Global Forum on Transparency
and Exchange of Information for Tax Purposes

Second Supplementary Peer Review Report Combined: Phase 1 + Phase 2

MAURITIUS

OECD

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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 120 jurisdictions, which participate in the Global Forum on an equal footing.

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

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

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

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

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

Executive Summary

1. 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 access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information partners. This is the second supplementary report on the amendments made by Mauritius to its legal and regulatory framework for transparency and exchange of information, as well as the practical implementation of that framework. It complements the Combined Phase 1 and 2 Review report which was adopted and published by the Global Forum on Transparency and Exchange of Information for Tax Purposes in January 2011 (the January 2011 Report) and the first supplementary report which was adopted and published by the Global Forum in September 2011 (the September 2011 Report). As a result of these reports, Mauritius was rated overall as "largely compliant" with the international standard and was recommended to take a number of actions to improve its legal and regulatory framework and its practice of exchange of information for tax purposes. The present report assesses the changes to this framework since the September 2011 Report and the implementation in practice of the framework in relation to a new three year period (2010-12).

2. In February 2013, Mauritius asked for a supplementary peer review report pursuant to paragraph 58 of the Global Forum's Methodology for Peer Reviews and Non-member Reviews, based on significant progress with regard to the availability of ownership and identity information in cases of nominee ownership and trusts (element A.1), as well as underlying documentation that must be kept for trusts (element A.2). This second supplementary report therefore assesses the changes made by Mauritius to address the recommendations made in the September 2011 Report.

3. The present report takes this opportunity to also review progress made to address other recommendations made in the September 2011 Report concerning Mauritius' exchange of information instruments (Phase 1 recommendations on elements C.1 and C.2), new laws introduced in Mauritius

(element A.1.5 on foundations), and more generally the exchange of information practice of Mauritius in the years 2010-12 and the implementation of the Phase 2 recommendations on six elements that were rated "Largely Compliant".

4. With regard to the availability of information, the September 2011 Report noted a continuing gap in the Mauritian legislation with regard to ownership and identity information concerning nominee shareholders in companies other than public companies and GBCs (Global Business Licence Companies – the Category 1 Global Business Licence Company (GBC1), which are taxable at an effective rate of 3% and can benefit from the DTCs and Category 2 Global Business Licence Company (GBC2) dedicated to non-tax resident companies). A gap regarding ownership and identity information also existed for some non-resident foreign trusts. Mauritius has amended its relevant legislation to address these two gaps. Thus, the two A.1 recommendations from the September 2011 Report have both been removed and the determination has been upgraded to "the element is in place".

5. The concept of foundation was introduced in Mauritius with the Foundations Act 2012, which came into operation in July 2012. Information on the persons related to a foundation at the time of its registration is available in its charter and in addition, the information is available at all times with the secretary of the foundation who is subject to the customer due diligence rules pursuant to the anti-money-laundering legislation. The new legislation provides for the keeping of accounting records for a period of seven years. However, in view of the short period between the introduction of the Foundations Act and the end of the period under review, the enforcement of the new law could not be assessed. Subsequently, two monitoring recommendations are made (A.1 and A.2).

6. The September 2011 Report reported the continuing, but narrower gap, under element A.2 regarding the requirement to keep underlying documentation for trusts if these trusts do not carry on a business or derive income in Mauritius. Considering the recent amendments to the relevant legislation, the recommendation has been removed and element A.2 has been upgraded to "the element is in place".

7. Banking information is available in Mauritius for all account holders pursuant to the banking law and anti-money laundering law. As stated in both the January and September 2011 Reports, the determination for element A.3 is "the element is in place".

8. With regard to access to information, in the September 2011 Report, it was noted that Mauritius had never exercised its compulsory powers in practice, despite the fact that some taxpayers had refused to disclose the requested information. A recommendation was made for Mauritius to exercise its compulsory powers and apply sanctions where appropriate. Since

then, the pending exchange of information cases have been resolved positively. In addition, in the period 2010-12, no information holder denied the Mauritian competent authority access to information for EOI purposes. The concern no longer has any practical basis and the recommendation is therefore removed.

9. Under element B.2, it was found that some of the rights and safeguards that apply to persons in Mauritius had not yet been tested in practice, and it was not possible to determine whether these could unduly prevent or delay exchange of information. Considering that no issue or concern was raised in the period 2010-12, it is concluded that these rights do not unduly prevent or delay exchange of information and the recommendation is therefore removed.

10. With regard to the exchange of information, Mauritius currently has exchange of information relationships with 56 jurisdictions, of which 43 are in force, and actively continues to negotiate new DTCs and TIEAs. Since the September 2011 Report, Mauritius has signed eight new DTCs (with Republic of Congo, Egypt, Gabon, Guernsey, Kenya, Monaco, Nigeria and Zambia) and eight new TIEAs (with Denmark, Faroe Island, Finland, Greenland, Guernsey, Iceland, Norway and United States), in addition to protocols with France, Italy, Luxembourg, Seychelles and the United Kingdom and two new treaties with Germany and Sweden to upgrade existing EOI instruments. The recommendations made to Mauritius to update its EOI network under elements C.1 and C.2 are therefore removed, although Mauritius is still encouraged to continue developing its EOI network with all relevant partners.

11. In the years 2010-12 Mauritius received 240 exchange of information requests from eight treaty partners, predominantly India. This is more than three times the number of requests received in the period 2007-09. Despite this significant increase in volume, the Mauritian competent authority made marked progress in 2010-12 in answering EOI requests in a timely manner, in accordance with its EOI Manual. Mauritius' response timeframe is generally very good with 89% of requests received during the period 2010-12 answered within 90 days and 98% of requests received answered within six months. No requests have taken more than a year to answer but four requests are currently pending from this period. No request has been only partially answered (and all the requests that were partially answered at the time of the Combined review have now been fully answered). Mauritius' competent authority also continued to improve its communication with treaty partners. The recommendations under element C.5 are therefore removed. Mauritius has not otherwise encountered any issues when gathering information for exchange of information purposes and no concerns were raised by peers in the implementation by Mauritius of its exchange of information instruments in the period 2010-12.

12. As a result of this second supplementary assessment, Mauritius' ratings for each of the 10 essential elements as well as the overall rating have been revised. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Mauritius' legal and regulatory framework, as well as the effectiveness of its exchange of information in practice. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach. On this basis, Mauritius has been assigned the following revised ratings: "Compliant" for all elements except A.1 and A.2 which are "Largely compliant". In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Mauritius is "Largely Compliant".

13. Mauritius is encouraged to continue to make improvements to its transparency and EOI framework and system for the exchange of information in practice to address any recommendations, and to provide a follow-up report within one year of the Global Forum's adoption of the present review report.

Introduction

Information and methodology used for the supplementary review of Mauritius

14. The assessment of Mauritius's legal and regulatory framework made through this second supplementary peer review report was prepared pursuant to paragraph 58 of the Global Forum's Revised Methodology for Peer Reviews and Non-member Reviews (2011 version)[1], and considers recent changes to the legal and regulatory framework of Mauritius, as well as the effectiveness of this framework in practice, based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference. This second supplementary report complements the Combined Phase 1 and 2 Review report which was adopted and published by the Global Forum in January 2011 (the January 2011 Report) as well as the first supplementary report which was adopted and published by the Global Forum in September 2011 (the September 2011 Report). Phase 2 ratings were adopted by the Global Forum in November 2013 and published in a consolidated report.

15. Mauritius informed the Peer Review Group (a subsidiary body of the Global Forum) in February 2013 that it had made significant progress with regard to ownership and identity information in cases of nominee ownership and non-resident foreign trusts administered in Mauritius or with a trustee resident in Mauritius (element A.1), as well as for underlying documentation that must be kept for trusts that do not carry on a business or derive income from Mauritius (element A.2, see Mauritius' progress report in Annex 2). These new legislative measures and other information provided by Mauritius appeared likely to lead to an upgrade of the determination to "the element is in place", and triggered the present assessment.

16. The present report takes the opportunity to review the implementation of other recommendations as well. Similarly, this report also reviews the

1. The provision for a request for a supplementary report is now contained in paragraph 60 of the revised Methodology, adopted in November 2013.

practical implementation of Mauritius's legal and regulatory framework over a three year period (2010-12) for all 10 elements (the Combined Review was based on the practice for the years 2007-09). While practice has continued to evolve, the amendments to laws and regulations assessed in the present report have not yet had an impact on exchange of information in practice. It is therefore not possible to draw conclusions on the practical implementation of these new legal provisions. This should be followed up in the course of the normal follow-up process, in accordance with the Methodology.

17. This second supplementary report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 10 February 2014, and information supplied by Mauritius.

18. 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) exchanging information. This review assesses Mauritius' legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding Mauritius' legal and regulatory framework 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.

19. In addition, to reflect the Phase 2 component, recommendations are made concerning Mauritius' practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. An overall rating is also assigned to reflect Mauritius' overall level of compliance with the standards. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and recommendations made in respect of Mauritius's legal and regulatory framework, and the effectiveness of its exchange of information in practice.

20. The assessment was conducted by an assessment team, which consisted of two expert assessors and two representatives of the Global Forum Secretariat: Ms Eng Choon Meng, Deputy Director, Department of International Taxation, Inland Revenue Board of Malaysia; Mr Richard Thomas, Attorney Advisor, Office of Associate Chief Counsel, Internal Revenue Service of the United States; Ms Gwenaëlle Le Coustumer and Ms Mélanie Robert from the Global Forum Secretariat.

21. An updated summary of determinations and factors underlying recommendations, as well as an update of the ratings in respect of the 10 essential elements of the Terms of Reference, which takes into account the conclusions of this second supplementary report, can be found at the end of this report.

Overview

22. Mauritius is a small and open economy, dynamic, diversified and fully integrated into world markets. Financial services, including providers of services to the offshore sector, are the second pillar of the economy (in GDP). The Mauritian currency is the Mauritian Rupee (MUR, with a floating exchange rate of EUR one for 41 rupees on 20 January 2014).

23. In line with the international movement towards more transparency and exchange of information, Mauritius has taken significant steps to enhance its legal and regulatory framework for exchange of information. Mauritius is able to exchange information on non-resident individuals and companies. There are accounting requirements in place for all Mauritius entities, resident and non-resident.

24. The Mauritian competent authority for incoming requests for exchange of information is the Director of the Large Taxpayers Department of the Mauritius Revenue Authority (MRA). The competent authority for outgoing requests is the Director-General of the MRA.

25. As of February 2014, Mauritius has bilateral DTCs with 56 jurisdictions, of which 43 have entered into force (see Annex 3).

26. Over the three years under review at the time of the combined review (2007-09) Mauritius had received 70 exchange of information (EOI) requests from nine of its treaty partners, with the majority being from India, followed by France and the United Kingdom (Mauritius counts one request per person concerned. even where more than one piece of information is requested).

27. Over the three years under review for the present Second Supplementary Report (2010-12), Mauritius received many more EOI requests, concerning a total of 240 persons (240 requests), from eight of its treaty partners, mainly the same ones as during the first period: The predominant partner of Mauritius remains India, which contributes to almost 80% of the requests received by Mauritius, still followed by France, the United Kingdom and Singapore.

Recent developments

28. On 16 January 2014, Mauritius informed the Secretariat of the Global Forum of its intention to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Compliance with the Standard

A. Availability of Information

Overview

29. Effective exchange of information requires the availability of reliable information. This part of the report considers the legal and regulatory framework in place in Mauritius as of February 2014 with regard to the availability of ownership information, accounting records and banking information. It also assesses the implementation and effectiveness of this framework in practice. The January and September 2011 Reports found that the legal and regulatory framework for element A.3 (bank information) was "in place" and no recommendations were made on either the Phase 1 or Phase 2 aspects, resulting in a "Compliant" rating. Phase 1 and Phase 2 recommendations were made on elements A.1 (availability of ownership information) and A.2 (availability of accounting information) which were determined to be "in place but certain aspects of the legal implementation of the element need improvement" and rated "Largely Compliant".

30. The September Report noted the absence of obligations to maintain ownership information where nominee shareholdings existed (except for public companies and global business licence companies), and the absence of identity information relating to non-resident foreign trusts administered in or with a trustee in Mauritius, where these were not management companies. In addition, trusts not carrying on a business or deriving income in Mauritius were not required to keep the underlying documents relating to their accounts.

31. Relevant legislative amendments have been introduced to solve the issue of nominee shareholding, as well as regarding the availability of identity information relating to non-resident foreign trusts administered in or with a

trustee in Mauritius. Both Phase 1 recommendations from the September 2011 Report for element A.1 are therefore removed.

32. Mauritius has also amended its legislation to address the recommendations regarding underlying documentation for trusts that do not carry on a business or derive income from Mauritius. Accordingly, the relevant Phase 1 recommendation for element A.2 is removed.

33. In addition, Mauritius has enacted a new law on foundations, the Foundations Act 2012, that came into operation on 1 July 2012. This new law provides for the establishment and regulation of foundations established in Mauritius and for the regulation of foundations established under a foreign law and which are re-domiciled in Mauritius. The law ensures the availability in Mauritius of some relevant ownership and accounting information on Mauritius foundations (including information on the founder and the secretary). Information on persons related to a foundation (including beneficiaries) is available with the secretary of the foundation pursuant to anti-money laundering legislation (see Section A.1.5 below). In view of the short period between the introduction of the concept of foundations in Mauritius law (July 2012) and the end of the period under review (December 2012), the enforcement of the law on foundations has not been assessed. Thus it is recommended that Mauritius monitor the operation of the new provisions on foundations and their enforcement.

34. Two Phase 2 recommendations were made in the September 2011 Report under elements A.1 and A.2 with a view to monitoring the implementation in practice of recently introduced provisions on the availability of ownership and accounting information relating to companies in the global business sector. There have not been any issues in practice with the application of these provisions in 2010-12 and the recommendations are therefore removed.

35. Considering the amendments made to the legal framework of Mauritius, the determinations for elements A.1 and A.2 have been upgraded to "in place" and the ratings are Largely Compliant.

36. For the period under review, Mauritius received EOI requests from its treaty partners in relation to identity and ownership information on companies including GBC2. Information exchanged during the period includes list of shareholders, directors and beneficial owners. Generally, the information is exchanged within two weeks if the information is available in the file and within a month and a half when it has to be requested from the taxpayer or a third party. During the three years under review, Mauritius received EOI requests concerning 240 persons involving ownership, accounting and/or banking information. All requests have been answered, except four pending cases.

37. Despite the increase in volume, the breakdown of the requests across the types of persons concerned remains stable: 95% of all requests concern

offshore business entities (89% for entities holding a GBC1 licence, and 6% for GBC2 companies). The remaining relate to individuals and domestic companies (together 5%). So far, Mauritius has not received any requests on GBC1 trusts.

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[2] A.1.1)

38. There are different types of companies that can be created under the Companies Act in Mauritius: company limited by shares, company limited by guarantee, company limited by both shares and guarantee and unlimited company. Additionally, companies carrying on financial service and offshore activities are required to be licensed: Category 1 and Category 2 Global Business Licences are issued under the Financial Services Act (GBC1 are taxable at an effective rate of 3% and can benefit from the DTCs and GBC2 are companies that are non-resident for tax purposes), banks must be licensed under the Banking Act 2004, authorised mutual funds are companies set up as collective investment schemes as defined in the Securities Act 2005, and insurance companies register under the Insurance Act.

39. Comparing the present to 2010, the number of domestic companies has increased by 21%, the number of GBC1s has increased by 13% and the number of GBC2s has decreased by 24%. As a result, as of June 2013, the Mauritian Registrar counts 53 941 domestic live companies; broken down into 53 251 private companies, 210 public companies and 480 foreign companies. There were also 11 574 GBC1s and 14 090 GBC2s registered with the Financial Services Commission (FSC). The increased number of domestic companies and GBC1s may be due to the ease of the incorporation process but also to the policy of the Mauritius Government to encourage the creation of small and medium size enterprises. With regard to the decreased number of GBC2s, this may be attributed to the introduction of new measures which have increased the cost of compliance, namely the additional requirements of filing a financial summary every year, introduced in February 2010.

Nominee identity information

40. In Mauritius, information on legal ownership for companies is available with the Registrar of Companies for all companies incorporated pursuant

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

to the Companies Act. However, the Registrar of Companies indicated during the onsite visit in 2010 that if a nominee registers the company on behalf of another person, the Registrar would not check on whose behalf the nominee acts. In addition, there were no obligations for the owners of shares held through nominees to be identified, except for GBCs (which are under the supervision of the Financial Services Commission which requires specific ownership information including on beneficial owners to issue the licence) and public companies (which need to maintain a share register recording shares held directly or indirectly). Therefore, the January and September 2011 Reports noted that there were no obligations for the owners of shares held through nominees to be identified in all instances.

41. Section 91(3) (a) of the Companies Act 2001 has been amended, effective 22 December 2012, to require companies to maintain in their share register, in respect of shares held by nominees, information on the names and addresses of persons giving to the (nominee) shareholder instructions to exercise a right in relation to a share either directly or through one or more persons. The information must be kept for at least seven years. Sanctions for failure to maintain information in the share register in section 94 of the Companies Act also apply for the breach of this new obligation (see below section A.1.6 of the report on Enforcement). This new provision is applicable to both existing and new nominee relationships and is applicable from the entry into force of the provision. There is no retroactive effect. The present assessment is a combined Phase 1 and Phase 2 review. However, as the changes to the Companies Act about identity information on nominees are recent, it is not possible to assess the implementation of this provision in practice. Therefore, Mauritius should monitor the implementation of the new legal provision and report back to the PRG in its one year follow-up report.

42. Thus, the recommendation to establish a requirement that information is maintained indicating the person on whose behalf any legal owner holds his/her interest or shares in any company or body corporate has been fully addressed and is therefore removed.

Trusts *(ToR A.1.4)*

43. Mauritius law permits the creation of Mauritius trusts, and foreign trusts are recognised and enforceable in Mauritius. However, except for trusts administered by Mauritian management companies, and trusts otherwise administered in Mauritius with the majority of their trustees resident in Mauritius, Mauritius did not require ownership and identity information to be maintained on foreign trusts. The September 2011 Report recommended that an obligation should be established for all trustees and administrators resident in Mauritius to maintain information on the settlor, trustees and beneficiaries of their trusts.

44. Accordingly, section 38(3) of the Trusts Act was amended to include the following requirement (effective on 22 December 2012):

(A) A trustee shall keep:

(i) up-to-date and accurate accounts and records of his trusteeship; and

(ii) a register of names, in alphabetical order, and the last known address of each beneficiary and settlor of the trust, including a non-resident foreign trust administered by him.

45. Sanctions for failure to comply with the obligations stated in the Trusts Act are applicable (see below section A.1.6 of the report on *Enforcement*). This new provision is applicable to both existing and new trusts and is applicable from the entry into force of the provision. There is no retroactive effect.

46. The amendments made to the Trusts Act require information on the settlor, trustees and beneficiaries to be maintained by the trustee. This is in line with the standard and the recommendation to establish a requirement for all trustees and administrators resident in Mauritius to maintain information on the settlor, trustees and beneficiaries of their trusts has therefore been fully addressed and is removed.

Practice

47. At the start of 2013, there were 28 trusts holding a GBC1 licence. There is no foreign trust holding such a GBC1 licence as foreign trusts are not eligible to apply for a GBC1 licence. The review of Mauritius is a combined Phase 1 and 2 review, however, considering that it is not possible to review the implementation in practice of laws that have just been amended and that have just entered into force, Mauritius should monitor the changes and report back to the PRG in its one year follow-up report.

Foundations *(ToR A.1.5)*

48. At the time of the Combined Review and 2011 Supplementary Review, the concept of foundation did not exist in Mauritian law. The introduction to Parliament of a Foundations Bill was nonetheless announced for the period 2010-15 and Mauritius has enacted the Foundations Act 2012, which came into operation on 1 July 2012. This new law provides for the establishment and the regulation of foundations in Mauritius and for the regulation of foundations established under a foreign law and which are re-domiciled in Mauritius.

49. The Foundations Act (article 3(3)) provides for the creation of foundations *(i)* for the benefit of a person or a class of persons (including the founder), *(ii)* to carry out a specific purpose, or *(iii)* for a combination of the two. Foundations can be established for charitable or non-charitable purposes, or for

both purposes. Under section 7 of the Foundations Act, charitable foundations can have the following objects: (a) the relief of poverty; (b) the advancement of education; (c) the advancement of religion; (d) the protection of environment; (e) the advancement of human rights and fundamental freedoms; or any other purpose beneficial to the public in general. Notwithstanding this, charitable foundations may be for the benefit of one or more persons or objects within a class of persons, who may be non-resident in Mauritius. A foundation will be a charitable foundation, notwithstanding the fact that the object or purpose may not be of a public nature or for the benefit of the public, but may benefit a section of the public, or members of the public, or that it may also benefit privately one or more persons or objects within a class of persons not resident in Mauritius (section 7(2) of the Foundations Act). A foundation can be established by a natural or legal person, Mauritian or foreign, including a GBC1. It must be formed through a written declaration of establishment of the founder (charter), or by way of a will. A foundation is a separate legal entity, to which the founder transfers assets. When transferred, these assets cease to be the property of the founder and become the sole property of the foundation (article 3(4)). Foundations are separate taxable entities, taxed in the same way as companies.

50. As of November 2013, 40 foundations were registered in Mauritius (of which 12 are charitable foundations), including 2 foundations created by a GBC1 (of which one is a charitable foundation). No foundations have been created by foreigners since the entry into force of the Foundations Act. Considering the recent introduction of foundations in Mauritius, no EOI requests concerning foundations have been received so far.

Information kept by administrative authorities

51. Pursuant to sections 5 and 26 of the Foundations Act, once created, foundations need to register with the Registrar of Foundations (which is also the Registrar for Companies) and obtain a certificate of registration in order to obtain legal personality. The application for registration (section 23 of the Foundations Act) must be in the approved form and contain, amongst other things:

- The name, purposes and objects of the foundation;
- The name and address, in Mauritius, of the founder (for the purpose of service of documents);
- Details of the beneficiaries of the foundation or the manner in which the beneficiaries may be appointed and the manner in which they may be removed;
- The name and address of the secretary and of the members of the council, and the address of the registered office of the foundation.

In addition, section 8 of the Foundations Act mentions that the charter of a foundation shall specify the name and address of the founder and an address for the founder in Mauritius for service of documents.

52. Pursuant to section 47 of the Foundations Act, foundations established under the law of another State may make an application to re-domicile in Mauritius as a foundation established and registered under the Foundations Act. The application must be signed by the members of the governing body of the foundation, accompanied with the same information as required for the registration of a Mauritian foundation (as mentioned in section 23 of the law) and satisfactory evidence that the foundation is in current standing (i.e. evidence of registration and payment of fees in the country of origin). All the provisions of the Foundations Act are applicable to foundations established under the law of another State and re-domiciled in Mauritius.

53. The Registrar is required to keep a register of foundations (section 28 of the Foundations Act) having information about every foundation registered under this Act and all documents filed in relation to the foundation. This register records the name and address of the founder, of the secretary and of the members of the council. The names of the beneficiaries are not recorded in the register.

54. A foundation must notify the registrar of any amendment it proposes to make to its charter, and the notification must be accompanied by a lawyer's declaration of compliance of the foundation with the requirements of the Foundations Act. The register of foundations must be amended when the notification of changes is received (section 9(4) of the Foundations Act). The Registrar must be notified of any change of secretary, registered office and council membership (sections 14, 15 and 17 respectively).

55. The register of foundations is not freely accessible to the public. Its inspection is subject to the authorisation of the secretary of the foundation or the FSC, and to the payment of a fee to the Registrar (section 29). The competent authority has access to the register in the framework of exchange of information, see Part B below).

Tax Law

56. The Foundations Act also amends the Income Tax Act (ITA), so that the definition of "company" in section 2 of the ITA includes a foundation as defined under the Foundations Act ("Foundation" means a Foundation established in Mauritius or elsewhere and registered in accordance with this Act). Therefore, all foundations are subject to the ITA and are required to comply with its obligations. Pursuant to section 73(da) of the ITA, a foundation registered in Mauritius or that has its central management and control in Mauritius is tax resident in Mauritius.

57. As a consequence, foundations are subject to the same tax requirements as companies (including the keeping of accounting records). A foundation deriving taxable income is liable to tax at the same rate as a company (sections 43 and 44 ITA) and its distributions to the beneficiaries are considered as dividends exempt from income tax (section 49A ITA). As a taxable entity, it is required to register with the Mauritius Revenue Authority and file an annual tax return (section 112 ITA). However, information on beneficiaries does not need to be included in the tax return.

58. Two types of foundations are exempted from taxes, as stated in the ITA: charitable foundations as defined in section 7 of the Foundations Act (exempted under section 7 ITA and Part I of the Second Schedule of the ITA) and foundations created by GBC1s or by a non-resident and all the beneficiaries are non-resident or are GBC1s (exempted under section 49A of the ITA).

59. Charitable foundations do not need to file a tax return (unless they are dual purpose foundations). To be tax exempt, the income of a charitable foundation must be applied exclusively for charitable purposes, though they may benefit individuals or objects within a class of persons, who may be non-resident in Mauritius (section 7(2) Foundations Act). If a charitable foundation has some employees or otherwise makes taxable payments, it must comply with all requirements relating to the operation of Pay As You Earn (PAYE) and other tax deduction at source systems, pursuant to the ITA.

60. Foundations can be set up by a GBC1 or have only GBC1s as its beneficiaries. In these cases, the foundation must deposit an annual declaration of non-residence with the Director-General of Income Tax to be exempt from taxes (section 49A(3)ITA). The exemption also applies if the founder or all beneficiaries are non-resident in a taxable year (new section 49A ITA). In such a case, the MRA has to verify whether the foundation meets the conditions for exemption from income tax (as laid down in section 49A of the ITA) which means it must verify *(i)* that the founder is a GBC1 or *(ii)* obtain confirmation from the FSC that all beneficiaries are GBC1 companies. The declaration on non-residence is an annual requirement. The foundation has to inform the MRA of any change of beneficiaries before the annual approval of the declaration. So far, the MRA has not received a declaration of non-residence from any foundation. A request for exemption would not provide complete information on beneficiaries when the exemption is triggered by the GBC1 nature of the founder. When a foundation has deposited a declaration of non-residence for a year, it is treated as non-resident and does not qualify for treaty benefits, but may be subject to information exchange if the treaty so provides.

Information held by the Foundation and other persons

61. Every foundation is required to keep at its registered office a file containing accurate records (including its charter) and a copy of all documents

filed with the Registrar; the minutes of proceedings of any meetings of the council; and a register showing the name and addresses of the members of the council, the founder and any person who may have endowed assets to the foundation (section 37 of the Foundations Act). Pursuant to section 8 of the Foundations Act, the charter of foundation must specify, amongst other things:

- The particulars of the founder, including their name and address. When the founder is a body corporate, its name and registered address and particulars of its directors and controlling members and an address of the founder in Mauritius for service of documents;
- The purposes and objects of the foundation and the endowment of the property which will be the initial asset of the foundation;
- The beneficiaries of the foundation or the manner in which they may be appointed and, if applicable the manner in which they may be removed;
- The name and address of the secretary and the address of the registered office of the foundation, :!which must be in Mauritius pursuant to section 14 of the Foundations Act; and
- The procedure for the appointment of the council or of a protector or committee of protectors and its or his powers and duties.

62. The identity of the initial and additional beneficiaries, if any may be contained in the Articles of the foundation (section 10 of the Foundations Act). Where such details are included beneficiaries would be identifiable. Proper records must nonetheless be made of all sums of money distributed, specifying the purpose of any distributions (section 36). Section 37(1)(c) provides that every foundation shall keep at its registered office a register showing the name and address of any person who may have endowed assets to the foundation. Every foundation shall also keep proper records of all sums of money received (section 36(1)(a) of the Foundations Act.)

63. Where a foundation has ceased to be a foundation registered under the Foundations Act, it is still required to keep its accounting records and other documents for a period of at least seven years (section 47 of the Foundations Act).

64. Section 30 of the Foundations Act provides that the Registrar may, on giving seven days' written notice to the foundation, call for the production of, or inspect, any record required to be kept by a foundation. Contraventions to the law are criminal offences (see below section A.1.6).

Information available with service providers

65. Every foundation must appoint a secretary that is either a management company or another person resident in Mauritius and such persons must

be "FSC licensees" (section 13(1) of the Foundations Act). Any secretary is therefore a licensed service provider subject to the Financial Services Act and the anti-money laundering legislation.

66. In Mauritius, section 2 of the Financial Intelligence and Anti-Money Laundering Act 2002 states that all FSC licensees are considered as financial institutions for the application of the law. Therefore, the secretary of a foundation, which is a FSC licensee, is subject to the same AML obligations as other financial institutions under the Financial Intelligence and Anti-Money Laundering Act 2002, including the requirement to conduct customer due diligence when providing services to a foundation, under section 17(a).

67. The Code of Prevention of Money Laundering and Terrorist Financing, which applies to management companies that can act as secretaries of foundations also sets general obligations; for instance section 4 requires that management companies and any person carrying on a business in the regulated sector take effective CDD measures when establishing a business relationship with an applicant for business. In addition, section 4(2) provides that these measures must be undertaken as soon as reasonably practicable after the relevant person commences business, be regularly reviewed and, if appropriate, amended so as to keep the CDD information up to date, and documented in order to be able to demonstrate its basis. No provision of the Act or of the Code explains how this general duty applies in the case of foundations specifically, however the Code of Prevention of Money Laundering and Terrorist Financing also specifies that the identity of the legal and beneficial owners must be verified. The Code defines beneficial owners as the natural person(s) who ultimately own or control a customer and/or the person on whose behalf a transaction is being conducted (section 3 of the Code of Prevention of Money Laundering and Terrorist Financing).

68. The Guidance Notes on Anti-Money Laundering and Combating the Financing of Terrorism for Financial Institutions of June 2005 (issued by the Bank of Mauritius and applicable to all financial institutions in Mauritius falling under the supervision of the Bank of Mauritius, including banks, non-bank deposit taking institutions, cash dealers and mobile payment operators) is more specific and provides, in article 6.82(c) that:

> "When verifying the identity of a foundation, the financial institution must, in line with guidance provided for individuals and legal bodies, verify:
>
> With respect to the foundation:
>
> (a) its name;
>
> (b) its date of registration with the Registrar of Foundations;
>
> (c) its date and country of incorporation;

(d) its official identification number;

(e) its business address;

(f) its principal place of business and operations (if different),

by using the following verification methods, namely, the Charter (or equivalent) of the foundation, search at the Registrar of Foundations, the latest audited financial statements and independent data sources.

With respect to the persons who are concerned with the foundation:

(g) the identity of, inter alia, *(i)* the council members, especially those who have authority to operate a business relationship or to give instructions concerning the use or transfer of funds or assets, *(ii)* the founder, *(iii)* the executor, *(iv)* the protector, *(v)* the beneficiary, and *(vi)* the administrator."

69. As a result, the secretary of the foundation, who must be an FSC licensee, is required to comply with CDD when providing services to a foundation pursuant to the Financial Intelligence and Anti-Money Laundering Act 2002 and pursuant to the Code of Prevention of Money Laundering and Terrorist Financing and comprehensive identification procedures must be conducted by the financial institutions when foundations open an account or are engaged in financial activities.

70. In practice, foundations are already covered by the supervision process of the FSC since the FSC Code on the Prevention of Money Laundering and Terrorist Financing refers to "(…) a company, a trust, a partnership, a société or **any other body of persons**". Therefore, foundations are already incorporated in the verification programmes for financial institutions and service providers since the above-mentioned provision is a general provision which ensures that all types of vehicles are captured in the FSC Code. The FSC, as regulator, has a supervisory role over its licensees, including foundations, but during the period under review, the controls programme had not started as the Foundations Act only entered into force in July 2012.

Conclusion

71. The name and address of the founder, the name and address of the secretary, and the beneficiaries of the foundation or the manner in which they may be appointed and, if applicable the manner in which they may be removed must be specified in the charter, a copy of which must be kept at the registered office of the foundation, and the name and address of the founder and the name and address of the secretary must be provided, along with any changes, to the Registrar of Foundations. The identity of the founder, council

members and beneficiaries must also be gathered by financial service providers (the secretary of the foundation) pursuant to Mauritian AML obligations. Moreover, taxable foundations need to file an annual tax return but this tax return does not include any information on beneficiaries. It may be concluded that the Mauritius legal and regulatory framework generally ensures the availability of identity information for foundations.

72. Considering the short period between the introduction of the concept of foundations in Mauritius law (July 2012) and the end of the period under review (December 2012), there have not been any EOI requests in relation to foundations, and the enforcement of the law on foundations was not able to be assessed. Mauritius should monitor the operation of these new provisions and their enforcement.

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

Nominee ownership

73. Sanctions for failure to maintain information in the share register already exist under section 94 of the Companies Act. Pursuant to this article, a secretary who fails to take reasonable steps to ensure that the share register is properly kept and that share transfers are promptly entered commits an offence and, on conviction, is liable to a fine not exceeding MUR 200 000 (EUR 5 000). The Registrar of Companies is responsible for the monitoring of the new obligations in relation to nominee ownership. The Registrar is working on inspection procedures to ensure that companies comply with new requirements introduced in the Companies Act.

Trusts

74. Sanctions for failure to comply with the obligations stated in the Trusts Act are applicable to all trustees, including trustees of foreign trusts with a nexus to Mauritius (sections 63 to 65 of the Trust Act). As explained above, pursuant to section 38 of the Trusts Act, all trustees have an obligation to keep identity and ownership information on beneficiaries. Compliance with the obligations under the Trusts Act is verified during routine inspections carried out by the FSC at the premise of licensed management companies/qualified trustees (corporate or individuals). The FSC can issue a direction (recommendations made by the Chief Executive of the FSC to correct the deficiency). Any person who fails to comply with a direction commits an offence under section 47(3) of the Financial Services Act (FSA). A total of 171 inspections were carried out in 2012 and the FSC has not seen any contraventions to section 38 of the Trusts Act.

Foundations

75. The application for registration of a foundation as well as the required notification of changes must be accompanied by a declaration in writing by a law practitioner, legal consultant or law firm regarding compliance with all the relevant requirements of the Foundations Act on which the Registrar is entitled to rely on as sufficient evidence of that compliance (sections 9 and 23).

76. Nonetheless, for the purposes of ascertaining whether a foundation or an officer is complying with the Foundations Act, section 30 of the Foundations Act provides that the Registrar may, on giving seven days' written notice to the foundation, call for the production of, or inspect, any record required to be kept by a foundation. The Registrar is setting up a verification programme for foundations to ensure that the requirements of the Foundations Act are effectively followed.

77. When a foundation or any person who was at the time concerned in the management of the foundation or was purporting to act in that capacity (subject to proof of intention or negligence, section 50 of the Foundations Act) contravenes any provisions of the Foundations Act or any regulations made under this Act, it commits an offence and is, on conviction liable to a fine not exceeding MUR 500 000 (EUR 12 000) and imprisonment for a term not exceeding five years.

78. In addition, pursuant to section 39 of the Foundations Act, where the Registrar has reasonable cause to believe that a foundation performs activities that are not in accordance with its charter, it must inform the foundation in writing and unless the foundation makes satisfactory representations within 21 days from the date of the notice in writing, the Registrar must remove the name of the foundation from the register. Section 40 further provides that when the name of a foundation has been removed from the register, the foundation, its officers, council and protectors cannot carry on any business, deal with the assets of the foundation, commence or defend any legal proceedings, make any claim in the name of the foundation or act in any way with respect to the affairs of the foundation. When the name of the foundation has been removed from the register, the foundation, a creditor or a liquidator can apply to the Court to have the foundation restored to the register following certain conditions (section 41 of the Foundation Act) or the foundation can be wound up voluntarily or by an order of the Court (sections 42 and 43 of the Foundation Act). In addition, pursuant to section 44 of the Foundations Act, the assets of a foundation remaining after completion of a winding-up shall be transferred to any remaining beneficiaries or vested in the Curator of Vacant Estates.

Practice

Financial Services Commission

79. The January 2011 Report notes that Mauritius has no enforcement experience where provisions on the availability of ownership and accounting information in the global business sector are recent. In particular, the Financial Services Commission of Mauritius has, since February 2010, required beneficial ownership information with new applications for a GBC2 licence. Beneficial ownership information has been available since June 2010 on pre-existing GBC2s. Accounting records were limited for GBC2s until the requirements were expanded in August 2010.[3] The January 2011 Report assessed the practice of Mauritius for the period 2007-09, and it was therefore recommended that enforcement of the legal provisions on the availability of ownership and accounting information in the global business sector be monitored. The September 2011 Report notes that the short lapse of time since the combined review was not sufficient for a complete assessment of Mauritius' actions with respect to the above Phase 2 recommendation. The FSC has the power to give directions to its licensees, in order to ensure compliance with the laws within its jurisdiction. Powers of the FSC over its licensees provide for the issuance of a private warning or a public censure, the disqualification from holding a licence for a specific period or the revocation of a licence, and the imposition of an administrative penalty. The FSC can also disqualify an officer of a licensee from a specified office or position in a licensee for a specified period. The FSC can suspend or revoke a licence, in particular, on the ground that this is necessary to protect the good reputation of Mauritius as a centre for financial services, to prevent or mitigate damage to the integrity of the financial services industry or to protect the public in general.

80. Since 2010, Mauritius has reviewed all its Licensed Management Companies (167) and intensified the on-site inspections.

81. The Financial Services Commission of Mauritius closely monitors its licensees and the filing of financial summaries through on-site and off-site controls. In cases where a licensee does not comply with the filing of financial summaries, the Financial Services Commission of Mauritius notifies the Management company/Registered agent to file such financial summaries within one month, otherwise sanctions are taken.

82. During the year 2010, the Financial Services Commission of Mauritius performed 49 controls of management companies, GBC1s and GBC2s, including seven investigations and one non-routine inspection of GBC2s. For 2011, there were 401 controls, including one non-routine inspection for GBC2 and more than 1 000 controls were performed in 2012 including nine non-routine

3. See Combined Review Report, paragraphs 56-57 on ownership information and 124-126 on accounting information.

inspections, nine inquiries, one investigation of officers of licensees and two other investigations for GBC2.

83. As a result of the investigation measures taken concerning its licensees by the Financial Services Commission of Mauritius, three licences were suspended, five licences were revoked and there was one "variation of licence" in 2010 (which means that the FSC may restrict the activity authorised under the licence or include further conditions on the licence) all actions were taken in relation to GBC1 companies. For 2011, there were two licences revoked (two management companies and one GBC1) and two "Directions" issued (recommendations made by the Chief Executive of the FSC, when there is reasonable cause to believe that a foundation is likely to breach the regulatory framework or is conducting its affairs in an improper or financially unsound way, for purposes including *(i)* remedying the effects of the contravention or *(ii)* taking such measures as may be necessary to ensure the contraventions do not occur. Any person who fails to comply with a direction commits an offence under section 47(3) of the FSA) in relation to two domestic companies engaged in collective investment schemes. For 2012, one license was suspended (in relation to a GBC2).

84. The findings of investigations made by the FSC were that all licensed Global Business Companies (including GBC2s) respect the obligations to identify the owner (including beneficial ownership) and to maintain full accounting records.

85. In its request for a supplementary report, Mauritius states that all EOI requests concerning entities in the global business sector are effectively handled within the agreed timeline. 6% of the requests received in 2010-12 relate to GBC2s and all the required information was exchanged. Considering the enforcement actions taken in Mauritius to ensure the availability of ownership and accounting information on GBC2s and the successful exchanges that took place during the period under review, the Phase 2 recommendation is removed, and the Mauritian authorities are encouraged to continue to enforce the legal provisions on the availability of information in the global business sector.

86. For the review period, information requests were primarily for GBC1s (in 213 cases) compared to 14 cases of identity information for GBC2s and six cases of domestic companies. No identity information was requested on partnerships or trusts or foundations.

Registrar

87. The Registrar of Companies has found that the non-filing of annual returns and the non-payment of registration fees are the main breaches when the Registrar's records are audited. With the amendments made to the Companies Act in 2009, a compounding offence (a financial offence resulting in an

administrative penalty rather than court proceedings) was included in the law and the office of the Registrar introduced procedures for such offences. From 2010 to October 2013, there were 6 505 offences (13%) for non-filing of annual returns and financial statements and for the same period, there were 6 455 (12.9%) offences for non-payment of fees and non-filing of annual returns[4].

88. In addition, the office of the Registrar can use its inspection powers where it has reason to believe that a company is not complying with its regulatory obligations. The office has called for the production of the statutory registers but no statistics are available.

Mauritius Revenue Authority

89. In April 2013, a Non-Filers Unit was set up at the MRA to specifically monitor the compliance in filing tax returns (tax returns of companies and partnerships include ownership information). In the first instance, reminders are issued to taxpayers that have not filed their tax returns. After the issuance of a reminder, field audit can be carried out to ensure that the taxpayer is still in operation (for corporate taxpayers) and to seek explanations from the taxpayer on the reasons for its non-compliance and explain the possible consequences of non-compliance (pecuniary penalties). The issuance of a Tax Residence Certificate to benefit from a treaty is conditional upon the filing of a tax return, which is another way of encouraging compliance.

90. In practice, the next step is for the Director of Public Prosecution to start a prosecution process to apply sanctions, but this is not the favourite solution, considering the Courts' work load. Therefore, if the taxpayer has not filed a tax return after the reminder, an assessment is issued based on the information from the file (best judgment assessment) and if the taxpayer wants to object to such assessment, the taxpayer will have to submit a tax return for the objection to be treated as valid. In cases where an assessment is not possible, penalties are applied through the Director of Public Prosecution.

91. For 2012, the MRA received 32 471 tax returns out of a total of 40 470 tax returns due to be filed. The compliance rate for returns filed on time is 69% while the overall compliance rate is 80% (excluding companies in liquidation, being wound up or not in operation). The compliance rate for GBC1 was 95% (8 0l4 returns out of 8 419). A total of 13 543 reminders were issued to non-filers, including companies in liquidation and not in operation.

4. Companies and commercial partnerships are required by law to effect payment of fees annually from 3 to 20 January as long as the entities are on the records. However, entities are not required to pay the fees when minutes of proceedings evidencing removal or winding up procedures are lodged. It means that it is not all offences for non-filing that also include non-payment of fees.

In addition, 2 211 penalties were applied for a total of MUR 24 million (EUR 585 000) in 2010, 2 623 penalties were applied in 2011 for a total of MUR 29 million (EUR 707 000) and in 2012, 1 805 penalties for a total of MUR 14.7 million (EUR 358 000).

92. With regard to tax return to be filed by foundations, since the Foundations Act came into force on 1 July 2012, no foundation has yet submitted its tax return (a foundation has six months from the end of its accounting year to submit its tax return).

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Largely compliant	
Factors underlying recommendations	**Recommendations**
In view of the short period between the introduction of the concept of foundations in Mauritius law (July 2012) and the end of the period under review (2009-12), the enforcement of the law on foundations could not be assessed.	Mauritius should monitor the operation of the new provisions on foundations and their enforcement.
New provisions were introduced in December 2012 on the availability of ownership information for nominees and identity information relating to non-resident foreign trusts administered or with a trustee in Mauritius. In view of the short period between the introduction of the new provisions and the end of the period under review, the enforcement of the new provisions could not be assessed.	Mauritius should monitor the operation of the new provisions on the availability of ownership information for nominees and identity information relating to non-resident foreign trusts administered or with a trustee in Mauritius.

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)

93. For the period under review, Mauritius received EOI requests relating to accounting information. The information exchanged was in relation to companies, including GBC2.

Trusts

94. The January 2011 Report noted that a gap existed in respect of a clear requirement for trusts to keep underlying documentation. The September 2011 Report noted that some steps had been taken to solve the gap, but a small gap remained for Mauritian trustees of foreign trusts that were not resident in Mauritius for tax purposes, when the majority of the trustees were not resident in Mauritius and the settlor was not resident in Mauritius at the time the instrument creating the trust was executed (section 73(d) ITA) and the trust does not hold a GBC1 license. Since these trusts were not resident in Mauritius for tax purposes, the tax obligation to keep underlying documentation (under section 73(d) ITA) did not apply to them and a recommendation was maintained, although restricted to this smaller gap.

95. In order to address this issue, Mauritius amended its Trusts Act (effective 22 December 2012) to include in section 38 an obligation for all trustees to maintain underlying documentation including proper books, registers, accounts, records such as receipts, invoices and vouchers and documents such as contracts and agreements representing a full and true record of all transactions and other acts engaged in by the trust, for a period of not less than five years. This new provision is applicable both to existing and new trusts and is applicable from the entry into force of the provision. There is no retroactive effect.

96. Accordingly, the recommendation is now removed and the determination for element A.2 revised to "the element is in place". The "Largely Compliant" rating is maintained. However, in view of the short period between the introduction of the new provision and the end of the period under review, the enforcement of the new provisions could not be assessed. Mauritius should therefore monitor the operation of the new provision for trusts to keep underlying documentation.

Foundations

97. Pursuant to section 36 of the Foundations Act, foundations, including charitable foundations, are required to keep proper records of:

- All sums of money received, expended and distributed, specifying the purpose of any such receipt, expense and distribution;
- All sales and purchases made by the foundation; and
- The assets and liabilities of the foundation.

98. Foundations must also keep accounting records which are sufficient to show and explain the transactions of the foundation, disclose with reasonable accuracy, at any time, the financial position of the foundation and allow financial statements to be prepared (section 36(2) of the Foundations Act).

99. Furthermore, section 37(4) of the Foundations Act provides that accounting records must be kept either in writing or in an electronic format for a period of at least seven years from the date on which they were made.

100. The enforcement of these obligations by the Registrar is based on sections 30 and 50 of the Foundations Act (as described in Sections A.1.5 on *Foundations* and A.1.6 on *Enforcement* above).

101. These obligations are complemented by tax obligations. With regard to underlying documents, given that every foundation is subject to the Income Tax Act, section 153 of the Income Tax Act imposes an obligation on every person carrying on business or deriving income other than emoluments to keep proper books, registers, accounts records such as receipts, invoices and vouchers, other documents such as contracts and agreements for the purpose of enabling his gross income, in order to give a full and true record of all transactions and other acts engaged, and to keep the above records for a minimum period of seven years (para. 2 Part II Fourteenth Schedule), as confirmed by the Mauritian authorities. Gross income is defined in section 2 of the ITA as " (a) the aggregate amount of all income other than exempt income as calculated under the ITA for individuals and legal entities, and (b)the amount of income derived from a particular source without any deduction", which means that the concept of gross income as mentioned in section 153 covers all types of income, whether exempt under the ITA or not. Failure to comply with the requirements of section 153 of the ITA is an offence under section 148(b) or (c) of the ITA for which the sanction is a fine not exceeding MUR 5 000 (EUR 122) and imprisonment for a term not exceeding 6 months. Mauritius has confirmed that the MRA will start an audit program for foundations in 2015 that will cover respect of the obligations of foundations under the ITA. This audit program is specifically designed for foundations and one

aspect of this audit will be to verify exempt foundations, including charitable foundations and includes compliance with section 153 of the ITA.

102. Considering that section 153 of the Income Tax Act is applicable to all foundations (as defined under the Foundations Act), that are carrying on business or deriving income other than emoluments, it does not apply to charitable foundations that do not carry on a business or derive income and the Foundations Act does not provide an obligation to keep underlying documentation in such cases. Mauritius is therefore recommended to ensure that charitable foundations without business activities or not deriving income maintain underlying documentation.

Exchange of information in practice

Phase 2 recommendation on Global Business companies

103. At the time of the combined review of Mauritius in 2010, a deficiency existed in the accounting requirements of GBC2s. This deficiency was solved with amendments to the Companies Act, effective 12 July 2011. The September 2011 Report removed the corresponding Phase 1 recommendation and introduced a new Phase 2 recommendation to monitor the enforcement of the new legal provisions on the availability of accounting information, given that GBC2s represented 25% of the Mauritian companies and 10% of the EOI requests received in 2007-09.

104. In its request for a supplementary report, Mauritius states that all EOI requests concerning entities in the global business sector are effectively being answered within the agreed timeline. This statement is confirmed by treaty partners.

105. In 2010-12 Mauritius received 14 EOI requests related to accounting information on GBC2s. The requested information was provided to the various treaty partners having requested it, where the treaty allowed such exchange (the DTC with the United Kingdom restricted exchange to information held by public authorities until the protocol entered into force in October 2011).

106. The Financial Services Commission of Mauritius closely monitors its licensees and the filing of financial summaries, through on-site and off-site controls, as noted above under section A.1.6. In cases where a licensee does not comply with the filing of financial summaries, the Financial Services Commission of Mauritius notifies the Management company/Registered agent to file such financial summaries within one month, otherwise sanctions will be taken. The FSC indicates that no deficiencies were noted in the keeping of accounts by GBC2s in the period 2010-12.

107. As a result, the recommendation is considered implemented and removed.

Companies

108. Pursuant to section 116 of the Tax Act, companies deriving gross income exceeding MUR 10 million (EUR 244 000) are required to submit their tax return electronically (most of domestic entities fall within this category). They do not have to file their financial statements but the electronic tax form includes details of accounts. A copy of audited financial statements are only required to be produced when a file is selected for audit. During the period 2010-12, the MRA has audited 9 346 companies (including 4 538 GBC1s) and in all of those cases the financial statements were maintained.

109. All GBCs are under the supervision of the FSC. Pursuant to section 30(1) of the FSA, they must file audited financial statements (prepared in accordance with International Financial Reporting Standard) with the FSC every year. The following sanctions can be applied in case of default: disqualification of a licensee, disqualification of officers of a licensee, suspension of a licensee, referral of the case to the police, revocation of licence. For the year 2013, one licence was suspended, four licences were revoked, there were four disqualifications of officers and four directions were issued. Management companies are also licensed under the FSA and thus, they fall under the supervision of the FSC with the same sanctions. In 2013, the FSC has revoked one Management licence.

110. In addition, in order to deter GBC2s from filing their financial summaries late, the FSC has introduced the Financial Services (Administrative Penalties) Rules 2013 which will come into force in 2014 and which empower the FSC to provide for the imposition of an administrative penalty in relation to such matters as may be prescribed. The Administrative Penalty Rules will act as an additional administrative tool for the FSC, in pursuance of its statutory requirements as a regulator, to ensure compliance with reporting requirements set out in the law.

Foundations

111. As mentioned above, the Foundations Act came into force on 1 July 2012 and no foundation has yet submitted its tax return and accounting records to the MRA (a foundation has six months from the end of its accounting year to submit its returns which includes financial statements). The review of Mauritius is a combined Phase 1 and Phase 2 review but it is not possible to review the implementation in practice of laws that have just entered into force and their impact on EOI in practice. This aspect should be followed up with respect to foundations, as this is a new legal entity that did not exist in Mauritius at the time of the original review. Therefore a monitoring recommendation is made.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Largely Compliant	
In view of the recent introduction of foundations in Mauritius the enforcement of their accounting obligations could not be assessed.	Mauritius should monitor the enforcement of the accounting obligations applying to foundations.

A.3. Banking information

Banking information should be available for all account-holders.

112. The September 2011 Report did not raise any concerns with respect to bank information. Banking information is available for all account holders pursuant to the banking law and anti-money laundering law. The determination for A.3 is "the element is in place" and no Phase 1 or Phase 2 recommendations are made. The rating is "Compliant".

113. In the period 2010-12, Mauritius received 156 EOI requests related to banking information concerning corporations, partnerships and individuals.

114. The following information was exchanged during the period under review: bank name, account number, bank statements for the period specified in the request, copies of account opening forms and identification documents filed at the time of opening the accounts (for KYC).

115. The information was provided, except for one case where the name of the entity mentioned in the request did not appear in the MRA database. Mauritius informed the treaty partner and asked for the confirmation of the name of the entity and a follow up was made six months later. One year later, no additional information was received from the requesting jurisdiction and Mauritius sent a reminder notifying the requesting jurisdiction that if no additional information was received within the next 15 days, Mauritius would consider the request closed. No reply was received and Mauritius considered the request as closed. However, Mauritius has recently been in contact with this peer who indicates that they still consider the request pending. Mauritius has agreed to work with this partner to provide the information. This request is therefore considered pending (one of the four pending requests under Section C.5.1 below).

116. In terms of enforcement of the obligations to maintain banking information, regular examination of each bank is undertaken every two years (there are 21 banks in Mauritius). Depending on assessment of risk, the examination will include AML/CFT, and the Bank of Mauritius may carry out special examinations when need arises. The main elements that are verified relate to whether there are appropriate AML/CFT policies and procedures in place, whether the bank has resources for monitoring of large transactions, whether customer files contain mandatory KYC documents, whether training has been provided to staff regarding AML/CFT. The main issues identified are the following: proof of address is not recorded or not recent, certified copies of KYC documents not secured, source of funds not documented, valid licence for Global Business and management companies from the FSC are not kept on record.

117. The Bank of Mauritius has imposed sanctions for non-compliance with AML obligations in the form of fines ranging from MUR 100 000 to MUR 500 000 (between EUR 2 400 to 12 000). For 2011, fines amounting to MUR 600 000 (EUR 15 000) were imposed, MUR 100 000 (EUR 2 400) for 2012 and MUR 3 500 000 (EUR 85 000) for 2013 (up to September). These sanctions were applied by the Bank of Mauritius after receiving the consent of the Director of Public Prosecutions pursuant to section 69 of the Bank of Mauritius Act and section 99 of the Banking Act. The penalties imposed related to non-compliance with the Guidance Notes on AML/CFT issued by the Bank of Mauritius under section 50 of the Bank of Mauritius Act and section 100 of the Banking Act. The penalties can be compounded with the consent of the Director of Public Prosecution.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

B. Access to Information

Overview

118. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. The January 2011 and September 2011 Reports analysed whether Mauritius's legal and regulatory framework gave the authorities access powers that cover all relevant persons and information and whether rights and safeguards were compatible with effective exchange of information. They also assessed the effectiveness of this framework in practice for the years 2007-09. The present report assesses new legislation that may impact access to information (the Foundations Act, the Trust Act and the Companies Act), as well as the effectiveness of access powers in the period 2010-12.

119. Mauritius's laws provide the competent authority with broad powers to access information foreseeably relevant for EOI purposes. Mauritius's competent authority has powers to obtain information, whether it is required to be kept under the Income Tax Act or other laws, and whether or not it is required to be kept. The competent authority has the power to obtain information from any person who is in possession or control of such information. In particular, Mauritius has access to bank information for EOI purposes. Mauritius's January 2011 Report noted that elements B.1 (access to information) and B.2 (notification requirements and rights and safeguards) were "in place". There have been no legal or regulatory changes since the time of the combined review; and the determinations remain unchanged.

120. Some Phase 2 (implementation in practice) concerns were identified concerning the implementation of these powers over the three years under review at the time of the combined review (2007-09) and some corrective actions were taken into consideration in the September 2011 report. The elements were subsequently rated as largely compliant.

121. With respect to element B.1, it was found that Mauritius had never exercised its compulsory powers in practice, despite the fact that incidents had occurred where some taxpayers had refused to disclose the requested information. A recommendation was made for Mauritius to exercise its compulsory powers and apply sanctions where appropriate. The Mauritian authorities had mentioned that awareness raising initiatives would increase compliance with requests for information.

122. In the period 2010-12, no holder of information denied the Mauritian competent authority access to information for EOI purposes. The concern therefore no longer has any practical basis. The recommendation is removed and the rating of element B.1 is upgraded to "Compliant".

123. Under element B.2, it was found that some of the rights and safeguards that applied to persons in Mauritius had not yet been tested in practice, and thus, despite the introduction of clear guidelines in the "Procedure Manual on Exchange of Information", it was not possible to determine whether these could unduly prevent or delay exchange of information. Considering that no issue or concern was raised in the period 2010-12, the uncertainty no longer exists, the recommendation is therefore removed and the rating is upgraded to "Compliant".

124. More generally, Mauritius did not encounter any issue when gathering information for exchange of information purposes during the period 2010-12.

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).

125. Mauritius's laws provide the competent authority with broad powers to access information foreseeably relevant for EOI purposes. Mauritius's competent authority has powers to obtain information, whether it is required to be kept under the Income Tax Act or other laws, and whether or not it is required to be kept. It has the power to obtain information from any person who is in possession or control of such information. In particular, Mauritius has access to bank information for EOI purposes. Mauritius's January 2011 Report noted that elements B.1 (access to information) and B.2 (notification requirements and rights and safeguards) were "in place".

126. In practice in 2010-12, Mauritius did not encounter any issues when gathering information for exchange of information purposes. The gathering of information methods have not changed since the September 2011 Report, except as concerns GBC2s. The competent authority now on some occasions

gathers information directly from these entities, without the intermediation of the Financial Services Commission in order to accelerate the process (see section C.5.1 below).

Access to ownership information (B.1.1), Accounting information (B.1.2) and Secrecy provisions (ToR B.1.5)

Foundations

127. Concerning foundations, relevant information is available with the registrar, the foundations themselves and service providers. The register of foundations is not public. Inspection of the register is subject to the authorisation of the secretary of the foundation or the FSC, and the payment of a fee to the Registrar (section 29). In addition the Registrar cannot be required to produce a registered document unless ordered by the Supreme Court. However, the MRA can ask for information about foundations from the Registrar without having to inform the foundation secretary or obtain a Court order. The obligation of confidentiality in the Foundations Act applies without subject to the obligations of Mauritius under any international treaty.

128. Section 46 of the Foundations Act provides that any person who has acquired information in his/her capacity as an officer, a protector or a member of the Council must treat the information as confidential and not disclose such confidential information to any person, or make use of or act upon such information. This duty of confidentiality allows for some exceptions, such as when the information is required by law (section 46(2)b) of the Foundations Act).

129. The Mauritius Revenue Authority (MRA) has power to require "every person" to give orally or in writing, within a determined time, "all such information" as may be demanded of him *(i)* to make an assessment or to collect Mauritian tax, or *(ii)* "to comply with any request for the exchange of information" under an international arrangement (section 124(1) ITA). This is "a requirement in law", applicable to the lifting of confidentiality under section 46 of the Foundations Act. Thus the MRA can require ownership, identity and accounting information from the persons subject to the request themselves and from third parties.

130. The competent authority can obtain ownership, identity or accounting information from any persons, including the subject of the request, public authorities, and third parties. Therefore information that must be kept pursuant to the Foundations Act is accessible to the MRA.

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

Access to information in practice

131. The January 2011 Report noted that the Income Tax Act provides for compulsory measures, and that the 2010 Procedure Manual dedicated a section to non-compliance by a taxpayer or third party with a request for information from the competent authority. Sanctions are also available. The report further noted that these measures and sanctions had never been applied, despite the fact that incidents had occurred where some taxpayers refused to disclose the requested information. Mauritius was therefore recommended to exercise its powers to compel information and to sanction failure to provide information whenever appropriate. It was further recommended that Mauritius monitor the implementation of these powers in practice. The Mauritian authorities had started to take corrective actions, such as a clarification of the access power procedure in the MRA Procedure Manual for EOI.

132. In practice, Mauritius had encountered two cases where taxpayers refused to provide requested bank information in the period 2007-09. The September 2011 Report noted that, after the adoption of the January 2011 Report, the Mauritian competent authority requested and successfully obtained information directly from the banks involved in the two cases, and transmitted it to the requesting foreign authority. The report further noted that the Mauritian authorities did not apply sanctions in these two cases as they had chosen an educative and awareness raising approach rather than a confrontational approach – dialogue rather than sanctions. Mauritius had notably taken some initiatives to ensure that all stakeholders were fully aware of the competent authority's powers to obtain banking information and of the procedure and timelines to be adopted in cases of EOI requests for banking information. It was at that time expected that education of stakeholders and access to information from alternative sources in some cases (such as banks) would improve compliance in the future. Mauritius was still recommended to monitor the implementation of its access powers in practice, given the short period of time between the January 2011 Report and the September 2011 Report.

133. Since those two cases constituted a small sample over a limited period of time, Mauritius was also recommended in the body of the September 2011 Report to monitor its ability to apply, where necessary, its powers to access bank information in practice in order to assure effective exchange of information and report back on this issue in follow-up reports to be provided in accordance with the Methodology for Peer Reviews.

134. In its request for a supplementary report, Mauritius states that there were no cases in the period 2010-12 where the Mauritius competent authority

failed to attend to EOI requests because taxpayers had not complied with requests for information.

135. Peer inputs confirm that requested bank information was exchanged in a timely manner most of the time. Generally, the Mauritius authorities first ask the taxpayer to provide the information unless the requesting party does not wish the taxpayer to be informed of the request or where it is impracticable to do so (for instance, when the taxpayer is not a resident of Mauritius). In all cases but two, bank information was requested from the taxpayer, whilst in the two other cases the information was requested directly from the bank: in one case because the person was not a resident of Mauritius, and in the other case because the company did not answer the request of the tax authorities. In the two cases where bank information was requested from the bank directly, the information was provided by the bank. In the case where the company had not answered the Mauritius authorities, Mauritius addressed a written warning to the company, as a first step, indicating that any other similar offence would lead to a financial penalty. Since this infraction, the procedure for sanction has changed and for the future, the penalty will be applied immediately without warning.

136. The Mauritian authorities add that when some taxpayers asked for more time to compile the requested information, of up to one month, they complied with the new deadline. The competent authority never had to seek a court order of disclosure of information. The Mauritian authorities state that all EOI cases are properly monitored to ensure that information is exchanged in a timely manner.

137. Considering that three years have elapsed since the Phase 2 recommendation on compulsory measures, and that the problems encountered in the years 2007-09 did not arise again in 2010-12, the recommendation is deleted.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

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)*

138. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

139. The Mauritian Income Tax Act does not require any notification to the taxpayer that he/she is the subject of a request for information. However, in practice, when the information is not already at the disposal of the tax authorities, the competent authority systematically sends a request for information to the person concerned, indicating that the information is sought for EOI purposes. When the person concerned is not resident in Mauritius, the information is sought from any relevant third party that may be in possession of the information.

140. At the time of the January 2011 Report there were no clear guidelines in Mauritius on handling requests where the requesting authority required information not to be made known to the person concerned. The January 2011 Report recommended that "Mauritius should set appropriate guidelines when a jurisdiction requires that the individual or entity concerned not be notified".

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

142. Based on the above, the recommendation with respect to prior notification was amended: as the new guidance had not yet been tested in practice, Mauritius was recommended in the September 2011 Report to ensure that these new guidelines were applied in practice.

143. The Mauritian authorities indicate that no treaty partner requested Mauritius not to inform the taxpayer that a request was being made pursuant to an EOI agreement in the period 2010-12. Whilst the absence of cases cannot ensure that the guidelines are implemented in practice, it indicates that

the issue may not be crucial in Mauritius, and nothing in Mauritius' practice over the period suggests that notification is misused to unduly prevent or delay exchange of information.

144. Seven other requests were received in October 2013 (i.e. after the period under review) where the requesting partner asked the MRA not to inform the taxpayers. The MRA is ready to exchange information without informing the taxpayers, but in some specific cases, the information is only available with the taxpayers and Mauritius is now contacting the requesting authorities to inform them that they have to ask the taxpayer to obtain the information and whether the requesting jurisdiction agrees with this process.

145. As a result, the recommendation is deleted. The Mauritius authorities are nonetheless encouraged to carefully consider any future request for not informing taxpayers of an EOI request and apply in practice the exceptions provided in its updated EOI manual.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C. Exchanging Information

Overview

146. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Mauritius, the legal authority to exchange information is derived from bilateral mechanisms (double tax conventions and tax information exchange agreements), a recent regional agreement, as well as domestic law. This section of the report examines Mauritius's network of information exchange arrangements against the standards and the adequacy of its institutional framework for effective exchange of information in practice.

147. Mauritius's September 2011 Report found elements C.2 (network of exchange of information mechanisms), C.3 (confidentiality) and C.4 (rights and safeguards of taxpayers and third parties) to be "in place". Element C.1 (exchange of information mechanisms) was also found to be "in place", though the report noted some minor factors of relevance.

148. Mauritius has exchange of information mechanisms with 56 jurisdictions (see Annex 3).

149. The first Phase 1 recommendation under element C.1 refers to the DTC with Germany that limited exchange of information to the carrying out of the provisions of the Convention and did not extend to the administration and enforcement of domestic laws of the contracting States. Since it was replaced by a new treaty to the standard in October 2011, the recommendation is removed.

150. The second recommendation made under element C.1 stated that exchange of bank information should be ensured with all Mauritius's treaty partners. Indeed, although Mauritius was willing to exchange information even in the absence of paragraphs 4 and 5 of Article 26 of the Model Tax Convention and reciprocity, Mauritius was encouraged to continue upgrading the exchange of information provision in its treaties, to secure the benefit of reciprocity from all its treaty partners. Since then, Mauritius has renegotiated

some new instruments and some protocols to existing treaties. Most importantly, the Global Forum's view has evolved and in subsequent reports on other jurisdictions, when the domestic laws preventing exchange of bank information absent paragraph 5 are those of the treaty partner and not of the jurisdiction under review, no recommendation has been included in the box. For consistency purposes, the recommendation is removed.

151. Mauritius was also recommended to continue to develop its EOI network with all relevant partners. Since the September 2011 Report, Mauritius has continued to expand its network and has signed eight new DTCs, with the Republic of Congo, Egypt, Gabon, Guernsey**,** Kenya, Monaco, Nigeria and Zambia, eight tax information exchange agreements (TIEAs), with Denmark, Faroe Islands, Finland, Greenland, Guernsey, Iceland, Norway, and United States and a regional instrument, the Agreement on Assistance in Tax Matters of the Southern African Development Community (SADC Agreement), all to the standard once in force.

152. The September 2011 Report also raised some Phase 2 matters related to elements C.1 (determination of the foreseeable relevance of requests received) and C.5 (delayed responses), which triggered "Largely Compliant" ratings whereas elements C.2, C.3 and C.4 were rated as "Compliant".

153. First, it was noted in the January 2011 Report that the Mauritian competent authority had faced difficulties in some cases in deciding whether a request met the foreseeable relevance standard. Considering the short lapse of time between the January and September 2011 Reports, although Mauritius had indicated that communication had improved, Mauritius was encouraged to continue communicating quickly with its treaty partners when the competent authority was unsure that the received request met the foreseeable relevance standard. No new concerns were raised in the period 2010-12 and the recommendation is therefore considered implemented. It is deleted and the rating is upgraded to "Compliant".

154. Second, Mauritius developed a Procedural Manual for Exchange of Information in 2010 and was recommended to respect the deadlines introduced therein, as it had taken too long in the past to gather information. The Mauritian competent authority made marked progress in 2010-12 in answering EOI requests in a timely manner. It was also recommended that the competent authority monitor the implementation of the Manual as practice develops, and improve it where needed. The Manual was updated in 2011 and the guidelines in the Manual have been largely respected. The recommendation under element C.5 is therefore removed and the rating upgraded to "Compliant".

155. Finally, no concerns were raised by peers in the implementation by Mauritius of its exchange of information instruments in the period 2010-12.

C.1. Exchange of information mechanisms

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

156. The first recommendation under element C.1 refers to the DTC with Germany that limited exchange of information to the carrying out of the provisions of the Convention and did not extend to the administration and enforcement of domestic laws of the contracting States. A new treaty, analysed below, has been signed.

157. Mauritius has also taken active steps to update its network of EOI agreements by signing new agreements and protocols to existing agreements that include the language of paragraphs 4 and 5 of Article 26 of the OECD Model Tax Convention. Therefore, the DTCs with France, Italy, Luxembourg the Seychelles and the United Kingdom have been updated through protocols, which are in force (except for Luxembourg). Mauritius also concluded a new DTC with Sweden to replace the existing 1992 agreement.

158. Since the September 2011 Report, Mauritius has also signed eight DTCs with new partners (Republic of Congo, Egypt, Gabon, Guernsey, Kenya, Monaco, Nigeria and Zambia) and eight TIEAs, with Denmark, Faroe Islands, Finland, Greenland, Guernsey, Iceland, Norway and United States. The DTC with Zambia and Monaco and the TIEAs with Australia, Denmark, Finland, Guernsey and Norway have entered into force.

159. Finally, Mauritius signed the Agreement on Assistance in Tax Matters of the Southern African Development Community (SADC Agreement) on 18 August 2012, which is in line with the standard and which covers nine jurisdictions: Democratic Republic of Congo, Lesotho, Malawi, Mozambique, Swaziland and Tanzania, Seychelles and Zambia (and Mauritius)[5].

160. This section of the report analyses the conformity with the standard of these new instruments as well as the implementation of all EOI instruments in practice during the period 2010-12.

5. Democratic Republic of Congo, Malawi and Tanzania did not have any bilateral agreements with Mauritius providing for exchange information. Seychelles and South Africa are members of the Global Forum and have DTCs with Mauritius to the standard. Lesotho, Mozambique, Swaziland and Zambia also have DTCs providing for exchange of information with Mauritius that appear to be to the standard (provided that there is nothing in the law of the other jurisdiction that would restrict EOI).

Foreseeably relevant standard (ToR C.1.1)

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

> The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out of the provisions this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

162. The commentary to Article 26 of the OECD Model Tax Convention, paragraph 5, refers to the standard of "foreseeable relevance" and states that the Contracting States may agree to an alternative formulation for this standard that is consistent with the scope of the Article, for instance by replacing "foreseeably relevant" with "necessary" or "relevant".

163. All agreements concluded by Mauritius since the September 2011 Report provide for the exchange of information that is "foreseeably relevant" to the administration and enforcement of the domestic laws of the Contracting Parties, except for agreements with the Republic of Congo, Gabon, Monaco and Zambia which use the term "necessary" and the SADC which use the expression "as may be relevant". The Mauritius authorities confirmed that they make no distinction between these expressions, therefore all agreements concluded since the September 2011 Report meet the foreseeably relevant standard.

164. In the Phase 2 recommendation under element C.1 in the September 2011 Report, Mauritius was encouraged to communicate quickly with its treaty partners when the competent authority is unsure that the received request meets the foreseeable relevance standard. The Mauritian authorities advised in their request for a supplementary report that prompt action is taken in all such cases. The Mauritian authorities further indicate that the question of foreseeable relevance has not arisen over the last three year review period in any of the EOI requests received by Mauritius.

165. The Mauritian authorities asked for clarifications from a treaty partner on three occasions over the last three years (2010-12), twice on the name of companies not registered with the Mauritius tax administration and

once on the steps taken in the other jurisdictions to gather the information before requesting it from Mauritius. However, since the treaty partner did not answer these requests for clarifications, the Mauritian authorities considered that these EOI files could be closed. However, the partner mentioned that they provided the clarification sought in two of the three cases but Mauritius states that they have not received any clarification from that jurisdiction. Mauritius has contacted the treaty partner again and they are now working with the partner to answer these requests. These three requests are therefore considered pending (see section C.5.1 below).

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

166. For EOI to be effective it is necessary that a jurisdiction's obligations to provide information are 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 EOI envisages that EOI mechanisms will provide for EOI in respect of all persons.

167. The January and September 2011 Reports noted that one DTC (with Germany) did not meet the international standard: the exchange of information was limited to residents because Article 1 of the treaty indicated that it applied to "persons who are residents of one or both of the Contracting States".

168. The DTC with Germany has been re-negotiated, and the new DTC, which entered into force on 7 December 2012, is in line with the standard. The first recommendation under C.1 is therefore removed.

169. The EOI provision of all the agreements signed by Mauritius since the September 2011 Report, including the SADC Agreement, apply the exchange of information provision to all persons, without any restrictions.

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

Bank information

170. Jurisdictions cannot engage in effective EOI if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Tax Convention and the Model Agreement on Exchange of Information, which are 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.

171. The January and September 2011 Reports pointed out that only a limited number of Mauritius' DTCs contained paragraph 26(5) of the Model Tax Convention. During the Combined review (the January 2011 Report), it was not clear whether Mauritius was in a position to fully exchange banking information absent this paragraph. It was therefore recommended that "exchange of bank information should be ensured with all Mauritius's treaty partners. Although Mauritius is willing to exchange information even in the absence of paragraphs 4 and 5 of Article 26 of the Model Tax Convention and reciprocity, Mauritius is encouraged to upgrade the exchange of information provision to include paragraphs 4 and 5 in its treaties, to secure the benefit of reciprocity from its treaty partners, especially those jurisdictions that are unable to do so without paragraphs 4 and 5 being explicitly provided".

172. In particular, the January Report indicates that Belgium, Botswana, Luxembourg and Singapore[6] were not in a position to exchange banking information in the absence of paragraph 5 of Article 26 of the Model Tax Convention. Belgium has changed its domestic legislation and can now exchange banking information without an explicit provision in the agreement and a protocol was signed with Luxembourg in January 2014. However, two other jurisdictions presently are still unable to access bank information for exchange purposes without paragraph 5 of Article 26 of the Model Tax Convention in their agreements.

173. All new agreements except two (Egypt and Zambia) signed by Mauritius since the September 2011 Report include such language (the agreements with Zambia was negotiated several years ago, which explains the absence of paragraphs 4 and 5 for Zambia and the absence of paragraph 5 for Egypt in their EOI provisions). Zambia is also covered by the Agreement of the SADC which includes the current language of paragraphs 4 and 5). A protocol is under negotiation with Egypt to include a provision equivalent to paragraph 5 in the agreement, which will apply when Egypt amends its domestic provision on bank secrecy.

174. Since the recommendation on this issue was made in the January 2011 Report, the Global Forum's view has evolved and for consistency with other reports adopted by the Global Forum, the recommendation is now removed, since Mauritius does not have a domestic tax interest and consequently does not require paragraph 26(4) of the Model Tax Convention in its treaties to lift domestic interest. Mauritius can also exchange banking

6. Singapore amended its domestic legislation in November 2013 with a view to being able to exchange information to the international standard under all of its DTCs on the basis of reciprocity. This legislation has not yet been reviewed by the Global Forum.

information with its treaty partners absent reciprocity as there is no restriction on exchanging bank information in Mauritian law. Mauritius is nonetheless encouraged to renegotiate the treaties concerned.

Exchange of information in practice

175. During summer 2011, Mauritius sent a letter to all its treaty partners, stating that it was able and willing to exchange bank information even in the absence of any explicit provisions to that effect in the treaty, and whether or not the partner provides a reciprocal treatment to Mauritius's EOI requests.

176. Mauritius on several occasions in 2010-12 answered requests for banking information from a treaty partner, the DTC with which does not contain paragraph 5. In 2010, there were 58 cases where banking information was exchanged in the absence of paragraph 5 in the EOI agreement, 54 in 2011 and 35 in 2012.

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

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

178. All but one (Zambia) new agreements, protocols and TIEAs signed by Mauritius since the September 2011 Report include the provision contained in paragraph 26(4) of the Model Tax Convention, which states that the requested party "shall use its information gathering measures to obtain the requested information, even though that [it] may not need such information for its own tax purposes". However, Zambia is now covered by an agreement (SADC) that includes a provision equivalent to paragraph 26(4) of the Model Tax Convention.

Exchange of information in practice

179. The MRA has power to require "every person" to give orally or in writing, within a determined time, "all such information" as may be demanded of him *(i)* to make an assessment or to collect Mauritian tax, or *(ii)* "to comply with any request for the exchange of information" under an international arrangement (section 124(1) ITA). In practice, Mauritius answered several EOI requests in 2010-12 that relate to non-taxpayers, which shows that Mauritius is fully able to exchange information absent a domestic tax interest.

Absence of dual criminality principles (ToR C.1.5)

180. 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, EOI should not be constrained by the application of the dual criminality principle.

181. None of the information exchange mechanisms concluded by Mauritius since the September 2011 Report contains the principle of dual criminality.

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

182. 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").

183. All information exchange mechanisms concluded since the September 2011 Report provide for EOI in both civil and criminal matters. In practice, Mauritius treated and answered all requests received during the period 2010-12 in a similar manner; whether they were criminal or civil in nature.

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

184. EOI mechanisms should allow for the provision of information in the specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent possible under a jurisdiction's domestic laws and practices.

185. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

186. There are no restrictions in the EOI mechanisms concluded by Mauritius since the September 2011 Report that might prevent it from providing information in the form requested, as long as this is consistent with its administrative practices.

Exchange of information in practice

187. In practice, no EOI partner has requested that information be provided in a specific form during the period under review.

In force (ToR C.1.8)

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

189. The protocols to the DTCs with France, Italy, the Seychelles and United Kingdom are now in force. In addition, of the new agreements concluded by Mauritius since 2011, the DTCs concluded with Germany, Zambia and Sweden and the TIEAs concluded with Denmark, Finland, Guernsey and Norway have entered into force.

190. Mauritius is finalising the required regulations to complete the ratification of the SADC Agreement.

In effect (ToR C.1.9)

191. For information exchange to be effective, the parties to an EOI arrangement need to enact legislation necessary to comply with the terms of the arrangement. In Mauritius, DTCs and TIEAs become effective once the Minister of Finance issues a regulation under section 76 of the Income Tax Act, published in the Government Gazette. No further action is required.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

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

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

192. Since the September 2011 Report, Mauritius has taken steps to update its network of EOI agreements by signing protocols to existing agreements (with France, Italy, the Seychelles and the United Kingdom) and two

new agreements with an existing partners (Germany and Sweden), which are in line with the standard, and have entered into force (except for the protocol with Luxembourg that has not yet entered into force).

193. Both the January 2011 and September 2011 Reports contain a recommendation that Mauritius should continue to develop its EOI network with all relevant partners. Since the 2011 Report, Mauritius has signed eight DTCs (with Republic of Congo, Egypt, Gabon, Guernsey, Kenya, Monaco, Nigeria and Zambia) and eight TIEAs (with Denmark, Faroe Islands, Finland, Greenland, Guernsey, Iceland, Norway and United States). Mauritius signed the Agreement on Assistance in Tax Matters of the Southern African Development Community (SADC) on 18 August 2012, which covers eight (nine – including Mauritius) jurisdictions (three of which did not have an EOI agreement with Mauritius[7]). All these new agreements are in line with the standard.

194. In addition, Mauritius is currently negotiating protocols to DTCs and new agreements (including TIEAs) with a number of jurisdictions in order to establish a legal basis with additional partners for exchange of information to the standard. Mauritius is currently negotiating protocols with Barbados, Belgium, Botswana, Croatia, Lesotho, Malaysia, Oman, Qatar, Singapore and Zambia. It is also negotiating new agreement with Algeria (DTC), Argentina (TIEA), Austria (TIEA), Burkina Faso (DTC), Canada (DTC), Cape Verde (DTC), Czech Republic (DTC), Ghana (DTC), Greece (TIEA), Hong Kong (DTC), India (TIEA), Isle of Man (TIEA), Iran (DTC), Korea (TIEA), Malawi (DTC), Malta (DTC), Montenegro (DTC), Morocco (DTC), the Netherlands (TIEA), North Sudan (DTC), Portugal (DTC), Saint Kitts and Nevis (DTC), Saint Lucia (TIEA), Samoa (TIEA), Saudi Arabia (DTC), Tanzania (DTC), Vietnam (DTC) and Yemen (DTC).

195. The underlying factors to the recommendation note that Mauritius does not have a DTC with some of its important trade partners. However, in practice these partners have not approached Mauritius to negotiate an EOI instrument but Mauritius has approached some of these for negotiation purposes. Since January 2011, the Global Forum's view has also evolved and for consistency with other reports adopted by the Global Forum, the factors underlying the recommendation are now removed, although it is still recommended that Mauritius continue to develop its EOI network with all relevant partners.

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7. Democratic Republic of Congo, Malawi and Tanzania did not have any bilateral agreements with Mauritius providing for exchange information. Seychelles and South Africa are members of the Global Forum and have DTCs with Mauritius to the standard. Lesotho, Mozambique, Swaziland and Zambia also have a DTC providing for exchange of information with Mauritius that appear to be to the standard (provided that there is nothing in the law of the other jurisdiction that would prevent an effective exchange of information).

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Mauritius should continue to develop its EOI network with all relevant partners.

Phase 2 rating
Compliant

C.3. Confidentiality

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

196. 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.

197. All the agreements signed by Mauritius since the September 2011 Report include confidentiality provisions in line with Article 26(2) of the Model Tax Convention or Article 8 of the Model TIEA.

198. The Agreement concluded with the SADC, the eight new TIEAs, the new DTC with Guernsey and the new protocol with the United Kingdom also contain a provision allowing the disclosure of information exchanged for other purposes with the consent of the requested party. The agreements provide that "the information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the Competent Authority or the Requested Party". This provision has not yet been used in practice.

199. The Combined Report noted that "the Procedure Manual on Exchange of Information does not remind tax officers that all information received from

a treaty partner should be considered as confidential in the same manner as information obtained under the Mauritian law. It does not either draw their attention to the fact that this information cannot be used for other purposes than the implementation of the treaty or domestic tax law (e.g. not for the purpose of the Prevention of Corruption Act and the Dangerous Drug Act)".

200. Since the January 2011 Report, the Procedure Manual on Exchange of Information has been upgraded and now includes language stating that all information received from a treaty partner must be considered confidential. During the period under review, there have been civil cases at Court where the applicant (the creditor) has assigned the MRA as a witness to produce the tax return of the debtor to show that the latter had sufficient income to pay his debts and the MRA has refused to produce taxpayer information before the Court pursuant to its confidentiality rule.

201. When collecting information from taxpayers, the FSC and banks, Mauritius uses standard templates that preserve the confidentiality of information received with the request. The only elements disclosed are the name of the requesting jurisdiction, the information needed (including the years for which the information relates) and the timeline to provide the information.

202. The Mauritian authorities indicate that there have not been any cases where information received by the competent authority from an EOI partner has been disclosed other than in accordance with the terms under which it was provided. Mauritius's treaty partners have not raised any concerns.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

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.

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

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

204. Mauritius agreements and protocols signed since September 2011 provide that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret, or information the disclosure of which would be contrary to public policy, in line with the Model Tax Convention and Model TIEA.

205. The Mauritian competent authority has not received any EOI requests where exchange has been denied for any of the above-mentioned reasons.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant

C.5. Timeliness of responses to requests for information

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

206. The September 2011 Report recommended that "Mauritius should respect the deadlines recently introduced in its new Procedure Manual for Exchange of Information and ensure responses or updates are received by treaty partners within 90 days of receipt. In addition, the competent authority should monitor the implementation of the Manual as practice develops, and improve it where needed". The Mauritian competent authority made marked progress in 2010-12 in answering EOI requests in a timely manner.

Responses within 90 days (ToR C.5.1)

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

208. The January 2011 Report noted that nothing in Mauritius's law prevents the Mauritian authorities from responding to EOI requests within 90 days of receipt by providing the information requested or an update on the status of the request.

209. The eight TIEAs concluded by Mauritius since the September 2011 Report require the provision of confirmations of receipt of requests, status updates and the provision of the requested information within the timeframes set in Article 5(6)(b) of the OECD Model TIEA: the requested party should confirm receipt of the request in writing and notify any deficiencies in the request within 60 days. It should in any event answer as promptly as possible and at least provide a detailed update of the status of the request within 90 days, be it because it encounters obstacles in furnishing the information or it refuses to furnish the information. The other new agreements (DTCs and SADC agreement) do not provide for timelines for responses or status updates. Since the January 2011 Report, the Procedure Manual on Exchange of Information has been upgraded and now includes specific timelines to answer EOI requests (see below).

210. For the period 2010-12, Mauritius received 240 EOI requests (79 requests in 2010, 96 requests in 2011 and 65 requests in 2012), from eight treaty partners, the most significant being India, followed by France, Singapore and the United Kingdom.

211. For these years, the percentage of requests where Mauritius answered within 90 days, 180 days, one year or more than one year, were:

	2010		2011		2012		Total	Average
	nr.	%	nr.	%	nr.	%	nr.	%
Total number of requests* received (a+b+c+d+e)	79	100%	96	100%	65	100%	240	100%
Full response**: ≤90 days	75	95%	81	84%	57	88%	213	89%
≤180 days (cumulative)	3	99%	13	98%	5	95%	21	98%
≤1 year (cumulative) (a)			1	99%	1	97%	2	99%
1 year+ (b)								
Declined for valid reasons (c)								
Failure to obtain and provide information requested (d)								
Requests still pending at date of review (e)	1	1%	1	1%	2	3%	4	1%

* The time periods in this table are counted from the date of receipt of the request to the date on which the complete and final response was issued.

** Mauritius counts one request per person concerned. even where more than one piece of information is requested. For instance, if three persons are the subjects of an inquiry for different types of information, Mauritius counts three requests.

212. For comparison, in the period 2007-09, 81% of the replies to EOI requests had been made within 90 days and 5% had been sent after more than a year (at maximum a year and 4 months). One request was pending for 19 months and many requests had been only partially answered.

213. Mauritius' response timeframe is generally very good with 89% of requests received during the period 2010-12 answered within 90 days and 98% of requests received answered within six months. No requests have taken more than a year to answer and four requests are currently pending from this period. No request has been only partially answered (and all the requests that were partially answered at the time of the Combined review have now been fully answered).

214. However, two treaty partners have commented on the fact that answers have sometimes been delayed.

215. The Mauritian authorities provided detailed statistics on the timelines observed, depending on the source of the information, which are compared with the guidelines in the Procedural Manual:

- Information already in the hands of the MRA should be exchanged within 15 days and in practice this was done within 3 to 7 days.
- Information maintained by another public authority should be submitted within 15 days when the information is available in their files, however the timeframe can be longer when the other public authority needs to request the information from the entity (a one month deadline was introduced at the end of 2013). In practice, information concerning international business actors was generally gathered through the Financial Services Commission within 1 to 3 months (no information was gathered from the Registrar of Companies or other public authorities of Mauritius). To accelerate the answering time, in some cases, Mauritius asked for the information directly from the entity (see section B.1 above).
- Information requested from taxpayers or third parties should be submitted within 21 days: in practice information was received within 3 to 6 weeks (often after the taxpayer had asked for more time to gather the requested documents).
- Bank information requested from taxpayers should be submitted within a month; when the bank statements relate to past years, the time allowed may be longer: in practice information was gathered in 15 to 21 days.

216. A clear improvement has therefore taken place concerning the cases that took a long time to answer in the past, mainly cases involving banking information. As noted under part B, information gathering practices have

improved markedly, which shows results in terms of timing of the replies. In particular, the issue noted in the January 2011 Report about communication between Mauritius and one of its EOI partners appears to have been solved and communication has been carried out much more smoothly in recent years. Despite some cases where answers were delayed, Mauritius' answering timeframe is very good and shows the efforts made since the previous evaluation to reduce the answering timeframe of incoming requests.

Acknowledgement of receipt and Status updates

217. The Mauritian authorities indicate that for each request received in 2010-12 an acknowledgement was sent to the requesting party within 7 days of receipt of the request, as prescribed in the Procedural Manual.

218. As concerns updates on the status of the requests, in the cases where no answer was provided within 90 days, Mauritius states that a status update was systematically sent to the requesting partner.

219. Some peers confirmed that they have always received such status updates. One indicated on the contrary that it received status updates sometimes, but not systematically. No peers indicated the need to send reminders to Mauritius, as was the case in the past. Mauritius indicated that in cases where partial information has already been supplied, no status updates are given unless it is likely to take an unusually long time to supply the remaining information.

220. Mauritius should continue respecting the deadlines set in its Procedure Manual and ensure that responses or updates are systematically sent to treaty partners within 90 days of receipt.

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

221. The September 2011 Report recommends that "the competent authority monitor the implementation of the Manual as practice develops, and improve it where needed".

222. As noted above, the guidelines on the timeframes within which requests should be handled are largely respected. The Mauritian authorities indicate that the Procedure Manual, adopted in January 2010 and updated several times since then, has proved to be a valuable tool in the hands of the officers attending to the EOI requests.

223. Resources have been stable over the last seven years despite the increase of EOI in volume, with good results in practice, which tends to indicate that the staff involved are fully aware of the EOI process and efficient. Despite the absence of the officer in charge of EOI the officers called upon

to temporarily replace the person responsible for EOI managed the requests appropriately, and the Manual was of great assistance to them.

224. Mauritius continued monitoring the implementation of the Manual and only one reminder had to be made by the Director of the Large Taxpayer Department to the EOI officials during the period under review.

225. The competent authority is encouraged to continue monitoring the implementation of the Manual and improve it where needed, as a matter of routine. The Phase 2 recommendation is now removed and element C.5 upgraded to "Compliant".

Determination and factors underlying recommendations

Phase 1 determination
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.

Phase 2 rating
Compliant.

Summary of Determinations and Factors Underlying Recommendations

Determination/rating	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
Phase 1 determination: The element is in place		
Phase 2 rating: largely compliant	In view of the short period between the introduction of the concept of foundations in Mauritius law (July 2012) and the end of the period under review (2009-12), the enforcement of the law on foundations could not be assessed	Mauritius should monitor the operation of the new provisions on foundations and their enforcement.
	New provisions were introduced in December 2012 on the availability of ownership information for nominees and identity information relating to non-resident foreign trusts administered or with a trustee in Mauritius. In view of the short period between the introduction of the new provisions and the end of the period under review, the enforcement of the new provisions could not be assessed.	Mauritius should monitor the operation of the new provisions on the availability of ownership information for nominees and identity information relating to non-resident foreign trusts administered or with a trustee in Mauritius.

Determination/rating	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
Phase 1 determination: The element in place but certain aspects of the legal implementation of the element need improvement.		
Phase 2 rating: largely compliant	In view of the recent introduction of foundations in Mauritius the enforcement of their accounting obligations could not be assessed.	Mauritius should monitor the enforcement of the accounting obligations applying to foundations.
Banking information should be available for all account-holders. *(ToR A.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: compliant		

Determination/rating	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
Phase 1 determination: The element is in place.		Mauritius should continue to develop its EOI network with all relevant partners.
Phase 2 rating: compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
Phase 1 determination: This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.		
Phase 2 rating: compliant		

Annex 1: Jurisdiction's Response to the Supplementary Review[8]

Mauritius places on record its gratitude to the PRG Bureau for having acceded to its request for a second supplementary review. It also conveys its appreciation to the Assessment Team for the hard work it has put in to produce the second supplementary report.

Mauritius notes with satisfaction that the PRG has recognized the progress made to ensure effective exchange of information. Mauritius has amended its Companies Act to require companies to maintain beneficial ownership information in respect of nominee shareholdings and its Trusts Act to require trustees of non-resident foreign trusts to keep identity information and all trustees to keep underlying documentation. Mauritius is also actively engaged in negotiating new treaties and in the updating of existing treaties to bring them in line with internationally agreed standard.

Last but not least Mauritius is able to and does exchange information to the international standard in respect of all its taxpayers, including companies operating in the global business sector. In recognition of the steps taken by Mauritius to implement the Global Forum's recommendations and the efforts being made to ensure effective exchange of information, the "Largely compliant" ratings initially allocated in respect of elements B1, B2, C1 and C5 have been reviewed and revised to "Compliant". Mauritius has now a rating of "Compliant" for 8 elements and of "Largely Compliant" for 2 elements with an overall rating of "Largely Compliant".

It is important for the Global Forum to recognize that there are no gaps in either the legislative or the administrative framework of the Mauritius exchange of information system. The "Largely Compliant" rating for A1 and A2 and the overall "Largely compliant' rating are essentially related to the introduction by Mauritius of the new Foundations Act in 2012. Mauritius is recommended to monitor the operation of this new law to ensure that EOI

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

requests in relation to the new provisions are dealt with in a timely manner. To that effect Mauritius commits itself to act accordingly.

March 2014

Annex 2: Request for a Second Supplementary Report Received from Mauritius[9]

ToR A.1 Determination

The element is in place, but certain aspects of the legal implementation of the element need improvement.

Recommendations
(i) Mauritius should establish a requirement that information is maintained indicating the person on whose behalf any legal owner holds his interest or shares in any company or body corporate.

Action taken: The Companies Act 2001 has been amended to require companies to maintain a share register where, in respect of shares held by a nominee, information on the names and address of persons giving to the nominee instructions to exercise any right in relation to those shares either directly or through the agency of one or more persons should also be kept for at least 7 years.

Section 91(3)(a) of the Companies Act 2001 has been amended to that effect – please see attached extract of the relevant clause in the Economic and Financial Measures (Miscellaneous Provisions) Act amending the Companies Act 2001 (Annex I). The amendment has come into effect on 22 December 2012, the date on which the amendment was gazetted.

(ii) An obligation should be established for all trustees and administrators resident in Mauritius to maintain information on the settlor, trustees and beneficiaries of their trusts.

Action taken: Section 38 of the Trusts Act has been amended to require a trustee to keep a register of the names and addresses of each beneficiary

9. Annexes to the Mauritius request are not reproduced in this document.

and settlor of a trust including the beneficiary and settlor of a non-resident foreign trust administered by that trustee.

The amendment has been made through the Economic and Financial Measures (Miscellaneous Provisions) Act and has come into effect on 22 December 2012 (a copy of the amendment is attached) (Annex II).

(iii) Enforcement of the legal provisions on the availability of ownership and accounting information in the global business sector should be monitored.

Action taken

Ownership and accounting information pertaining to the global business sector is effectively being exchanged with our treaty partners within the agreed delay. There is no case where a treaty partner has shown concern.

ToR A.2 Determination

The element is in place but certain aspects of the legal implementation of the element need improvement.

Recommendations
(i) Mauritius should ensure that all relevant entities and arrangements maintain underlying documentation, for at least five years.

Action taken: The amendment to section 38 of the Trusts Act (as stated under ToR A.1(ii)) also covers a requirement for trustees to keep underlying documentation in respect of all trusts including non-resident foreign trusts administered by those trustees for a period of at least 5 years – please see Annex II.

The amendment has come into effect on 22 December 2012.

(ii) Enforcement of legal provisions on the availability of accounting information in the global business sector should be monitored.

Action taken: As stated under ToR A.1 (iii), accounting information is effectively being exchanged with our treaty parties within the agreed timeline in respect of the global business sector including companies holding a GBC2 licence.

ToR B.1 Determination

The element is in place.

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

Action taken: There has not been any case where we have failed to attend to EOI requests because taxpayers have not complied with our request for information. The need to sanction has therefore never arisen.

All EOI cases are properly monitored to ensure that information is exchanged in a timely manner.

ToR B.2 Determination

The element is in place.

Recommendation
Mauritius should ensure that its new guidelines regarding prior notification are applied in practice.

Action taken: It is confirmed that the new guidelines in the Procedure Manual on Exchange of Information regarding prior notification are being effectively applied in practice.

There is no case where the need for prior notification that could have unduly delayed exchange of information with treaty partners has arisen.

ToR C.1 Determination

The element is in place.

Recommendations
(i) Mauritius should continue to negotiate with existing partners (or take steps to expedite entry into force of) new exchange of information arrangements where the existing treaties do not meet the international standard.

Action taken: The DTC which limited exchange of information to the carrying out of the provisions of the Convention (i.e. DTC with Germany) has been renegotiated. A new DTC with an article on exchange of information along the OECD Model is in force since 7 December 2012.

Annex III shows the progress made with regard to DTAs and TIEAs from September 2011 to date.

Annex IV gives a complete and updated picture of DTAs and TIEAs signed and in force.

(ii) Exchange of bank information should be ensured with all Mauritius's treaty partners. Although Mauritius is willing to exchange information even in the absence of paragraphs 4 and 5 of Article 26 of the Model Tax Convention and reciprocity, Mauritius is encouraged to continue upgrading the exchange of information provision in its treaties to include paragraph 4 to secure the benefit of reciprocity from its treaty partners, especially those jurisdictions that are unable to do so without paragraphs 4 and 5 being explicitly provided.

Action taken: Please see action taken under C.1 *(i)* above.

(iii) Mauritius is encouraged to continue communicating quickly with its treaty partners when the competent authority is unsure that the received request meets the foreseeable relevance standard.

Action taken: Prompt action is taken in all such cases. There is no such case pending at our end.

TOR C.2 Determination

The element is in place.

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

Action taken: Please see action taken under C.1 *(i)* above.

TOR C.5

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

Action taken: Being done.

Annex 3: List of all Exchange of Information Mechanisms

Multilateral agreements

Mauritius is a signatory to the Agreement on Assistance in Tax Matters of the Southern African Development Community (SADC Agreement) signed by the SADC countries, that is, Mauritius, Democratic Republic of Congo, Lesotho, Malawi, Mozambique, Seychelles, Swaziland, Tanzania and Zambia. The SADC Agreement provides for administrative assistance between member countries including exchange of information for tax purposes.

Bilateral agreements

The table below contains the list of information exchange agreements (TIEA) and tax treaties (DTC) signed by Mauritius as of February 2014.

For jurisdictions with which Mauritius has several agreements, a reference to all those EOI instruments is made.

	Treaty partner	Type of EoI arrangement	Date signed	Date in force
1	Australia	ABA	08-Dec-10	31-May-2013
		TIEA	08-Dec-10	25-Nov-11
2	Bangladesh	DTC	21-Dec-09	15-Sep-2010
3	Barbados	DTC	28-Sep-04	28-Jan-05
4	Belgium	DTC	04-Jul-95	28-Jan-99
5	Botswana	DTC	26-Sep-95	13-March-96
6	China (People's Rep.)	DTC	01-Aug-94	5-May-95
		Protocol	05-Sept-06	25-Jan-07
7	Croatia	DTC	06-Sep-02	9-Aug-03

	Treaty partner	Type of EoI arrangement	Date signed	Date in force
8	Cyprus [10, 11]	DTC	21-Jan-00	12-June-00
9	Congo (Republic of)	DTC	20-Dec-2010	
10	Democratic Republic of Congo	SADC	18-Aug-12	
11	Denmark	TIEA	1-Dec-11	1-Jun-12
12	Egypt	DTC	19-Dec-2012	
13	Faroe Islands	TIEA	1-Dec-11	
14	Finland	TIEA	1-Dec-11	6-Jul-12
15	France	DTC	11-Dec-80	17-Sept-82
		Protocol	23-Jun-11	1-May-12
16	Gabon	DTC	18-July-2013	
17	Germany	DTC	15-Mar-78	1-Jan-81
		DTC (new)	7-Oct-11	7-Dec-12
18	Greenland	TIEA	1-Dec-11	
19	Guernsey	TIEA	6-Feb-2013	5-July-2013
		DTC	17-Dec-13	
20	Iceland	TIEA	1-Dec-11	
21	India	DTC	24-Aug-82	11-June-85
22	Italy	DTC	09-Mar-90	28-April-95
		protocol	09-Dec-10	19-Nov-12
23	Kenya	DTC	7-May-12	
24	Kuwait	DTC	24-Mar-97	1-Sept-98

10. Footnote from Turkey: The information in this document with reference to "Cyprus" relates to the southern portion of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

11. Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

	Treaty partner	Type of EoI arrangement	Date signed	Date in force
25	Lesotho	DTC	29-Aug-97	9-Sept-04
		SADC	18-Aug-12	
26	Luxembourg	DTC	15-Feb-95	12-Sept-96
		protocol	28-Jan-14	
27	Madagascar	DTC	30-Aug-94	4-Dec-95
28	Malaysia	DTC	23-Aug-92	19-Aug-93
29	Malawi	SADC	18-Aug-12	
30	Monaco	DTC	13-April-2013	8-Aug-2013
31	Mozambique	DTC	14-Feb-97	8-May-99
		SADC	18-Aug-12	
32	Namibia	DTC	04-Mar-95	25-July-96
33	Nepal	DTC	03-Aug-99	11-Nov-99
34	Nigeria	DTC	10-Aug-12	
		Protocol	09-May-2013	
35	Norway	TIEA	1-Dec-11	26-May-12
36	Oman	DTC	30-Mar-98	20-July-98
37	Pakistan	DTC	03-Sep-94	19-May-95
38	Qatar	DTC	28-Jul-08	28-July-09
39	Russia	DTC	24-Aug-95	
40	Rwanda	DTC	30-Jul-01	14-April-03
41	Senegal	DTC	17-Apr-02	15-Sept-04
42	Seychelles	DTC	11-Mar-05	22-June-05
		Protocol	03-Mar-11	18-May-12
		SADC	18-Aug-12	
43	Singapore	DTC	19-Aug-95	07-June-96
44	Sri Lanka	DTC	12-Mar-96	2-May-97
45	South Africa	DTC	05-Jul-96	20-June-97
46	Swaziland	DTC	29-Jun-94	8-Nov-94
		SADC	18-Aug-12	
47	Sweden	DTC	23-Apr-92	21-Dec-92
		DTC (new)	1-Dec-11	7-Dec-12

	Treaty partner	Type of EoI arrangement	Date signed	Date in force
48	Tanzania	SADC	18-Aug-12	
49	Thailand	DTC	01-Oct-97	10-June-98
50	Tunisia	DTC	12-Feb-08	28-Oct-08
51	Uganda	DTC	19-Sep-03	21-July-04
52	United Arab Emirates	DTC	18-Sep-06	31-July-07
53	United Kingdom	DTC	11-Feb-81	26-Oct-87
		Protocol	10-Jan-11	13-Oct-11
54	United States	TIEA	27-Dec-13	
55	Zambia	DTC	26-Jan-11	4-Jun-12
		SADC	18-Aug-12	
56	Zimbabwe	DTC	06-Mar-92	5-Nov-92

The text of most DTCs is available on the website of the Mauritius Revenue Authority at www.mra.mu.

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

Amended legislation

The Companies Act 2001 (Amendments to Section 91(3))

The Economic and Financial Measures (Miscellaneous Provisions) Act 2012 The Financial Services (Administrative Penalties) Rules 2013

The Foundations Act 2012

The Trusts Act 2001 (Amendments to Section 38(3))