

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report**  
**Phase 1**  
**Legal and Regulatory Framework**

**SAINT VINCENT AND THE GRENADINES**





# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Saint Vincent and the Grenadines 2012**

PHASE 1

March 2012  
(reflecting the legal and regulatory framework  
as at February 2012)



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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 dual criminality.

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](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).





## Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Saint Vincent and the Grenadines.
2. The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and whether that information can be effectively exchanged with its exchange of information (EOI) partners.
3. Saint Vincent and the Grenadines is an independent island nation located in the Eastern Caribbean Sea on the boundary with the Atlantic Ocean. Its economy is based primarily on agriculture, tourism, construction, and to a small extent financial services.
4. Saint Vincent and the Grenadines 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 renewed its commitment to the international standard for transparency and exchange of information for tax purposes. Since then it has quickly built up a network of exchange of information agreements that includes its key trading partners. As at 27 January 2012 it has signed EOI agreements with 31 jurisdictions, of which 22 have been brought into force.
5. Most of Saint Vincent and the Grenadines' EOI agreements allow it to exchange information according to the international standard. They contain adequate safeguards to protect the rights of taxpayers and third parties, and these safeguards are consistent with the international standard. The EOI agreements also ensure the confidentiality of all information exchanged.
6. With regard to the authorities' powers to access information requested by foreign counterparts, the International Co-operation (Tax Information Exchange Agreements) Act gives Saint Vincent and the Grenadines' competent authority broad powers to access all types of information from all persons for EOI purposes. The rights and safeguards that apply to persons in the requested jurisdiction are compatible with effective exchange of information.

7. Saint Vincent and the Grenadines' incorporation and AML laws ensure that ownership information is available for most relevant legal entities and arrangements. In respect of International Business Companies and Limited Liability Companies, up to date ownership information may not be available as their service providers are not obliged in all cases to maintain information on ownership changes after conducting the initial customer due diligence measures. Banks are required to maintain information on their account holders.

8. The main gap in Saint Vincent and the Grenadines legal and regulatory framework for exchange of information relates to the availability of accounting information. International business companies and limited liability companies are not required to maintain adequate accounting records. While they have AML-regulated service providers who are obliged to maintain accounting information relating to these entities, these obligations do not meet the full requirements under the international standard.

9. Recommendations have been made where elements of Saint Vincent and the Grenadines' EOI regime have been found to be in need of improvement. Saint Vincent and the Grenadines' progress in these areas, as well as its actual practice in exchange information with its EOI partners, will be considered in its Phase 2 review which is scheduled to commence in the first half of 2013. In the meantime, a follow up report on the steps undertaken by Saint Vincent and the Grenadines to implement the recommendations made in this report should be provided to the PRG within six months after the adoption of this report.

## Introduction

### Information and methodology used for the peer review of Saint Vincent and the Grenadines

10. The assessment of the legal and regulatory framework of Saint Vincent and the Grenadines was 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*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at February 2012, other materials supplied by Saint Vincent and the Grenadines, and information supplied by partner jurisdictions.

11. The Terms of Reference break 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 Saint Vincent and the Grenadines' 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.

12. The assessment was conducted by an assessment team which comprised two expert assessors: Mr. Mustupha Mosafeer, Director, Mauritius Revenue Authority, Ms. Graciela V. Liquin, Head of Division, International Taxation Directorate, Tax Administration of the Argentine Republic; and one representative of the Global Forum Secretariat Mr. Guozhi Foo. The assessment team assessed the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Saint Vincent and the Grenadines.

## Overview of Saint Vincent and the Grenadines

13. Saint Vincent and the Grenadines is an archipelago of islands situated in the Eastern Caribbean at the southern end of the Windward Islands chain, north of Trinidad and Tobago. It comprises a group of 32 islands and cays, with Saint Vincent being the largest island having an area of approximately 388 square kilometres. Kingstown is the capital and is located on Saint Vincent. Saint Vincent and the Grenadines has a total population of approximately 110 000. The official language is English and the official currency is the Eastern Caribbean dollar (XCD) which is currently pegged to the United States Dollar (USD) at XCD 2.70 to USD 1.

14. Saint Vincent and the Grenadines gained independence from the United Kingdom on 27 October 1979 and has remained a part of the Commonwealth since. Queen Elizabeth II is the head of state and is represented by the Governor General appointed by the Queen. It is a sovereign member of the Commonwealth of Nations; member of the United Nations; CARICOM member state and a member of the Organisation of Eastern Caribbean States.

15. The two main economic resources of Saint Vincent and the Grenadines are hydropower and arable land. Agriculture and agricultural products dominate the country's economy. Banana is the chief commodity and is also an important export item representing 50% of all merchandise exports. Other products are spices, arrowroot, coconuts, taro, sweet potatoes and eddoes. Tourism has grown to become a very important part of the economy. In 1996, new cruise ship and ferry berths came on-line, sharply increasing the number of passenger arrivals. In 2010, total visitor arrivals stood at 231 000 with most of visitors originating from countries in the Caribbean, the UK and the USA. Other important sectors include construction and financial services. Saint Vincent and the Grenadines' main trading partners are Barbados, Canada, Trinidad and Tobago, the UK, and the USA.<sup>1</sup>

16. In the fiscal year ending in 2011, Saint Vincent and the Grenadines' gross domestic product was approximately USD 688 million, translating to a GDP per capita of approximately USD 6 254.

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1. Sources: World Trade Organisation, <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Country=VC&Language=S>, retrieved 17 November 2011, and Saint Vincent and the Grenadines.

### ***Legal system***

17. Saint Vincent and the Grenadines is a parliamentary democracy within the Commonwealth of Nations. The House of Assembly forms the legislature and comprises a total of 23 members, including 15 elected members, six senators appointed by the Governor General on the advice of the Prime Minister, the Attorney-General and the Speaker. The parliamentary term of office is five years, although the Prime Minister may call elections at any time. The power of Parliament to make laws is exercised through the process of Bills being passed by the House. These Bills must be assented to by the Governor-General and published in the Gazette before they have effect.

18. Saint Vincent and the Grenadines' legal system is based on English common law with the English Privy Council being the final court of appeal. The legal system has a three-tiered structure set out in hierarchal order as follows: (i) the Eastern Caribbean Court of Appeal; (ii) the Supreme Court of Judicature or the High Court; and (iii) the Magistrates' Courts or the lower courts. The judiciary is headed by the Saint Lucia-based Eastern Caribbean Supreme Court of which two judges, not citizens of Saint Vincent and the Grenadines, reside in Saint Vincent and the Grenadines. One of the judges has jurisdiction over criminal matters and the other presides over civil matters. Saint Vincent and the Grenadines has a written Constitution which is the supreme law of the jurisdiction. Its legal system relies on single national laws and is not divided between federal and sub-national powers.

### ***Tax system***

19. The administration of income tax is governed by the Income Tax Act, while value added tax (VAT) is governed by the Value Added Tax Act. The Inland Revenue Department, a department of the Ministry of Finance, has the responsibility of collection of the following taxes and licences: income tax, taxes on property, licences fees, travel tax and VAT and excise duties.

20. Resident persons are assessed for income tax on all income accruing directly or indirectly from all sources, whether domestic or foreign. This includes income from any business; rent and royalties; interest or discounts; premiums, commission, fees and licence charges; and any other gains or profits accrued to the person. Non residents are subject to income tax only with respect to income accrued, directly or indirectly, from sources in Saint Vincent and the Grenadines. A company is tax resident in Saint Vincent and the Grenadines if it is incorporated in Saint Vincent and the Grenadines; or if it is incorporated outside of Saint Vincent and the Grenadines and effectively controlled or managed therein. An individual is resident in Saint Vincent and the Grenadines if (a) his permanent place of abode is located therein and he is physically present there for some period of time during the tax year, or (b) if

he is physically present there for at least 183 days during the tax year, or (c) if he is physically present in Saint Vincent and the Grenadines for some period of time during the tax year and the tax year is continuous with a period of physical presence in a preceding or succeeding basis period of such duration as to qualify the person as a resident for the preceding or succeeding year under the 183-day rule.<sup>2</sup>

21. Partnerships are tax transparent entities in Saint Vincent and the Grenadines. A partnership is not charged to tax in its own name, but all income accrued thereto in the basis period for any year of assessment is charged on the partners for such year of assessment.<sup>3</sup> Each partner will be taxed according to its own circumstances.

22. The taxation of trusts in Saint Vincent and the Grenadines depends on whether there are any beneficiaries immediately entitled to the trust income. This is independent of whether the trust actually distributes the income to the beneficiaries. If there are no beneficiaries immediately entitled to the trust income, the income is taxed in the hands of the trustee. Otherwise, the income is taxed in the hands of the beneficiaries. A trust is tax resident in Saint Vincent and the Grenadines if it was “established” in Saint Vincent and the Grenadines. The word “established” is not defined under the Income Tax Act and the Saint Vincent and the Grenadines authorities advise that a trust is “established” there if any one of the following conditions is met: (a) the trustee is resident in Saint Vincent and the Grenadines; (b) the trust is governed by its laws; (c) the beneficiary is resident in there; or (d) the trust property is located there.<sup>4</sup>

23. The general corporate tax rate is 32.5%. Both ordinary companies incorporated in Saint Vincent and the Grenadines and foreign companies carrying on a business therein must register with the Commerce and Intellectual Property Office (CIPO) and the Inland Revenue Department as a taxpayer. In addition to corporate taxes, life insurance businesses and general insurance businesses must pay Insurance Premium Tax. Banks, on the other hand, are required to pay an annual Bank Licence. Relevant partnerships and trusts that are liable to tax in Saint Vincent and the Grenadines have similar registration requirements with the Inland Revenue Department. Individuals are taxed on tiered rates ranging from 0% to 32.5%, and are exempt on their interest from bank deposits.

24. VAT was introduced in 2007, replacing hotel tax, entertainment tax, consumption tax, tele-communications service surcharge and stamp duty. Businesses with annual taxable supplies in excess of XCD 120 000 (USD 44 444) are required to register for VAT. VAT is charged at 15% on

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2. Section 2 of the Income Tax Act.

3. Section 21 of the Income Tax Act.

4. Sections 2 and 15 of the Income Tax Act.

goods and services, 10% on hotel accommodation. Some essential items are zero-rated (*e.g.* baby formula) and certain supplies (*e.g.* financial services) are exempted.

25. International Business Companies and other offshore entities regulated by the International Financial Services Authority (“IFSA”) such as international trusts, limited liability companies, etc. are exempt from taxes in Saint Vincent and the Grenadines. They may however opt to pay a 1% income tax annually so that they can utilise the provisions of the CARICOM DTC. These entities are prohibited from carrying on business in Saint Vincent and the Grenadines.

### ***Saint Vincent and the Grenadines’ commercial laws and financial sector***

26. Saint Vincent and the Grenadines’ commercial laws allow for the creation of a wide range of business entities. The Financial Services Sector comprises the following entities: Domestic entities – banks; insurance companies; insurance intermediaries, brokers, agents and sales representatives; building societies; credit unions and money services business. International (offshore) entities – international banks, international insurance companies, international insurance managers/brokers, mutual funds, mutual fund managers and administrators, registered agents/trustees (RAs), international trusts, international business companies (IBCs) and limited liability companies (LLC).

27. On the domestic front, commercial banks are supervised by the Eastern Caribbean Central Bank, which is responsible for maintaining the stability of the common currency (XCD) and preserving the integrity of the banking system. In addition, the Eastern Caribbean Central Bank’s broad supervisory mandate also includes the regulation of non bank financial institutions (excluding credit unions and insurance companies) carrying on banking business on behalf of and in collaboration with Participating Governments in its member countries *e.g.* Saint Vincent Co-operative Bank and First Saint Vincent Bank Limited. The legislation governing the regulation of banking business is the Saint Vincent and the Grenadines Banking Act. The Commerce and Intellectual Property Office is the Registrar of Companies and administers domestic and foreign companies pursuant to the Companies Act. As of December 2011, there were 21 insurance companies, six domestic banks with assets totalling USD 726 million, nine credit unions, two money services business, one building society and 3 506 domestic companies.<sup>5</sup> Domestic insurance companies are regulated under the Supervisory and Regulatory Division of the Ministry of Finance.

5 Source: Saint Vincent and the Grenadines.

28. Saint Vincent and the Grenadines has a small international financial services sector, offering international business companies (IBCs), international trusts, international mutual funds, limited liability companies (LLCs) and allowing for establishment of international banks and international insurance companies. IBCs, LLCs, international mutual funds, international insurance companies, international banks and Registered Agents are regulated by the International Financial Services Authority (IFSA), a regulatory body formed under the International Finance Authority Act. As at 2011, there were four international banks, eight international insurance companies, 70 mutual funds, 38 mutual fund managers, two international insurance managers/brokers, 130 international trusts, 8 462 IBCs, three LLCs and 16 Registered Agents. The total value of the bank assets of international banks was USD 138 million as at December 2011. The provision of corporate services to these offshore entities is a regulated activity and such service providers are known as Registered Agents, who must be licensed under the Registered Agents and Trustee Licensing Act. Saint Vincent and the Grenadines also has an important international ship registry.

29. The regulatory framework for the financial services sector is complemented by Saint Vincent and the Grenadines' Anti-money Laundering (AML) and Counter Financing of Terrorism (CFT) regime which is applicable to a range of institutions including banks, Registered Agents and trust settlements. The AML regime is governed by the Proceeds of Crime and Money Laundering (Prevention) Act (PCML Act). Money Laundering Prevention Guidance Notes (19 May 2006 version) provide further guidance to the regulated sector in complying with their AML/CFT obligations. While the Guidance Notes are not legally binding, the PCML Act expressly states that the Court can take into consideration any guidance made pursuant to the PCML Act in making a determination in any case of compliance with the Regulations.<sup>6</sup> A new set of revised Guidance Notes are in the process of being drafted and are anticipated to be adopted by the end of February 2012. The new revised Guidance Notes will be made legally binding.

30. The accounting profession in Saint Vincent and the Grenadines comprises both accountants and auditors. There are no statutory provisions regulating accountants, auditors or lawyers, but lawyers and accountants are legally obliged to comply with Saint Vincent and the Grenadines' AML/CFT requirements. Lawyers and accountants who act as financial fiduciaries for the purposes of offering international financial services to entities registered or licensed by IFSA are required to obtain licenses from IFSA and are similarly regulated.

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6. Section 48(4) of the PCML Act.



## Recent developments

31. The regulatory functions of the IFSA and Ministry of Finance were merged under the Financial Services Authority (FSA) Act which was enacted on 22 November 2011. The Act created a new single regulatory authority (the FSA) to regulate and supervise the financial institutions and non-bank financial institutions previously supervised by IFSA, the Ministry of Finance and the Co-operatives Department. The FSA is expected to be set up by end March 2012.

32. Saint Vincent and the Grenadines committed to the international standard for transparency and exchange of information in 2002. It renewed its commitment in 2009 and since then has rapidly built up its network of EOI agreements. As of 3 February 2012 it has concluded EOI agreements with a total of 31 jurisdictions, of which 22 have been brought into force.



## Compliance with the Standards

### A. Availability of information

#### Overview

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

34. Saint Vincent and the Grenadines law provides for the formation of a wide range of legal entities and arrangements. Ownership information of these entities and arrangements is available. Ordinary and registered foreign companies are required to submit annual returns to the Registrar of Companies containing information on the identities of their shareholders and/or maintain an up to date register of their shareholders/members. Companies, partners of partnerships, trustees and trust beneficiaries that are liable to tax in Saint Vincent and the Grenadines must register with the Comptroller of Inland Revenue for tax purposes and submit annual tax returns.<sup>7</sup> The above requirements are supplemented by AML obligations on relevant service providers,

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7. Sections 2, 15 and 80 of the Income Tax Act; and the Income Tax Registration Form.

which are required to identify all the beneficial owners of the IBCs, LLCs and trusts for which they act. However, service providers need not in all cases maintain information on subsequent changes to the beneficial owners of IBCs or LLCs.

35. Accounting records are generally available due to record keeping obligations under the Income Tax Act and the PCML Act. These records explain all transactions, and enable the financial position of the relevant entity to be determined. They also include underlying documents backing up the accounting records and must be kept for at least seven years from the date of the transaction. However, reliable accounting records may not be available in respect of IBCs and LLCs. While IBCs and LLCs must have registered agents which are subject to the record keeping requirements under the PCML Act, not all transactions undertaken by these entities will be conducted through their registered agents. This gap, combined with the fact that the accounting record keeping obligations imposed on these entities themselves are inadequate, means that reliable accounting information will not be available in respect of these entities in all instances.

36. Banks are obliged under Saint Vincent and the Grenadines' AML laws to maintain information on account holders and transaction information. They may rely on AML-regulated foreign introducers to identify the customer, but it is not clear if any enforcement provisions apply if the foreign introducer fails to do so.

## 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)*

37. Saint Vincent and the Grenadines' laws allow for the incorporation and registration of a wide variety of companies. There are three acts governing these companies – the Companies Act, the International Business Companies Act (IBC Act) and the Limited Liability Companies Act (LLC Act). The other corporate entities that may be formed are co-operatives under the Co-operative Societies Act and building societies under the Building Societies Act.

38. The Companies Act provides for the incorporation of the following types of companies:

- ordinary companies – incorporated under the Companies Act and formed for the purpose of carrying on a trade or business for gain. Ordinary companies may conduct their business in Saint Vincent

and the Grenadines. There were 3 506 ordinary companies in Saint Vincent and the Grenadines as at end 2011; and

- non-profit companies – non-profit companies do not have share capital and may only be formed with the approval of the attorney-general. They must restrict their business to socially useful objects, such as charitable, educational, scientific, literary, artistic or sporting activities.<sup>8</sup> There were 209 non-profit companies in Saint Vincent and the Grenadines as at end 2011.

39. The IBC Act allows for the incorporation of international business companies (IBCs). IBCs are formed for the purpose of carrying out business activities outside of Saint Vincent and the Grenadines and enjoy a wide range of tax benefits.<sup>9</sup> IBCs can be limited by shares, limited by guarantee, or have unlimited liability. IBCs that are limited by guarantee or have unlimited liability may also be authorised to issue shares.

40. An IBC can be incorporated as a segregated cell company whose assets, equity and liabilities may be segregated into individual cells. Segregated cell companies may only be used by insurers and collective investment schemes, and may only be incorporated with the written consent of the IFSA. The regulations applicable to IBCs under the IBC Act apply similarly to segregated cell companies.<sup>10</sup>

41. LLCs are part of the range of entities that may be formed under Saint Vincent and the Grenadines' offshore sector and like IBCs, enjoy a wide range of tax benefits. LLCs are regulated under the LLC Act and may generally not carry on business or own any real estate in Saint Vincent and the Grenadines. LLCs have no share capital and ownership is determined by the LLC agreement or in the case where the agreement does not specify, the ratio of members' contributions.

42. Saint Vincent and the Grenadines law provides for the creation of co-operatives under the Cooperative Societies Act. A co-operative is defined as an entity comprising a group of people with a commitment to joint action on the basis of democracy and self-help to secure a service or economic arrangement that is both socially desirable and beneficial to all taking part. Only citizens or residents of Saint Vincent and the Grenadines may be members of co-operatives.<sup>11</sup> Co-operatives are exempt from income tax in Saint Vincent and the Grenadines.

8. Section 326 and 328 of the Companies Act.

9. Section 180 of the IBC Act.

10. Section 111 of the IBC Act.

11. Sections 2 and 23 of the Co-operative Societies Act.

43. Building societies may be incorporated under the Building Societies Act. Building societies are self-contained entities formed for the purpose of accepting member subscriptions and using these subscriptions to make loans to their own members in return for real property pledged as collateral. They may not conduct any other forms of business.<sup>12</sup> Given the limited scope of their activities, their self-contained nature, and the fact that there is only one building society in Saint Vincent and the Grenadines, building societies in Saint Vincent and the Grenadines do not appear to be relevant for the purposes of this review.

#### *Regulated entities*

44. Saint Vincent and the Grenadines law also provides for the formation of international mutual funds, international banks and international insurance companies, which are regulated under the Mutual Funds Act, International Banks Act and International Insurers Act respectively.<sup>13</sup> However, these businesses must first be constituted as a legal entity under another act, such as the IBC Act, and are therefore subject to the regulations of the relevant constituting act in addition to any requirements spelt out in the Mutual Funds Act, International Banks Act or International Insurance Companies Act.

#### *Information required to be provided to government authorities*

45. The Commerce and Intellectual Property Office is the Registrar for Companies and is responsible for administering the Companies Act. It is responsible for maintaining a register of every company that is incorporated or registered under the Act and receiving all relevant documents that are filed by companies. The Registrar is obliged to keep all the documents it receives for at least six years from the date of receipt.<sup>14</sup>

46. The Registrar of International Business Companies administers the IBC Act. The Registrar is obliged to retain all “qualifying documents”<sup>15</sup> filed by IBCs and segregated cell companies and any other information it “sees fit”.<sup>16</sup> The IBC Act is silent as to how long these documents must be kept.

47. The Registrar of LLCs administers the LLC Act and maintains the Register of Limited Liability Companies. It keeps all the filings that LLCs are

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12. Section 4 of the Building Societies Act.
  13. International banks and international insurers are business entities that conduct banking and insurance businesses outside of Saint Vincent and the Grenadines.
  14. Section 507 of the Companies Act.
  15. “Qualifying documents” are documents that are required or permitted to be filed under Saint Vincent and the Grenadines law.
  16. Sections 5 and 183 of the IBC Act.

required to make under the LLC Act. The LLC Act is silent as to how long these filings must be kept.

### Ordinary companies and non-profit companies

48. All ordinary and non-profit companies in Saint Vincent and the Grenadines must register and provide their articles of incorporation to the Registrar of Companies at the time of their incorporation. The articles of incorporation must include general information on the company such as name, address, classes and any maximum number of shares the company is authorised to issue, number of directors, and restrictions on the business that the company may undertake.<sup>17</sup>

49. All ordinary companies in Saint Vincent and the Grenadines must submit an annual return that details any changes in key company information such as its directors, address of registered office and secretaries. The annual return must also contain a share capital schedule spelling out the names and addresses of all shareholders over the past year, including particulars of shares held or transferred since the date of the last annual return.<sup>18</sup> This obligation applies similarly to non-profit companies, but their returns do not contain a share capital schedule as non-profit companies have no share capital.

### IBCs

50. IBCs must file their articles of incorporation with the Registrar of IBCs in order to be incorporated. The articles of incorporation must set out the name and address of the IBC and its registered agent, details on the nature of the company (limited by shares, guarantee or unlimited), as well as the number of registered shares and any bearer shares it will issue.<sup>19</sup>

51. In the case of an IBC that is a segregated cell company, the IFSA's approval must be sought prior to incorporation, and a segregated cell company must provide the following details to the IFSA in its application for approval (regulation 27 of the IBC Act regulations):

- details of the functionaries<sup>20</sup> who are, or who will be appointed as functionaries to the applicant company;

17. Section 5 of the Companies Act.

18. Section 194 of the Companies Act, read together with Forms 28 and 28A in the Schedule to the Companies Act.

19. Section 14 of the IBC Act.

20. A functionary is in the case of a mutual fund segregated cell company, the manager, administrator, investment advisor, custodian or any other person approved

- a list of the initial segregated cells that it is intended will be created, including the name, identification or designation of each segregated cell; and
- in respect of each proposed initial segregated cell, details of the functionary who will be appointed by the company to act in respect of the cell.<sup>21</sup>

### LLCs

52. One or more persons may form a LLC by having a registered agent sign articles of formation in the prescribed form and filing them with the Registrar of LLCs. The articles of formation must contain among other information the name of the LLC, the address of its first registered office and the name and address of its registered agent.<sup>22</sup>

### Co-operatives

53. A co-operative must register with the Registrar of Co-operative Societies before it can carry on business in Saint Vincent and the Grenadines. Information to be submitted at the point of registration includes the co-operative's by-laws, address and names of directors.<sup>23</sup>

### Foreign companies

54. Any firm or body of persons, whether incorporated or unincorporated, that is formed outside Saint Vincent and the Grenadines, is known as an “external company” and must register with the Registrar of Companies before it can carry on a business in Saint Vincent and the Grenadines.<sup>24</sup> Section 338 of the Companies Act defines the following as “carrying on business” in Saint Vincent and the Grenadines:

- the business of the company is regularly transacted from an office in Saint Vincent and the Grenadines established or used for the purpose;
- the company establishes or uses a share transfer or share registration office in Saint Vincent and the Grenadines;

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by the IFSA; and in the case of an insurance company segregated cell company, a manager, broker, agent, actuary, or any other person approved by the IFSA.

21. Regulation 27 of the IBC Act Regulations.

22. Section 12 of the LLC Act.

23. Sections 9 and 10 of the Cooperative Societies Act.

24. Section 340 of the Companies Act.



- the company owns, possesses or uses assets situated in Saint Vincent and the Grenadines for the purpose of carrying on or pursuing its business, if it obtains or seeks to obtain from those assets, directly or indirectly, profit or gain whether realised in Saint Vincent and the Grenadines or not; or
- if the company owns a legal or equitable interest in land in Saint Vincent and the Grenadines.

55. At the point of registration, foreign companies must provide a statement to the Registrar of Companies containing, among other information, details on the jurisdiction within which the company was incorporated, the date of its incorporation, the extent, if any, to which the liability of the shareholders or members of the company is limited, the business that the company will carry on, the date on which the company intends to commence any of its business in the State; the authorised, subscribed and paid-up or stated capital of the company, and the shares that the company is authorised to issue and their nominal or par value, if any, the full address of the principal office of the company in Saint Vincent and the Grenadines, and the full names, addresses and occupations of the directors of the company.<sup>25</sup> There were 235 foreign companies registered in Saint Vincent and the Grenadines as at end 2011.

56. All foreign companies registered under the Companies Act must submit an annual return to the Registrar of Companies updating any changes in its directors, registered office, lawyers, etc. The annual return must also contain a share capital schedule spelling out the names and addresses of all shareholders over the past year, including particulars of shares held or transferred since the date of the last annual return.<sup>26</sup>

57. According to Section 339 (1) of the Companies Act, the Minister for Legal Affairs may exempt a foreign company from compliance with all or any of the provisions of Division B of the Companies Act (Division B applies to foreign companies). The Minister may exempt certain foreign companies from, among others, registration requirements. It is not clear whether such foreign companies continue to be subject to the requirements to file an annual return with the Registrar of Companies as the Companies Act specifies that “An external company shall, not later than the first day of April in each year after the date of its registration, send to the Registrar a duly executed annual return in the pre-scribed form...”. Ownership information on foreign companies that do not file annual returns with the Registrar of Companies will not be available. As at end 2011, 137 foreign companies have been exempted from Section 344(2) (c) of the Companies Act, relating to the filing of a Statutory Declaration by an

25. Section 344 of the Companies Act.

26. Section 356 of the Companies Act and Form 24A under the Fourth Schedule of the Companies Act.

attorney-at-law that the registration requirements under the Companies Act been complied with. As at end 2011, no foreign company has been exempted from the requirement to register with the Registrar of Companies.

### Income Tax Act

58. All companies that are chargeable to tax under the Income Tax Act must register with the Comptroller of Inland Revenue.<sup>27</sup> These include IBCs and LLCs that opt to pay a 1% income tax in Saint Vincent and the Grenadines so as to utilise the provisions of the CARICOM DTC. The registration form for non-individual enterprises (*i.e.* companies and partnerships) requires the submission of information on the owners of the enterprise, including the name, address and percentage owned by each owner, and the date on which ownership became effective. There is no requirement for changes in these shareholding details to be advised to the Comptroller. These companies must also file annual tax returns; ownership details need not be provided in these returns.

59. Co-operatives are exempted from income tax.<sup>28</sup>

### *Information required to be held by companies*

#### Ordinary companies and non-profit companies

60. The Companies Act requires all ordinary companies and non-profit companies to maintain a register of its shareholders (or members as the case may be) showing:

- the name and address of each person who is a shareholder;
- a statement of the shares held by each shareholder;
- the date on which each person was entered on the register as a shareholder, and the date on which any person ceased to be a member.<sup>29</sup>

#### Co-operatives

61. Every registered co-operative must keep a register of members containing the names and addresses of members; and the date on which each member became a member and the date, if any, on which he ceased to be a member.<sup>30</sup>

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27. Section 80(7) of the Income Tax Act.

28. Section 235 of the Co-operative Societies Act.

29. Section 177 of the Companies Act.

30. Section 25 of the Co-operative Societies Act.

### IBCs

62. There is no express requirement for IBCs to maintain any information on their shareholders. The IBC Act states that IBCs “may” maintain shareholder registers, which implies that this is fully discretionary.<sup>31</sup> Shareholder information on IBCs is however available through their Registered Agents (see section on service providers below).

### LLCs

63. There is no express requirement for LLCs to maintain any information on their shareholders. Information on the members of LLCs is however available through their Registered Agents (see section on service providers below).

### *Information held by service providers*

64. The regulation of service providers in Saint Vincent and the Grenadines is an avenue through which identity and ownership information of relevant entities and arrangements can be made available. Many legal persons and arrangements conducting business from or in Saint Vincent and the Grenadines will have some involvement with a licensed service provider through either a one-off transaction or an ongoing business relationship and it is through these instances that the relevant regulatory requirements are triggered and ownership information of relevant entities made available. In particular, all companies incorporated under the IBC Act (*i.e.* IBCs and segregated cell companies), all LLCs formed under the LLC Act, all mutual funds regulated under the Mutual Funds Act, and all international banks and international insurers are required to have at all times a registered agent licensed under the Registered Agent and Trustee Licensing Act (“RATL Act”).<sup>32</sup>

65. The RATL Act regulates service providers that provide services to entities in the offshore sector, *i.e.* IBCs, international trusts, international banks and mutual funds, etc\.. The scope of regulated services includes:

- acting as agent or representative in the establishment, registration, renewal or continuation of a IBC; the continuation or registration of an international trust; or the registration of mutual funds under the Mutual Funds Act;

31. Section 54 of the IBC Act.

32. Section 68 of the IBC Act, Section 7 of the LLC Act, Regulation 21 of the Mutual Funds Regulations, Section 8 of the International Banks Act, Section 22 of the International Insurance Act.

- providing registered office or registered agent services in Saint Vincent and the Grenadines for companies incorporated, licensed or continued under the IBC Act;
- providing or appointing nominee directors, nominee shareholders or nominee officers for companies incorporated under the IBC Act or the International Banks Act, or
- acting as a local trustee or fiduciary for an international trust, or trust settled elsewhere and which subsequently adopted the Saint Vincent and the Grenadines International Trust Law as the applicable law of the trust.<sup>33</sup>

66. The provision of services to LLCs is not specified as a regulated activity under the RATL Act as the LLC Act was enacted 2010 and the RATL Act was enacted in 1996. The RATL Act will need to be amended to capture LLCs. The Saint Vincent and the Grenadines authorities have advised that this amendment is anticipated to be completed by 31 March 2012. Nevertheless, the LLC Act makes it clear that all LLCs must have a registered agent licensed under the RATL Act.

67. RATL Act licensees and other service providers that are not regulated under the RATL Act (e.g. service providers to ordinary companies and partnerships) are separately regulated under the Proceeds of Crime and Money Laundering (Prevention) Act (“PCML Act”) and subject to Saint Vincent and the Grenadines’ AML laws.<sup>34</sup>

68. The scope of regulated institutions and activities are spelt out in the First Schedule of the PCML Act and includes (but is not limited to) the following:

- banks licensed under the Banking Act or the International Banks Act;
- insurance companies registered under the Insurance Act or the International Insurance Act;
- registered agents and trustees licensed under the RATL Act;
- trusts licensed under the International Trusts Act;
- a person licensed to operate an exchange bureau;
- a person licensed as a dealer or investment adviser;
- a person who carries on cash remitting services;

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33. Sections 2 and 4 of the RATL Act.

34. The First Schedule of the PCML Act lists the scope of regulated activities.

- a person who carries on postal courier services;
- mutual funds licensed under the Mutual Funds Act;
- credit unions (a type of co-operative);
- lending (including personal credits, factoring with or without recourse, financial or commercial transaction including forfeiting cheque cashing services);
- finance leasing;
- money transmission services;
- trading for customers in:
  - money market instruments (cheques, bills, certificates of deposit, etc.);
  - foreign exchange;
  - financial futures and options;
  - exchange and interest rate instruments; and
  - transferable instruments.
- underwriting share issues and the participation in such issues;
- money broking;
- investment business
- deposit taking;
- financial intermediaries;
- custody services;
- investment and merchant banking;
- asset management services;
- trusts and other fiduciary services;
- company formation and management services;
- collective investment schemes and mutual funds;
- barristers-at-law and solicitors;
- accountants;
- charities; and
- a trust settlement.

69. The PCML Regulations, which form part of the PCML Act, requires service providers to establish and maintain procedures that identify and verify the identity of all clients prior to establishing a business relationship. The information that must be obtained as part of these procedures include the client's full name, permanent address, date and place of birth, nationality, occupation, and source of income or wealth. Where the client is a corporate entity, the service provider must obtain the location of the registered office or registered agent of the corporate entity; the names and address of all officers and directors of the corporate entity; and the names and addresses of all the beneficial owners of the corporate entity (except where the entity is a publicly traded company). In the case of partnerships, the service provider must identify all partners or beneficial owners in accordance with the procedure for the verification of individuals.<sup>35</sup>

70. The AML guidance notes define beneficial owners to be individuals who ultimately own or control the customer or on whose behalf a transaction or activity is being conducted. In the case of a body corporate the beneficial owner also includes any persons on whose instructions the signatories of an account, or any intermediaries instructing such signatories, are for the time being accustomed to act.<sup>36</sup> Once the beneficial owners' identities have been established and verified, the service provider must continue to verify the identities if:

- there are concerns regarding the identity of the client or the beneficial owner during the course of the business relationship; or
- there has been no recent contact between the person and the service provider; or
- there has been no transaction within a period of five years, the regulated institution shall confirm the identity of the account holder.

71. Service providers need not carry out the client identification procedures if the client is introduced by another AML-regulated institution (whether by Saint Vincent and the Grenadines or by a foreign jurisdiction). In such cases, a written assurance from the introducing institution to the effect that evidence of the identity of a client has been obtained and recorded under procedures maintained by the introducing institution will be sufficient. Identity information is held by the introducing institution. The law is silent as to whether service providers remain liable for any client identification that is

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35. Regulation 4 and Schedule to PCML Regulations. The PCML Regulations form part of the Act and therefore part of the law.

36. Paragraphs 39 and 40 of the AML Guidance Notes (19 May 2006)

not carried out by the introducing institution, especially if the institution is a foreign institution.<sup>37</sup>

72. The PCML Act obliges all service providers to keep client identity and account transactions information for a minimum of seven years after a business relationship is terminated.

### *Nominee identity information*

73. The business of providing nominee shareholders is regulated under PCML Act. The PCML Act requires nominee shareholders to establish and maintain procedures that identify and verify the identity of all clients prior to establishing a business relationship. More details on these obligations are available in the section on Service Providers. Nominee shareholders are not covered by these obligations if they are not acting in the course of business.

74. In addition, the Companies Act requires every person who has a substantial shareholding in a company (defined as having at least ten percent of the unrestricted voting right), whether directly or through nominees, to give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder. He is required to do so within 14 days after he becomes aware that he is a substantial shareholder. If he ceases to be a substantial shareholder, he must give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder of the company, giving full particulars of the circumstances under which he ceased to be a substantial shareholder. The company is required to keep a register of all such filings it has received.<sup>38</sup>

75. Nominee shareholders that are not acting by way of business are not regulated. The Saint Vincent and the Grenadines authorities have advised that, based on feedback from Registered Agents, such nominees would comprise primarily persons performing services gratuitously or in the course of a purely private non-business relationship and are not expected to be significant in terms of number or the assets they hold. The Saint Vincent and the Grenadines authorities have also advised that any person offering nominee services in any significant manner would most likely be considered as conducting a business and accordingly will be caught under its AML laws. The materiality of this gap in practice will be further examined in the course of Saint Vincent and the Grenadines' phase 2 review.

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37. Section 4 of the PCML Regulations.

38. Sections 181 to 184 of the Companies Act.

### *Conclusion*

76. Ownership and identity information on ordinary, non-profit and registered foreign companies is available as the Companies Act obliges these companies to maintain a shareholder register and/or to furnish an annual return providing details of their shareholders. All IBCs and LLCs are required to engage a licensed Registered Agent who is subject to AML obligations, these obligations require the Registered Agent to identify all the beneficial owners of the IBC or LLC before establishing a business relationship. However, the Registered Agent need not maintain information on subsequent changes to the beneficial owners of the IBCs or LLCs in all cases. Additionally, the law is silent as to whether service providers remain liable for any client identification that is not carried out by the introducing institution, especially if the institution is a foreign institution.

### ***Bearer shares (ToR A.1.2)***

77. The IBC Act has historically allowed IBCs to issue bearer shares. The Saint Vincent and the Grenadines authorities however took steps in 2007 to immobilise them. The IBC Act was amended in 2007 to specify that any bearer share issued by an IBC must remain in the custody of the IBC's registered agent. The registered agent must maintain a record of each bearer certificate issued or deposited in its custody that includes following information:

- the name of the company issuing the bearer certificate;
- the identification number of the bearer share certificate;
- the number of shares and the class of shares in the company contained in the bearer share certificate;
- the identity of the beneficial owner of the shares contained in the bearer share certificate, including but not restricted to the name, address, date of birth and other details of identification as may be prescribed;

78. Where custody of the bearer certificates is transferred to another registered agent, the registered agent must notify the Registrar of IBCs and the IFSA within seven days of such transfer and of the particulars of the new registered agent.<sup>39</sup>

79. IBCs which had issued bearer shares prior to the amendments to the IBC Act were given six months to provide to their registered agents information as to the beneficial owners of the shares and a full and detailed account of

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39. Section 30 of the IBC Act.



changes if any, in the beneficial ownership of such shares since their issuance by the IBC. IBCs that fail or refuse to comply with these requirements are liable to be struck off from the register by the Registrar of IBCs or the IFSA.

### *Partnerships (ToR A.1.3)*

80. Saint Vincent and the Grenadines law allows the creation of ordinary partnerships. Ordinary partnerships are governed by the Partnership Act, which defines an ordinary partnership as a relation which subsists between persons carrying on a business in common with a view of profit. Every partner is an agent of the firm and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the partnership of which he is a member, binds the partnership and all the partners. Every partner in a partnership is liable jointly with the other partners for all debts and obligations of the firm.<sup>40</sup>

81. Saint Vincent and the Grenadines law does not provide for the creation of limited partnerships.

### *Information required to be provided to government authorities*

82. The Partnership Act does not require ordinary partnerships to register with the Saint Vincent and the Grenadines authorities.

### Tax requirements

83. Every partnership that carries on business or derives taxable income under the Income Tax Act must register with the tax authority giving details of every partner (including the name, address and percentage owned by each owner, and the date on which the ownership became effective), and the partnership and each of its partners must submit an annual tax return to the Comptroller containing a calculation of the chargeable income and tax payable of each partner.<sup>41</sup>

### *Ownership and identity information required to be held by partnerships*

84. There are no express obligations on partnerships to maintain information on the identity of their partners. However, as partnerships need to file tax returns containing a calculation of the chargeable income and tax payable of each partner, they will need to know who their partners are.

40. Sections 7, 8 and 11 of the Partnership Act.

41. Section 80 of the Income Tax Act, read together with the Income Tax Registration Form.

### *Conclusion*

85. The income tax obligations of partnerships ensure that ownership and identity information of every partnership that carries on a business or which has income, deductions or credits for tax purposes in Saint Vincent and the Grenadines is available.

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

86. The laws of Saint Vincent and the Grenadines provide for the creation of ordinary trusts and international trusts. Ordinary trusts are recognised and created under the common law framework and have no governing statutes. While there are statutes relating to trusts (*i.e.* Trustees Act and Public Trustees Act), these statutes spell out the powers, duties and obligations of trustees and public trustees rather than the trusts themselves.

87. International trusts are a component of Saint Vincent and the Grenadines financial services sector and are formed and regulated under the International Trusts Act (ITA). An international trust is a trust in respect of which:

- the settlor is not a resident at the time of the creation of the trust and at such times as the settlor adds new property to the trust;
- the trust is evidenced by a writing signed by the settlor or his nominee and by a registered trustee licensed under the RATL Act;
- at all times at least one of the trustees is licensed under the RATL Act;
- no beneficiary is a resident at the time of the creation or settlement of the trust or at such times as the settlor adds new property to the trust; and
- the trust property does not include any real property situate in Saint Vincent and the Grenadines or an interest in any property so situate.

88. An international trust will not be subject to income tax in Saint Vincent and the Grenadines as long as the following conditions are met:

- the trust is created neither by or on behalf of nor for the benefit of a person who is a resident;
- all of the trust income (other than interest from regular bank accounts or portfolio investments of securities) either accrues or is derived outside Saint Vincent and the Grenadines, and would not, if it had been received directly by the beneficiary of the trust, be liable to tax under the Income Tax Act; and

- the terms of the trust expressly prohibit the ownership of real property situated in Saint Vincent and the Grenadines and exclude residents as persons who either are or may be beneficiaries or any class or classes of beneficiary of the trust.

*Trust ownership and identity information required to be provided to government authorities*

89. There is no obligation for ordinary trusts or foreign trusts (defined as trusts which are governed by the law of a jurisdiction other than Saint Vincent and the Grenadines) to be registered. However, trusts that derive taxable income are liable to tax either at the trustee or beneficiary level and must register with the tax authority, giving details of its beneficiaries (including the name, address and percentage owned by each owner, and the date on which the ownership became effective).<sup>42</sup> Additionally, the trustee or beneficiaries, as the case may be, must file annual tax returns. Trusts that do not derive income or which otherwise are not liable to tax in Saint Vincent and the Grenadines need not register with the tax authority or file tax returns.

90. An international trust may opt to register itself with the Registrar of Trusts pursuant to Section 56 of the ITA. To register, an international trust must provide details of its trustees, domicile, and a copy of the trust deed to the Registrar of Trusts. Otherwise, an international trust need not submit any information to the government authorities.

*Trust ownership and identity information required to be held by the trust*

91. Common law obligations on the trustee to maintain information on the trust beneficiaries and settlors apply in the case of all trusts. The common law places obligations on trustees to have full knowledge of all the trust documents, to act in the best interests of the beneficiaries and to only distribute assets to the right persons. These obligations implicitly require all trustees to identify all the beneficiaries of the trust since this is the only way the trustee can carry out his duties properly. If the trustees fail to meet their common law obligations they are liable to being sued. The extent of these common law obligations could not be established during the Phase 1 review. An in-depth assessment of the effectiveness of the common law requirements with respect to availability of identity information pertaining to settlors, trustees and beneficiaries of trusts will be considered as part of Saint Vincent and the Grenadines' Phase 2 review.

42. Sections 2, 15 and 80 of the Income Tax Act, and the Income Tax Registration Form.

92. Additional obligations apply for trusts which are managed professionally. The provision of trustee services is regulated under the PCML Act and professional trustees must identify in respect of every trust they act as trustee for the following information:

- name and occupation of the settlor or any person transferring assets to the trust;
- name, address and other identification information such as passport number of the beneficiaries;
- name, address and business occupation of the protector;
- purpose and nature of the trust: a statement of the true purpose of the trust being established, even where it is a purpose or charitable trust; and
- the source(s) of funds settled on the trust.<sup>43</sup>

93. Where a professionally managed trust is also an international trust, the ITA requires the Registered Trustee to keep the following information:

- a copy of the instrument creating the trust and copies of any other instrument amending or supplementing such information;
- a register in which the following information is set out:
  - the name of the settlor and the name of the beneficiary or the beneficiaries and the names of the trustee or trustees and where applicable the name of the protector,
  - if a purpose or charitable trust, a summary of the purposes of the trust and the name of the protector(s) of the trust, and
  - such documents as are necessary to show the true financial position of the trust, which shall be current as of one month following the close of each fiscal quarter.<sup>44</sup>

### *Conclusion*

94. All trustees are obliged under common law to maintain information on the settlors and beneficiaries of the trusts they act for. Professional trustees in Saint Vincent and the Grenadines are regulated and are required under the AML law to maintain information on all trust settlors and beneficiaries. Trustees of international trusts (Registered Trustees) have an additional

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43. Regulation 4 of the PCML Regulations and Paragraph 78 of the AML Guidance Notes.

44. Section 63 (1) of the International Trusts Act and Section 3 (2) of the International Trust Regulations

obligation under the International Trust Act to maintain key information on the international trusts they act for, including the identities of the settlors and all beneficiaries.

95. It is conceivable that a trust could be created which has no connection with Saint Vincent and the Grenadines other than that the settlor chooses the trust to be created under or governed by Saint Vincent and the Grenadines common law, with the settlors, beneficiaries, trustees and trust assets all located outside Saint Vincent and the Grenadines. In that event, there may be no information about the trust available in the Saint Vincent and the Grenadines.

### ***Foundations (ToR A.1.5)***

96. The laws of Saint Vincent and the Grenadines do not include the concept of a foundation and it is therefore not possible to create a foundation in Saint Vincent and the Grenadines.

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

97. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information. Non-compliance affects whether the information is available to Saint Vincent and the Grenadines to respond to a request for information by its EOI partners in accordance with the international standard.

98. In Saint Vincent and the Grenadines, where an obligation to retain relevant information exists, it is supported by an enforcement provision to address the risk of non-compliance. The relevant enforcement provisions are set out below:

- an ordinary or foreign company that files a false annual return to the Registrar of Companies is liable on summary conviction to a fine of XCD 2 000 (USD 740) or to imprisonment for a term of six months, or to both;<sup>45</sup>
- an ordinary company that fails to file annual returns to the Registrar of Companies commits an offence and is liable on summary conviction to a fine of XCD 2 000 (USD 740). A foreign company that fails to file annual returns to the Registrar of Companies may be struck off the register.<sup>46</sup>

45. Section 530 of the Companies Act.

46. Section 194, 356 and 533 of the Companies Act.

- a foreign company that carries on a business in Saint Vincent and the Grenadines without registering is liable to a penalty of XCD 350 (USD 130) for each day that the company is in default;<sup>47</sup>
- an IBC that does not immobilise its bearer shares in accordance with the requirements under the IBC Act is liable upon summary conviction to a fine of USD 10 000, and IBCs that fail or refuse to comply with transitional requirements to immobilise any existing bearer shares are liable to be struck off from the register by the Registrar of IBCs or the IFSA;<sup>48</sup>
- an ordinary or non-profit company that does not maintain a register of its shareholders or members with the requisite information is liable upon summary conviction to a fine of XCD 2 000 (USD 740);<sup>49</sup>
- a Registered Trustee that does not maintain relevant trust information as spelt out in the International Trust Act is liable upon summary conviction to a fine of up to XCD 10 000 (USD 3 700)<sup>50</sup>;
- an AML-regulated entity (e.g. a Registered Agent) that does not meet any of the requirements under the PCML Regulations is liable on summary conviction to a fine of XCD 10 000 (USD 3 700) and on conviction on indictment, for a first offence, to a fine of XCD 500 000 (USD 185 000) or to a term of one year imprisonment, or both, for a second or subsequent offence, to a fine of XCD 1 000 000 (USD 370 000) or to a term of three years imprisonment, or both;<sup>51</sup>
- any person that fails to furnish a return of income for any year of assessment within the prescribed time is liable to a penalty of XCD 20 (USD 7) and to a further fine of not less than XCD 20 (USD 7) for each month or part of the month in which the default in payment continues.<sup>52</sup>

99. The law is silent as to whether service providers remain liable for any client identification that is not carried out by the introducing institution, especially if the institution is a foreign institution. The effectiveness of the enforcement provisions which are in place in Saint Vincent and the Grenadines is an issue of practice and will be considered as part of its Phase 2 review.

47. Section 340A of the Companies Act.

48. Schedule to the IBC Act.

49. Section 533 of the Companies Act.

50. Section 63 of the International Trusts Act

51. Regulation 9 of the PCML Regulations.

52. Section 125 of the Income Tax Act.

### ***Conclusion for Part A.1***

100. Ownership and identity information of relevant entities and arrangements is available in Saint Vincent and the Grenadines. Ordinary and registered foreign companies are required to submit annual returns to the Registrar of Companies containing information on the identities of their shareholders and/or maintain an up to date register of their shareholders/members. Partnerships, trustees and trust beneficiaries that are liable to tax in Saint Vincent and the Grenadines must register with the Comptroller of Inland Revenue for tax purposes and submit annual tax returns. IBCs and LLCs that opt to pay a 1% tax are also subject to the above tax requirements. Professional trustees must identify all the settlors and beneficiaries of the trusts for whom they act as trustee for.

101. The main issue concerning the availability of ownership information relates to IBCs and LLCs. While IBCs and LLCs must have AML-regulated service providers who are obliged to identify all the beneficial owners of IBCs and LLCs before establishing a business relationship, service providers need not in all cases maintain information on subsequent changes to the beneficial owners of the IBCs and LLCs. Additionally, foreign companies, which with the approval of the Minister of Legal Affairs may be exempted from registration requirements. If a foreign company is exempted from registration requirements, ownership information of the foreign company would not be available.

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

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
While IBCs and LLCs must have AML-regulated service providers who are obliged to identify all the beneficial owners of the IBCs and LLCs they act for, the service providers need not maintain information on the changes to the beneficial owners of the IBCs and LLCs in all cases.	Up to date ownership and identity information should be available for all IBCs and LLCs.

Phase 1 determination	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
Factors underlying recommendations	Recommendations
It is possible for relevant foreign companies ( <i>i.e.</i> those effectively managed from Saint Vincent and the Grenadines and therefore resident there) to be exempted from registration requirements; such foreign companies need not submit or maintain information on their owners.	Ownership and identity information should be available for all foreign companies having a sufficient nexus with St Vincent and the Grenadines.
The law is silent as to whether service providers remain liable for any client identification that is not carried out by the introducing institution, especially if the institution is a foreign institution.	Introduce relevant enforcement provisions to ensure that ownership information is available where an introducing institution is relied upon to carry out client identification.

## 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*

##### Ordinary companies and non-profit companies

102. The Companies Act requires all ordinary companies and non-profit companies to place before the shareholders at every annual general meeting financial statements and any further information on the financial position of the company and the results of its operations as may be required by its articles, by-laws or any unanimous shareholder agreement. The Registrar may permit a company to omit items from the financial statements if he believes the disclosure of such information would be detrimental to the company. Companies must also prepare and maintain “adequate” accounting records.<sup>53</sup> Accounting records are considered “adequate” if they prepared in accordance with standards approved by the Institute of Chartered Accountants of

53. Sections 149, 150 and 187 of the Companies Act.



Saint Vincent and the Grenadines or any other recognised supervisory body. Financial statements must include a balance sheet, a statement of retained earnings, a statement of income and a statement of changes in financial position.<sup>54</sup> Records must also enable the directors of the company to ascertain the financial position of the company with reasonable accuracy on a quarterly basis.<sup>55</sup>

### Foreign Companies

103. The Companies Act does not expressly require foreign companies to maintain accounting records.

### IBCs

104. The IBC Act requires all IBCs to keep “such accounts and records as the directors consider necessary or desirable in order to reflect the true financial position of the company and sufficient to demonstrate whether the company is likely to (a) be unable to pay its debts as they fall due; and (b) make an unlawful distribution.” The IBC Act also provides that no person, other than a member of the company, may question the relevance or quality of the accounts or records that an IBC keeps.<sup>56</sup>

### LLCs

105. The LLC Act does not expressly require LLCs to maintain accounting records. The LLC Act provides that members may request from the LLC for any purpose reasonably related to their interest true and full information regarding the status of the business and financial condition of the LLC; the type of documents to be provided is however subject to the terms of the LLC agreement.<sup>57</sup>

### Regulated entities

106. Companies that are international banks, international insurance companies or mutual funds are subject to additional record keeping requirements under the respective governing legislation as follows:

- international banks must file annual audited accounts with the IFSA. They must also file quarterly returns with the IFSA that include a

54. Regulation 8, Companies Act Regulations.

55. Section 187(3) of the Companies Act.

56. Section 72 of the IBC Act.

57. Sections 38 and 39 of the LLC Act.

current statement of assets and liabilities; current income statement; a schedule of different income sources; and any other information the IFSA may require;<sup>58</sup>

- an international insurer must maintain permanently at its principal office in Saint Vincent and the Grenadines such books of accounts and records of its insurance business and financial affairs as will show adequately the nature and extent of the insurance business carried on by the insurer in or from within Saint Vincent and the Grenadines; and as will enable the Commissioner of International Insurance to conduct a proper examination of the insurer's affairs to ascertain with reasonable accuracy its financial position. The books and records to be kept by every licensed insurer include financial statements for the current year and the preceding three years for its insurance business; current record of premium income and claims paid by the insurer, including payments for re-insurance; and general and subsidiary ledgers and general journals, current through the next preceding month<sup>59</sup>; and
- every mutual fund must maintain permanently at its principal office in the Saint Vincent and the Grenadines such books of accounts and records of its mutual fund business and financial affairs (a) as will describe in reasonable detail the type of mutual fund business carried on by that fund; and (b) as will enable the Registrar of Mutual Funds at any time to conduct a proper examination of the mutual fund's affairs and to ascertain with reasonable accuracy its financial position at the date of the examination.<sup>60</sup>

#### *Accounting records to be kept in respect of co-operatives*

107. Section 124 of the Co-operative Societies Act requires the directors of all co-operatives to place before the members at every annual meeting comparative financial statements for the most recent financial year and the immediate preceding financial year. The financial statements for the most recent financial year, however, may be omitted if the reason for the omission is set out in the financial statement to be placed before the members or in a note attached thereto, as determined by the Registrar.

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58. Section 13 of the International Banks Act.

59. Regulation 11 of the International Insurance Regulations.

60. Regulation 23 of the Mutual Funds Regulations.

*Accounting records to be kept in respect of partnerships*

108. The Partnership Act requires all partners to “render true accounts and full information of all things affecting the partnership to any partner or his legal representatives”.<sup>61</sup>

*Accounting records to be kept in respect of trusts*

109. The accounting record keeping obligations of trusts arise from Saint Vincent and the Grenadines’ common law, AML law and the International Trust Act. All professional trustees must keep accounting records of transactions that they conduct on behalf of their customers; the scope of which is outlined in the AML section below. Trustees of international trusts are subject to additional obligations under the International Trust Act, and must keep “such documents as are necessary to show the true financial position of the trust, which shall be current as of one month following the close of each fiscal quarter”.<sup>62</sup>

110. Lastly, all trustees resident in Saint Vincent and the Grenadines are subjected to a broad fiduciary duty to the beneficiaries under the common law to keep proper records and accounts of their trusteeship. The extent of such requirements could not be ascertained during the Phase 1 review. An in-depth assessment of the effectiveness of this common law regime will be considered as part of the Phase 2 review of Saint Vincent and the Grenadines.

*Accounting records to be kept by AML-regulated entities*

111. AML-regulated entities are required under the PCML Act to keep “the records or copies of records containing the details relating to its business as may be necessary to assist an investigation into suspected money laundering.” The guidance notes elaborate on what must be included in these records. Essentially, all transactions carried out on behalf of or with a customer in the course of relevant business must be recorded within the firm’s records. Transaction records in support of entries in the accounts, in whatever form they are used, *e.g.* memoranda of sale and purchase, custody of title documentation, etc., should be maintained in a readily retrievable form from which a satisfactory audit trail may be compiled where necessary, and which may establish a financial profile of any suspect account or customer. These should include underlying documents such as receipts, invoices, contracts, vouchers and all other documentation, which would be necessary to compile

61. Section 30 of the Partnerships Act.

62. Section 63 of the International Trusts Act.

any audit trail. The records must be retained for a period of at least seven years from the date on which the transaction is completed.<sup>63</sup>

*Accounting records to be kept under the Financial Services Authority Act*

112. The FSA Act requires all “financial entities”<sup>64</sup> to furnish quarterly financial statements to the FSA and include with the financial statements “any other information necessary for the understanding of the financial statements”. In addition, the FSA has the authority to require financial entities and registered entities<sup>65</sup> to submit “all books, minutes, vouchers, invoices, contracts, and other documents and records relating to the assets, liabilities and businesses generally of the person concerned” to the FSA when the FSA considers it necessary.<sup>66</sup> However, the information access powers of the FSA does not necessarily by itself create an obligation for financial entities and registered entities to maintain these accounting records in the first place.

*Income tax requirements*

113. Section 86 of the Income Tax Act requires every person carrying on any business to keep “such records or books of accounts as are necessary to reflect the true and full nature of the transactions of the business, regard being had to the nature of the activities concerned and the scale on which they are carried out.” In addition, such persons must preserve all books of account and *other records which are essential to the explanation of any entry in such books of account of that business*. These records would include underlying documents. The records must be kept for a period of seven years after the end of the basis period to which such books of account or records relate. The seven year retention period may be extended by the Comptroller at his discretion.

114. Where the Comptroller is of the opinion that records and books are not being kept properly, or where no records or books of account are being kept by any person carrying on business, the Comptroller may direct such person to keep such records or books of account as he may specify. Such records or books of account must be kept at the place of business of the

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63. Regulation 5(2) and Paragraph 104 of the AML Guidance Notes.

64. “Financial entities” are defined under Schedule 2 of the FSA Act and comprise mutual funds, registered agents, international insurers, domestic insurers, international banks, money service businesses friendly and building societies, and credit unions.

65. “Registered entities” refer to entities registered under the International Trusts Act, IBC Act and the LLC Act.

66. Section 22 of the FSA Act.

person carrying on business, unless the Comptroller approves of them being kept at some other place.

115. The term “person” is defined under Section 2 of the Income Tax Act as including an individual, a trust, the estate of a deceased person, a company and a partnership.

116. The term “business” is defined under the Income Tax Act as “any business, profession, trade, venture, or undertaking and includes the provision of personal services or technical and managerial skills and any adventure or concern in the nature of trade but does not include any employment”.<sup>67</sup> This is a wide definition that would cover all relevant entities in Saint Vincent and the Grenadines, although financial sector entities that are expressly exempted from income tax *i.e.* IBCs, LLCs and International Trusts would not be subject to the record keeping requirements under the Income Tax Act.

117. Any person that fails to keep the above accounting records is guilty of an offence and liable to a fine of XCD 1 500 (USD 555) and to imprisonment for one year.<sup>68</sup>

### *Conclusion*

118. The accounting record keeping obligations of relevant entities in Saint Vincent and the Grenadines arise from a number of different laws. In combination, it appears that the records that must be kept by persons carrying on business in Saint Vincent and the Grenadines under the Income Tax Act and by regulated service providers under the PCML Act meet the requirements under the international standard. These records explain all transactions, and enable the financial position of the relevant entity to be determined. They also include underlying documents backing up the accounting records. The records must be kept for at least seven years from the date of the transaction.

119. However, it should be noted that some entities in Saint Vincent and the Grenadines are not fully covered under the income tax or AML accounting record keeping obligations. These are co-operatives, IBCs and LLCs.<sup>69</sup> While IBCs and LLCs must have registered agents which are subject to the record keeping requirements under the PCML Act, not all transactions undertaken by these entities will be conducted through their registered agents. This gap, combined with the fact that the accounting record keeping obligations imposed on IBCs and LLCs themselves are inadequate, means that reliable accounting information may not be available in respect of these entities in all

67. Section 2 of the Income Tax Act.

68. Section 131 of the Income Tax Act.

69. IBCs, LLCs and international trusts which opt to pay a 1% tax under the Income Tax Act will be covered.

instances. As IBCs form the bulk of the relevant entities in Saint Vincent and the Grenadines, this is a significant gap.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
International Business Companies and Limited Liability Companies are not required to keep adequate and reliable accounting records. While these entities are required to have at least one AML-regulated registered agent who must keep relevant accounting records, not all transactions need to be conducted through these registered agents. Full accounting information may therefore not be available.	Introduce legislation that ensures that reliable accounting information is available for International Business Companies and Limited Liability Companies.
Co-operatives are not required to keep adequate and reliable accounting records.	Ensure that reliable accounting information is available for co-operatives.

### A.3. Banking information

Banking information should be available for all account-holders.

#### *Record-keeping requirements (ToR A.3.1)*

120. All banks licensed under the Banking Act and the International Banks Act are subject to Saint Vincent and the Grenadines' AML laws.<sup>70</sup> Banks are required to carry out identification procedures prior to forming any business relationship, including the opening of a bank account for a client. Where the client is a natural person, identification procedures include obtaining the name, permanent address, date and place of birth and nationality of the client. Where the client is a corporate entity, banks will need to obtain a copy of the certificate of incorporation, memorandum and articles of association of the entity, location of the registered office or registered agent of the corporate entity and names and addresses of the beneficial owners of the corporate

70. Schedule 1 of the PCML Act.

entity (except where the corporate entity is a publicly traded company). Where the client is a partnership or un-incorporated business, banks will need to obtain the identity of all partners or beneficial owners and a copy of partnership agreement (if any) or other agreement establishing the unincorporated business.

121. Banks need not carry out identification procedures if a client is introduced by another AML-regulated institution (whether by Saint Vincent and the Grenadines or by a foreign jurisdiction). In the case where the introducer is a foreign AML-regulated institution, the level of AML regulation must be at least equivalent to the regulation in Saint Vincent and the Grenadines.<sup>71</sup> In such cases, a written assurance from the introducing institution to the effect that evidence of the identity of a client has been obtained and recorded under procedures maintained by the introducing institution will be sufficient. The law is silent as to whether banks remain liable for any client identification that is not carried out by the introducing institution, especially if the institution is a foreign institution.<sup>72</sup>

122. Prior to 2002, there were no laws prohibiting the creation of anonymous or fictitious bank accounts. Regulations were enacted in 2002 to do so and these regulations included transitional provisions to deal with any existing anonymous or fictitious bank accounts then. The transitional provisions required banks to establish the beneficial ownership of all “anonymous” accounts and accounts in obviously “fictitious” names within one year of the regulations coming into force (*i.e.* by 2003). Where the beneficial owner cannot be established within one year, banks were required to report these accounts to the Finance Intelligence Unit.<sup>73</sup> The Saint Vincent and the Grenadines authorities advise that the FIU has not received any reports from banks regarding anonymous or fictitious accounts in Saint Vincent and the Grenadines. This implies that there were no anonymous or fictitious accounts in respect of which banks were unable to identify the beneficial owner. This will be confirmed during Saint Vincent and the Grenadines’ Phase 2 review.

123. Banks are required to keep records containing “the details relating to its business as may be necessary to assist an investigation into suspected money laundering”. These details are prescribed under the AML Guidance Notes and include all transactions carried out on behalf of or with a customer in the course of relevant business. Transaction records in support of entries in the accounts, in whatever form they are used, *e.g.* memoranda of sale and purchase, custody of title documentation, etc., should be maintained in a readily retrievable form from which a satisfactory audit trail may be compiled

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71. Section 2 of the PCML Act.

72. Section 4 of the PCML Regulations.

73. Regulation 10 of the PCML Regulations.

where necessary, and which may establish a financial profile of any suspect account or customer. These should include underlying documents, which would be necessary to compile any audit trail.<sup>74</sup>

124. The information on client identity and account transactions must be kept for a minimum of seven years after an account is closed.<sup>75</sup>

125. A bank that does not comply with the above requirements is liable on summary conviction to a fine of XCD 10 000 (USD 3 700); on conviction on indictment for a first offence, to a fine of XCD 500 000 (USD 185 000); for a second or subsequent offence, to a fine of XCD 1 000 000 (USD 370 000).<sup>76</sup>

### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
It is not clear whether there are enforcement provisions to ensure that information on bank account holders is available where the account holder is introduced by a foreign AML-regulated institution.	Introduce relevant provisions to ensure that information on all bank account holders is available in all instances.

74. Regulation 5(2) and Paragraph 104 of the AML Guidance Notes.

75. Section 5 of the AML Regulations.

76. Section 9 of the AML Regulations.



## **B. Access to information**

### **Overview**

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

127. Saint Vincent and the Grenadines' competent authority for its EOI agreements is the Minister of Finance; he may designate any other persons to exercise the functions of the competent authority. Under the International cooperation (Tax Information Exchange Agreements) Act 2011 (IC Act), the competent authority has broad powers to obtain and exchange all relevant information pursuant to an EOI request. These powers are exercised through the issue of a notice, either directly by the competent authority or through the High Court, to any holder of the information to produce the information. Non-compliance with such notices is an offence and penalties apply upon summary conviction. Under the sanction of the High Court the competent authority may also exercise search and seizure powers to obtain information.

128. The safeguards applicable to EOI under the IC Act are compatible with effective exchange of information.

## 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)*

129. The relevant law governing the access to and exchange of information by the Saint Vincent and the Grenadines authorities under its TIEAs and DTCs is the International Cooperation (Tax Information Exchange Agreements) Act 2011 (IC Act). Saint Vincent and the Grenadines also exchanges information with other governments under the Exchange of Information Act 2008 (EOI Act). The scope of the EOI Act is not limited to exchange of information for tax purposes; it also facilitates the exchange of information for other purposes, such as for regulatory purposes and for the prevention of money laundering. The Saint Vincent and the Grenadines authorities have advised that the relevant law for processing EOI requests under TIEAs and DTCs is the IC Act. The IC Act covers “agreements”, which refer to TIEAs; and “arrangements”, which cover all other agreements that are not specifically referred to as TIEAs, such as DTCs.<sup>77</sup>

130. Under the IC Act, the competent authority for EOI is the Minister for Finance or any other relevant person indicated in the relevant EOI arrangement. The Minister may designate any person or authority to perform his functions under the IC Act.<sup>78</sup>

131. The information gathering powers under the IC Act may be exercised by the competent authority to obtain any information from any person that he may need in order to respond to an EOI request. This includes ownership and identity information as well as accounting records.<sup>79</sup> These powers can be exercised through the issuance of a notice for information, through a High Court order, and under certain circumstances through the use of search and seizure warrants.

132. These powers may be exercised when the competent authority receives a valid request, defined as one that is in compliance with the relevant EOI arrangement.<sup>80</sup>

77. Section 2 of the IC Act.

78. Section 4 of the IC Act.

79. Section 7 of the IC Act.

80. Section 8 of the IC Act.

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

133. The information gathering powers under the IC Act may be exercised independently of whether or not the request relates to a domestic tax matter in Saint Vincent and the Grenadines.

*Compulsory powers (ToR B.1.4)*

134. Upon the receipt of an EOI request, the competent authority must first determine whether the request complies with the relevant EOI arrangement. If so, the competent authority may issue a certificate certifying so and exercise his compulsory information gathering powers under the IC Act in order to respond to the request.

135. In cases where the requested information is required for court proceedings or related investigations in the requesting state, the competent authority must apply to the High Court for a court order for the production of the requested information. The High Court may approve the order if it is satisfied that<sup>81</sup>:

- the competent authority has certified the request is in accordance with the relevant EOI arrangement;
- the information to which the request relates is in the possession or control of a person in Saint Vincent and the Grenadines; and
- there are no valid grounds for declining the request (see below).

136. Such a court order may require that the information be provided in a given time, be in such a form as the competent authority may specify, and be verified or authenticated in such manner as the competent authority may require. The default time period for compliance is 14 days; this is subject to change at the High Court’s discretion. The Saint Vincent and the Grenadines authorities advise that the time taken for the competent authority to obtain a court order ranges from one to five days and matters pursuant to international requests are always treated as priority matters by Saint Vincent and the Grenadines and the Court. The effectiveness of this process is a practical issue that should be further examined in the course of Saint Vincent and the Grenadines’ Phase 2 review.

137. In all other cases, the competent authority can issue a direct notice to any person in Saint Vincent and the Grenadines to provide the requested information that he may require to respond to the request. A person who has been served with such a notice must provide the requested information within 28 days, or any other timeframe as the competent authority may indicate. He

81. Section 10 of the IC Act.

need not comply with the notice if he is not in possession or control of the requested information.<sup>82</sup>

138. In cases where the request relates to the taking of any evidence, the competent authority must apply to the High Court for the High Court to issue the necessary summons and to receive the relevant evidence. Once this is done the evidence may be transmitted over to the requesting state. The taking of evidence is however limited to evidence that any person would be compelled to give in a similar proceeding in Saint Vincent and the Grenadines.<sup>83</sup>

139. The competent authority may apply to the High Court for a search and seizure warrant to obtain information. The High Court may issue such a warrant if it is satisfied that (a) a court order or a notice to produce information has not been complied with; there are reasonable grounds for believing that the information is on the premises specified in the application of the warrant; and the request for the purposes of which the application is made might be seriously prejudiced unless immediate access to the information is secured; or (b) the competent authority has certified the request is in accordance with the relevant EOI arrangement, the information to which the request relates is in the possession or control of a person in Saint Vincent and the Grenadines; there are no grounds for declining the request (see below); and it would not be appropriate to make a court order for the production of information because:

- it is not practicable to communicate with any person entitled or authorised to produce the information;
- it is not practicable to communicate with any person entitled or authorised to grant access to the information or entitled or authorised to grant entry to the premises on which the information is situated; or
- the request for the purposes of which the application is made might be seriously prejudiced unless a police officer can secure immediate access to the information.<sup>84</sup>

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82. Section 9 of the IC Act.

83. The Saint Vincent and the Grenadines authorities have advised that there are only three situations where this restriction would apply. The first is pursuant to the Evidence Act, which provides that in criminal proceedings where a husband and wife are witnesses against each other, both cannot be compelled to disclose any communication made by each other during the course of the marriage. The second is pursuant to the Evidence Act, where a person cannot be compelled to give evidence if doing so would be prejudicial to the security of Saint Vincent and the Grenadines. The third relates to legal professional privilege – a legal practitioner cannot be compelled to reveal communications between himself and his client unless the communication is in furtherance of a criminal offence.

84. Section 11 of the IC Act.

140. Any person that fails to provide any requested information or who willfully tampers with or alters such information so that it is not true when received by the competent authority is guilty of an offence and is liable upon summary conviction to a fine not exceeding XCD 10 000 (USD 3 700) or to imprisonment for a term not exceeding two years or both.

141. Any person who refuses to give evidence or comply with a court summon is liable on summary conviction to a fine of XCD 5 000 (USD 1 850) or to imprisonment for a term of one year or both.<sup>85</sup>

### *Secrecy provisions (ToR B.1.5)*

142. Secrecy provisions applicable to various entities do not prevent the effective exchange of information by the Saint Vincent and the Grenadines competent authority. The IC Act specifically provides that any notice issued by the competent authority or order issued by the High Court for information “shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information whether imposed by any Act or the common law”.<sup>86</sup> This broad provision clearly overrides any confidentiality provisions that may be present in any other act in Saint Vincent and the Grenadines. Additionally, the IC Act provides that any person who divulges any confidential information or gives any evidence in compliance with an order or notice issued pursuant to a request shall be deemed not to commit any offence under any Act in force in Saint Vincent and the Grenadines.<sup>87</sup>

143. The following paragraphs describe some of the confidentiality provisions that can be found in Saint Vincent and the Grenadines laws, but as noted above these provisions (with the exception of legal professional privilege) are overridden by the disclosure requirements spelt out under the IC Act.

### *Financial institutions*

144. Domestic banks are required to keep all client information confidential, but may disclose such information to any government authority pursuant to any law in Saint Vincent and the Grenadines.<sup>88</sup> There are no express secrecy provisions relating to international banks.

85. Section 15 of the IC Act.

86. Section 10(8) of the IC Act.

87. Section 12 of the IC Act.

88. Section 32 of the Banking Act.

*IBCs*

145. Section 196 of IBC Act prohibits the disclosure of confidential information, broadly defined as including all information concerning any property and commercial transactions which have taken or may take place, which the recipient is not, otherwise than in the normal course of business or professional practice, authorised by the principal to divulge. The IBC Act provides that such information may only be disclosed for criminal investigation or prosecution purposes.<sup>89</sup>

*International trusts*

146. The International Trust Act provides that subject to the terms of the instrument creating an international trust, no trustee, protector or other person shall disclose to any other person not legally entitled to any information or documents respecting an international trust, including (a) the name of the settlor or any beneficiary; (b) the trustees' deliberations as to the manner in which a power or discretion was exercised or a duty conferred by the terms of the trust or by law was performed; (c) the reason for the exercise of the power or discretion or the performance of the duty or any evidence upon which such reason might have been based; (d) any information relating to or forming part of the accounts of an international trust; or (e) any other matter or thing respecting an international trust. The list of authorised persons entitled to trust information comprises the Registrar of Trusts and the Comptroller of Inland Revenue, who may request for any information relating to the trust for regulatory purposes and for the purpose of determining the international trust's exempt status respectively.<sup>90</sup>

*Legal professional privilege*

147. The IC Act defines privileged communication as “any information or other matter which is communicated between a client and attorney, solicitor or other admitted legal representative where such communication is (a) produced for the purposes of seeking or providing legal advice; or (b) produced for the purposes of use in existing or contemplated legal proceedings.”<sup>91</sup> The scope of privileged communication is consistent with the international standard. Under the IC Act, the competent authority may decline a request that relates to privileged information. The IC Act also provides that no one shall be required to disclose information that is subject to legal professional privilege.

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89. Section 196(3) of the IBC Act.

90. Sections 55 (1) a, b, 57 and 64 of the International Trust Act.

91. Section 2 of the IC Act.

*Conclusion*

148. The powers of the Saint Vincent and the Grenadines competent authority to obtain and exchange information for tax purposes pursuant to its TIEAs and DTCs are fully compatible with the requirements of the international standard.

**Determination and factors underlying recommendations**

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

**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)*

149. There is no requirement in the Saint Vincent and the Grenadines' domestic legislation that the taxpayer under investigation or examination must be given prior notification of a request and the Saint Vincent and the Grenadines authorities have advised that they do not do so. The IC Act provides for circumstances where it may not be appropriate to issue a notice to third parties to produce information. In such cases the competent authority has the option of applying for a search and seizure warrant to directly obtain the requested information.

150. Where the competent authority obtains any information pursuant to issuing a direct notice for information, he is obliged to keep it confidential and not provide it to the requesting party for a period of 20 days from the day he obtained the information. This period allows taxpayers and any other interested parties adequate time to file any appeal they might wish against the action of the competent authority before the information is transmitted to the requesting state. Should such an appeal be filed, the exchange of information is suspended and any further action would be determined by the relevant court. Whether this appeal process has a practical impact on effective exchange of information will be further examined in the course of Saint Vincent and the Grenadines' Phase 2 review.

151. The IC Act provides safeguards on the type of information that may be exchanged. The competent authority may decline a request for information if:

- the requested information is not foreseeably relevant to the administration or enforcement of the tax laws of the requesting jurisdiction;
- the requesting party does not pay the costs as have been agreed under an EOI agreement;
- the information is protected from disclosure under the laws of Saint Vincent and the Grenadines on the grounds that the information constitutes or would reveal a privileged communication;
- the requesting party would not be able to obtain the information
  - under its own laws for the purposes of administration or enforcement of its tax laws; or
  - in response to a similar valid request from the competent authority under the relevant EOI arrangement; or
- the disclosure of the information would be contrary to public policy or national security.<sup>92</sup>

152. The above safeguards are consistent with the international standard.

**Determination and factors underlying recommendations**

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

92. Section 6 of the IC Act.



## C. Exchanging information

### Overview

153. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Saint Vincent and the Grenadines, the legal authority to exchange information is derived from its EOI agreements as well as from domestic law. This section examines whether Saint Vincent and the Grenadines has a network of information exchange that would allow it to achieve effective EOI in practice.

154. Pursuant to the IC Act, the Minister for Finance is Saint Vincent and the Grenadines' competent authority for international exchange of information in tax matters. The Minister may also designate other persons to perform the functions of the competent authority. As noted above, Saint Vincent and the Grenadines also shares information with other jurisdictions pursuant to the EOI Act.

155. As of 3 February 2012 Saint Vincent and the Grenadines has signed 31 EOI agreements – one multilateral DTC covering 10 jurisdictions and 21 tax information exchange agreements (TIEAs) – of which a total of 22 are in force (see Annex 2). Saint Vincent and the Grenadines' multilateral DTC was signed in 1994. Its 21 TIEAs were signed after September 2009, when Saint Vincent and the Grenadines became more active in negotiating EOI agreements.

156. Most of Saint Vincent and the Grenadines' EOI agreements allow Saint Vincent and the Grenadines to exchange information according to the international standard. Saint Vincent and the Grenadines is currently in the process of negotiating a number of other TIEAs.

157. All of Saint Vincent and the Grenadines' EOI agreements contain confidentiality provisions to ensure that the information exchanged will be disclosed only to authorised persons. While the articles in these EOI agreements vary slightly in wording, these provisions generally contain all of the essential aspects of Article 8 of the 2002 OECD's Model Agreement

on Exchange of Information on Tax Matters (the OECD Model TIEA) and Article 26 of the OECD Model Tax Convention on Income and on Capital (the OECD Model Tax Convention).

158. Saint Vincent and the Grenadines' EOI agreements ensure that the contracting parties are not obliged to provide information which would disclose trade, business, industrial, commercial or professional secrets or information which is the subject of attorney-client privilege or to make disclosures which would be contrary to public policy. There are no legal restrictions on the ability of Saint Vincent and the Grenadines' competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request.

### C.1. Exchange of information mechanisms

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

159. The EOI agreements signed by Saint Vincent and the Grenadines are ratified upon Parliamentary approval and publication in the Government Gazette. EOI agreements do not take precedence over domestic law but if the law is silent on any certain aspects then reference will be made to the provisions of the EOI agreement. Currently, no EOI agreement contradicts the domestic law. Each new EOI agreement is carefully reviewed by the Competent Authority and Attorney General to ensure consistency with domestic law.

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

160. The international standard for exchange of information envisages information exchange to the widest possible extent, but does not allow speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance”. It does not allow “fishing expeditions”.

161. All of Saint Vincent and the Grenadines' signed EOI agreements provide for the exchange of information that is foreseeably relevant or necessary to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered in the TIEAs/DTCs. This scope is set out in Article 1 of all of Saint Vincent and the Grenadines' TIEAs and in Article 24(1) of Saint Vincent and the Grenadines' CARICOM multilateral DTC.

162. However, the agreement with Liechtenstein provides in Article 7(1) (d) that the requested State may decline a request if the amount of tax or duty in question does not exceed the threshold of EUR 25 000. Although

this agreement allows an exception to this rule when the case is “deemed to be extremely serious by the applicant party”, there is no guidance as to what constitutes an “extremely serious” case. It is also unclear how the requested party will determine the tax amount, as often the amount of tax involved can only be determined after information has been exchanged, and how this rule would be applied in a group of cases, where in each case the tax amount is less than the threshold but the overall tax effect might be large. In this regard, Saint Vincent and the Grenadines has advised that it will treat any international request for information which is foreseeably relevant to the administration and enforcement of tax laws as extremely serious in every case. Therefore, on Saint Vincent and the Grenadines’ part, there is no risk that a request will be declined if it meets the threshold of “foreseeably relevant”. The practical effects of this rule are a matter to be examined in Saint Vincent and the Grenadines’ Phase 2 review. Saint Vincent and the Grenadines in its futures negotiations may wish to consider whether such a requirement is consistent with the international standard.

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

163. For exchange of information to be effective it is necessary that a jurisdiction’s obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that EOI mechanisms will provide for exchange of information in respect of all persons.

164. All but one of Saint Vincent and the Grenadines’ EOI agreements provide for EOI in respect of all persons. All of its TIEAs provide for EOI in respect of all persons. Its DTC with CARICOM does not specifically define the scope of persons in respect of which EOI may take place; however since the scope of EOI in the DTCs includes the enforcement of laws and provisions that also apply to non-residents, the DTC also allows for EOI in respect of all persons.

***Exchange of information held by financial institutions, nominees, agents and ownership and identity information (ToR C.1.3)***

165. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Tax Convention and the OECD Model TIEA, which are the authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information

cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

166. All of Saint Vincent and the Grenadines' TIEAs provide for the exchange of information held by financial institutions, nominees, agents; and ownership and identity information.

167. Saint Vincent and the Grenadines' CARICOM DTC does not contain provisions similar to paragraph 26(5) of OECD Model Taxation Convention.<sup>93</sup> However, the absence of this paragraph does not automatically create restrictions on exchange of bank information. The commentary in the convention to Article 26(5) indicates that while paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information.

168. Saint Vincent and the Grenadines' domestic laws allow it to access and exchange bank and ownership information even in the absence of wording akin to Article 26(5). In view of this, whether the CARICOM treaty is compliant will depend on Saint Vincent and the Grenadines' EOI partners' respective domestic laws.

169. In respect of Saint Vincent and the Grenadines' DTCs, the obligation to exchange all types of information is only clearly available with respect to one of its signatories, Saint Kitts and Nevis for the following reasons:

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93. The full EOI Article in the CARICOM treaty reads “(1) The competent authorities of the Member States shall exchange such information as is necessary for the carrying out of this Agreement and of the domestic laws of the Member States concerning taxes covered by this Agreement in so far as the taxation thereunder is in accordance with this Agreement. Any information so exchanged shall be treated as secret and shall only be disclosed to persons or authorities including Courts and other administrative bodies concerned with the assessment or collection of the taxes which are the subject of this Agreement. Such persons or authorities shall use the information only for such purposes and may disclose the information in public court proceedings or judicial decisions.

(2) In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Member States the obligation: (a) to carry out administrative measures at variance with the laws or the administrative practice of that or/of the other Member States; (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Member States; (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process the disclosure of which would be contrary to public policy.”

- the competent authorities of Belize and St. Lucia have access to bank information in criminal tax matters only;
- Trinidad and Tobago are only able to access information for the purpose of their TIEAs with the United States, therefore, they will not be able to exchange all information under the CARICOM agreement;
- Dominica has not provided any information regarding powers of competent authority to access bank information;
- Antigua and Barbuda does not have access to confidential information held by certain legal entities;<sup>94</sup>
- information about competent authorities' powers to access bank information to obtain ownership, identity and accounting information for the purpose of exchange of information is not available with respect to Guyana, so it is not possible to confirm that the CARICOM treaty with this jurisdiction meets the international standard;
- Saint Kitts and Nevis has enacted the Saint Christopher and Nevis (Mutual Exchange of Information on Tax Matters) Act 2009 which provides that all types of information may be obtained and shared with treaty partners (civil as well as criminal);
- while Grenada has enacted an new EOI Act providing EOI to the standard, the CARICOM agreement is not a scheduled agreement to the Act, meaning that the information gathering powers under the Grenada EOI Act does not apply to the CARICOM agreement;
- the competent authorities of Barbados have no powers to obtain confidential information covered by the International Trust Act and the Mutual Funds Act for exchange purposes.<sup>95</sup>

170. It is recommended that Saint Vincent and the Grenadines work with its EOI partners to ensure exchange of information to the standard can occur under the relevant agreements.

#### ***Absence of domestic tax interest (ToR C.I.4)***

171. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement

94. See Phase 1 Peer Review Report of Antigua and Barbuda.

95. See Phase 1 Peer Review Report of Barbados.

is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

172. All of Saint Vincent and the Grenadines' TIEAs contain provisions similar to the Article 5(2) of the 2002 Model Agreement on EOI for Tax Matters, which obliges the Contracting Parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested Party does not have a domestic interest in the requested information.

173. Saint Vincent and the Grenadines' CARICOM DTC does not contain explicit provisions obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest. The commentary to Article 26(4) indicates that paragraph 4 was introduced in the 2005 Model Tax Convention to express an implicit obligation contained in this Article to exchange information in situations where the requested information is not needed by the requested State for domestic tax purposes.

174. There are no domestic tax interest restrictions on Saint Vincent and the Grenadines' powers to access information in EOI cases (see Section B above). Saint Vincent and the Grenadines is able to exchange information, including in cases where the information is not publicly available or already in the possession of the governmental authorities. However, there may be restrictions in some of Saint Vincent and the Grenadines' DTC partners' ability to exchange information in the absence of domestic interest. Where such restrictions exist (such as in the case of Jamaica) the DTCs would not be considered compliant with the international standard. It is recommended that Saint Vincent and the Grenadines work with the relevant DTC partners to remove these restrictions.

### ***Absence of dual criminality principles (ToR C.1.5)***

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

176. All of Saint Vincent and the Grenadines' TIEAs contain provisions similar to Article 5(1) of the 2002 Model TIEA, which obliges Contracting Parties to exchange information without regard to whether the conduct being investigated would constitute a crime under the laws of the requested

Contracting Party. There are no dual criminality provisions in Saint Vincent and the Grenadines’ DTCs.

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

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

178. All of Saint Vincent and the Grenadines’ EOI agreements provide for exchange of information in both civil and criminal tax matters.

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

179. There are no restrictions in Saint Vincent and the Grenadines’ domestic laws that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices. Further, section 16 of the IC Act explicitly authorises the competent authority to obtain, where the request so stipulates, information in the form of deposition of witnesses and authenticated copies of original documents.

180. This is reinforced in all of Saint Vincent and the Grenadines’ TIEAs, which contain provisions similar to Article 5(3) of the 2002 Model TIEA. Article 5(3) obliges Contracting Parties to provide, on request, information in the form of dispositions of witnesses and authenticated copies of original records to the extent allowable under domestic law.

***In force (ToR C.1.8)***

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

182. Saint Vincent and the Grenadines has concluded 31 EOI agreements, of which 22 have been brought into force as of 3 February 2012. In respect of the other 9 agreements, Saint Vincent and the Grenadines has completed all the steps necessary on its part to bring the agreements into force.

183. The time taken for Saint Vincent and the Grenadines to bring their TIEAs into force is short and averages about one year.

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

184. For information exchange to be effective, the parties to an EOI arrangement need to enact any legislation necessary to comply with the terms of the arrangement. Saint Vincent and the Grenadines' EOI agreements are given the force of law once they are approved by the Parliament of Saint Vincent and the Grenadines and published in the Gazette.

**Determination and factors underlying recommendations**

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Some of Saint Vincent and the Grenadines' DTCs do not meet the international standard due to restrictions on access to bank and fiduciary information and/or a domestic interest requirement in its DTC partners' domestic laws.	Saint Vincent and the Grenadines should work with the relevant DTC partners to ensure that these restrictions are removed.

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

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

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

186. Since 2009, Saint Vincent and the Grenadines has rapidly expanded its EOI network and has signed 21 TIEAs. Saint Vincent and the Grenadines' EOI network currently covers 31 jurisdictions. A breakdown of its network is as follows.

- 28 are Global Forum members;
- 13 are neighbouring jurisdictions within the Caribbean region;



- 15 are OECD countries; and
- 5 are G20 countries

187. Saint Vincent and the Grenadines’ EOI network covers all but one of its biggest trading partners. These include Canada, UK and the CARICOM countries. Saint Vincent and the Grenadines has advised that it is in the process of expanding its EOI network with other relevant partners.

188. No jurisdictions have advised the assessment team during the course of the review that Saint Vincent and the Grenadines had refused to negotiate or conclude an EOI agreement with it.

**Determination and factors underlying recommendations**

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	Saint Vincent and the Grenadines should continue to develop its exchange of information network with all relevant partners and take all steps necessary to bring concluded agreements into effect as quickly as possible.

**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)***

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

190. All Saint Vincent and the Grenadines' EOI agreements have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. While each of the articles vary slightly in wording, these provisions contain all of the essential aspects of Article 8 of the OECD Model TIEA and Article 26(2) of the OECD Model Tax Convention.

191. However, Saint Vincent and the Grenadines' domestic laws are not fully consistent with these confidentiality provisions. Section 14 of the IC Act provides that information received by a requesting party (which includes information obtained pursuant to Saint Vincent and the Grenadines' EOI agreements) may also be disclosed to "persons employed or authorised by the government of the requesting party to oversee data protection". While this is permissible under the international standard, it requires express consent by the jurisdiction that provided the information. The IC Act does not specify this as one of the conditions necessary for such disclosure.

192. The Saint Vincent and the Grenadines authorities advise that this provision was included in the IC Act in order to avoid being inconsistent with a proposed data protection law currently still in draft form. The objective of the proposed data protection law is to safeguard data and ensure that data is not exposed or leaked to unauthorised persons. As the data protection law has not been enacted, there is presently no data protection agency in Saint Vincent and the Grenadines, nor is there any person or agency authorised by the government to oversee data protection.

### ***All other information exchanged (ToR C.3.2)***

193. Confidentiality rules should apply to all types of information exchanged, including information provided in a request, information transmitted in response to a request and any background documents to such requests.

194. All of Saint Vincent and the Grenadines' EOI agreements contain confidentiality provisions similar to Article 8 of the OECD Model TIEA and Article 26(2) of the OECD Model Tax Convention, which specify that the confidentiality rules spelt out in the EOI arrangement apply to all information received under the agreement.

**Determination and factors underlying recommendations**

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Saint Vincent and the Grenadines law allows information that is obtained pursuant to its EOI agreements to be disclosed to persons employed or authorised by the government of the requesting party to oversee data protection. This disclosure does not require the express written consent of the EOI partner providing the information.	Ensure that any future disclosure of information to the proposed data protection agency is in line with the international standard.

**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)***

195. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise, or where the disclosure of information would be contrary to public policy. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by legal professional privilege.

196. Communications between a client and an attorney or other admitted legal representative are only privileged to the extent that, the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where attorney-client privilege is more broadly defined it does not provide valid grounds on which to decline a request for EOI. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, EOI resulting from and relating to any such activity cannot be declined because of legal professional privilege.

197. All of Saint Vincent and the Grenadines' TIEAs and DTCs ensure that the contracting parties are not obliged to provide information which

would disclose any trade, business, industrial, commercial or professional secret, information which is subject to legal professional privilege, or information the disclosure of which is contrary to public policy. The scope of legal professional privilege, as defined under the IC Act, is consistent with the international standard.

198. Administratively, when the competent authority observes that the requested information concerns issues of public policy, it must obtain written directions and guidance from the Attorney General before responding to the request.

### *Notification of taxpayers*

199. The Protocol in Saint Vincent and the Grenadines agreement with Liechtenstein contains a provision stating that: “it is understood that the taxpayer, unless subject to criminal investigations, is to be informed about the intention to make a request for information.”

200. This obliges the requesting jurisdiction to inform the taxpayer of its intention to make a request whenever the investigation does not relate to a criminal case. In the absence of an exception, there is a possibility of jeopardising the success of investigations in non-criminal cases, and to this extent this agreement is not to the standard.

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

<b>Phase 1 determination</b>	
<b>The element is in place.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Saint Vincent and the Grenadines' TIEA with Liechtenstein requires the requesting state to notify the taxpayer of its intent to make a request whenever the investigation does not relate to a criminal case. This can potentially prevent or delay the exchange of information by Saint Vincent and the Grenadines in non-criminal cases.	It is recommended that the TIEA with Liechtenstein be updated to allow appropriate exceptions to the requirement to notify taxpayers in non-criminal cases.

## 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)*

201. There appear to be no legal restrictions on Saint Vincent and the Grenadines tax authorities' ability to respond to EOI requests within 90 days of receipt by providing the information requested or providing an update on the status of the request

202. A review of Saint Vincent and the Grenadines' ability to respond to requests in a timely manner will be conducted in the course of its Phase 2 review.

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

203. Saint Vincent and the Grenadines' competent authority for its EOI agreements is the Minister with the responsibility for Finance or any other person designated by him.

204. A review of Saint Vincent and the Grenadines' organisational process and resources will be conducted in the context of Saint Vincent and the Grenadines' Phase 2 review.

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

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

206. There are no aspects of Saint Vincent and the Grenadines' domestic laws that appear to impose additional restrictive conditions on 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>		
<b>The element is in place but certain aspects of the legal implementation of the element need improvement.</b>	While IBCs and LLCs must have AML-regulated service providers who are obliged to identify all the beneficial owners of the IBCs and LLCs they act for, the service providers need not maintain information on the changes to the beneficial owners of the IBCs and LLCs in all cases.	Up to date ownership and identity information should be available for all IBCs and LLCs.
	It is possible for relevant foreign companies ( <i>i.e.</i> those effectively managed from Saint Vincent and the Grenadines and therefore resident there) to be exempted from registration requirements; such foreign companies need not submit or maintain information on their owners.	Ownership and identity information should be available for all foreign companies having a sufficient nexus with St Vincent and the Grenadines.
	The law is silent as to whether service providers remain liable for any client identification that is not carried out by the introducing institution, especially if the institution is a foreign institution.	Introduce relevant enforcement provisions to ensure that ownership information is available where an introducing institution is relied upon to carry out client identification.

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>		
<b>The element is not in place.</b>	International Business Companies and Limited Liability Companies are not required to keep adequate and reliable accounting records. While these entities are required to have at least one AML-regulated registered agent who must keep relevant accounting records, not all transactions need to be conducted through these registered agents. Full accounting information may therefore not be available.	Introduce legislation that ensures that reliable accounting information is available for International Business Companies and Limited Liability Companies.
	Co-operatives are not required to keep adequate and reliable accounting records.	Ensure that reliable accounting information is available for co-operatives.
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
<b>The element is in place.</b>	It is not clear whether there are enforcement provisions to ensure that information on bank account holders is available where the account holder is introduced by a foreign AML-regulated institution.	Introduce relevant provisions to ensure that information on all bank account holders is available in all instances.
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i>		
<b>The element is in place.</b>		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i>		
<b>The element is in place.</b>		



Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information. (ToR C.1)		
<b>The element is in place.</b>	Some of Saint Vincent and the Grenadines' DTCs do not meet the international standard due to restrictions on access to bank and fiduciary information and/or a domestic interest requirement in its DTC partners' domestic laws.	Saint Vincent and the Grenadines should work with the relevant DTC partners to ensure that these restrictions are removed.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. (ToR C.2)		
<b>The element is in place.</b>		Saint Vincent and the Grenadines should continue to develop its exchange of information network with all relevant partners and take all steps necessary to bring concluded agreements into effect as quickly as possible.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. (ToR C.3)		
<b>The element is in place.</b>	Saint Vincent and the Grenadines law allows information that is obtained pursuant to its EOI agreements to be disclosed to persons employed or authorised by the government of the requesting party to oversee data protection. This disclosure does not require the express written consent of the EOI partner providing the information.	Ensure that any future disclosure of information to the proposed data protection agency is in line with the international standard.

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
<b>The element is in place.</b>	Saint Vincent and the Grenadines' TIEA with Liechtenstein requires the requesting state to notify the taxpayer of its intent to make a request whenever the investigation does not relate to a criminal case. This can potentially prevent or delay the exchange of information by Saint Vincent and the Grenadines in non-criminal cases.	It is recommended that the TIEA with Liechtenstein be updated to allow appropriate exceptions to the requirement to notify taxpayers in non-criminal cases.
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>		

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

Saint Vincent and the Grenadines (SVG) extends its appreciation to the Global Forum Secretariat and the Assessors for the invaluable assistance given during this country’s Phase 1 Peer Review process.

SVG remains committed to the OECD standards on tax transparency and the exchange of information for tax purposes and has demonstrated this by signing 22 Tax Information Exchange Agreements. These Agreements have been signed with both OECD member and non-member countries, including both economic and non economic partners. As reflected in this Report, altogether SVG has established 31 exchange of information (EOI) agreements, for which the entry into force procedures have been completed on SVG’s part. The country has further demonstrated its commitment by the enactment of the International Co-operation (Tax Information Exchange) Act 2011, so as to ensure that its competent authority encounters no legal hindrances in exchanging tax information.

SVG is committed to continuing to do all within our powers and resources to further strengthen our legislative and regulatory regime in order to ensure effective cooperation and transparency in the global efforts to eradicate tax offences. To this end, we remain ever cognizant that this Peer Review process is designed as an objective assessment of our legislative and regulatory framework to promote transparency and effective EOI.

Moving forward, SVG wishes to emphasize that its focus on enhancing its legal and regulatory framework in relation to EOI mechanisms will be guided by the recommendations made in this Report. Indeed, work has already commenced towards implementing these recommendations, in order to fully meet the objectives of the Global Forum.

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\* 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: List of all Exchange-of-Information Mechanisms in Force

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
1	Aruba	Tax Information Exchange Agreement (TIEA)	01-Sep-09	21-Mar-11
2	Australia	TIEA	18-Mar-10	
3	Austria	TIEA	14-Sep-09	
4	Belgium	TIEA	07-Dec-09	
5	Canada	TIEA	22-Jun-10	04-Oct-11
6	CARICOM (Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Jamaica, Saint Kitts and Nevis, Guyana, Saint Lucia, Trinidad and Tobago)	Double Taxation Convention (DTC)	08-Dec-94	07-Mar-00
7	Curaçao <sup>96</sup>	TIEA	28-Sep-09	21-Mar-11
8	Denmark	TIEA	01-Sep-09	01-Apr-11
9	Faroe Islands	TIEA	24-Mar-10	

96. Following the dissolution of the Netherlands Antilles on 10 October 2010, two separate jurisdictions were formed (Curaçao and Saint Maarten) with the remaining three islands (Bonaire, St. Eustatius and Saba) joining the Netherlands as special municipalities. The TIEA concluded with the Kingdom of the Netherlands, on behalf of the Netherlands Antilles, continues to apply to Curaçao, Sint Maarten and the Caribbean part of the Netherlands (Bonaire, St. Eustatius and Saba) and is administered by Curaçao and Saint Maarten for their respective territories and by the Netherlands for Bonaire, St. Eustatius and Saba.

	<b>Jurisdiction</b>	<b>Type of EOI arrangement</b>	<b>Date signed</b>	<b>Date in force</b>
10	Finland	TIEA	24-Mar-10	28-Apr-11
11	France	TIEA	13-Apr-10	21-Mar-11
12	Germany	TIEA	29-Mar-10	
13	Greenland	TIEA	24-Mar-10	
14	Iceland	TIEA	24-Mar-10	
15	Ireland	TIEA	15-Dec-09	21-Mar-11
16	Liechtenstein	TIEA	02-Oct-09	
17	Netherlands	TIEA	01-Sep-09	21-Mar-11
18	New Zealand	TIEA	16-Mar-10	
19	Sint Maarten <sup>97</sup>	TIEA	28-Sep-09	21-Mar-11
20	Norway	TIEA	24-Mar-10	21-Mar-11
21	Sweden	TIEA	24-Mar-10	21-Mar-11
22	UK	TIEA	18-Jan-10	19-May-11

97. See previous footnote.

## **Annex 3: List of all Laws, Regulations and Other Material Received**

### **Commercial Laws**

Building Societies Act  
Companies Act  
Co-operative Societies Act  
Commerce and Intellectual Property Office Act  
Exchange of Information Act  
Financial Services Authority Act  
International Business Companies Act  
Insurance Act  
International Cooperation (Tax Information Exchange Agreements) Act  
International Insurance Act  
International Trusts Act  
International Banks Act  
Limited Liability Companies Act  
Money Services Business Act  
Mutual Funds Act  
Partnership Act  
Public Trustees Act  
Registered Agent and Trustee Licensing Act  
Securities Act  
Trustees Act

**Taxation Laws**

Customs Act  
Income Tax Act  
Value Added Tax Act

**Banking Laws**

Banking Act  
Eastern Caribbean Central Bank Act

**Anti-Money Laundering Laws**

Proceeds of Crime and Money Laundering Act  
Financial Intelligence Unit Act  
Money Laundering Prevention Guidance Notes

**Others**

Saint Vincent and the Grenadines Constitution Order





## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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## Global Forum on Transparency and Exchange of Information for Tax Purposes

# PEER REVIEWS, PHASE 1: SAINT VINCENT AND THE GRENADINES

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

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

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

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

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

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 visit [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).

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