with and satisfy the requirements of the Agreement, and the doing of such thing by the Authority shall be treated as a power the Authority has by virtue of this Act to exercise.

30. The quoted provision clearly indicates that the MLAA is meant to provide access powers to the Virgin Islands competent authority that are sufficient to comply with a request for information under an information exchange agreement. In fact, it is stated that any action taken by the Virgin Islands competent authority pursuant to an information exchange request is in itself sufficient (in combination with the quoted provision) to be treated as such powers, within the boundaries of the information exchange agreement and the requirement to comply with a request. However, it can be expected that the authorities will have to follow the procedures specifically described in the MLAA. Because section 5(1) MLAA provides access powers in respect of any information from any person believed to be in possession or control of that information, this is sufficient to comply with a request for information under an information exchange agreement. Section 3(4) MLAA is therefore

expected to serve primarily for the avoidance of any possible interpretational issues, although no such issues are apparent.

Financial Services Commission

31. It was noted in the Phase 1 report that section 33C(3) of the Financial Services Commission Act (FSCA) states that the FSC is not compelled to provide any assistance relating to matters of taxation while cooperating with foreign regulatory authorities. It was also noted that this provision does not apply when the Virgin Islands competent authority (the Financial Secretary, see s. 4(1) MLAA) requests the FSC to provide information under section 5 MLAA. Nevertheless, to give unequivocal recognition to the fact that the FSC can act following an information request under an exchange of information agreement, the Virgin Islands amended section 33C(3) FSCA to make it no longer applicable in cases where information is lawfully required by a competent authority acting pursuant to an enactment.

32. In addition, section 32 FSCA has been amended. This provision gives the FSC powers to obtain information from persons when carrying out its functions, such as ensuring compliance with the financial services legislation. These powers can now also be used to ensure compliance with a request from a competent authority acting pursuant to an enactment. This means that if the Virgin Islands competent authority would issue a notice for information under the MLAA to the FSC, the FSC can also use its own powers to obtain that information if the FSC itself does not hold the information. The powers of the FSC include the issuance of a notice to any person reasonably believed to have the information and applying for a search warrant in certain circumstances.

Compulsory powers

33. The regular procedure for the Virgin Islands competent authority to obtain information is to issue a notice in writing to the person believed to be in possession or control of the information. The penalty for failing to comply with such notice without lawful or reasonable excuse has been increased through Act No. 11 of 2011 and a person is now liable on conviction on indictment to a fine not exceeding USD 100 000 or to imprisonment for a term not exceeding five years, or both (s. 5(6) MLAA). The same penalty applies where a person fails to comply with any request made by the competent authority in exercise of any power pursuant to section 3(4) MLAA.

Use of information gathering measures absent domestic tax interest (ToR B.1.3) and Secrecy provisions (ToR B.1.5)

34. The Phase 1 report found that the Virgin Islands does not have a domestic tax interest and that no secrecy provisions can be used to decline the provision of information in a way that is not in accordance with the standard.

Determination and factors underlying recommendations

Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
The powers of the Virgin Islands competent authority to obtain and exchange information under an information exchange agreement applies 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 Virgin 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.

35. The Phase 1 report found that the rights and safeguards that apply to persons in the Virgin Islands are fully compatible with effective exchange of information.

Determination and factors underlying recommendations

Determination
The element is in place.

C. Exchanging information

Overview

36. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In the Virgin Islands, the legal authority to exchange information derives from its exchange of information agreements, as soon as an Order by the Minister of Finance has been provided for which gives effect to the MLAA for the specified agreement.

37. In the Phase 1 report, element C.1 was determined to be “not in place” and element C.2 was determined to be “in place but certain aspects of the legal implementation of the element need improvement”. These determinations arose mainly from the assessment that the Virgin Islands competent authority had limited powers to obtain all foreseeably relevant information for exchange of information purposes under its domestic laws. The Virgin Islands was therefore unable to give full effect to its exchange of information agreements. As discussed in Part B of this supplementary report, the Virgin Islands has successfully addressed the deficiency regarding its access powers. Consequently, the recommendations under elements C.1 and C.2 have been removed and the determinations have changed to “the element is in place”.

38. The Phase 1 report also recommended that the Virgin Islands should take all necessary steps to bring its exchange of information agreements into force as quickly as possible, because it had not done so for a number of TIEAs. The Virgin Islands has now taken these steps including the notification of all their treaty partners (including in respect of the newly signed TIEA with the Czech Republic) that it has. The recommendation under C.1 has therefore been removed.

C.1. Exchange of information mechanisms

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

Foreseeably relevant standard (ToR C.1.1), In respect of all persons (ToR C.1.2), Obligation to exchange all types of information (ToR C.1.3), Absence of domestic tax interest (ToR C.1.4), Absence of dual criminality principles (ToR C.1.5), Exchange of information in both civil and criminal tax matters (ToR C.1.6) and Provide information in specific form requested (ToR C.1.7)

39. The Phase 1 report noted that the Virgin Islands has concluded 21 Tax Information Exchange Agreements (TIEAs), which all contain provisions sufficient to allow the Virgin Islands to exchange all foreseeably relevant information. Since May 2011 (the date at which the legal and regulatory framework was previously assessed), the Virgin Islands signed a new TIEA with the Czech Republic. This TIEA follows the wording generally found in the other TIEAs concluded by the Virgin Islands and also allows the Virgin Islands to exchange all foreseeably relevant information in accordance with the standards.

In force (ToR C.1.8)

40. In the Phase 1 report, a recommendation was made because the Virgin Islands had not taken all necessary steps to bring all of its TIEAs into force. The steps to be taken by the Virgin Islands encompass the publication of the text in the official Gazette and notifying its treaty partner. Recently, the Virgin Islands has completed its procedures for all but two TIEAs, ensuring that all steps are taken to bring the TIEAs into force in respect of 10 agreements (including its new TIEA with the Czech Republic) in addition to the 10 that were already in force. This rapid action results in the following table showing the progress made since May 2011 (the date at which the legal and regulatory framework was previously assessed) in ***underlined bold italics***.

Jurisdiction	Date of signing	Date gazetted	Date the Virgin Islands sent notification	Date of entering into force
Aruba	11 September 2009	<i>22 August 2011</i>	<i>23 August 2011</i>	
Australia	27 October 2008	1 April 2010	12 April 2010	19 April 2010
China (People's Rep.)	7 December 2009	9 December 2010	11 February 2010	30 December 2010

Jurisdiction	Date of signing	Date gazetted	Date the Virgin Islands sent notification	Date of entering into force
Curaçao ²	11 September 2009			
Czech Republic	<u>13 June 2011</u>	<u>22 August 2011</u>	<u>22 August 2011</u>	
Denmark	18 May 2009	1 April 2010	12 April 2010	15 April 2010
Faroe Islands	18 May 2009	1 April 2010	<u>7 July 2011</u>	
Finland	18 May 2009	1 April 2010	12 April 2010	15 April 2010
France	17 June 2009	1 April 2010	29 October 2010	18 November 2010
Germany	5 October 2010	23 December 2010	<u>5 July 2011</u>	
Greenland	18 May 2009	1 April 2010	<u>7 July 2011</u>	
Iceland	18 May 2009	1 April 2010	<u>17 June 2011</u>	
India	9 February 2011	<u>22 August 2011</u>	<u>22 August 2011</u>	
Ireland	7 December 2009	9 December 2010	28 February 2011	28 February 2011
Netherlands	11 September 2009	1 April 2010	<u>7 July 2011</u>	
New Zealand	13 August 2009	1 April 2010	<u>7 July 2011</u>	
Norway	18 May 2009	1 April 2010	15 April 2010	15 April 2010
Portugal	5 October 2010	23 December 2010	<u>6 July 2011</u>	
Sint Maarten ³	11 September 2009			
Sweden	18 May 2009	1 April 2010	13 April 2010	16 May 2010
United Kingdom	29 October 2008	1 April 2010	12 April 2010	12 April 2010
United States	3 April 2002	Date unknown	Date unknown	10 March 2006

2. Following the dissolution of the Netherlands Antilles on 10 October 2010, two separate jurisdictions were formed (Curacao and Sint Maarten) with the remaining three islands (Bonaire, Sint Eustatius and Saba) joining the Netherlands as special municipalities. The TIEA concluded with the Kingdom of the Netherlands, on behalf of the Netherlands Antilles, will continue to apply to Curacao, Sint Maarten and the Caribbean part of the Netherlands (Bonaire, Sint Eustatius and Saba) and will be administered by Curacao and Sint Maarten for their respective territories and by the Netherlands for Bonaire, Sint Eustatius and Saba.
3. See footnote 2.

41. The Virgin Islands has now taken all necessary steps to bring the TIEAs with all but two jurisdictions in force. The TIEAs with the two remaining jurisdictions are in fact one agreement applicable to two jurisdictions (see footnote 2). The Virgin Islands authorities state that they are in the process of also bringing these TIEAs into force. As a result of these new developments, the recommendation regarding this issue has been removed.

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

42. The Phase 1 report concluded that the limitation of the powers of the Virgin Islands competent authority to obtain information that is foreseeably relevant for tax purposes prevented the Virgin Islands from fully complying with the terms of its TIEAs. This resulted in a recommendation and a determination of element C.1 being “the element is not in place”. As discussed in Part B of this supplementary report, the Virgin Islands has successfully addressed the deficiency regarding its access powers. Consequently, the recommendation under element C.1 has been removed and the determination changed to “the element is in place”.

Determination and factors underlying recommendations

Determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
Although 21 TIEAs concluded by the Virgin Islands, to date 10 have been ratified and entered into force. Of the other 12 agreements, 8 were signed almost two years ago and in the case of 7 TIEAs the Virgin Islands only needs to send a notification to its treaty partner, meaning that not all steps have been taken by the Virgin Islands to bring them into force.	The Virgin Islands should take all necessary steps to bring its EOI agreements into force as quickly as possible.
The Virgin Islands legal and regulatory framework does not allow its competent authority to fully comply with the terms of its TIEAs due to limited access powers.	The Virgin Islands should amend its legal and regulatory framework in order to be able to fully comply with the terms of its TIEAs.

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

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

43. The Phase 1 report found that the Virgin Islands has a network of information exchange arrangements with relevant partners, but those arrangements had not been given full effect through domestic law due to the deficiency in the Virgin Islands competent authority's power to obtain information. As discussed in Part B of this supplementary report, the Virgin Islands has successfully addressed the deficiency regarding its access powers. Consequently, the relevant recommendation under element C.2 has been removed and the determination changed to "the element is in place".

Determination and factors underlying recommendations

Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
The Virgin Islands has a network of EOI arrangements with relevant partners but they have not been given full effect through domestic law.	The Virgin 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 relevant partners.
	The Virgin 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) and All other information exchanged (ToR C.3.2)

44. The Phase 1 report found that there were adequate provisions in the Virgin Islands to ensure the confidentiality of information received. In respect of information provided in a request for information received by the Virgin Islands, the penalty for disclosing information by any person involved in the processing of the request or aware of the request or any of the particulars has been increased through Act No. 11 of 2011. A person in violation of this non-disclosure rule is

now liable on conviction on indictment to a fine not exceeding USD 100 000 or to imprisonment for a term not exceeding five years, or both (s. 9(2) MLAA).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

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

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

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

45. No issues leading to a recommendation were raised in the Phase 1 report in respect of the provisions regarding rights and safeguards of taxpayers and third parties.

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

46. The Phase 1 report did not identify any issues relating to the Virgin Islands ability to respond to exchange of information requests within 90 days, organisational process and resources, or any restrictive conditions on the exchange of information.

Determination and factors underlying recommendations

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

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <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 under the Virgin Islands Anti Money Laundering legislation whether service providers are required to identify all beneficial owners or only certain owners. Consequently, full ownership information may not be available where a company has issued bearer shares.	The Virgin Islands should clarify its laws to ensure availability of full ownership information where a company has issued bearer shares.
	It is only in relation to trusts which the trusts service provider regards as presenting a “higher level of risk” in terms of money laundering or terrorist financing, that beneficiaries with a vested right in the trust have to be identified.	The Virgin Islands should ensure that information that identifies the beneficiaries of a trust is available in all cases.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
The element is not in place.	There is no consistent obligation for partnerships and trusts to keep reliable accounting records.	The Virgin Islands should ensure that reliable accounting records are required to be kept by partnerships and trusts in all cases.
	Consistent requirements for companies, partnerships and trusts to keep underlying documentation are not in place.	The Virgin Islands should ensure that underlying documentation is required to be kept by all relevant entities and arrangements.
	Except in limited cases pertaining to persons licensed to carry on financial services business, no minimum retention period to maintain accounting records and underlying documentation exists.	The Virgin Islands should ensure that all relevant entities and arrangements maintain accounting records and underlying documentation for a period of at least five years.
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
The element is in place.		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i>		
The element is in place.		
The rights and safeguards (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 Virgin Islands should continue to develop its EOI network with all relevant partners.

Determination	Factors underlying recommendations	Recommendations
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 Report⁴

The Virgin Islands would like to especially thank the Secretariat and our Assessors for their tireless effort in finalizing this supplementary report in such a short space of time. We would also like to thank the PRG for agreeing to consider these amendments during its session in September 2011 and for adopting this supplementary report.

We would further assure the Global Forum that the Virgin Islands has already started to review and update its legal and regulatory framework in line with the remaining recommendations made in the Phase 1 report in respect of availability of ownership and identity information (element A.1) and accounting information (element A.2). We expect to submit these at the next meeting of the PRG.

4. 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 the Virgin Islands

1. Following the adoption of its Phase One Report by the Global Forum, in accordance with Paragraph 58 of the Revised Methodology, the BVI is requesting a Supplementary Report for further consideration by the Peer Review Group at its next meeting scheduled for September 19th-23rd.

2. This request comes in light of amendments having been made in July, 2011 to relevant BVI legislation to address the deficiency outlined in respect of element B1. The BVI considers that the legislative amendments provide the PRG with sufficient ground to upgrade the determinations of element B1 and, consequently element C1, to “the element is in place”. It is noted that element C1 was downgraded by the PRG from “element in place, but ...” to “element not in place” on account of the determination that element B1 “is not in place”. Additionally, with regard to element C1 the Virgin Islands has as of the time of this request, incorporated all signed treaty agreements into its law, and the remaining treaty partners so concerned will be notified within the next few days. This will signify the completion of all internal procedures required to bring these agreements into effect in the Virgin Islands.

3. The following are the relevant information to substantiate this request:

B1: the Competent Authority’s ability to obtain and provide information:

4. The PRG determined that this element was not in place because

“the powers of the Virgin Islands Competent Authority to obtain and exchange information under an information exchange agreement applies 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.”

5. The recommendation therefore was that

“The Virgin 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.”

The Virgin Islands’ Phase 1 Report noted that Article 5.1 of the enabling legislation, the Mutual Legal Assistance (Tax Matters) Act, 2003 (MLAA), while clear, did not provide for the exchange of all types of information. The Report specifically noted that *“Most notably... 5(1) MLAA does not guarantee access to accounting information (or, in fact, any information other than ownership information) in respect of persons other than a bank, other financial institution, or any person acting in an agency or fiduciary capacity including a nominee and trustee. As most companies and partnerships will not be banks, other financial institutions, or persons acting in an agency or fiduciary capacity, this could have a significant impact on the Virgin Islands’ ability to obtain accounting information and other information that is foreseeably relevant for tax purposes and that is not covered by section 5(1) MLAA.”*

6. The Virgin Islands’ position that all of the Virgin Islands TIEAs are law by virtue of forming part of the Schedule to the MLAA, that their effectiveness in terms of implementation (notwithstanding any omission in the provisions of the MLAA) is beyond doubt and that in enacting the MLAA, the Virgin Islands Parliament had had regard to the provisions of the TIEAs and indeed intended the MLAA to accord with the provisions of the TIEAs, was not accepted by the PRG.

7. Notwithstanding and within the spirit of cooperation and in order to provide the necessary clarity to the Virgin Islands’ legal framework to ensure a clear power to access and exchange information on tax matters in respect of all persons and entities, the Legislature on 13th July, 2011 amended the Mutual Legal Assistance (Tax Matters) Act, 2003 through the Mutual Legal Assistance (Tax Matters) (Amendment) Act. Section 5 of the MLAA has been amended to expand the scope of the listings in subsection (1) (i) to include “any other person or entity”. Thus the access powers exercisable by the competent authority under section 5 are in relation to all persons therein identified, including any other person or entity (as well as all companies and partnerships) that are not specifically named in the section.

8. In addition, the competent authority is now specifically mandated to deal with any matter that is the subject of a request in a “manner as would be consistent with and satisfy the requirements of” a TIEA, notwithstanding anything to the contrary that may be contained in the MLAA. Such act by the competent authority “shall be treated as a power the Authority has by virtue of [the] Act to exercise” (new section 3 (4)). This effectively gives the TIEAs precedence over the provisions of the Act and any power that is required to be exercised by virtue of any TIEA may be exercised as if the power had been granted under the Act.

9. Summarily, these amendments ensure beyond doubt that the Competent Authority of the Virgin Islands may obtain any or all information that is foreseeably relevant to the domestic laws of a requesting jurisdiction in respect of any person or entity. Thus the PRG’s recommendation in relation to element B1 is fully adhered to.

10. Additionally the Virgin Islands’ Legislature has also amended the Financial Services Commission Act in sections 32 and 33C to give unequivocal recognition to the FSC’s mandate to act on the basis of a request for information from a competent authority acting in accordance with an enactment. This includes the competent authority under the MLAA.

11. Copies of the relevant amendments are attached for ease of reference.

C 1: Effective exchange of information mechanisms should allow for effective exchange of information:

12. The PRG was of the view that element C1 was predicated by element B1 in that the legal and regulatory framework did not allow the Virgin Islands’ competent authority to fully comply with the terms of its TIEAs due to limited access powers. The PRG was also of the view that not all steps had been taken by the Virgin Islands to bring its signed TIEAs into force.

13. The Virgin Islands has now completed all of its internal procedures bringing the remaining TIEAs effectively in force (thus making a total of 20 TIEAs that we have completed all internal procedures to bring them in force in the Virgin Islands) and has accordingly advised its treaty partners concerned. With the amendment of the MLAA as described at paragraphs 8, 9, and 10 above, coupled with the action taken to complete the process of bringing the outstanding TIEAs into effect, the Virgin Islands hopes that the PRG would now be in a position to amend the determination with respect to element C1 to “element is in place”.

14. Ultimately, with regard to the determination that the B1 and C1 elements being determined to be “not in place”, the Virgin Islands would draw attention to paragraph 7 of the Executive Summary of the Report and later paragraph 24, which acknowledges that “*the Virgin Islands has recently enacted legislation with the purpose of addressing the issue of limited access power by the Competent Authority. This could not, however, be assessed in the Report as it was neither in force nor in effect as at May 2011.*” At the kind initiative of the Bureau of the PRG, it was agreed towards the conclusion of the July PRG meeting after much debate that rather than wait for six months for the submission of a supplementary report regarding these new developments with respect to the Virgin Islands, the supplementary report should be considered at the next meeting of the PRG which will take place during the week of 19th September, 2011.

15. The Virgin Islands recognizes that element A2, relating to accounting records, is still determined to be “not in place”. To give comprehensive effect to the recommendations concerning this determination will require elaborate legislative changes affecting different legislation which will take a little while to accomplish. However, the Virgin Islands is fully committed to implementing the recommendations and undertakes to put these in place in time for the supplementary report that follows this one.

16. The Virgin Islands takes this opportunity to reiterate that since 2009 it has, on the basis of its current legislative framework, been exchanging information with a number of Treaty Partners, including the United States, Sweden, France and Australia. Although the effectiveness of this process is a matter for Phase 2, the Virgin Islands uses this example merely to establish that the its legal and regulatory framework is robust and that the Government of the Virgin Islands is fully committed to the mandate of the Global Forum on the Exchange of Information for Tax Purposes.

Ministry of Finance
Central Administration Complex
Road Town, Tortola
BRITISH VIRGIN ISLANDS
22nd August, 2011

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

Bilateral agreements

Exchange of information agreements signed by the Virgin Islands as at August 2011, in alphabetical order:

	Jurisdiction	Type of Eol Arrangement	Date signed	Date entered into force
1	Aruba	TIEA	11 September 2009	
2	Australia	TIEA	27 October 2008	19 April 2010
3	China (People's Rep.)	TIEA	7 December 2009	30 December 2010
4	Curacao ⁵	TIEA	11 September 2009	
5	Czech Republic	TIEA	13 June 2011	
6	Denmark	TIEA	18 May 2009	15 April 2010
7	Faroe Islands	TIEA	18 May 2009	
8	Finland	TIEA	18 May 2009	15 April 2010
9	France	TIEA	17 June 2009	18 November 2010
10	Germany	TIEA	5 October 2010	
11	Greenland	TIEA	18 May 2009	
12	Iceland	TIEA	18 May 2009	
13	India	TIEA	9 February 2011	
14	Ireland	TIEA	7 December 2009	28 February 2011
15	Netherlands	TIEA	11 September 2009	
16	New Zealand	TIEA	13 August 2009	
17	Norway	TIEA	18 May 2009	15 April 2010
18	Portugal	TIEA	5 October 2010	

5. See footnote 2.

	Jurisdiction	Type of Eol Arrangement	Date signed	Date entered into force
19	Sint Maarten ⁶	TIEA	11 September 2009	
20	Sweden	TIEA	18 May 2009	16 May 2010
21	Switzerland	DTC	August 1963	1 January 1961
22	United Kingdom	TIEA	29 October 2008	12 April 2010
23	United States	TIEA	3 April 2002	10 March 2006

6. See footnote 2.

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

Financial Services Commission (Amendment) Act, 2011

Mutual Legal Assistance (Tax Matters) (Amendment) Act, 2011

Mutual Legal Assistance (Tax Matters) Order, 2011