

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

ANTIGUA AND BARBUDA

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Antigua and Barbuda 2014

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

August 2014
(reflecting the legal and regulatory framework
as at May 2014)

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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. This report summarises the legal and regulatory framework for transparency and exchange of information in Antigua and Barbuda as well as the practical implementation of that framework. The assessment of effectiveness in practice has been performed in relation to a three-year period.
2. The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information (EOI) partners.
3. Antigua and Barbuda is an independent twin-island nation located in the Eastern Caribbean Sea on the boundary with the Atlantic Ocean. Its economy is based primarily on tourism and to a lesser extent other sectors like agriculture, construction, manufacturing and financial services. It receives more than 200 000 tourists per year, mainly from the United States (US) and United Kingdom (UK).
4. Antigua and Barbuda committed to the international standards of transparency and exchange of information in tax matters in 2002. In 2009, it renewed this commitment and since then has rapidly expanded its network of EOI agreements. As of 15 May 2014, Antigua and Barbuda has signed 31 EOI agreements, of which 23 are in force. All the EOI agreements Antigua and Barbuda has signed since 2000 meet the international standard.
5. Since the adoption of the August 2011 Phase 1 report, Antigua and Barbuda has amended its laws to address most of the deficiencies identified in the Phase 1 report. The Tax Information Exchange (Miscellaneous Amendments) Act amended provisions to the Income Tax Act, Inland Revenue Administration Act, Companies Act, Tax Information Exchange Act, International Trusts Act, International Foundations Act and the ILLC Act. These amendments became effective on 2 December 2011. As reviewed in the supplementary report, all these laws of Antigua and Barbuda generally ensure that ownership and accounting information are available for relevant legal entities and arrangements. Relevant bank information for all account

holders is available to the authorities. However, a gap exists in relation to the availability of accounting information of International Business Companies as it is not clear whether the accounting record keeping obligations applicable to International Business Companies fully meet the requirements of the Terms of Reference. In practice, Antigua and Barbuda's authorities do not have a system of oversight to ensure the fulfilment of the obligations to maintain ownership and accounting information and correspondingly, penalties for non-compliance are rarely imposed by the authorities.

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

7. In practice, Antigua and Barbuda's competent authority did not exercise its access powers to obtain information from third parties during the review period since it considered that the few EOI requests received did not require it to exercise these access powers. The amendments introduced to the International Business Companies Act, International Limited Liability Companies Act, International Foundations Act and the International Trusts Act removing the impediments relating to the access powers of the competent authority which were reviewed in the supplementary review in 2012, have not been tested in practice.

8. Antigua and Barbuda has EOI agreements with 31 jurisdictions, consisting of one bilateral double taxation convention, a CARICOM Multilateral Tax Treaty signed with 10 partners and 20 Tax Information Exchange Agreements.

9. During the three-year review period (i.e. 1 January 2010 to 31 December 2012), Antigua and Barbuda received four EOI requests from three jurisdictions. Antigua and Barbuda replied to two requests within 90 days if the delays relating to lost mails affecting both Antigua and Barbuda and its EOI partners were excluded. One request was replied within less than a year and another request had not been replied by Antigua and Barbuda at the time it was cancelled by the requesting jurisdiction after two years from the original request. Antigua and Barbuda did not have a structured organisation procedure in place to handle EOI requests during the review period. There were also issues concerning lost mail (affecting both Antigua and Barbuda as well as its EOI partners) and this has resulted in delays in the receipt of EOI requests by Antigua and Barbuda's competent authority or delays in receipt of replies to EOI requests by Antigua and Barbuda's EOI partners.

10. Antigua and Barbuda has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings are Compliant for elements A.3, B.2, C.1, C.2 and C.4, Largely Compliant for elements A.1, B.1, C.3 and C.5, and Non-Compliant for element A.2. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Antigua and Barbuda is Partially Compliant.

11. A follow-up report on the steps undertaken by Antigua and Barbuda to answer the recommendations made in this report should be provided to the Peer Review Group within twelve months of the adoption of this report.

Introduction

Information and methodology used for the peer review of Antigua and Barbuda

12. The peer review process of Antigua and Barbuda has been undertaken across three reports: the August 2011 Phase 1 Report, the May 2012 supplementary report and the July 2014 Phase 2 Report. The assessment of the legal and regulatory framework of Antigua and Barbuda was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*.

13. The Phase 1 Report of Antigua and Barbuda which was adopted and published by the Global Forum in August 2011 was based on the laws, regulations, and exchange of information mechanisms in force as at June 2011, other materials supplied by Antigua and Barbuda, and information supplied by partner jurisdictions.

14. The supplementary report, which followed the 2011 Phase 1 Report was prepared pursuant to paragraph 58 of the Global Forum's Methodology and was adopted by the Global Forum in May 2012. The supplementary report was prepared based on information available to the assessment team including the laws, regulations, exchange of information arrangements in force or effect as at April 2012, and information supplied by Antigua and Barbuda. The following analysis reflects the integrated 2011 Phase 1 report and the supplementary report of the legal and regulatory framework of Antigua and Barbuda as in effect at April 2012.

15. The Phase 2 assessment is based on the laws, regulations, and exchange of information mechanisms in force or effect as at 15 May 2014, Antigua and Barbuda's responses to the Phase 2 questionnaires, supplementary questionnaires, and other materials supplied by Antigua and Barbuda, information supplied by exchange of information partners and explanations

provided by Antigua and Barbuda during the on-site visit that took place from 29 to 31 October 2013 in St. John's, Antigua and Barbuda. During the on-site visit, the assessment team met with officials and representatives of the relevant Antigua and Barbuda's government agencies including the Ministry of Finance, the Inland Revenue Department, the Attorney General's Office and Legal Affairs, the Registrar for Intellectual Property and Commerce, Financial Services Regulatory Commission and Office of National Drug and Money Laundering Policy (See Annex 4).

16. The following analysis reflects the Phase 1, Supplementary and the Phase 2 assessments of the legal and regulatory framework in Antigua and Barbuda in effect as at 15 May 2014 and the practical implementation and effectiveness of this framework in the three-year review period from 1 January 2010 to 31 December 2012.

17. The Terms of Reference breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses Antigua and Barbuda's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Antigua and Barbuda's 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 Antigua and Barbuda's overall level of compliance with the standards.

18. The assessment presented in the Phase 1 Report was conducted by an assessment team, which comprised two expert assessors: Ms. Hyonae Park, Deputy Director, Ministry of Strategy and Finance, Republic of Korea; and Mr Colin Chew, Director of Investigation and Forensics Division, Inland Revenue Authority of Singapore; and one representative of the Global Forum Secretariat, Mr. Guozhi Foo. In the supplementary review, Ms. Hyonae Park was replaced by Mr. Kwangmin Kim as expert assessor. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Antigua and Barbuda.

19. The Phase 2 assessment was conducted by a team which comprised two expert assessors and two representatives of the Global Forum Secretariat: Mr. Eric Ho from the Inland Revenue Authority of Singapore; Ms. Aya Okimoto

from the National Tax Agency, Japan; and Mr. Robin Ng and Ms. Renata Teixeira from the Global Forum Secretariat. The assessment team examined the practical implementation of the legal and regulatory framework for transparency and exchange of information in Antigua and Barbuda.

Overview of Antigua and Barbuda

20. Antigua and Barbuda is an independent twin-island nation located in the Eastern Caribbean Sea on the boundary with the Atlantic Ocean. It comprises two major inhabited islands, Antigua in the south and Barbuda in the north, and a number of smaller islands, with a total land area of about 440 square kilometres. Its total population is approximately 87 000. The capital is Saint John's, located on Antigua.

21. Antigua and Barbuda achieved independence from the United Kingdom (UK) on 1 November 1981 and is now a self-governing, sovereign member of the Commonwealth of Nations; member of the United Nations; CARICOM member state and a member of the Organisation of Eastern Caribbean States.

22. Antigua and Barbuda's economy is based primarily on tourism and to a lesser extent other sectors like agriculture, construction, manufacturing and financial services. It receives more than 200 000 tourists per year, mainly from the United States (US) and the UK. Antigua and Barbuda's primary trading partners are the US and the European Union.¹ Antigua and Barbuda's official currency is the East Caribbean Dollar (XCD), which is currently pegged to the United States Dollar (USD) at XCD 2.70 to USD 1. In 2012, its gross domestic product was approximately USD 1.17 billion, translating to a GDP per capita of about USD 13 207.²

Legal and taxation system

23. Antigua and Barbuda is a constitutional democracy with a British-style parliamentary system of government comprising the legislative, executive, and judicial branches.

24. The legislative branch is represented by a bicameral Parliament comprising a 17-member House of Representatives, responsible for introducing legislation, and a 17-member Senate, which reviews and gives assent to proposed legislation. Representatives are elected in general elections that are held at least once every five years. The Prime Minister is the leader of the

1. Data from WTO.

2. Data from World Bank.

majority party in the House and is responsible for appointing other members of Parliament to his cabinet, which forms the executive branch.

25. The judiciary comprises the Magistrate’s Court for summary offenses and the High Court for major offenses. Above the High Court are the Eastern Caribbean States Supreme Court and the Judicial Committee of the Privy Council in the UK. Antigua and Barbuda is a common law jurisdiction. The laws also include statute law and case law as decided by the courts. The hierarchy of laws in Antigua and Barbuda listed from the highest rank to the least is as follows: (a) acts of Parliament, creating statutes, laws, primary legislation, (b) statutory instruments, secondary legalisation, (c) judicial precedent and (d) common law.

26. Antigua and Barbuda has an established tax system which provides the bulk of government funding. The current tax regime of Antigua and Barbuda comprises both direct and indirect taxes, which are administered and collected by Inland Revenue Department and the Customs Division.

27. Direct taxes are taxes imposed on income and property, such as personal income tax (tiered, up to 25%), corporate income tax (25%), and property tax. Individuals and companies resident in Antigua and Barbuda generally pay income tax on their worldwide income, while non-residents are only taxed on income arising in or derived from Antigua and Barbuda. Antigua and Barbuda law allows the creation of several types of offshore entities which are exempted from a wide range of taxes.

28. Indirect taxes are taxes levied on the acquisition or consumption of goods and services. In 2006, Antigua and Barbuda introduced the Antigua and Barbuda Sales Tax (ABST), which is levied on consumption and imports. Rates are tiered, ranging from zero to 15%. Other taxes in Antigua and Barbuda include stamp duties and excise taxes.

29. Other non-tax revenue streams are Medical Benefits, Education Levy and Social Security, which are charged directly against income. These are administered by statutory authorities established under their own legislative provisions.

Antigua and Barbuda’s commercial laws and financial sector

30. Antigua and Barbuda’s commercial laws allow for the creation of a wide range of business entities. These entities are regulated according to business types and whether such businesses reside in the onshore or offshore sectors.

31. On the domestic front, the Eastern Caribbean Central Bank is responsible for regulating, licensing and supervising all domestic banks pursuant to the Banking Act. The Registrar of Intellectual Property and Commerce

administers domestic and external companies pursuant to the Companies Act. As 31 December 2012, there were four licensed domestic banks with assets totalling USD 1.9 billion, and 12 035 domestic companies.³

32. In 1982, legislation was enacted under the International Business Corporations Act (IBCA), to make Antigua and Barbuda a choice offshore jurisdiction for businesses, including offshore banking and insurance. These offshore entities generally enjoy a wide range of tax exemptions in Antigua and Barbuda. The Financial Services Regulatory Commission (FSRC), a statutory authority established in accordance with the IBCA, is responsible for regulating IBCs. In 2007, the offshore sector was further developed through the introduction of the International Trusts Act (ITA), International Foundations Act (IFA) and the International Limited Liability Companies Act (ILLCA). These offshore entities are also regulated by the FSRC.

33. As at 31 December 2012, there were 14 international banks with total asset size of about USD 2.3 billion, three international insurance companies, one international trust, nine interactive gaming, six interactive wagering and about 4 587 other international business corporations, of which 2 267 were active. There were 21 international trusts registered pursuant to the ITA and no international limited liability companies or international foundations.⁴

34. The FSRC also regulates and supervises the other sectors of the financial system as a Single Regulatory Unit and as such oversees the administration of the Insurance Act, the Money Services Business Act, the Corporate Management and Trust Service Providers Act, the Co-operative Societies Act, the Financial Institutions (Non-Banking) Act, the International Limited Liability Companies Act, the International Foundations Act, the International Trusts Act and the Interactive Gaming and Interactive Wagering Regulations.

35. The regulatory framework for the financial services sector is complemented by Antigua and Barbuda’s Anti-money Laundering (AML) and Counter Financing of Terrorism (CFT) regime which is applicable to a range of “financial institutions”, the definition of which includes banks, company service providers, trust businesses; and attorneys, accountants and notaries who conduct any financial activity as a business.

36. Antigua and Barbuda has a free trade zone which accords generous tax exemptions to companies operating within. Activities within the free trade zone are controlled by the Free Trade and Processing Zone Commissioner and only IBCs may be licensed to operate there.⁵ Aside from tax benefits, there are no special regulatory rules or exemptions for companies operating within

3. Statistics provided by Antigua and Barbuda.

4. Statistics provided by Antigua and Barbuda.

5. Regulations to the Free Trade and Processing Zone Act 1994.

a free trade zone. Antigua and Barbuda also has a significant international ship registry.

Antigua and Barbuda's framework for the exchange of information for tax purposes

37. The Antigua and Barbuda Tax Information Exchange Act 2002 (TIE Act) is the legislation pursuant to which Antigua and Barbuda provides assistance under its EOI agreements. The TIE Act provides Antigua and Barbuda's Competent Authority with the necessary powers to comply with the terms of the EOI agreements that Antigua and Barbuda enters into. These agreements become part of the domestic law upon ratification.

38. In accordance with the TIE Act, the Commissioner of the Inland Revenue Department (Commissioner) is the authority designated to exercise the powers and perform the duties of the competent authority for international exchange of information in tax matters. Under the TIE Act, the Commissioner may, in the execution of any request, require any person, including an officer in the employment of the Government, or any local Government or other public body or statutory authority to supply such particulars as may be required which may be in the possession of such person or officer.

39. Antigua and Barbuda also provides international co-operation in criminal tax matters pursuant to the provisions of the Mutual Legal Assistance in Criminal Matters (the Government of Antigua and Barbuda and the Government of the United States of America) Ratification Act 2000, and the Mutual Assistance in Criminal Matters Act.

Recent developments

40. Since the Phase 1 review, Antigua and Barbuda has initiated or received requests to conclude TIEAs with 10 jurisdictions (Canada, Korea, Monaco, Slovakia, Mexico, Greece, New Zealand, Ukraine, India and Chile). The competent authority advised that Antigua and Barbuda has responded to all requests to conclude TIEAs and are currently in various stages of negotiation with these 10 jurisdictions.

Compliance with the Standards

A. Availability of Information

Overview

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

42. The law of Antigua and Barbuda provides for the recognition and creation of a wide range of entities, especially in the offshore sector. Information on the owners of these legal entities and arrangements, which include domestic companies, international business corporations, international limited liability companies, domestic trusts, international trusts, partnerships and international foundations, is made available through a combination of the entities' governing legislation, tax laws, obligations imposed on service providers, as well as AML laws.

43. Deficiencies concerning the legal obligation to maintain comprehensive accounting records existed for legal entities prior to the supplementary

review. However, these deficiencies were rectified through the amendment to Antigua and Barbuda's laws in 2011 reviewed in the supplementary review. The current law of Antigua and Barbuda provides for an express requirement for all domestic companies, foreign companies, relevant partnerships (i.e. those that carry on a business in Antigua and Barbuda), international trusts, international foundations and ILLCs to keep comprehensive accounting records, including underlying documentation, for at least five years. However, a gap exists in relation to the availability of accounting information of International Business Companies as it is not clear whether the accounting record keeping obligations applicable to International Business Companies fully meet the requirements of the Terms of Reference. Antigua and Barbuda's authorities do not have a system of oversight to ensure the fulfilment of the obligations to maintain ownership and accounting information (except in relation to licensed International Business Companies, including the ones in the business of international banking, trusts and insurance which are examined in section A.3 of this report) and correspondingly, penalties for non-compliance are rarely imposed by the authorities in practice.

44. Banking information on account holders is generally made available through Antigua and Barbuda's AML laws and the regulatory authorities have conducted regular on-site examinations on the domestic and international banks to ensure that the information is kept in practice. Antigua and Barbuda received one request concerning banking information during the period under review. This request had not been replied by Antigua and Barbuda at the time it was cancelled by the requesting jurisdiction after two years from the original request. Antigua and Barbuda had already provided banking information to the requesting jurisdiction in relation to the same bank account before the period under review. Antigua and Barbuda reports that there may have been a misunderstanding on its side concerning the existence of a separate request. This issue is further analysed in section C.5 of this report.

A.1. Ownership and identity information

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

Companies (ToR A.1.1)

45. The law of Antigua and Barbuda provides for the incorporation of the following types of companies:

- domestic companies – private and public companies⁶ with limited liability incorporated under the Companies Act. Such companies are formed for the purpose of carrying on a trade or business for gain and conduct their business in or from Antigua and Barbuda. There were 12 035 domestic companies in Antigua and Barbuda as at 31 December 2012;
- non-profit companies – private companies without share capital incorporated under the Companies Act. These companies are restricted to carrying on businesses of a non-profit nature, such as charitable, educational, scientific, literary, artistic or sporting activities⁷. There were 143 non-profit companies in Antigua and Barbuda as at 31 December 2012;
- international business companies (IBCs) – incorporated under the International Business Corporations Act (IBCA) and formed for the purpose of carrying out international trade or business from Antigua and Barbuda.⁸ IBCs enjoy a wide range of tax exemptions in respect of their international trade or business for 50 years from the date of their incorporation⁹. There were 4 587 IBCs in Antigua and Barbuda as at 31 December 2012, of which 2 390 were active IBCs; and
- international limited liability companies (ILLCs) – unincorporated entities that are not trusts or partnerships, formed under the International Limited Liability Companies Act (ILLCA) for any lawful business or other purpose, including the rendering of professional services by or through their members, managers, officers or agents. ILLCs are exempt from a wide range of taxes in Antigua

6. Public companies are domestic companies where any part of its issued shares or debentures are or were part of a distribution to the public.

7. The list of permitted activities is spelt out in Section 328(2) of the Companies Act.

8. Defined under the IBCA as international banking, international trust business, international insurance, international manufacturing or other international trading or commercial activities.

9. The full scope of tax exemption is listed in Division G of the IBCA.

and Barbuda. No ILLCs were formed in Antigua and Barbuda as at 31 December 2012.

Company ownership and identity information required to be provided to government authorities

Registration requirements

46. The Registrar for Intellectual Property and Commerce is the Registrar for Companies and is responsible for administering the Companies Act. One of its functions is to maintain a register of domestic and non-profit companies containing the names of every company that is incorporated, continued¹⁰ or registered under the Act. It also keeps a record of all company documents it receives under the Act.¹¹

47. The Financial Services Regulatory Commission (FSRC) is responsible for the regulation and administration of IBCs and ILLCs. The Administrator (who holds the appointment of the Chief Executive Officer of the FSRC) maintains registers of IBCs and ILLCs containing the name of every corporation that is incorporated or continued¹² under the IBCA and ILLCA, and keeps copies of all documents filed by IBCs and ILLCs under their respective acts.

48. All documents filed with the Registrar of Companies and documents filed by IBCs with the FSRC must be kept for six years from the date of receipt.¹³ The ILLCA is silent on the retention period for documents filed by ILLCs.

Domestic companies and non-profit companies

49. All domestic and non-profit companies in Antigua and Barbuda must register and provide their articles of incorporation to the Registrar of Companies at the time of their incorporation. The articles of incorporation

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10. A “continued” company under the Companies Act is one that was incorporated or registered under the previous Companies Act and subsequently recognised as a valid and existing company under the current Companies Act. This is done by the company applying to the Companies Registrar for a certificate of continuance, or for companies that do not do so, through the deeming provisions of the current Companies Act.
 11. Section 494 of the Companies Act.
 12. Continued companies under the IBCA and the ILLCA are companies that are originally formed under another law, and subsequently come under the provisions of the IBCA or the ILLCA through a certificate of continuance or certificate of transfer of domicile respectively.
 13. Section 507 of the Companies Act and section 331 of the IBCA.

must include general information on the company such as name, classes and any maximum number of shares the company is authorised to issue, number of directors, and restrictions on the business that the company may undertake.¹⁴

50. At the time of filing, the company must also provide to the Registrar the address of its registered office and the names of all the directors. Any changes in the above information must be advised to the Registrar within 15 days of the change happening.¹⁵

51. Besides filing company information at the time of incorporation, all domestic and non-profit companies must file annual returns to the Registrar that include among other information:

- name of company;
- address of registered office/principal office;
- class of shares, number of shares issued and outstanding;
- whether any share transfers have been effected during the last financial period, and if so the name of transferor, name of transferee, number of shares and date of transfer; and
- the names, addresses and occupations of all shareholders.¹⁶

52. Any changes in share ownership of a company must be evidenced by lodging at the Registry a copy of the share transfer instrument bearing the signature of the transferor and naming the transferee. No transfer of stock or shares of a company is valid unless the instrument of transfer is presented to the Registrar of Companies and duly registered.¹⁷

IBCs

53. An IBC can be incorporated by making an application to the Administrator and filing articles of incorporation, which must include general information such as company name, number of directors, and the classes and maximum number of shares that the corporation is authorised to issue. An application for the incorporation of an IBC may be filed only by a registered agent licensed under the Corporate Management and Trust Services Providers Act (CMTSPA).¹⁸ All IBCs incorporated under the IBCA will be in the Register of IBCs maintained by the Director of IBCs¹⁹.

14. Section 5 of the Companies Act.

15. Sections 6, 77 and 176 of the Companies Act.

16. Section 194, read with the Third Schedule of the Companies Act.

17. Section 195A of the Companies Act.

18. Sections 5 and 5(1)(a) of the IBCA.

19. Section 318 of the IBCA.

54. An IBC that is in the business of international banking is required to submit an annual certification attesting to the ownership, directors and officers of the IBC. The information on this certificate includes the name and address of each shareholder who owns more than 5% of the shares.²⁰

ILLCs

55. An ILLC may be formed in Antigua and Barbuda by a person domiciled in Antigua and Barbuda signing and filing the articles of organisation with the FSRC. The articles of organisation must include among other items the name of the ILLC, name, address and signature of the registered agent (who must be a licensee under the CMTSPA) and information on any restrictions on the business that the ILLC may carry on.²¹

Foreign companies

56. A firm or body of persons, whether incorporated or unincorporated, that is formed outside Antigua and Barbuda, is known in Antigua and Barbuda as an “external company” and must register with the Registrar of Companies before it can carry on a business in Antigua and Barbuda.²² Section 338 of the Companies Act defines the following as “carrying on business” in Antigua and Barbuda:

- the business of the company is regularly transacted from an office in Antigua and Barbuda established or used for the purpose;
- the company establishes or uses a share transfer or share registration office in Antigua and Barbuda; or
- the company owns, possesses or uses assets situated in Antigua and Barbuda for the purpose of carrying on or pursuing its business, if it obtains or seeks to obtain from those assets, directly or indirectly, profit or gain whether realised in Antigua and Barbuda or not.

57. In order to be registered, the external company must file certain information with the Registrar, which includes general information such as company name, jurisdiction, date and manner of its incorporation; the business that the company will carry on in Antigua and Barbuda; the address of the registered or head office of the company outside Antigua and Barbuda; the address of the principal office of the company in Antigua and Barbuda; the names, addresses and occupations of the directors of the company; and the particulars of its corporate instruments.

20. Section 242 of the IBCA.

21. Sections 2, 12 and 17 of the ILLCA.

22. Section 537 of the Companies Act.

58. After registration, external companies must file annual returns with the Registrar of Companies containing information on the name of company, financial year, address of registered or head office, company number, address of principal office (if any), date of registration, fundamental changes in corporate structure (if any), share capital: class of shares, number issued and outstanding, amount (if any), shares purchased by the company in the last financial period and the cumulative total or/and if any shares have been redeemed by the Company in the last financial period.²³

Taxation requirements

59. All persons operating a company, business, trade, profession or service involved in economic activity in Antigua and Barbuda must register with the Commissioner of Inland Revenue for an identification tax number within 30 days of commencement of the economic activity.²⁴ Persons covered include relevant domestic companies, external companies, partnerships and trusts. The corporate registration form issued by Inland Revenue (Form F15) requires full disclosure of the identity of all shareholders where the enterprise is a company; and full disclosure of the identity of all partners in the case where the enterprise is a partnership.²⁵ Where a material change occurs in this information, this must be notified to the Commissioner of Inland Revenue immediately, but in every case submission of the next annual return.

60. International trusts, international foundations and ILLCs are generally exempted from taxes and duties in Antigua and Barbuda, with the exception of:

- tax on income derived from the sale or rental of property in Antigua and Barbuda;
- tax on income derived from the sale of equity or other interests in any entity incorporated or otherwise registered in Antigua and Barbuda and doing business in Antigua and Barbuda; or
- tax arising from or relating to the conduct of business or ownership of property in Antigua and Barbuda.

61. In such cases, unless the tax is paid by another person, the international trust, international foundation or ILLC would need to file a tax return with the Antigua and Barbuda authorities.²⁶

23. Section 356 of the Companies Act, read with Form 24 of the Companies Act Regulations.

24. Section 75A of the Income Tax Act.

25. www.forms.gov.ag/ird/pit/F15_Non_Individual_Enterprise.pdf.

26. Section 91 of the IFA, section 90 of the ILLCA and section 91 of the ITA

62. IBCs are generally exempted from all duties and taxes in Antigua and Barbuda.

Company ownership and identity information required to be held by companies

Domestic and non-profit companies

63. Companies are obliged under the Companies Act to maintain at their registered offices a register of members showing:

- the name and latest known address of each person who is a member;
- in a case of a company with share capital, a statement of the shares held by each member; and
- the date on which each person was entered on the register as a member, and the date on which any person ceases to be a member.

64. A company may appoint an agent to prepare and maintain the register, and such a register may be kept at its registered office or at another place within Antigua and Barbuda.²⁷

IBCs

65. An IBC is required to (through its registered agent) maintain at its registered office a register of shareholders showing:

- the name and the latest known address of each person who is a registered shareholder;
- a statement of the shares held by each registered shareholder; and
- the date on which each person was entered on the register as a shareholder and the date on which any person ceased to be a shareholder.

66. In the case of bearer shares the register must show: (i) the total number of bearer shares issued; (ii) the name of the beneficial owners; and (iii) the number identifying and date of issues of each bearer certificate.²⁸ The term “beneficial owner” is defined under the CMTSPA (see section on bearer shares).

27. Section 177 of the Companies Act.

28. Section 130(2) of the IBCA.

67. In addition to maintaining a register of shareholders, an IBC is required to hold annual general meetings and for each of these meetings prepare a list of its shareholders and the number of shares held by each shareholder.²⁹

ILLCs

68. An ILLC is required to keep at the office of its registered agent, or at another place to which the registered agent has access, prescribed information relating to the ILLC. This includes a list of the full name and last known business, residence or mailing address of each member and manager, a copy of the initial articles of organisation and all amendments, as well as a copy of membership certificates issued.³⁰

Foreign companies

69. The Companies Act does not impose any obligation on an external company to maintain information on its shareholders.

Ownership information held by nominees

70. The business of providing nominee shareholders for external companies, IBCs and ILLCs³¹ is regulated under the Corporate Management and Trust Service Provides Act (CMTSPA) and such service providers must be licensed under the CMTSPA.³² Such service providers also fall within the definition of “financial institution” under the Money Laundering (Prevention) Act (ML Act) and are required to comply with the relevant AML obligations.

71. The CMTSPA and AML laws require such nominee shareholders (providing such services for IBCs and ILLCs) to conduct customer due diligence on their clients; this will include obtaining, verifying and recording information on the identities and addresses of clients and their beneficial owners. More details on these obligations are available below in the section on Service Providers. Such nominee shareholders are not covered by these obligations if they are not acting in the course of business.

72. In respect of domestic companies, the Companies Act requires every person who has a substantial shareholding in a company (defined as having at least ten percent of the unrestricted voting right), whether directly or through

29. Section 111 of the IBCA

30. Section 8 of the ILLCA.

31. In the context of an ILLC, which does not have share capital, the provision of nominee shareholders refers to the scenario where the interest of a member in the ILLC is held through a nominee.

32. Sections 2 and 5 of the CMTSPA.

nominees, to give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder. He is required to do so within 14 days after he becomes aware that he is a substantial shareholder. If he ceases to be a substantial shareholder, he must give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder of the company, giving full particulars of the circumstances under which he ceased to be a substantial shareholder. The company is required to keep a register of such filings for a period of six years from the date of receipt.³³

73. Otherwise, the provision of nominee shareholders for domestic companies (whether on a professional or informal basis) is not regulated. Whether such service providers are subject to the due diligence requirements prescribed by the CMTSPA and the AML laws will depend on whether they meet the criteria for regulation in other respects (for example, if they are also financial institutions).

Ownership information held by service providers

74. Corporate management and trust service providers in Antigua and Barbuda are regulated under both the Corporate Management and Trust Service Providers Act (CMTSPA) and the Money Laundering (Prevention) Act (ML Act). The regulation of service providers through these Acts is an avenue through which identity and ownership information of relevant entities and arrangements can be made available. Many legal persons and arrangements conducting business from or in Antigua and Barbuda will have some involvement with a licensed service provider through either a one-off transaction or an on-going business relationship and it is through these instances that the relevant regulatory requirements under the CMTSPA and the AML laws are triggered and ownership information of relevant entities made available.

75. It is mandatory for IBCs and ILLCs to engage the services of an agent licensed under the CMTSPA. Only licensed service providers may provide nominee shareholders for external companies and IBCs, or act as custodians for IBC bearer shares. In addition, international trusts and international foundations would need to engage a licensed service provider. This arises from the requirement that they must have at least one Antigua and Barbuda domiciliary as trustee / foundation member, combined with the fact that the provision of such services is a regulated activity under the CMTSPA. This regime ensures that most of the offshore sector entities (IBCs, ILLCs, international trusts and international foundations) are covered.

33. Sections 181, 182, 183 and 184 of the Companies Act.

CMTSPA

76. The CMTSPA regulates a broad range of services:
- the administration of corporate management for profit or reward in or from within Antigua and Barbuda;
 - the conduct or the carrying on of corporate management and trust services in or from Antigua and Barbuda, including on-line corporate management services;
 - the management and administration of IBCs, external companies, ILLCs, and international foundations;
 - the provision of registered agent/office or officers/managers for IBCs, external companies, ILLCs, and international foundations;
 - the provision of directors/officers, nominee shareholders, and the preparation and filing of statutory documents for IBCs, external companies and ILLCs;
 - provision of asset management services not otherwise regulated by the FSRC or other Authority;
 - the provision of partners for partnerships registered under any law in force in Antigua and Barbuda;
 - acting as protector of an international foundation registered under the IFA;
 - the provision of services as a custodian of bearer shares; and
 - any other service provider that the Minister may by order specify.³⁴

77. A service provider that offers a regulated service must be licensed under the CMTSPA unless it qualifies for exemption. Section 4 of the CMTSPA allows a service provider to apply for exemption if: (a) the services rendered do not include the management or other control of assets of one or more entities the aggregate of which exceeds XCD 30 000 (USD 11 111); and (b) the services carried out fall under one of the following categories:

- services provided in or from within Antigua and Barbuda but which are otherwise regulated by the FSRC or by another Authority;
- services provided as an incorporator, registered agent, director, manager or officer of:
 - not more than 12 entities during any calendar year, where the person does not have a significant interest in any of them, or
 - any entity in which the person has an equity interest of 10% or more;

34. Section 2 of the CMTSPA.

- acting as trustee of no more than three international trusts registered under the ITA;
- acting as a member of a foundation council of not more than three international foundations registered under the IFA; and
- acting as a non-resident director, manager or officer of affiliated entities.

78. Antigua and Barbuda has advised that as at 31 December 2012, 19 service providers were licensed under the CMTSPA and one service provider was exempted from licensing and therefore exempted from paying the annual licence fee and annual on-site examination. Notwithstanding the exemption, the service provider is not discharged from keeping the documentation necessary to have established the exemption in accordance with the CMTSPA.

79. Where a licensed service provider is instructed by a client to provide corporate management services, he is required to conduct such due diligence as may be necessary to establish the identity and business background of a client. The information that a licensee must obtain from a client includes:

- details of the clients' principal place of business, business address, telephone and facsimile numbers and electronic address of the principal or professionals concerned with the client;
- details of the client's home address and telephone, and facsimile numbers and electronic address;
- copies of passport or identity card, driver's license and original utility bill or bank statement; and
- two sources of reference to provide adequate indication on the reputation and standing of the client.

80. In relation to trusts and foundations, Antigua and Barbuda authorities have advised that the relevant clients would include the settlors and founders respectively.

81. A licensee must also keep records on the names and addresses of the beneficial owners of entities for which it provides corporate management services. These records must be kept for six years from the date on which the service provider ceases to provide services to the client.³⁵ In relation to trusts and foundations, the Antigua and Barbuda authorities have advised that this refers to the beneficial owners and beneficiaries respectively.

35. Section 18 of the CMTSPA.

82. A service provider that is exempt from licensing under the CMTSPA is not subject to the above due diligence and record keeping obligations, but is nonetheless still subject to Antigua and Barbuda’s AML requirements.

AML requirements

83. The Money Laundering (Prevention) Regulations 2007 (ML Regulations), issued under the Money Laundering (Prevention) Act (ML Act) is the relevant legislation governing the AML obligations of “financial institutions” operating from or within Antigua and Barbuda – defined broadly to include all persons whose regular occupation or business is in the provision of corporate services.³⁶ It is an important source of ownership and identity information of offshore entities in Antigua and Barbuda. As explained above, all offshore entities (IBCs, ILLCs, international trusts and international foundations) are required to engage the services of at least one corporate service provider in Antigua and Barbuda.

84. The ML regulations oblige corporate service providers to obtain and record identification information of all customers who seek to form a business relationship with them. This will include obtaining information on the identity of the principal where the customer is acting in the capacity of an agent, and the identity of the ultimate natural persons who own or control the customer or principal where the customer or principal is a legal person or trust. Identity information obtained must be verified using reliable, independent source documents, data or information. A copy of the evidence and information as to where the evidence may be obtained must be kept for a period of six years from the date the business relationship ends.³⁷ If the financial institution is unable to obtain satisfactory evidence of the customer’s identity, it must not proceed with the business relationship with the customer, or may only do so under the direction of the FSRC.

85. Where a customer is acting in the capacity of an agent, the service provider has the option of accepting a written assurance from the customer that evidence of the principal’s identity has been recorded under the procedures maintained by the customer, but only if the service provider has reasonable grounds to believe that the agent is regulated by a local or overseas regulatory authority. In such situations the agent must be based in a country whose laws contain provisions of a similar or higher standard

36. The full list of financial institutions covered by the Money Laundering (Prevention) Regulations is contained in Schedule 1 of the Money Laundering (Prevention) Act.

37. Section 12B of the ML Act and regulations 4 and 5 of the ML Regulations.

of those contained in the ML Act. Even so, the principal service provider remains liable for any customer due diligence that is not performed.³⁸

Availability of identity and ownership information of companies in practice

Domestic, external and non-profit companies

86. In practice, all domestic, external and non-profit companies (IBCs are not included) have to file paper annual returns (containing updated shareholder information) with the Registrar of Companies. It is not possible for these companies to file the returns electronically and the returns together with the information contained therein are not digitalised and are kept in their original format by the Registrar. The Registrar views its duties as one of repository of information and does not have in place a regular programme to enforce the filing of annual returns or the reporting of changes in shareholders of companies. The Registrar of Companies also does not conduct any checks or audits to ensure that the register of shareholders is properly maintained by the companies. Notwithstanding the fact that the Registrar does not have in place a regular programme to enforce the filing of annual returns, the Registrar explained that most companies will require a “Certificate of Good Standing” that is issued by the Registrar to obtain loans and financing from financial institutions and for other official purposes such as applying for permits and licences. This certificate has a validity of 12 months, after which it has to be re-issued by the Registrar. As the certificate is issued only to companies that have complied with all their filing obligations, the Registrar takes the opportunity to enforce the filing of outstanding annual returns whenever they are requested by companies to issue such certificates. However, it is noted that a number of companies may not need this certificate and that even companies that have such a certificate may not need to report changes in ownership while the certificate is still valid.

87. The filing compliance rates for the annual returns for domestic, external and non-profit companies are summarised in the tables on the next page. Antigua and Barbuda authorities indicate that traditionally, companies were struck off from the Register if they failed to comply, rather than applying financial penalties. However, no statistics on the frequency or consistency of such action is available.

38. Regulation 4 of the ML Regulations.

Domestic companies

Year	Total no. of domestic companies registered with the Registrar as at the end of the year	No. of domestic companies that have not submitted Annual Returns in the year	No. of domestic companies where penalties under s. 533 of the Companies Act has been applied for non-filing of Annual Returns in the year
2010	11 680	70	No penalties were applied
2011	11 867	40	No penalties were applied
2012	12 035	100	No penalties were applied

Non-profit companies

Year	Total no. of non-profit companies registered with the Registrar as at the end of the year	No. of non-profit companies that have not submitted Annual Returns in the year	No. of non-profit companies where penalties under s. 533 of the Companies Act has been applied for non-filing of Annual Returns in the year
2010	96	15	No penalties were applied
2011	124	20	No penalties were applied
2012	143	17	No penalties were applied

External companies

Year	Total no. of external companies registered with the Registrar as at the end of the year	No. of external companies that have not submitted Annual Returns in the year	No. of external companies where penalties under s. 533 of the Companies Act has been applied for non-filing of Annual Returns in the year
2010	363	6	No penalties were applied
2011	377	6	No penalties were applied
2012	400	10	No penalties were applied

88. In addition to the filing of annual returns with the Registrar, domestic and external companies (IBCs are not included) are also required to register themselves with the Inland Revenue Department for tax purposes upon incorporation/registration. This is done by filing a physical corporate registration form (i.e. Form F15) with the Inland Revenue Department. The competent authority advised that all domestic and external companies are required to submit the corporate registration form to the Inland Revenue Department in order to complete the incorporation/registration procedures. Moreover, whenever there are changes to the shareholders, the domestic/external company has to report the changes to the Inland Revenue Department using the same corporate registration form. The competent authority advised that it does not carry out any specific enforcement procedures to ensure that all changes in

ownership of domestic and external companies are reported as it considers the risk of non-compliance as low. Statistics concerning the non-compliance of this obligation are not available. However, the competent authority highlighted that if a domestic/external company is selected for a tax audit, the shareholder information is verified as part of the profile of the legal entity by the tax auditor. The competent authority has conducted 115, 123 and 132 tax audits on companies in the years 2010, 2011 and 2012 respectively, and verified that there were no changes in shareholder information. In addition, if the competent authority receives information or intelligence that suggest that changes in shareholders have not been reported by the company, it may also trigger an investigation into the company to verify the changes and appropriate penalty may be imposed on the company and its officers.

89. Notwithstanding the above, the fact that neither the Registrar nor the Inland Revenue Department carries out enforcement procedures to ensure that information on the ownership of domestic and external companies is being filed or maintained gives rise to concerns on the availability of relevant information in practice.

90. During the period of review (i.e. 1 January 2010 to 31 December 2012), Antigua and Barbuda did not receive any EOI requests pertaining to identity and ownership information of domestic, external or non-profit companies.

IBCs

91. In practice, the FSRC started issuing licenses to service providers under the CMTSPA in the year 2012. The FSRC explained that for IBCs that were incorporated prior to the licensing of the service providers, the obligations under the old section 5(1) of the IBCA was applicable and an IBC could only be incorporated by any two resident citizens of Antigua and Barbuda, one of whom must be entitled to practice as an Attorney-at-Law in Antigua and Barbuda; or a body corporate authorised by the Cabinet of Antigua and Barbuda to perform IBC incorporation services.

92. Since 2012, the FSRC has issued licenses to 19 service providers. 19 of the 47 persons who have facilitated the incorporation of IBCs prior to the licensing of service providers under the CMTSPA were licensed under the CMTSPA in year 2012. The other 28 persons who have facilitated the incorporation of IBCs fall under the categories mentioned in the preceding paragraph. As the FSRC had started issuing licenses to service providers in year 2012, FSRC has not conducted any on-site/off-site examinations during the review period (i.e. 1 January 2010 to 31 December 2012) to ensure that the obligations and requirements under the CMTSPA as well as the obligations under the IBCA are being properly carried out by the agents/ licensed service providers. The on-site examinations of the licensed service providers under

the CMTSPA and the corresponding oversight programme are scheduled to commence in 2014.

93. While no on-site examination was conducted during the review period, the FSRC highlighted that a rigorous licensing framework was put in place in 2012 to screen applicants for the license issued under the CMTSPA. In general, the FSRC assesses whether the applicant meets the basic requisite of having the necessary academic and professional qualifications, training and experience to perform the duties required under the CMTSPA as well as other more subjective criteria such as possessing the requisite reputation, character, financial integrity and reliability. All the agents that did not fulfil the licensing criteria have to transfer its portfolio of IBCs they were managing to other licensed service providers.

94. As regards the fulfilment of the obligations under the ML Act by the agents and licensed service providers of IBCs, the regulatory function is performed jointly by the FSRC and the Office of National Drug Control Policy (ONDCP). The ONDCP has provided AML/CFT training and conducted sensitisation sessions for entities and businesses within the corporate management and trusts service providers sector during the review period. However, the FSRC and the ONDCP have not conducted any on-site/off-site examinations during the review period (i.e. 1 January 2010 to 31 December 2012) to ensure that the obligations and requirements under the ML Act are being properly carried out by the agents/ licensed service providers. The on-site examinations of the licensed service providers for compliance with the ML Act obligations are also scheduled to commence in 2014 and will be undertaken by the FSRC. With regard to the two IBCs that were engaged in the business of international banking and are subjected to ML Act, the FSRC has conducted yearly on-site examinations to ensure compliance with the obligations under the ML Act. Details of the on-site examinations and the FSRC's findings are elaborated in section A.3 of the report.

95. During the period of review (i.e. 1 January 2010 to 31 December 2012), Antigua and Barbuda did not receive any EOI requests pertaining to identity and ownership information of IBCs.

ILLCs

96. In practice, the FSRC has never received any application to form an ILLC and no ILLC currently exists in Antigua and Barbuda.

Nominees

97. While the business of providing nominee shareholders for external companies and IBCs are regulated under the CMTSPA and the service

providers must be licensed under the CMTSPA, the FSRC started licensing service providers in the year 2012. Section 34 of the CMTSPA provides that any person who at the date of coming into force of the CMTSPA (i.e. 31 December 2008) lawfully carries on the business of corporate management and trust service provider shall make an application within three months from the coming into force of the CMTSPA for a license. However, no deadline is specified in the CMTSPA for the FSRC to issue the license to the applicants once the applications have been submitted by the applicants with the three-month period. In this regard, it is not clear whether that the FSRC could enforce the obligations provided in the CMTSPA until the licenses were issued in 2012.

98. Notwithstanding the issue on the enforceability of the obligations in the CMTSPA, the CDD obligations required under the ML Act would still be applicable to these service providers. However, no on-site/off-site examinations or checks were conducted by the FSRC or the ONDCP on the service providers for compliance with CDD obligations required under the ML Act. The FSRC, however, highlighted that a rigorous licensing framework is in place to screen applicants for the licenses issued under the CMTSPA (see information in preceding paragraphs) and the FSRC and ONDCP were reasonably assured that the persons that have been issued with licenses would have the ability and capacity to carry out the CDD obligations under the CMTSPA.

99. As regards the potential gap in relation to situations where a person in Antigua and Barbuda is acting as nominee for another person and the nominee is not subject to the CMTSPA or the ML Act, it is not clear if this gap has any practical effect on effective EOI as the authorities have not encountered any such cases in practice. In addition, Antigua and Barbuda did not receive any EOI requests that pertained to the beneficial owners of companies that were held through nominees during the review period. Nonetheless, Antigua and Barbuda should ensure that this potential gap does not impede any exchange of information in practice, and should monitor the availability of this information on an on-going basis.

Conclusion

100. While ownership and identity information of domestic companies, non-profit companies, IBCs and ILLCs is made available through a combination of obligations imposed by various laws on either the entity itself or its service provider, Antigua and Barbuda did not have a regular oversight programme in place to monitor the compliance with the obligations provided under the CMTSPA and ML Act during the review period. Moreover, Antigua and Barbuda did not carry out any specific enforcement procedures to ensure that information on the ownership of domestic and external

companies is being filed or maintained. This gives rise to concerns about the availability of relevant information in practice. While the oversight programme for the licensed service providers has been planned to commence in 2014, Antigua and Barbuda should monitor the implementation of the planned oversight programme and exercise its enforcement powers as appropriate to ensure that the obligation to maintain ownership and identity information is being complied with by the relevant entity and the information is fully available in practice.

Bearer shares (ToR A.1.2)

101. The Companies Act does not allow domestic companies to issue bearer shares.³⁹

102. The IBCA has historically allowed IBCs that are not international banks to issue bearer shares. The Antigua and Barbuda authorities have however in recent years taken steps to immobilise them. Antigua and Barbuda has established a requirement for bearer shares to be deposited with a custodian, converted to registered shares, or cancelled. A custodian may be a licensed custodian if it has a physical presence in Antigua and Barbuda, or a recognised custodian if it is located outside of Antigua and Barbuda, and needs to meet the requirements and obligations under the 2010 amendments of the IBCA and the CMSTPA. Licensed and recognised custodians need to be licensed or approved by the FSRC under the CMSTPA. As described above, where an IBC has issued bearer shares, the licensed custodian is obliged to maintain a register identifying all the beneficial owners of such shares. All deposits of bearer shares with licensed and recognised custodians must be accompanied by a written notice setting out the name and address of every beneficial owner of the bearer share, any other person having an interest in the bearer share, and every company management and trust service provider of the company that issued the bearer share.⁴⁰ If there is a change in the beneficial ownership of a bearer share, the company or the former beneficial owner must within seven days of the change send a notice to the custodian that includes the following information:

- name and address of the new beneficial owner;
- name and address of any other person having an interest in the bearer share; and
- the circumstances under which the change in beneficial ownership occurred.

39. Section 29(2) of the Companies Act.

40. Section 139F of the IBCA.

103. Both the custodian and the company are required to provide a copy of this notice to all of the company's service providers. The transfer of beneficial ownership is not effective until all the above requirements have been met.⁴¹ The CMTSPA defines the term "beneficial owner" as a person who enjoys the benefits of ownership of property or an interest in property but who may not necessarily be registered or listed as the legal owner of the property or interest.⁴²

Identity and ownership information of bearer share owners in practice

104. While there are requirements for the IBCs to maintain a register identifying all the beneficial owners of bearer shares, the FSRC has not conducted any on-site examinations or checks during the review period to ensure that such registers are properly kept by the IBCs or their agents. The FSRC advised that the oversight programme is scheduled to commence in 2014. During the review period, Antigua and Barbuda did not receive any EOI requests that pertained to the identity information of the owner of a bearer shares issued by IBCs. Peers have not highlighted any particular concerns relating to bearer shares.

105. As regards the custodian arrangement, the FSRC advised that they have issued 19 licenses to service providers under the CMTSPA in 2012. Out of these 19 licensed service providers, six were issued with a Composite License which allows the service providers to also provide custodian services to IBCs that have issued bearer shares. There are currently no recognised custodians and there were no applications for recognised custodians during the period under review. As at 31 October 2013, the FSRC reported that 95% of the bearer shares issued by IBCs have been deposited with a licensed custodian before the expiry of the transition period provided under the IBC Act. The remaining 5% of the bearer shares which were not deposited with a licensed custodian before the expiry of the transition period are considered "disabled". These remaining bearer shares were held by two service providers that were not licensed to perform custodian services. The FSRC issued notices to these two service providers informing that the bearer shares that were in their custody were disabled. The effect of holding a "disabled" bearer share is that the holder will not have any entitlement to vote, distribution and to a share in the assets of the IBC in the event that the IBC is being wound up or upon its dissolution. In addition, according to Section 139B of the IBCA, any transfer or purported transfer of an interest in the "disabled" bearer share is void and has no effect. The rights to holding the bearer share

41. Section 139G of the IBCA.

42. Section 2 of the CMTSPA

cannot be reactivated even if the bearer share is subsequently deposited with a custodian. Similarly, the FSRC has not conducted any on-site/off-site examinations or checks during the review period to ensure that the custodians are performing its duty in accordance with the obligations required under the IBCA, CMTSPA and ML Act.

Conclusion

106. While the above mechanisms ensure that the bearer share owners are properly identified, Antigua and Barbuda has not conducted any on-site visit of the licensed service providers during the review period. Antigua and Barbuda has informed the two service providers that were not licensed to perform custodian services that the bearer shares that were in their custody were disabled. Antigua and Barbuda should monitor the implementation of the oversight programme planned in 2014 and exercise its enforcement powers as appropriate to ensure that the legal obligations to maintain information identifying the owners of all bearer shares is being complied with and the information is fully available in practice.

Partnerships (ToR A.1.3)

107. In Antigua and Barbuda, the law relating to partnerships is generally governed by common law principles. There are no statutory provisions specifically governing partnerships. While there is a Partnership Act, this is an 1888 statute that simply sets out types of arrangements that are not deemed to constitute partnerships.

Ownership and identity information required to be provided to government authorities

108. The Income Tax Act requires all persons who operate a company, business, trade, profession or service involved in economic activity in Antigua and Barbuda to register with the Commissioner of Inland Revenue for tax purposes⁴³

109. This would include both domestic and foreign partnerships that carry on a business in Antigua and Barbuda. The identities of all partners must be provided as part of registration requirements.⁴⁴ In addition, every partner in a partnership must file annual tax returns giving details of the partnership

43. Sections 2 and 75A of the Income Tax Act. “Trade” is defined as every trade, manufacture, adventure or concern in the nature of trade, and economy activity” is defined as any activity for which a charge is made.

44. www.forms.gov.ag/ird/pit/F15_Non_Individual_Enterprise.pdf.

income and the apportionment of the partnership income among each of the partners.⁴⁵ Moreover, the precedent partner (as defined in section 18 of the Income Tax Act) or a representative (as referred in the same provision) must file a return of the income of the partnership for any year and include the names and addresses of the other partners in the partnership together with the amount of the share of the said income to which each partner was entitled for that year. Section 18 of the Income Tax Act is transcribed below:

Where a trade, business, profession or vocation is carried on by two or more persons jointly:

(1) the income of any partner from the partnership shall be deemed to be the share to which he was entitled during the year preceding the year of assessment in the income of the partnership (such income being ascertained in accordance with the provisions of this Act) and shall be included in the return of income to be made by such partner under the provisions of this Act;

(2) (a) the precedent partner, that is to say, the partner who of the partners resident in Antigua and Barbuda *(i)* is first named in the agreement of partnership, or *(ii)* if there is no agreement, is named singly or with precedence to the other partners in the usual name of the firm, or *(iii)* is the precedent acting partner, if the partner named is not an acting partner, shall when required by the Commissioner, make and deliver a return of the income of the partnership for any year, such income being ascertained in accordance with the provisions of this Act, and declare therein the names and addresses of the other partners in the firm together with the amount of the share of the said income to which each partner was entitled for that year;

(b) Where no partner is resident in Antigua and Barbuda, the return shall be made and delivered by the attorney, agent, manager, or factor of the firm resident in Antigua and Barbuda.

(3) Any person who refuses, fails or neglects to deliver any return required under the provisions of this section shall be guilty of an offence against this Act.

45. [www.ab.gov.ag/gov_v4/pdf/forms/finance/F51%20Personal%20Income%20Tax%20Monthly%](http://www.ab.gov.ag/gov_v4/pdf/forms/finance/F51%20Personal%20Income%20Tax%20Monthly%20).

Ownership and identity information required to be held by partners and partnerships

110. There are no statutory obligations on partners or on partnerships to maintain information on the partners.

Ownership and identity information of partners of partnerships in practice

111. According to the Antigua and Barbuda's competent authority, all partnerships are required to file the corporate registration form (i.e. Form F15) containing the identification details of the partners of the partnership with the Inland Revenue Department when the partnership is formed in Antigua and Barbuda. This obligation is also applicable to any partnerships formed outside Antigua and Barbuda but carrying on a business in Antigua and Barbuda. The Inland Revenue Department receives approximately 30 of such forms each year from partnerships (i.e. 29 in 2010, 31 in 2011 and 36 in 2012). The competent authority also explained that partnerships are not required to file annual returns as they are treated as tax transparent entities for tax purposes and any income derived through the partnership is taxed in the hands of the partners. In this regard, the partners are required to submit annual tax returns reporting their share of the income in the partnership to the Inland Revenue Department.

112. The competent authority advised that it does not carry out any specific enforcement procedures to ensure that all changes in partners in partnerships are reported to the Inland Revenue Department. Hence, statistics concerning the non-compliance of this obligation are not available. However, the competent authority highlighted that if a partnership is selected for tax audit, the identity of the partners of the partnership are verified as part of the profile of the partnership by the tax auditor. The Inland Revenue Department has audited 13, 15 and 17 partnerships in the year 2010, 2011 and 2012 respectively. In addition, if the competent authority receives information or intelligence to suggest that changes in the partnership have not been reported, it may also trigger an investigation to verify the changes and appropriate penalty may be imposed. Section 18 of the Income Tax Act stipulates that failure to deliver a return by the partner or representative constitutes an offence against the Income Tax Act. Section 82 provides for a penalty for such a failure. Antigua and Barbuda has not applied this penalty in relation to partners of partnerships that failed to file a return. Antigua and Barbuda should put in place enforcement procedures to ensure that changes in partnerships are reported to its authorities.

113. During the period of review (i.e. 1 January 2010 to 31 December 2012), Antigua and Barbuda did not receive any EOI requests pertaining to identity information of partners of partnerships.

Conclusion

114. While the income tax obligations imposed on relevant partnerships ensure that information on the partners is available to the Antigua and Barbuda's authorities, the Antigua and Barbuda's authority should establish a system of oversight to ensure that information identifying the partners of partnerships is available in all cases in practice.

Trusts (ToR A.1.4)

115. The law of Antigua and Barbuda provides for the creation of ordinary trusts and international trusts. Ordinary trusts are recognised and created under the common law framework and have no governing statutes.

116. International trusts are a component of Antigua and Barbuda's off-shore services sector and are formed and regulated under the International Trusts Act (ITA). An international trust must have at least one trustee who is a domiciliary of Antigua and Barbuda, and may not have an Antigua and Barbuda domiciliary as settlor or beneficiary. It may not manufacture a product or provide goods or services for sale anywhere within the Caribbean region, or otherwise actively conduct business for profit in Antigua and Barbuda. An international trust may only be created through a trust deed or equivalent document. Upon the execution of the trust deed or equivalent document by a settlor and a trustee and registration in Antigua and Barbuda, an international trust acquires a legal personality and may hold assets in its own name.⁴⁶ As of 31 December 2012, there were 21 international trusts registered under the ITA in Antigua and Barbuda.⁴⁷

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

117. There is no obligation for ordinary trusts or foreign trusts (defined as trusts which are governed by the law of a jurisdiction other than Antigua and Barbuda) to be registered in Antigua and Barbuda. However, as noted above, ordinary trusts that operate a company, business, trade, profession or service involved in economic activity in Antigua and Barbuda must register with the Commissioner of Inland Revenue for income tax purposes. No details of the

46. Section 6 of the ITA.

47. Figures provided by Antigua and Barbuda.

trust beneficiaries or settlors need to be provided at the point of registration or in the annual tax returns. Trusts are taxed at the trustee level.⁴⁸

118. An international trust must be registered pursuant to Section 17 of the ITA. At the point of registration international trusts must submit information on the trust name, name and address of all trustees and protectors.⁴⁹

119. This registration requirement also applies to foreign trusts which subsequently change their governing law to Antigua and Barbuda law. Upon registration such foreign trusts become international trusts and are subject to the regulations of the ITA; this includes having at least one trustee who is an Antigua and Barbuda domiciliary.⁵⁰

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

120. Statutory requirements to keep ownership and identity information apply to professional trustees that act by way of business. This applies to professional trustees of foreign, international and ordinary trusts. The provision of such trustee services is regulated under the CMTSPA and the ML Act and such professional trustees are required to conduct customer due diligence on the trusts for which they act as trustees. This includes establishing the identities of the settlors and beneficiaries of the trusts for which they provide services to.⁵¹ More details of these obligations can be found in the earlier section on information held by service providers.

121. In respect of trusts that are not professionally managed (including foreign trusts), the obligations on the trustee to maintain information on the trust beneficiaries and settlors arise only from the requirements of common law. The common law places obligations on trustees to have full knowledge of all the trust documents, to act in the best interests of the beneficiaries and to only distribute assets to the right persons. These obligations implicitly require all trustees to identify all the beneficiaries of the trust since this is the only way the trustee can carry out his duties properly. If the trustees fail to meet their common law obligations they are liable to being sued.

Common Law Obligations

122. The rules governing the obligations to maintain identity information of the settlors, trustees and beneficiaries of trusts (i.e. trusts that are not managed by trustees that are regulated under the CMTSPA and ML Act) is

48. Section 21 of the Income Tax Act.

49. Schedule 1 of the ITA.

50. Section 17 of the ITA.

51. Section 18 of the CMTSPA.

largely based on the English common law as a result of the Common Law (Declaration of Application) Act of 1705. This means that for a discretionary trust to be valid, it needs to meet the three certainties: the certainty of intention, the certainty of subject matter and the certainty of object. As a consequence, a trust is only valid if evidenced by a clear intention on behalf of the settlor to create a trust, clarity as to the assets that constitute the trust property and identifiable beneficiaries (*Knigh v Knigh* (1849) 3 Beav 148). In addition, the trustee has several obligations which all suggest that he/she is required to know who the beneficiaries of the trust are in order to be able to comply with these obligations. Example are the obligation to avoid conflicts of interests between the trustee's fiduciary duties and their own self-interest (*Bray v Ford* [1896]) and the obligation to familiarise themselves with all information regarding the trust including the trust documents and assets (*Hallows v Lloyd* (1888) 39 Ch D 686, 691). Finally, trustees are under a fiduciary duty to keep accounts of the trust and to allow beneficiaries to inspect them as requested (*Pearse v Green* (1819) 37 E.R. 327 at 329).

123. In summary, the obligations placed on trustees (which are not regulated under the CMTSPA and ML Act) by English common law, which are applied in Antigua and Barbuda, ensure the maintenance of identity information on the settlors and beneficiaries. This means that even where a trustee would not be required under CMTSPA or the ML Act to identify the beneficiaries of the trust, he/she is still required to have this information available based on the common law obligations. The common law obligations should ensure that trustees are complying with their ongoing records keeping requirements although its effectiveness in ensuring the availability of information for EOI purposes in practice should be monitored by Antigua and Barbuda on an ongoing basis.

Trust ownership and identity information in practice

124. The regulatory body that has oversight of the ITA is the FSRC. The FSRC is responsible for the registration of all international trusts established in Antigua and Barbuda. According to the FSRC, there is no obligation for an international trust to engage a service provider licensed under the CMTSPA as a trustee. However, in practice, and in accordance with the IBCA, the trustees of international trusts are either service providers licensed under the CMTSPA or two specific IBCs licensed under the IBCA that are engaged in the business of international banking. These two IBCs also hold a license that allows them to conduct trust and international banking businesses in accordance with the IBCA. These two IBCs are subject to the ML Act and are required to conduct CDD on their customers.

125. As regards the trustees that are service providers licensed under the CMTSPA, the FSRC has not conducted any on-site/off-site examinations

or checks during the review period to ensure that the obligations under the CMTSPA to conduct CDD were properly carried out by the service providers. Similarly, no on-site examinations or checks were conducted during the review period to ensure that obligations under the ML Act were properly carried out by these licensed service providers. The FSRC advised that the oversight programme is scheduled to commence in 2014.

126. During the period of review (i.e. 1 January 2010 to 31 December 2012), Antigua and Barbuda did not receive any EOI requests pertaining to identity information relating to settlors, beneficiaries or trustees of trusts.

Conclusion

127. The obligation for trustees to have information on trust settlors and beneficiaries stems primarily from common law, and in the case of international trusts, also from the CMTSPA and anti-money laundering requirements that apply to the Antigua and Barbuda trustee.

128. It is conceivable that a trust could be created which has no connection with Antigua and Barbuda other than that the settlor chooses the trust to be governed by Antigua and Barbuda's law. In that event, there may be no information about the trust available in the Antigua and Barbuda. In these situations, trust information would have to be available in the jurisdiction where the trustee is located as the relevant records would be situated there.

129. While the CMTSPA and ML Act obligations imposed on relevant trustees should ensure that information on settlors and beneficiaries is available to the Antigua and Barbuda competent authority, the Antigua and Barbuda's authority did not have a system of oversight in place to ensure that the legal obligations to maintain information identifying the settlors and beneficiaries are being complied with by the obligated persons. Antigua and Barbuda should monitor the implementation of the oversight programme planned in 2014 and exercise its enforcement powers as appropriate to ensure that the legal obligations are being complied with by the obligated persons and the information is fully available in practice.

Foundations (ToR A.1.5)

130. The laws of Antigua and Barbuda provide for the creation of international foundations under the International Foundations Act (IFA). An international foundation is recognised as a separate legal entity and may be established through the execution of a foundation charter by a founder and by the members of a foundation council. At least one of the members of

the foundation council must be a domiciliary of Antigua and Barbuda.⁵² As of 2010, there were no international foundations registered in Antigua and Barbuda.

131. There are no laws that provide for the creation or recognition of domestic foundations in Antigua and Barbuda. While there may be non-profit organisations in Antigua and Barbuda who use the term “foundation” in their name, this does not refer to a foundation in the sense of a legal arrangement or relationship. Rather, it refers to its ordinary meaning, being an institution supported by endowments. These “foundations” are predominantly used for charitable purposes and usually take the legal form of a company limited by guarantee.

Foundation ownership and identity information required to be held by government authorities

132. An international foundation that specifies the laws of Antigua and Barbuda for any part of its administration must be registered with the FSRC, which maintains a Register of International Foundations. At the time of registration, the international foundation must provide to the FSRC the names and addresses of the following persons:

- the Antigua and Barbuda member of the foundation council;
- all non-resident members; and
- all protectors.⁵³

Foundation ownership and identity information required to be held by foundations

133. Each international foundation is obliged to keep at its registered office a register containing the names and addresses of each foundation member and protector.⁵⁴ The registered office of an international foundation is the office of the Antigua and Barbuda member of the foundation.

134. Section 21 of the IFA states that a foundation charter shall:

- specify the name of the foundation;

52. Section 2 of the IFA defines a domiciliary as a person who resides in Antigua and Barbuda with the intention of making Antigua and Barbuda his or her permanent place of residence, or an entity that is incorporated or registered in Antigua and Barbuda and has its principal place of business in Antigua and Barbuda.

53. Section 17 of the IFA.

54. Section 53 of the IFA.

- specify the beneficiary or class of beneficiaries, or, if no beneficiary, the purpose of the foundation;
- appoint a foundation council and specify its members;
- set forth the respective rights, duties, responsibilities and beneficial interests of the foundation council and the beneficiary;
- set forth the method for appointing or removing a member of the foundation council; (f) specify the initial endowment; and
- set forth the manner in which the endowment shall be maintained and distributed.

135. There are however no statutory obligations on the international foundation to keep or maintain a copy of the foundation charter.

136. Identity information on the founders and beneficiaries of international foundations is instead made available through the CMTSPA and AML obligations imposed on their service providers, which would include the compulsory Antigua and Barbuda member of the foundation council.

137. There were no international foundations found registered in Antigua and Barbuda during the period of review. In practice, if such international foundations are created or established, their service providers will be under the oversight of the FSRC. Antigua and Barbuda should put in place a system of oversight to ensure the availability of information in practice for any international foundations registered in future.

Conclusion

138. CMSTPA and AML obligations imposed on the Antigua and Barbuda foundation council member ensure that information on the founders and beneficiaries is available to the competent authorities.

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

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

140. In Antigua and Barbuda, where an obligation to retain relevant information exists, it is generally supported by an enforcement provision to address the risk of non-compliance.

141. Section 194 of the Companies Act provides that the company and every director and officer that is in default of the requirement to file an annual return to the Registrar of Companies setting out prescribed information (which includes the list of shareholders) is guilty of an offence and is liable on summary conviction to a fine of XCD 5 000 (USD 1 850).⁵⁵ The statistics on the compliance with the filing requirement and the number of times the penalties under the Companies Act were imposed during the review period is summarised in section A.1.1. No penalties are applicable for companies that fail to maintain a register of shareholders – this is however not an issue in view of the above enforcement provisions in relation to annual returns. In practice, Antigua and Barbuda did not apply any penalties during the review period for the failure to file annual returns. Antigua and Barbuda should exercise its enforcement powers as appropriate to ensure the compliance of filing annual returns.

142. Any person who knowingly files incorrect or incomplete information is guilty of an offence and is liable upon summary conviction to a fine of XCD 5 000 (USD 1 850) or/and a two year imprisonment. Where this offence is committed by a body corporate, any director or officer who knowingly authorised, permitted or acquiesced in the commission of the offence is also guilty of the offence and upon summary conviction is liable to the same penalties. In practice, the Registrar detected incorrect or incomplete information or filings, and the relevant companies were asked to file corrected documents along with a statutory declaration confirming the accuracy of the information filed. However, no penalties were imposed by the Registrar.

143. A substantial shareholder that fails to comply with the filing requirements described under the Companies Act attracts upon summary conviction a fine of up to XCD 5 000 (USD 1 850).⁵⁶ In practice, there were no known cases where a shareholder was charged or convicted under section 185 and 533 of the Companies Act for non-compliance with the filing requirements.

144. A resident agent of an IBC that fails to keep a register of shareholders and the prescribed information relating to any bearer shares or who knowingly enters false information in the register is guilty of an offence and is liable on conviction to a fine of XCD 50 000 (USD 18 500) and the court may direct that the registration of the IBC be revoked.⁵⁷ In practice, the FSRC has not conducted on-site/off-site examinations to ensure that the register of

55. Section 533 of the Companies Act.

56. Sections 185 and 533 of the Companies Act.

57. Section 130(2a) of the IBCA.

shareholders and the prescribed information relating to any bearer shares are properly kept. Consequently, the penalties provided under section 130(2a) of the IBCA were never imposed in practice. The FSRC has never revoked the registration of any IBC. The FSRC advised that the oversight programme for service providers licensed under the CMTSPA and persons subject to the ML Act will commence in the year 2014.

145. Failure by any IBC to file any return or notice prescribed by the IBCA is sufficient grounds for the FSRC to strike off the IBCA from its register.⁵⁸ In practice, during the review period, the FSRC struck off 1040 IBCs (483 in 2010, 283 in 2011 and 274 in 2012) from its register for failure to file return or notice prescribed by the IBCA.

146. An enterprise that carries on a business in Antigua and Barbuda and fails to register with the Inland Revenue within the specified time period is guilty of an offence and is liable upon summary conviction to a fine of XCD 2 000 (USD 740) and a further XCD 200 (USD 74) for every day the default continues. In practice, the Inland Revenue Department receives information on the registration of any businesses (e.g. domestic and external companies) from the Registrar and such businesses are required to register with the Inland Revenue Department to complete the registration procedure with the Registrar. In this regard, the penalties concerning the non-registration with the Inland Revenue Department were never invoked in practice.

147. A licensed service provider that fails to undertake the necessary customer due diligence (CDD) measures prescribed under the CMTSPA is liable upon conviction to a fine of up to XCD 5 000 (USD 1 850).⁵⁹ In practice, the FSRC has not conducted any on-site examinations during the review period to ensure that the CDD measures prescribed under the CMTSPA were being adhered to the licensed service providers as the licensing of service providers only started in year 2012. Consequently, the penalties provided under the CMTSPA were never imposed in practice. The FSRC advised that the oversight programme for service providers licensed under the CMTSPA will commence in the year 2014.

148. A licensed service provider that fails to undertake the necessary customer due diligence measures prescribed under the ML Act is liable upon summary conviction to a fine not exceeding XCD 500 000 (USD 185 000), or on conviction on indictment to a fine not exceeding XCD 1 000 000 (USD 370 000).⁶⁰ Similarly, in practice, the FSRC and the ONDCP have not conducted on-site examinations during the review period to ensure that the CDD measures prescribed under the ML Act were being adhered to by

58. Section 335 of the IBCA.

59. Section 27(7)(b) of the CMTSPA.

60. Section 12(6) of the ML Act.

obligated person under the ML Act. Consequently, the penalties provided in the ML Act were never imposed in practice. The FSRC and ONDCP advised that the oversight programme for service providers that are subject to ML Act will commence in the year 2014.

149. The ILLCA does not prescribe any penalties for ILLCs that fail to maintain prescribed information under Section 8 of the ILLCA, which includes a list of the full name and last known business, residence or mailing address of each member and manager, a copy of the initial articles of organisation and all amendments, as well as a copy of membership certificates issued. The enforcement of this requirement is instead effected through the registered agent, who is required by the CMTSPA to keep the records prescribed under the ILLCA. Failure to do so attracts upon conviction a fine of up to XCD 5 000 (USD 1 850). In practice, there are no ILLCs in Antigua and Barbuda.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
During the review period, Antigua and Barbuda did not have a regular oversight programme in place to monitor the compliance of the obligations to maintain ownership and identity information and penalties for non-compliance were unenforced in practice. Antigua and Barbuda plans to commence the oversight programme for service providers in 2014.	Antigua and Barbuda should put in place an oversight programme to ensure the compliance of the obligations to maintain ownership and identity information for all relevant entities and arrangements and exercise its enforcement powers as appropriate to ensure that such information is available in practice.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

General requirements (ToR A.2.1), Underlying documentation (ToR A.2.2) and 5-year retention standard (ToR A.2.3)

Accounting records to be kept in respect of companies

Domestic and non-profit companies

150. Ordinary and non-profit companies must keep accounting records to meet their obligations under the Income Tax Act, Antigua and Barbuda Sales Tax Act (ABSTA) and the Companies Act.

151. Deficiencies concerning the legal obligation to maintain comprehensive accounting records existed for these entities prior to the supplementary review. However, these deficiencies were rectified through the amendment to Antigua and Barbuda's laws in 2011 reviewed in the supplementary review.

152. Under the existing Section 77 of the Income Tax Act, any person who is engaged in any business by way of trade or in any profession or required to make any return under the Income Tax Act is required to keep and maintain in Antigua and Barbuda in English Language, books of accounts, sufficient to record all transactions in order to ascertain the gains and profits made or the loss incurred in respect of these transaction (Section 77(1) of the Income Tax Act). In addition to the books of account, any source documents and underlying documentation utilised in the creation of the books of account and the underlying documentation must also be kept (Section 77(2) of the Income Tax Act). Source documents is defined to include but not limited to sales and purchase invoices, costing documents, bookings, diaries, purchase orders, delivery notes, bank statements, contracts and all documents which relate to any element of the transaction (Section 77(4) of the Income Tax Act). All such records have to be retained for a minimum period of seven years from the date on which the transaction took place (Section 77(3) of the Income Tax Act). Failure to do so is an offence and attracts upon conviction, a fine of XCD 10 000 (USD 3 703) or imprisonment for six months (Section 77(5) of the Income Tax Act). The same obligation is also provided in Sections 4B and 4C of the Inland Revenue Administration Act on any person(s) that is required to provide a return under the Acts mentioned in Schedule 1 of the Inland Revenue Administrative Act.

153. In addition to keeping records on financial transactions and underlying documents, the Income Tax Act also requires all persons engaged in business in Antigua and Barbuda to file annual tax returns. This includes

non-profit companies. Failure to do so is an offence and attracts upon summary conviction a penalty not exceeding XCD 5 000 (USD 1 850), and in default of payment to imprisonment with or without hard labour for a term not exceeding six months. A tax return must be accompanied by an audited financial statement, which must include a balance sheet, an income statement and a cash flow statement.⁶¹

154. Under the ABSTA, all persons which supply goods and services the value of which meet the registration thresholds (XCD 300 000 (USD 111 111) in any 12 month period) are required to register for ABST purposes. Such persons are required to issue sales invoices if they make a taxable supply to another registered person.⁶² Section 38 of the ABSTA requires all registered persons to keep copy of all ABST invoices, credit notes and debit notes issued and received, as well as all customs documentation relating to imports and exports of goods by the person. There is no express requirement for registered persons to keep the relevant documents for at least five years.

155. Under Section 154(A) of the Companies Act, a company is required to retain all accounting records that *(i)* correctly explain all transactions; *(ii)* enable the financial position of the entity to be determined with reasonable accuracy at any time; and *(iii)* allow financial statements to be prepared (Section 154(A)(1) of the CA). In addition, the accounting records should further include underlying documentation, such as invoices, contracts, purchase orders, delivery notes and bank statements which should reflect details of *(i)* all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; *(ii)* all sales and purchases and other transactions; and *(iii)* the assets and liabilities of the entity (Section 154(A)(2) of the CA). Finally, a company is also required to retain all underlying documentations for a minimum period of six years from the date of winding up (Section 154(A)(3) of the CA).

156. The Companies Act also requires the directors of domestic companies to place before their shareholders at every annual meeting financial statements pertaining to the latest two financial years. Such financial statements must be prepared in accordance with the standards approved by the Institute of Chartered Accountants of Antigua and Barbuda and must contain at least: *(a)* a balance sheet; *(b)* a statement of retained earnings; *(c)* a statement of income; and *(d)* a statement of changes in financial position. The company may omit certain items from the financial statement if the Registrar of Companies reasonably believes that such disclosure would be disadvantageous to the company's business. Examples would include cases where the

61. Section 49A of the Income Tax Act, read together with the Corporation Tax Guide 2011.

62. Section 9 of the ABSTA.

company deals in only one line of products or services and its competitors are not required to make similar disclosures, or information the disclosure of which would put it in at a disadvantage in its dealings with its suppliers, customers or others.⁶³

157. Non-profit companies are exempt from the above obligation, but are required to within 15 days of their annual meetings submit to the Registrar a financial statement showing the assets and liabilities of the company in the form of a balance sheet and the revenue and expenditure of the company since the date of incorporation or the date of the previous financial statement.⁶⁴

Foreign companies

158. The accounting record keeping obligations applicable to domestic companies under the Income Tax Act and the ABSTA apply similarly to relevant foreign companies that meet the criteria established in the respective Acts.

159. In addition, Section 356(A) of the Companies Act further requires an external company to retain all accounting records which (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared (Section 356(A)(1) of the CA). The accounting records should further include underlying documentation, such as invoices, contracts, purchase orders, delivery notes and bank statements which should reflect details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the entity (Section 356(A)(2) of the CA). Finally, an external company is also required to retain all underlying documentations for a minimum period of six years from the date of winding up (Section 356(A)(3) of the CA).

160. For the obligations under the Income Tax Act and ABSTA to maintain accounting records, routine tax audits are conducted by the Inland Revenue Department on the taxpayers and in the process, accounting records are also verified. The Inland Revenue Authority conducted approximately 30-40 tax audits a year during the review period. In cases where accounting records were found to have not been kept or properly maintained, the Inland Revenue Department takes the opportunity to educate the taxpayer of the need to keep and maintain accurate accounting records and may also impose

63. Section 149 and 150 of the Companies Act, read together with Regulation 10 of the Companies Regulations 1997.

64. Regulation 28 of the Companies Regulations 1997.

penalties provided under the Income Tax Act. The penalty also includes raising a default tax assessment based on the Inland Revenue Department's estimates if the accounting records were found to be insufficient for the Inland Revenue Department to accurately assess the tax payable by the entity.

161. As regards the statistics on the imposition of the penalties provided under the Income Tax Act for failure to file annual tax returns and financial statements with the Inland Revenue Authority, the Inland Revenue Department advised that such information was not captured by their IT system during the review period and hence the Inland Revenue Department could not provide details on the number of times the non-filing penalties were imposed on defaulting taxpayers during the same period. However, the Inland Revenue Department assessed that the tax filing compliance rate of domestic and external companies were healthy during the review period.

162. As regards the Registrar's obligations to maintain accounting records under the Companies Act, the Registrar explained that it views its duties as more of a repository of information and it does not carry out active enforcement action with respect to the obligations to maintain accounting records. During the period of review (i.e. 1 January 2010 to 31 December 2012), Antigua and Barbuda did not receive any EOI requests pertaining to the accounting information of domestic, non-profit or external companies.

International business companies

163. The IBCA requires the directors of a IBC, if required by the articles of incorporation or by-laws, to place before the shareholders at every annual meeting of the shareholders of the IBC: (a) financial statements relating separately to previous two financial years; (b) the report of the auditor, if any; and (c) any further information with respect to the financial positions of the corporation and the results of its operations required by the articles of the corporation, its by-laws, or unanimous shareholder agreement. The IBCA further requires all IBCs to keep at their registered offices a copy of the financial statements of each of its subsidiaries whose accounts are consolidated in its financial statements.⁶⁵ Section 132(1) of the IBCA further provides that "In addition to the records described in section 130 [i.e. concerning corporate information], a corporation shall prepare and maintain adequate accounting records containing minutes of meetings and resolutions of the directors and any committees of the directors...". While this section of the IBCA provides for an express obligation for IBCs to maintain accounting records, it is not clear whether these obligations fully meet the requirements of the Terms of Reference. Antigua and Barbuda should amend and clarify its law to ensure that there are clear and comprehensive legal obligations

65. Sections 142 and 144 of the IBCA.

requiring IBCs to keep reliable accounting records including the underlying documentation in all cases for at least 5 years, and monitor the compliance and enforce these legal obligations.

164. An IBC that is a “licensed institution”⁶⁶ must in respect of all its transactions obtain the name and number of the account, the type, amount and date of the transaction, and the identity of the party authorising the transaction. In relation to deposits, it must obtain the account name, number and the financial institution from which the accounts were drawn. In relation to withdrawals it must obtain the name, address and where applicable the financial institution and account name and number to whom the funds are disbursed. All the information obtained must be retained for at least five years.⁶⁷

165. Additionally, an IBC that is an international bank must as a condition of its license further submit an annual audited return to the FSRC providing an analysis of customers’ liabilities to the corporation in respect of loans, advances and other assets of the corporation, a profit and loss statement, a balance sheet, and the statement of assets and liabilities. The return must be submitted no later than 21 days after the end of the year to which it relates.⁶⁸ An international bank is also subject to AML requirements, and accordingly must keep for a minimum of six years details relating to all transactions it carries out in the course of its banking business. The IBCA does not impose an obligation on IBCs to keep underlying documents.

166. In practice, the FSRC has not conducted any on-site/off-site examinations of IBCs (except IBCs that are in the business of international banking, trusts and insurance which are examined in A.3 of this report) during the review period to ensure that the limited obligations to maintain accounting records under the IBCA are being complied with. During the period of review (i.e. 1 January 2010 to 31 December 2012), Antigua and Barbuda also did not receive any EOI requests pertaining to the accounting information of IBCs.

ILLCs

167. Section 55A of the International Limited Liability Company Act expressly provides that manager(s) who are vested with the management of the ILLC is/are required to retain all accounting records which (i) correctly explain all transactions; (ii) enable the financial position of the entity to be

66. A “licensed institution” is defined under the IBCA Regulations 1998 as an IBC licensed by the FSRC to engage in international banking, international trust or international insurance business.

67. Regulation 16, IBCA Regulations 1998.

68. Section 242 of the IBCA.

determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared (Section 55(A)(6) of the ILLCA). The accounting records should further include underlying documentation, such as invoices, contracts, purchase orders, delivery notes and bank statements which should reflect details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the entity (Section 55(A)(7) of the ILLCA). Finally, an external company is also required to retain all underlying documentations for a minimum period of six years from the date of dissolution (Section 55(A)(8) of the ILLCA). There are no sanctions for ILLCs that do not meet the accounting record keeping obligations under the ILLCA.

168. In practice, there is no ILLC registered in Antigua and Barbuda.

Accounting records to be kept in respect of partnerships

169. The accounting record keeping obligations on a company under the Income Tax Act and ABSTA apply similarly to relevant partnerships, including foreign partnerships, that meet the criteria established in the respective Acts.

170. The Phase 2 observations for domestic and external companies under the Income Tax Act and ABSTA apply similarly to partnerships. During the period of review (i.e. 1 January 2010 to 31 December 2012), Antigua and Barbuda did not receive any EOI requests pertaining to the accounting information of partnerships.

Accounting records to be kept in respect of trusts

171. The accounting record keeping obligations on domestic companies under the Income Tax Act and the ABSTA similarly apply to domestic trusts that carry on a business in Antigua and Barbuda and meet the respective criteria under the Acts.

172. For other trusts, the obligations for the trustee to keep accounting records arise from common law requirements. Under common law, all trustees resident in Antigua and Barbuda are subject to the fiduciary duty to the beneficiaries to keep proper records and accounts of their trusteeship and to allow the beneficiaries to inspect the accounts as required (*Pearse v Green* (1819) 37 E.R. 327 at 329 and *Re Tillot* [1892] 1 Ch. 86). However, it is not clear that the common law obligations ensure that reliable accounting records, including underlying documentations, are maintained for at least 5 years in all cases. Moreover, a question also remains on whether there is sufficient

oversight by a Antigua and Barbuda government authority on whether information or documents are being kept by the trustee in all cases.

173. Additional statutory obligations apply to trustees of international trusts that are formed under the ITA. For instance, under the ITA, a trustee is required to retain all accounting records which (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared (Section 42(6) of the ITA). The accounting records should further include underlying documentation, such as invoices, contracts, purchase orders, delivery notes and bank statements which should reflect details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the entity (Section 42(7) of the ITA). Finally, a trustee is also required to retain all underlying documentations for a minimum period of six years from the date of termination of trust (Section 42(8) of the ITA). There are no sanctions for international trusts that do not meet the accounting record keeping obligations under the ITA.

174. In practice, the FSRC has not conducted any on-site/off-site examinations of international trusts during the review period to ensure that the obligations to maintain accounting records under the ITA are being adhered to by the trustee. During the period of review (i.e. 1 January 2010 to 31 December 2012), Antigua and Barbuda did not receive any EOI requests pertaining to the accounting information of trusts.

Accounting records to be kept by foundations

175. Section 46 of the International Foundation Act expressly provides that a foundation council is required to retain all accounting records which (i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared (Section 46(6) of the IFA). The accounting records should further include underlying documentation, such as invoices, contracts, purchase orders, delivery notes and bank statements which should reflect details of (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place; (ii) all sales and purchases and other transactions; and (iii) the assets and liabilities of the entity (Section 46(7) of the IFA). Finally, a foundation council is also required to retain all underlying documentations for a minimum period of six years from the date of dissolution (Section 46(8) of the IFA). There are no sanctions for international foundations that do not meet the accounting record keeping obligations under the IFA.

Accounting records to be kept by service providers

176. The ML Act requires financial institutions to retain a copy of each customer generated financial transaction document. They are also required to retain each financial transaction document that is not a customer generated financial transaction document⁶⁹ the retention of which is necessary to preserve a record of the financial transaction concerned.⁷⁰ These documents must be maintained for a minimum of six years from the day the transaction takes place. The ML Act defines customer generated financial transaction document as a document of a financial institution that relates to:

- the opening or closing by a person of an account with the institution;
- the operation by a person of an account with the institution;
- the opening or use by a person of a deposit box or packet held by the institution.
- the telegraphic or electronic transfer of funds by the institution on behalf of the person to another person;
- the transmission of funds between Antigua and Barbuda and a foreign country or between foreign countries on behalf of a person;
- an application by a person for a loan from the institution, that is given to the institution by or on behalf of the person whether or not the document is signed by or on behalf of the person;
- the financial activities of the customer and any correspondence that relates to that customer.

177. A financial institution that fails to comply with the above requirements is liable upon summary conviction to a fine of up to XCD 20 000 (USD 7 400).

178. It should be noted that these requirements apply only to the subset of business transactions that are made through AML regulated financial institutions. Since legal persons and arrangements in Antigua and Barbuda are under no obligation to engage the services of regulated entities for *all* their transactions, the record retention requirements under Antigua and Barbuda's AML regime will not be sufficient to cover all relevant legal persons and arrangements.

179. In practice, there are no international foundations registered in Antigua and Barbuda.

69. A “financial transaction document” in relation to a financial institution, means any document that relates to a financial transaction carried out by the institution in its capacity as a financial institution.

70. Sections 12 and 12A of the ML Act.

Conclusion

180. The accounting record keeping requirements imposed by the various Acts on relevant entities may be summarised as follows:

	(i) correctly explain all transactions; (ii) enable the financial position of the entity to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared.	Underlying documentation	Five year retention period
Domestic companies	Yes	Yes	Yes
Foreign companies	Yes	Yes	Yes
Ordinary trusts	Yes for trusts that carry on a business in Antigua and Barbuda. Otherwise it is dependent on the common law obligations.	Yes for trusts that carry on a business in Antigua and Barbuda. Otherwise the common law obligations do not explicitly require underlying documentation to be kept.	Yes for trusts that carry on a business in Antigua and Barbuda. Otherwise the common law obligations do not explicitly require the records to be kept for at least 5 years.
International trusts	Yes	Yes	Yes
International foundations	Yes	Yes	Yes
IBCS that are licensed institutions	Yes	No	Yes
Other IBCs	No	No	No
ILLCs	Yes	Yes	Yes
Partnerships	Yes	Yes	Yes

181. The accounting record keeping and document retention obligations of Antigua and Barbuda’s IBCs are not sufficiently comprehensive to meet the requirements of the international standard.

182. The competent authority of Antigua and Barbuda confirmed that, during the review period, it did not receive any EOI requests that pertained to accounting information of legal entities and arrangements.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	Recommendations
It is not clear whether the accounting obligations applicable to IBCs and ordinary trusts not carrying on business in Antigua and Barbuda cover underlying documentation and a minimum record retention period of five years. Moreover, there are no penalties for non-compliance with the obligation to keep accounting records.	Antigua and Barbuda should amend and clarify its laws to ensure that there are clear and comprehensive legal obligations requiring IBCs and ordinary trusts not carrying on business in Antigua and Barbuda to keep reliable accounting records meeting the requirements of the Terms of Reference in all cases for at least five years. In addition, appropriate sanctions for instances of non-compliance should be established.

Phase 2 rating	
Non-compliant	
Factors underlying recommendations	Recommendations
During the review period, Antigua and Barbuda did not have a regular oversight programme in place to monitor the compliance of the accounting record keeping obligations. In addition, there are no sanctions for non-compliance with the accounting record keeping obligations under the relevant laws.	Antigua and Barbuda should put in place an oversight programme to monitor the compliance of the obligations to maintain accounting records. Antigua and Barbuda should also ensure that there are effective sanctions for non-compliance of the accounting record keeping obligations under the relevant laws and should exercise its enforcement powers to ensure that accounting records for all relevant entities are available in practice.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

183. Persons carrying on banking business (including IBCs that are international banks) from or within Antigua and Barbuda must be licensed and are subject to the Antigua and Barbuda's AML regulations.

184. The ML Regulations establishes an obligation for banks to obtain and record identification information of customers who seek to form a business relationship or undertake certain categories of one-off transactions with the bank. One-off transactions that are covered include instances where: (a) the bank suspects the transaction involves money laundering or the financing of terrorism; (b) a transaction (or linked transactions) between the bank and the customer that exceeds XCD 25 000 (USD 9 260); or (c) where the bank is asked to send or receive a wire transfer for the customer.

185. Customer identification information under the AML requirements includes the identity of beneficial owners where the bank customer is a legal person or arrangement, and the identity of principal where the bank customer is acting in the capacity of an agent. Identity information obtained must be verified using reliable, independent source documents, data or information. Such information must be kept for a period of six years from the date the financial transaction takes place.⁷¹

186. In the case where a customer is acting in the capacity of an agent, the bank has the option of accepting a written assurance from the customer that evidence of the principal's identity has been recorded under the procedures maintained by the customer, but only if the bank has reasonable grounds to believe that the agent is regulated by a local or overseas regulatory authority. In the latter case, the agent must be based in a country whose laws contain provisions of a similar or higher standard of those contained in the ML Act. The bank remains liable for any customer due diligence that is not performed.

187. Any financial institution that fails to undertake the customer due diligence measures prescribed under the ML Regulations is liable upon summary conviction to a fine not exceeding XCD 500 000 (USD 185 000), or on conviction on indictment to a fine not exceeding XCD 1 000 000 (USD 370 000)⁷².

71. Regulations 4 and 5 of the ML Regulations, read together with Section 12B of the ML Act.

72. Section 12(6) of the ML Act.

188. With regard to transactional information, the ML Regulations require all persons carrying on a banking business to maintain records containing details relating to all transactions carried out in the course of carrying out that business.⁷³ These records must be retained for at least six years after the account is closed.

Banking information in practice

189. In practice, the FSRC regulates international banks that were incorporated in the form of an IBC while the Eastern Caribbean Central Bank (ECCB) regulates domestic banks. The ONDCP is the regulatory body for compliance with the ML Act/Regulations and has the powers to initiate legal proceeding to sanction any non-compliance with the ML Act/Regulations. Even though on-site examinations of the international and domestic banks are conducted by the FSRC and the ECCB, any serious deficiencies or non-compliance with the ML Act/Regulations are referred to ONDCP for follow-up actions. Regular enforcement activity has been undertaken by the regulatory bodies to ensure that international and domestic banks comply with the AML obligations and are maintaining banking records required under Antigua and Barbuda's law.

190. The number of on-site examinations of international banks and trusts corporations undertaken by the FSRC are summarised in the table below:

Year	No. of International Banks and Trust Corporations issued with License	No. of On-site Examinations Conducted	Level of Compliance and Actions taken by FSRC
2010	15	15	<ul style="list-style-type: none"> • in 12 cases, the FSRC has found that the international banks have met the requirements required under the ML Act/ Regulations and no deficiencies were identified. • in three cases, the FSRC have issued deadline to the international banks/trust corporations to fully comply with the requirements under the ML Act/ Regulations. The penalty under the ML Act was not imposed as the deficiencies found were not serious enough to invoke the penalty.

73. Regulation 5(2)(b) of the ML Regulations.

Year	No. of International Banks and Trust Corporations issued with License	No. of On-site Examinations Conducted	Level of Compliance and Actions taken by FSRC
2011	14	14	<ul style="list-style-type: none"> in 12 cases, the FSRC has found that the international banks have met the requirements required under the ML Act/ Regulations and no deficiencies were identified. in two cases, the FSRC have issued deadline to the international banks/trust corporations to fully comply with the requirements under the ML Act/ Regulations. The penalty under the ML Act was not imposed as the deficiencies found were not serious enough to invoke the penalty.
2012	13	11	<ul style="list-style-type: none"> in 11 cases, the FSRC has found that the international banks have met the requirements required under the ML Act/ Regulations and no deficiencies were identified. in the other two cases where the FSRC has not conducted on-site examination, the FSRC advised that the two banks have ceased business.

191. As regards the on-site examinations of domestic banks undertaken by the ECCB, the ECCB has conducted examinations of two domestic banks licensed under the Banking Act of Antigua and Barbuda (out of 10 institutions). A review of the banks' AML functions revealed some inconsistencies with the standards required by the ML Regulations. The specific areas of non-compliance ranged from limited adherence to CDD processes, to cases of non-collection of source of funds information. The ECCB required these two institutions to sign a memorandum of understanding to agree to rectify all the deficiencies identified by the ECCB. The ONDCP has not imposed any penalties on the two banks as it was of the view of the deficiencies were not serious breach of the ML Act/Regulations and actions have been taken by the banks to remedy the deficiencies.

192. During the period under review, Antigua and Barbuda received one request for banking information. The banking information requested in relation to a named individual included account opening documents, signature cards, monthly statements, cancelled checks, deposit slips, wire transfers, copies of certificate of deposits, loan documents and credit card statements. The bank from which the information was requested is licensed in Antigua and Barbuda under the IBCA. Peer input indicates that, notwithstanding the

several follow-up inquiries it made, an answer to the request has not been received. After two years from the date of the request, the peer reported having informed Antigua and Barbuda’s competent authority that the examination of the taxpayer had been closed and that the information was no longer needed.

193. It is noted that in 2009, prior to the period under review, Antigua and Barbuda received a request for banking information from the same peer. The request referred to the same bank, the same bank account, the same account-holder of the subsequent request and similar records were being request, but the records referred to different years. Antigua and Barbuda reports, and peer input confirms, that it provided the information requested in the 2009 request within a six-month timeframe. Antigua and Barbuda reports that it mistakenly assumed that the subsequent request received during the review period (the 2010 request) was identical to the 2009 request that had already been replied to.

194. While no conclusions can be drawn with respect to availability of banking information in respect of the 2010 request, it is noted that banking information in relation to same bank account was provided in previous years, as confirmed by peer input. The 2010 request is further dealt with in section C.5 of this report.

Conclusion

195. The supervisory authorities for both international and domestic banks have exercised its enforcement powers and have conducted on-site examinations to ensure that both international and domestic banks comply with the requirement to maintain banking information required under the standard. During the period under review, Antigua and Barbuda received one request for banking information. The peer reported that requested information has not been provided, although it reports that records related to the same bank account had been provided in previous years. The request is further analysed in section C.5 of this report.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

B. Access to Information

Overview

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

197. Antigua and Barbuda's Commissioner of Inland Revenue is the competent authority for EOI requests, and under the Tax Information Exchange (TIE) Act 2002, has powers to obtain any information under the possession, custody or control of any person under Antigua and Barbuda's territorial jurisdiction, regardless of where the information is held.

198. The Commissioner's access powers are predominantly exercised by the issue of a notice requesting the production of information. Non-compliance with a notice is an offence which carries significant penalties upon summary conviction. With the oversight of a Court, the Commissioner also has the power to search premises and seize information where there is a reasonable doubt that the production of relevant information will be endangered. The TIE Act provides that a person that complies with a notice to provide information has an absolute defence to any claim brought against him in respect of any action taken.

199. In practice, Antigua and Barbuda's competent authority has never issued a notice requesting the production of information since it considers that the few EOI requests it received did not require the issuance of such notice. The amendments introduced to the IBCA, ILLCA, IFA and the ITA removing

the impediments relating to the access powers of the competent authority, which were reviewed in the supplementary review in 2012, were not tested in practice yet. During the period under review, Antigua and Barbuda received one request for banking information and information has not been accessed in this case. As noted in section A.3 of the report, Antigua and Barbuda mistakenly assumed that the request was similar to a previous request that had already been replied to. This is further reviewed in section C.5 of the report.

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).

Banking, ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2)

200. Pursuant to Section 2(2) of the Tax Information Exchange (TIE) Act 2002, the Commissioner of the Inland Revenue Department is the authority designated to exercise the powers and perform the duties of the competent authority for international exchange of information in tax matters. The Commissioner's powers to access information for the purposes of EOI are found in the TIE Act. The TIE Act covers access to and exchange of information in respect of requests made pursuant to all EOI agreements that Antigua and Barbuda has entered into. Under the TIE Act, the Commissioner has powers to access information by issuing a notice for its production, and in certain instances through the use of search and seizure warrants.⁷⁴

201. The powers of the Commissioner to obtain relevant information to respond to an EOI request are applicable regardless of the type of information sought (i.e. whether it is ownership, bank or accounting information) or the person from whom the information is sought (i.e. bank, company, individual etc.).

202. Where the information is public information held by a government body or agency, the Commissioner has the authority to transmit the information directly to the Requesting State. Where the information is non-public information held by a government body or agency, the Commissioner will transmit the information to the Requesting State only to the extent and under the same conditions as such copies would be available to the Commissioner himself under the Income Tax Act.

74. Sections 6 and 7 of the TIE Act.

203. Section 47(1) of the Income Tax Act is the relevant provision governing the transmission of non-public information by government bodies and agencies to the Commissioner. It states:

The Commissioner may require an officer in the employment of the Government or any municipality or other public body to supply such particulars as may be required for the purposes of this Act and which may be in the possession of such officer: Provided that no such officer shall by virtue of this section be obliged to disclose any particulars as to which he is under any statutory obligation to observe secrecy.

204. It appears therefore that statutory secrecy obligations applicable to public officers are not always overridden by the Commissioner's powers to obtain information for income tax purposes. This is carried over to the TIE Act and the same restrictions apply to the Commissioner's information gathering powers for the purposes of EOI. This should not impede the effective exchange of information because the avenue to obtain such information directly from the relevant entities remains available.

205. The Commissioner's access powers can be exercised by the Commissioner when he receives a valid request, defined as one that contains the relevant details prescribed under section 4(2) of the TIE Act. These include the identity of the taxpayer, the purpose of the request, and the particulars of the information sought.

206. The relevant details used to include the provision of a statement by the requesting State that the information sought is in Antigua and Barbuda. This requirement was however, amended in 2012 and the requesting jurisdictions now only has to provide a statement that the requested information is under the possession, custody or control of a person within Antigua and Barbuda (Section 4(2)(c) of the TIE Act). In this regard, the requesting jurisdiction does not have to establish that the requested information is in possession, custody or control of a person within Antigua and Barbuda but just be able to connect the person to Antigua and Barbuda.

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

207. The information gathering powers of the Commissioner are not subject to Antigua and Barbuda requiring such information for its own tax purposes. He may exercise these information gathering powers upon the receipt of a valid request pursuant to an EOI agreement. The subject of a valid request need not concern the enforcement of Antigua and Barbuda tax laws.

Compulsory powers (ToR B.1.4)

208. The TIE Act grants the Commissioner compulsory powers to compel the production of information. The Commissioner may require the production of information by issuing a notice or may use a warrant to enter premises to access the information. The TIE Act also allows the Commissioner to obtain relevant information by way of witness deposition or certified copy.⁷⁵

209. On receipt of a request which is in accordance with the relevant EOI agreement and which contains the relevant details spelled out in section 4(2) of the TIE Act, the Commissioner will issue a notice requiring the person who has been identified to have possession or control of the information to deliver the specified relevant information.⁷⁶ A person will have 14 days from the date of service of the notice to produce the information. The Commissioner may grant an extension.⁷⁷

210. The Commissioner or an authorised officer may apply to a magistrate for a search warrant to enforce the notice. The magistrate may issue the warrant if the magistrate is satisfied that there are reasonable grounds to suspect that an offence has been, is, or will be committed against the TIE Act that will endanger the delivery of the information to the Commissioner.⁷⁸ The warrant would be served within 48 hours of the grant of the order.

211. Once information has been received by the Commissioner pursuant to either a notice or a search warrant, the Commissioner must not disclose the information to any person for a period of 20 days, after which he may provide copies of the information to the requesting jurisdiction.⁷⁹ This 20-day period covers the 14-day deadline for a person affected by the notice or the notice recipient to seek a judicial review of the Commissioner's decision to issue a notice (see section B2).

212. The TIE Act establishes offences where a person:

- fails to deliver the information required pursuant to a notice;
- gives false evidence or produces false books, papers, records or other tangible property pursuant to a notice;
- wilfully obstructs the execution of a search warrant;
- wilfully tampers with, or alters any information or any part of such information so that it is false when received by the Commissioner; or
- wilfully alters, destroys, damages or conceals any information requested under a notice.

75. Section 5 of the TIE Act.

76. Section 6 of the TIE Act.

77. Section 6 of the TIE Act.

78. Section 7 of the TIE Act.

79. Section 8 of the TIE Act.

213. Such offences carry on summary conviction fines of up to XCD 5 000 (USD 1 850) or imprisonment for a term not exceeding six months or both.⁸⁰

Secrecy provisions (ToR B.1.5)

Government agencies

214. As noted above, the secrecy provisions applicable to information held by public officers continue to apply in cases where the Commissioner needs to obtain information from other public bodies or agencies in order to comply with an EOI request. This should not impede the effective exchange of information because the avenue to obtain such information directly from the relevant entities remains available.

Banks and insurers

215. The confidentiality provisions applicable to other types of information held by relevant entities can be found in the various governing acts. Section 32(1) of the Banking Act and section 196 of the Insurance Act provide that no person who has acquired knowledge in his capacity as staff or in his official dealings with a bank or an insurer shall disclose to any person or government authority the identity, assets, liabilities, transactions or other information in respect of a customer. He may however do so under the provisions of any other law of Antigua and Barbuda, which would include the TIE Act.

216. Section 5(3) of the TIE Act provides:

Notwithstanding the provisions of any other law, the Commissioner shall obtain and provide information held by financial institutions, nominees, or persons acting in agency or fiduciary capacity (not including information that would reveal confidential communications between a client and an attorney, solicitor or other legal representative where the client seeks legal advice), or information respecting ownership interests in a person.

217. In addition, section 6(7) of the TIE Act provides that a person who provides information to the Commissioner pursuant to a notice requiring him to do so, has an absolute defence to any claim brought against him in respect of any action taken in compliance with the notice. Confidentiality provisions in the Banking Act and Insurance Act therefore do not restrict effective international EOI.

80. Section 11 of the TIE Act.

Offshore entities

218. The IBCA (in respect of international banks and trusts only), ILLCA, IFA, and the ITA contain confidentiality provisions that expressly prohibit the disclosure of key information and documents relating to the entity.

219. In the case of international trusts, international foundations and international limited liability companies, confidential information includes the founding documents (trust deed, foundation charter, ILLC operating agreement *etc.*), documents relating to the financial information of the entity (assets, income, expenses *etc.*), documents relating to the exercise of any function or duty of key personnel (trustee, protector, manager, member *etc.*) and documents relating to the rights, benefits or interests of settlors, beneficiaries, founders, and ILLC members.⁸¹ In the case of an IBC that is an international bank or an international trust company, confidential information includes any business affairs of a customer.⁸²

220. The IBCA, ILLCA, IFA and the ITA as amended in 2011 and reviewed in the supplementary review spell out circumstances under which these confidentiality provisions may be lifted. The IBCA, IFA, ILLCA and the ITA expressly cater to situations where disclosure may be needed for EOI for tax purposes and state that confidential information may be disclosed:

Under Section 88 of the ITA, section 88 of the IFA and section 92 of the ILLCA

(b) Upon the written request of an authorised officer of the Government of Antigua and Barbuda, or the Commissioner of Inland Revenue, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction, pertaining to the exchange of information or legal assistance in connection with the investigation, prosecution or prevention of a criminal offence if

(i) the request for the information or legal assistance identifies the investigation, prosecution or offence, as well as the person or entity charged or

(ii) the request for exchange of information or legal assistance does not conflict with any existing laws, rules or regulations of Antigua and Barbuda; or

(iii) the Court has determined that the confidential information is required to prove the offence.

81. Section 91 of the ILLCA, section 87 of the IFA and section 87 of the ITA.

82. Section 244 of the IBCA.

(c) upon the written request of an authorised officer of the Government of Antigua and Barbuda, or the Commissioner of Inland Revenue, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction pertaining to the exchange of information for purposes of determining, assessing and collecting tax, the recovery and enforcement of tax claims or the investigation or prosecution of criminal tax matters, if the request complies with the Antigua and Barbuda Tax Information Exchange Act.

Under Section 281A of the IBCA

(1) Notwithstanding the provisions of section 244 and 254 in this Division, a disclosure of information of an exempt corporation shall be made to the Competent Authority –

(a) upon a written request signed by or on behalf of the Competent Authority of the requesting jurisdiction or by a person designated by the Competent Authority to perform the functions of the Competent Authority of a requesting jurisdiction;

(b) in the form and manner specified under the Antigua and Barbuda Tax Information Exchange Act.

to enable him to comply with valid treaty or convention obligation in force between Antigua and Barbuda and any other jurisdiction pertaining to exchange of information for purposes of determining, assessing and collecting tax, the recovery and enforcement of tax claims or the investigation or prosecution of criminal tax matters.

Professional privilege

221. The domestic scope of information subject to legal professional privilege can be found in the Legal Professions Act 1997. Section 15 states that

An attorney-at-law shall never disclose, unless lawfully ordered to do so by the Court or required by statute, what has been communicated to him in his capacity as an attorney-at-law by his clients or his client’s attorney-at-law and this duty not to disclose extends to his partners, to junior attorneys-at-law assisting him and to his employees

222. Under the TIE Act, all professionals acting as nominees or in an agency or fiduciary capacity must provide information as requested by the

Commissioner. This would apply even to lawyers when they act as nominees, agents or in any other fiduciary capacity.⁸³ As such, the scope of legal professional privilege in Antigua and Barbuda would not interfere unduly with effective EOI for tax purposes.

Access to information in practice

223. During the review period, Antigua and Barbuda did not have a dedicated EOI unit to handle incoming EOI requests as the volume of EOI requests received were relatively low. From 1 January 2010 to 31 December 2012, the competent authority reported that it only received four EOI requests from three jurisdictions.

224. The three EOI partners have also provided peer input confirming that they had indeed sent EOI requests to Antigua and Barbuda during the review period. One of the partners has indicated that it sent one EOI request to Antigua and Barbuda requesting information that relates to the contact details of an individual for tax collection purposes. The other EOI partner has indicated that it sent two EOI requests. The first request related to the beneficial owner of a boat/ship and the second request related to the owner of an immovable property. The Antigua and Barbuda competent authority indicated that it did not receive the first EOI request and has established direct contact with the other EOI partner to obtain a copy of such request when the on-site visit was conducted in October 2013. The third partner reported having sent two requests to Antigua and Barbuda during the review period: in one it requested specific banking information concerning a named individual taxpayer; and in another it requested permission to use information previously secured and requested through the Mutual Legal Assistance Treaty entered by Antigua and Barbuda and the treaty partner for civil matters via the TIEA entered by the two parties. According to the peer input, a response to the request for banking information has not been received and the request was cancelled after two years. More details on this request are provided further in this section and in section C.5 of the report. A response to other request was received.

225. According to the competent authority, after ascertaining that the incoming EOI request is valid and contains all the necessary information, it will proceed to check if the information requested is available within the Inland Revenue Department's IT system. The IT system used by Antigua and Barbuda is the Standard Integrated Government Tax Administration System (SIGTAS). The SIGTAS provides a variety of information relating to different type of entity such as (i) corporations, (ii) estates of deceased, (iii) government, (iv) individuals, (v) joint ventures, (vi) non-profits entities,

83. Section 5(3) of the TIE Act.

(vii) partnerships, and (viii) trusts. If the information requested resides or is available in the system, the Deputy Commissioner will retrieve the information directly from the system and draft the reply accordingly. In relation to the two EOI requests received during the review period, the competent authority was able to respond to the requests using information available in its databases.

226. In cases where the information does not reside in the database of the Inland Revenue Department but is available with other government agencies such as the Registrar of Intellectual Property and Commerce or the FSRC, the competent authority will write directly to these agencies to request to obtain the information. If the government agencies have access to the requested information and are not duty bound to observe secrecy as prescribed under Antigua and Barbuda's law, these agencies will provide the information directly to the competent authority. The competent authority advised that in practice, the agencies will be given two weeks to comply with the letter issued by the competent authority.

227. In cases where the information cannot be disclosed by the relevant government agencies due to official secrecy, the agencies are obliged to inform the competent authority of the constraints faced. The competent authority may then proceed to obtain the requested information from the taxpayer or a third party (e.g. banks) as the case may be. In this regard, a written notice under section 6(1) of the TIE Act will be issued by the competent authority to compel the person holding the information to provide it to the competent authority within 14 days. The competent authority also advised that by virtue of section 6(4)(a) of the TIE Act, the competent authority is only required to disclose the details of the information requested and no other information needs to be provided to the information holder. The competent authority also advised that it never had to issue the written notice under section 6(1) of the TIE Act as it considered that this was not required to reply to the few EOI requests received so far. Consequently, the amendments introduced to the IBCA, ILLCA, IFA and the ITA reviewed in the supplementary review that sought to remove the impediments relating to the access powers of the competent authority were never tested in practice.

228. Notwithstanding the above, Antigua and Barbuda received one request for banking information during the review period. As noted in section A.3 of the report, this request has not been replied to as Antigua and Barbuda mistakenly assumed that the request was identical to another request received prior to the review period. The information holder in this case was a bank licensed in Antigua and Barbuda under the IBCA. There appears to have been an opportunity for Antigua and Barbuda to issue a written notice under section 6(1) of the TIE Act as described above. While no conclusions can be drawn with respect to Antigua and Barbuda's access to

banking information in order to reply to this request, it is noted that banking information in relation to same bank account was accessed in order to reply to a request sent by the same peer prior to the review period. This is further reviewed in section C.5 of this report.

229. The competent authority also advised that it may also request for a search warrant from the court to enforce the notice under section 6(1) of the TIE Act. Similarly, this procedure has never been invoked in practice. The competent authority advised that if the need arises, the procedure as prescribed in section 7 of the TIE Act will be followed to request for the search warrant from the court. The competent authority is unable to advice on the timeframe needed to obtain such search warrants as it does not have any practical experience in obtaining such warrants for domestic purposes.

230. As regards the legal professional privilege, the competent authority has not encountered any domestic cases where they were prevented from accessing the information due to the privilege. The Solicitor General also advised that the legal professional privilege would not preclude the competent authority from accessing information for bona fide reasons and in the context of when the attorney-at-law is holding information in a different capacity (e.g. as a director of company) other than as an attorney-at-law.

Conclusion

231. Following the amendments made to Antigua and Barbuda's law in 2011, Antigua and Barbuda's competent authority now has the necessary powers to obtain and exchange information for tax purposes and they are consistent with the international standard. However, the competent authority did not exercise its access powers to obtain information from third parties during the review period as it considered that this was not required to reply to the few EOI requests received. In addition, the amendments introduced to the IBCA, ILLCA, IFA and the ITA that were reviewed in the supplementary review in 2012, to remove the impediments relating to the access powers of the competent authority, were never tested in practice. Antigua and Barbuda should monitor the effectiveness of its access powers when they receive any EOI requests requiring the use of these access powers. During the period under review, Antigua and Barbuda received one request for banking information. Information has not been accessed in this case, as Antigua and Barbuda mistakenly assumed that the request was similar to a previous request that had already been replied to. This is further reviewed in section C.5 of the report.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
The competent authority did not exercise its access powers to obtain information from third parties as it considered that this was not required to reply to the few EOI requests received by the competent authority during the review period. In addition, the amendments introduced to the IBCA, ILLCA, IFA and the ITA that were reviewed in the supplementary review in 2012 to remove the impediments relating to the access powers of the competent authority were not yet tested in practice.	Antigua and Barbuda should monitor the effectiveness of its access powers to obtain information from third parties when it receives EOI requests requiring the use of these access powers.

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)

232. Whenever the Commissioner issues a notice to a holder of information pursuant to an EOI request, he may under Section 6(2) of the TIE Act send a copy of the same notice to the taxpayer concerned unless he is of the opinion that the service of such a notice may lead to the obstruction of any investigation for which the information is requested or unduly delay the effective exchange of the information. Any person to whom a notice has been issued or any person affected by such notice may apply to a Judge in Chambers within 14 days commencing from the date the noticed is served on such person, for a review of the Commissioner's decision to issue such notice.⁸⁴

84. Section 9 of the TIE Act.

233. Upon receipt of any information pursuant to a notice or the execution of a search warrant, the Commissioner is required to hold the information for a period of 20 days without disclosing the information to any person.⁸⁵ If a taxpayer or interested person objects to the exchange of information, or seeks a judicial review of the Commissioner's actions, the Commissioner may extend the 20 days holding period at discretion. During this period the information is not released to the requesting party.

234. A judicial review by a Judge in Chambers would conceivably result in a more rapid judicial process relative to an open court hearing. It does not appear that the 20-day holding period or the possibility of judicial review would alone compromise the effective exchange of information or Antigua and Barbuda's ability to respond within 90 days. Antigua and Barbuda has advised that to date, the right to judicial review of a request has never been exercised.

Notification requirements and rights and safeguards in practice

235. As described in earlier paragraphs, the competent authority did not exercise its access powers to obtain information from third parties provided under sections 6(1) and 7 of the TIE Act during the review period. Consequently, the exception to the requirement to inform the taxpayer of the written notice issued under section 6(1) of the TIE Act was never invoked in practice. The 20-day holding period requirement as prescribed in section 8 of the TIE Act as well as the judicial review procedure were never invoked in practice. Antigua and Barbuda should put in place clear guidelines to ensure that the exception to the prior notification requirement may be invoked expeditiously by the competent authority when they receive an EOI request that requires the exercise of access powers under sections 6(1) and 7 of the TIE Act. Antigua and Barbuda should also monitor the 20-day holding period and the judicial review procedure, when they receive EOI requests that require the use of these procedures, to ensure that these procedures do not impede effective EOI.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

85. Section 8 of the TIE Act.

C. Exchanging Information

Overview

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

237. As of 15 May 2014, Antigua and Barbuda has signed 31 EOI agreements – one bilateral double taxation convention (DTCs), one multilateral DTC covering 10 jurisdictions⁸⁶ and 20 taxation information exchange agreements (TIEAs) – of which a total of 23 are in force (see Annex 2).⁸⁷ Antigua and Barbuda’s bilateral DTC with Switzerland was signed in 1964 (an extension of a former DTC (1954) between the United Kingdom and Switzerland), its multilateral DTC was signed in 1994 and its first TIEA was signed with the US in 2001. The other 19 EOI agreements were concluded after 2009, when Antigua and Barbuda became more active in negotiating EOI agreements. Most of Antigua and Barbuda’s EOI agreements will allow Antigua and Barbuda to exchange information according to the international standard after they are brought into force. Antigua and Barbuda is currently in the

86. The CARICOM treaty covers Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago.

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

process of negotiating a number of other EOI agreements, all of which will incorporate provisions that allow Antigua and Barbuda to exchange information according to the international standard.

238. All of Antigua and Barbuda's EOI agreements contain confidentiality provisions to ensure that the information exchanged will be disclosed only to authorised persons. While the articles in these EOI agreements might vary slightly in wording, these provisions generally contains all of the essential aspects of Article 8 of the 2002 OECD's Model Agreement on Exchange of Information on Tax Matters (the OECD Model TIEA) and Article 26(2) of the OECD Model Tax Convention on Income and on Capital (the OECD Model Tax Convention).

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

240. During the three-year review period (i.e. 1 January 2010 to 31 December 2012), Antigua and Barbuda received four EOI requests from three jurisdictions. Antigua and Barbuda replied to two of these requests within 90 days if the delays relating to lost mails affecting both Antigua and Barbuda and its EOI partners were excluded. One request was replied within less than a year and another request had not been replied by Antigua and Barbuda when it was cancelled by the requesting jurisdiction after two years from the original request. Antigua and Barbuda did not have a structured organisation procedure in place to handle EOI requests during the review period. There were also issues concerning the reliability of the mail services in Antigua and Barbuda and this has resulted in delays in receiving EOI requests by Antigua and Barbuda's competent authority or delays in receiving replies to EOI requests by Antigua and Barbuda's EOI partners.

C.1. Exchange of information mechanisms

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

241. The EOI agreements signed by Antigua and Barbuda are given the force of law once they are ratified by a resolution passed by the House of Representatives of Antigua and Barbuda. Once an agreement is ratified, the implementation of its terms is governed by the provisions of the TIE Act. Ratified EOI agreements have equal status as any law passed by the Parliament of Antigua and Barbuda.

Foreseeably relevant standard (ToR C.1.1)

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

243. All but one of Antigua and Barbuda’s signed EOI agreements provide for the exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered in the TIEAs/DTCs. This scope is set out in Article 1 of all of Antigua and Barbuda’s TIEAs.

244. The CARICOM multilateral DTC (Article 24(1)) provides for the exchange of information that is “necessary” for carrying out the provisions of the Convention or of the domestic tax laws of the Contracting States.

245. The commentary to Article 26(1) of the OECD Model Tax Convention refers to the standard of “foreseeable relevance” and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing “foreseeably relevant” with “necessary” or “relevant”. In view of this recognition, all the DTCs concluded by Antigua and Barbuda, with the exception of its DTC with Switzerland, meet the “foreseeably relevant” standard.

246. Antigua and Barbuda’s DTC with Switzerland provides for a narrower scope of EOI. Antigua and Barbuda’s DTC with Switzerland restricts EOI to the purposes of carrying out the DTC provisions. It is recommended that Antigua and Barbuda update its DTC with Switzerland at the earliest opportunity.

247. Antigua and Barbuda’s competent authority interprets the standard of foreseeably relevance in accordance with the OECD Model Tax Convention. The competent authority has recently issued guidelines to assist the EOI officers identifying the validity of the requests. To date, the competent authority has not challenged whether the few EOI requests received met the foreseeably relevant standard.

In respect of all persons (ToR C.1.2)

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

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

250. Article 20(1) of the DTC with Switzerland provides for exchange of information only for the purposes of "carrying out the provisions of the present Convention in relation of the taxes which are the subject of the Convention". Since the DTC provisions only apply to residents of either Switzerland or Antigua and Barbuda, exchange of information in respect of all persons is not possible under Antigua and Barbuda's DTC with Switzerland.

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

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

252. All of Antigua and Barbuda's TIEAs provide for the exchange of information held by financial institutions, nominees, agents; and ownership and identity information.

253. Antigua and Barbuda's DTCs with Switzerland and the CARICOM do not contain provisions similar to paragraph 26(5) of OECD Model Taxation Convention. However, the absence of this paragraph does not automatically create restrictions on exchange of bank information. The commentary in the convention to Article 26(5) indicates that while paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information.

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

255. In respect of Antigua and Barbuda’s DTCs (including the CARICOM), the obligation to exchange all types of information is only clearly available with respect to six signatories, Barbados, Belize, Jamaica, Saint Lucia, St. Vincent and the Grenadines and Saint Kitts and Nevis for the following reasons:

- in Dominica’s and Trinidad and Tobago’s Phase 1 report, serious deficiencies were found in element B.1 regarding the access powers of the competent authority. This resulted in the element being assessed as “not in place”. This suggests that Dominica and Trinidad and Tobago cannot exchange all types of information under their respective domestic law;
- in Grenada’s Phase 1 report, deficiencies have been found in element B.1, regarding the competent authorities’ access powers due to presence of a domestic tax interest requirement and confidentiality provisions in its law. This suggest that Grenada cannot exchange all types of information under its domestic law;
- information about the competent authorities’ powers to access banking information and to obtain ownership, identity and accounting information for purpose of EOI is not available with respect to Guyana, so it is not possible to confirm that the CARICOM Multilateral DTC with regard to Guyana meets the standard;
- Switzerland is unable to exchange bank and ownership information in the absence of a provision similar to Article 26(5).

256. It is recommended that Antigua and Barbuda update the DTC with Switzerland and work with CARICOM partners to ensure exchange of information to the standards can occur under that agreement.

Absence of domestic tax interest (ToR C.1.4)

257. 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.

258. All of Antigua and Barbuda’s TIEAs contain provisions similar to the Article 5(2) of the 2002 Model Agreement on EOI for Tax Matters⁸⁸, which

88. Article 5(2) of the 2002 Model Agreement reads “If the information in possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant

obliges the Contracting Parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested Party does not have a domestic interest in the requested information.

259. Antigua and Barbuda’s DTCs with Switzerland and CARICOM do not contain explicit provisions obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest. The commentary to Article 26(4) indicates that paragraph 4 was introduced in the 2005 Model Tax Convention to express an implicit obligation contained in this Article to exchange information in situations where the requested information is not needed by the requested State for domestic tax purposes.

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

Absence of dual criminality principles (ToR C.1.5)

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

262. All of Antigua and Barbuda’s TIEAs contain provisions similar to Article 5(1) of the 2002 Model TIEA⁸⁹, which obliges Contracting Parties to exchange information without regard to whether the conduct being investigated

information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes”.

89. Article 5(1) of the 2002 Model Agreement reads “The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party”.

would constitute a crime under the laws of the requested Contracting Party. There are no dual criminality provisions in Antigua and Barbuda’s DTCs.

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

263. 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”).

264. All of Antigua and Barbuda’s EOI agreements provide for exchange of information in both civil and criminal tax matters. In practice, the competent authority confirms that the same procedure in obtaining and accessing information applies for both civil and criminal tax matters. During the review period, Antigua and Barbuda received a request seeking the permission to use information previously secured and requested through the Mutual Legal Assistance Treaty entered by Antigua and Barbuda and a treaty partner for civil matters via the TIEA entered by the two parties. The Antigua and Barbuda competent authority authorised the requesting jurisdiction to use of the information in that case pursuant to the terms of the TIEA.

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

265. There are no restrictions in Antigua and Barbuda’s domestic laws that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices. Further, section 12 of the TIE Act explicitly authorises the Commissioner to obtain, where the request so stipulates, information in the form of deposition of witnesses and authenticated copies of original documents.

266. This is reinforced in all of Antigua and Barbuda’s TIEAs, which contain provisions similar to Article 5(3) of the 2002 Model TIEA. Article 5(3) obliges Contracting Parties to provide, on request, information in the form of dispositions of witnesses and authenticated copies of original records to the extent allowable under domestic law. In practice, Antigua and Barbuda’s EOI partners have not requested for information to be provided in any specific form.

In force (ToR C.1.8)

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

268. Antigua and Barbuda has concluded 31 EOI agreements⁹⁰, of which 23 have been brought into force as of 15 May 2014.⁹¹ In respect of the other 9 agreements, Antigua and Barbuda has completed all its domestic procedures to ratify these agreements. Antigua and Barbuda has also informed all its treaty partners that it has completed its domestic ratification procedures with the exception of Belgium, Curaçao and Sint Maarten. Antigua and Barbuda is now waiting for its treaty partners to complete their domestic ratification procedures.

269. The time taken for Antigua and Barbuda to bring their signed EOI agreements into force is short and has historically ranged approximately between two months and three years.

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

270. For information exchange to be effective, the parties to an EOI arrangement need to enact any legislation necessary to comply with the terms of the arrangement. In practice, all EOI agreements have to be vetted by the Solicitor General before they are signed. Once the Solicitor General gives his agreement to the text of the EOI agreement, he will submit the EOI agreement to the Minister of Finance for his final approval. The Minister of Finance will in turn submit the EOI agreement to the Cabinet for information before giving the final approval to sign the agreement. Once EOI agreements are signed and ratified by a resolution passed by the House of Representatives of Antigua and Barbuda, these agreements are then given the force of law. Antigua and Barbuda usually take approximately four to six weeks to ratify EOI agreements.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

90. Antigua and Barbuda's participation in the CARICOM Income Tax Treaty allows it to exchange information with 10 other jurisdictions who are also signatories to this treaty.

91. The agreements in force are with Aruba, Australia, Denmark, Finland, France, Germany, Ireland, Liechtenstein, the Netherlands, Norway, Switzerland, the UK, the US and the 10 CARICOM jurisdictions in the CARICOM treaty – Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago.

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

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

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

272. Since 2009, Antigua and Barbuda has rapidly expanded its EOI network and has signed 19 TIEAs. Antigua and Barbuda's EOI network currently covers 31 jurisdictions. A breakdown of its network includes:

- 12 are jurisdictions within the Caribbean region;⁹²
- 15 are OECD/G20 countries.⁹³

273. Antigua and Barbuda's two biggest trading partners, the US and the UK, as well as its immediate neighbours in the Caribbean region are included.

274. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and no jurisdiction advised the assessment team that Antigua and Barbuda had refused to negotiate or conclude an EOI agreement with it.

275. Since 2009, Antigua and Barbuda has initiated or received requests to conclude TIEAs with 10 jurisdictions (Canada, Korea, Monaco, Slovakia, Mexico, Greece, New Zealand, Ukraine, India and Chile). The competent authority advised that Antigua and Barbuda has responded to all requests to conclude TIEAs and are currently in various stages of negotiation with these 10 jurisdictions.

92. Aruba, Belize, Dominica, Grenada, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Barbados, Curaçao and Sint Maarten.

93. Australia, Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, the Netherlands, Norway, Portugal, Sweden, Switzerland, UK and US.

Determination and factors underlying recommendations

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

Information received: disclosure, use, and safeguards (ToR C.3.1)

276. 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.

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

All other information exchanged (ToR C.3.2)

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

279. All of Antigua and Barbuda’s EOI agreements contain confidentiality provisions similar to Article 8 of the OECD Model TIEA and Article 26(2) of the OECD Model Tax Convention, which specify that the confidentiality rules spelt out in the EOI arrangement apply to all information received under the agreement.

280. This is reinforced under Section 4 of the Income Tax Act, which requires all persons having any official duty or employed in the administration of the Act to preserve the confidentiality of all taxpayer information they obtain in the course of their work.

Ensuring confidentiality in practice

281. The Antigua and Barbuda’s competent authority confirms that if it needs to issue a written notice under section 6(1) of the TIE Act to any person in Antigua and Barbuda to obtain information for EOI purposes, there is no legal obligation under Antigua and Barbuda’s law to provide any other details to the person except for the details of the information required. In this regard, Antigua and Barbuda is not required to disclose information to third parties (i.e. the information holder) other than the information necessary to locate the information requested by its treaty partner.

282. The Antigua and Barbuda’s competent authority highlighted that, in practice, any breach of the confidentiality of taxpayer information by any employees of the Inland Revenue Department will result in termination of service. The case will also be referred to the police for investigation and the person may be prosecuted under the relevant section of the Income Tax Act for divulging secret and confidential information. No cases of breach of confidentiality have been reported by the Antigua and Barbuda’s competent authority to date.

283. The Antigua and Barbuda’s competent authority also practices a clean desk policy and all official documents including any EOI requests received by the competent authority have to be kept in locked cabinets after office hours. All completed EOI requests will be filed in the file registry and are handled personally by the Head of Registry. The EOI requests that are filed in the Registry are only accessible to the competent authority.

284. The competent authority uses a public email account (i.e. Gmail account) to communicate with its EOI partners. There is no known government policy governing the use of public email account and the type

of information that may be transmitted via the public email account. The competent authority explained that a public email account is used mainly for sake of convenience as there is only one official email account allocated to the Inland Revenue Department and there is a restriction on the file size of the attachments. While all official responses to EOI requests are sent physically by the competent authority via regular mail, there have been instances where the competent authority has sent the official responses to an EOI request also via a public email account to its EOI partners when the partners indicated that they did not receive the official response. In those instances, the competent authority has not sought the EOI partner’s agreement prior to sending the official response by the public e-mail and the messages were sent without any level of encryption. The use of public email account without an appropriate level of encryption may raise a concern over the confidentiality of the information as the competent authority does not have full control over the security of the email. In this respect, Joint OECD/Global Forum “Keeping it Safe” Guide expressly provides that “tax administrations must ensure that information sent by a competent authority electronically or by mail is transmitted securely and in the case of electronic transmission with an appropriate level of encryption”.⁹⁴ Antigua and Barbuda should only send email to its EOI partners using encrypted or secured email account if the need to communicate confidential information via email arises.

285. Antigua and Barbuda’s peers who have provided inputs to this review have not indicated that there has ever been a breach of confidentiality concerning their exchange of information with Antigua and Barbuda. However, it is also noted that Antigua and Barbuda and its partners had an issue with lost mails and this is addressed under element C.5.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

94. www.oecd.org/tax/transparency/final%20Keeping%20it%20Safe%20with%20cover.pdf.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
There is no known government policy governing the use of public email account and the type of information that may be transmitted via the public email account. There have also been instances where the competent authority sent confidential information (i.e. response to an EOI requests) to its EOI partners via a public email account without prior agreement with such EOI partners and without any level of encryption.	If the need to communicate confidential information with its EOI partners via email arises, Antigua and Barbuda should only use encrypted or secured email.

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

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

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

286. 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. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

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

288. All of Antigua and Barbuda’s TIEAs and most of its DTCs ensure that the Contracting Parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret, information which is subject to attorney-client privilege, or information the disclosure of which would be contrary to public policy. The scope of attorney-client privilege is defined in 16 of Antigua and Barbuda’s 31 EOI agreements⁹⁵ and these definitions adhere to the international standard. With respect to the remaining 15 EOI agreements, the scope of attorney-client privilege is not defined and thus would take reference from Antigua and Barbuda’s domestic law.

289. As described in Section B, the domestic scope of attorney-client privilege in Antigua and Barbuda’s domestic law is consistent with the international standard. The Solicitor General also advised that the legal professional privilege would not preclude the competent authority from accessing information for bona fide reasons and in the context of when the attorney-at-law is holding the required information in a different capacity (e.g. as a director of company) other than as an attorney-at-law.

290. Where Antigua and Barbuda’s TIEAs provide that the rights and safeguards secured to the persons by the laws or administrative practice of the requested party remain applicable, this is generally qualified by the statement that these rights and safeguards are only applicable to the extent that they do not unduly prevent or delay effective EOI. The exception is Antigua and Barbuda’s TIEA with Liechtenstein, which simply provides that these rights and safeguards remain applicable without any qualification. Liechtenstein and Antigua and Barbuda have been in contact to bring their TIEA fully in line with the international standard.

291. To date, the Antigua and Barbuda’s competent authority has never relied on the above-mentioned provisions in its EOI agreements to decline the provision of assistance to an EOI requests. The input received from Antigua and Barbuda’s peers confirms that no issues concerning the application of rights and safeguard in Antigua and Barbuda have been experienced in practice during the review period.

Notification of taxpayers

292. The Protocol in Antigua and Barbuda’s agreement with Liechtenstein contains a provision stating that: “it is understood that the taxpayer, unless subject to criminal investigations, is to be informed about the intention to make a request for information.”

95. The exceptions are the TIEAs with Germany, Portugal, Liechtenstein and the DTCs with Switzerland and the CARICOM countries.

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

Determination and factors underlying recommendations

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

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.

Responses within 90 days (ToR C.5.1)

294. All of Antigua and Barbuda's TIEAs, except for its TIEA with Liechtenstein, contain provisions similar to Article 5(6) of the 2002 Model Agreement on EOI on Tax Matters, which obliges Contracting Parties to forward the requested information as promptly as possible to the applicant Party.

295. In particular, Contracting Parties are required to confirm receipt of a request in writing to the applicant Party and notify the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request. The requested Party is also required to inform the applicant Party if it is unable to obtain and provide the information within 90 days of receipt of the request, and explain the reasons behind the delay.

296. During the three-year review period (i.e. 1 January 2010 to 31 December 2012), Antigua and Barbuda reported that it had only received four EOI requests from three jurisdictions. The three jurisdictions have also provided peer inputs confirming that they had indeed sent EOI requests to Antigua and Barbuda during the review period. However, one EOI partner has indicated that it had sent two EOI requests instead of one.

297. With regard to the two EOI requests sent by a same EOI partner, the first request related to the beneficial owner of a boat/ship and the second request related to the owner of an immovable property. Antigua and Barbuda's competent authority reports that it did not receive the first request whose existence only became known to such authority after receiving the peer input for purposes of the Phase 2 review. Antigua and Barbuda's competent authority has established direct contact via email with the EOI partner to obtain a copy of the first EOI request so that the request could be acted upon. With regard to the second EOI request, it was revealed that the request was sent on 7 December 2012 by the EOI partner to Antigua and Barbuda. Antigua and Barbuda responded to the request via regular mail on 19 February 2013 within 90 days. Unfortunately, the EOI partner did not receive the response. Similarly, it was after receiving the peer input for purposes of the Phase 2 review that Antigua and Barbuda realised that the EOI partner did not receive the response. The response was re-sent via email to the EOI partner on 27 October 2013. The entire process from the date the original request was sent by the EOI partner to the date Antigua and Barbuda responded and received by the EOI partner took 10 months.

298. With regards to the EOI request sent by a second EOI partner, it was revealed that the request was sent on 30 March 2012 by the EOI partner to Antigua and Barbuda. However, according to Antigua and Barbuda, the EOI request did not reach the competent authority. The EOI partner has confirmed that the mail was incorrectly sent to the former Commissioner of Inland Revenue Department at its old address. A first reminder was sent by the EOI partner on the 16 October 2012 and Antigua and Barbuda replied on 9 November 2012 requesting for a copy of the original EOI request. Unfortunately, the EOI partner overlooked the letter and did not provide the original EOI request to Antigua and Barbuda as requested. The EOI partner sent a second reminder on 21 May 2013 and Antigua and Barbuda again replied to the EOI partner requesting for a copy of the original EOI request on 31 May 2013. The EOI request was finally provided by the EOI partner in September 2013 and responded to by Antigua and Barbuda within a month in October 2013. The entire process from the date the original request was sent by the EOI partner to the date Antigua and Barbuda responded fully to the request took 19 months.

299. Two requests were received from a third EOI partner. One request referred to banking information concerning a named individual taxpayer. The peer reports having sent this request via express mail in July 2010 and also by fax to the Commissioner of Inland Revenue. It also reports having made several follow up inquiries. In August 2011, the peer reports having sent an email to the Gmail account that was provided by the Commissioner of Inland Revenue. In the same month, the peer reported having received a confirmation via Gmail that a copy of the July 2010 request for banking information was received and the process would be started for retrieving the information. Subsequently status updates were requested by the requesting jurisdiction in January and March 2012 with no response. The requesting jurisdiction reports having sent a letter in August 2012 to the Commissioner of Inland Revenue informing him that the examination of the taxpayer had been closed and the information was no longer needed. In relation to the other request for information, the same EOI partner sought the permission of the Antigua and Barbuda competent authority to use information previously secured and requested through the Mutual Legal Assistance Treaty entered by Antigua and Barbuda and the requesting jurisdiction for civil matters via the TIEA entered by the two parties. Antigua and Barbuda provided a response to this request within less than a year.

300. Antigua and Barbuda reports going through an International Monetary Fund programme in June 2010; and, as a result thereof, significant staff turnover took place within the Inland Revenue Department. The office of the Inland Revenue Department was relocated and assigned new contact numbers. The post of Commissioner of Inland Revenue was occupied by three different persons during the period 2010 to 2011; hence Antigua and Barbuda reports having had difficulties in following up with its EOI partners in some cases. With regard to the request received for banking information, Antigua and Barbuda reported that the request had exactly the same particulars as the previous request for information received from the same partner, and Antigua and Barbuda competent authority had mistakenly assumed that the information requested was for the same information that had already been provided. Antigua and Barbuda reports having no records of contact from the requesting jurisdiction in the period January and March 2012.

301. Based on the handling of the requests received, it appears that there were some issues concerning lost mails as both Antigua and Barbuda and its EOI partners have experienced lost mails in the few EOI requests. However, in relation to two of the four EOI requests received by Antigua and Barbuda, a complete response was provided within 90 days if the delays caused by lost mails were excluded. It is recommended that Antigua and Barbuda strengthens its communication with all its EOI partners by communicating the identity and contact information of its competent authority to all EOI partners and to update their EOI partners regularly whenever there are any changes.

This is to ensure that all EOI requests sent by its EOI partners are received by the competent authority and there are avenues for its EOI partners to contact the competent authority to discuss any outstanding EOI cases. Antigua and Barbuda is also encouraged to send all outgoing mails to its EOI partners via an international registration system where a mail tracking function is in place and follow up with an electronic mail to inform its treaty partner that an official reply has been provided via registered mail.

302. In relation to the request for banking information, it appears that the organisational difficulties faced by Antigua and Barbuda during the review period and a misunderstanding concerning the scope of the request – i.e. Antigua and Barbuda mistakenly assumed the request was the same as the previous one without noticing the different years – has led to the lack of response. Antigua and Barbuda should ensure that requests are replied effectively and in a timely manner and that it provides status updates to its EOI partners if EOI requests cannot be responded to within 90 days.

Organisational process and resources (ToR C.5.2)

303. Antigua and Barbuda's Competent Authority for its EOI agreements is the Minister for Finance or his authorised representative. The TIE Act refers to the Commissioner of Inland Revenue as the person authorised to exercise the powers and perform the duties of the Competent Authority.

Organisational process and resources during the review period and before MLU Unit was established

304. Antigua and Barbuda did not have a dedicated EOI unit to handle incoming EOI requests during the review period and until the MLU unit was established. According to the competent authority, this is mainly due to the low volume of EOI requests received by Antigua and Barbuda.

305. All incoming EOI requests, including the two EOI requests received during the review period, were handled by the Antigua and Barbuda on a case-by-case basis. In this regard, all EOI requests were handled personally by the Commissioner and his deputy. Once the EOI request is received by the Commissioner, the Commissioner forwards the request to the Deputy Commissioner for necessary action and follow-up. The Deputy Commissioner has nine years of working experience with the Inland Revenue Department and is familiar with the Global Forum work as he had participated in the Phase 1 and Supplementary Review of Antigua and Barbuda. The Deputy Commissioner was responsible for screening the EOI request, determining whether information is available internally, determining the best method to obtain the information requested, and drafting the reply to the EOI partner. Once the information requested was collected and after drafting the reply, the

Deputy Commissioner hands the EOI request together with the information requested and the draft reply to the Commissioner for his approval. If the Commissioner agrees with the draft reply and is satisfied that the reply and information provided is adequate in answering the EOI request, he will sign off the reply as the competent authority and send out the reply directly. The EOI request together with a copy of the reply is then filed in the file registry by the Head of File Registry.

306. While it was the responsibility of the Deputy Commissioner to gather the information and draft the reply to the EOI requests, the entire process was not tracked or monitored. There was also no requirement for the Deputy Commissioner to provide status updates to the requesting jurisdiction if the request could not be replied to within 90 days. The Deputy Commissioner also had other duties and responsibilities and priority was not always given to EOI requests. This could potentially result in delays and longer response time.

Organisational processes and resources after the review period and after MLU Unit was established

307. Notwithstanding the low volume of incoming EOI requests, Antigua and Barbuda has recently committed resources to establish a new Monitoring and Legal Unit (MLU) within the Inland Revenue Department to monitor and process incoming EOI requests. The budget for the establishment of the unit was approved in November 2012. The MLU was formally established within the Inland Revenue Department with three officers in October 2013.

308. The new MLU is supervised personally by the Commissioner of the Inland Revenue Department. The three staff members are one legal counsel and two monitoring officers from within the Inland Revenue Department. The legal counsel is familiar with the Global Forum work and she was the liaison officer that facilitated Antigua and Barbuda's Phase 1 and Supplementary review. She also participated in the Phase 1 review of another Global Forum member acting as the expert assessor representing Antigua and Barbuda. The other two monitoring officers from within the Inland Revenue Department have not been previously trained in EOI matters but there are plans to schedule them to attend workshops and training courses on EOI organised by the Global Forum and other international organisations.

309. After the MLU was established in October 2013, the legal counsel prepared an internal checklist to guide the work of the monitoring officers. The checklist will be used to screen incoming EOI requests to ensure that the EOI request is valid and contains all the information required under the TIE Act and the EOI agreement so as to facilitate processing. Notwithstanding the checklist, the MLU is still in the process of drafting an EOI manual that will

set out the detailed procedure for handling EOI requests (i.e. acknowledging receipt of the EOI request, analysing the EOI request, collecting information, providing status updates and responding to EOI requests). The competent authority advised that it will be adopting the EOI Manual published by OECD and will be making appropriate changes to suit their local context. In the interim, the MLU is going to follow the processes undertaken by the Deputy Commissioner (as discussed in B.1 of the report) for obtaining information from other agencies or third parties if it does receive EOI requests.

Conclusion

310. While there were some issues concerning lost mails and a significant staff turnover during the review period, Antigua and Barbuda provided complete responses within 90 days to two of the four EOI requests received, if the delays caused by lost mails are excluded. In relation to another request, a response was provided within less than a year and no interim status updates were provided. One request had not been responded at the time it was cancelled by the requesting jurisdiction. Antigua and Barbuda should ensure that requests are replied effectively and in a timely manner and that it provides status updates to its EOI partners if EOI requests cannot be responded to within 90 days. Moreover, it is recommended that Antigua and Barbuda strengthens its communication with all its EOI partners by communicating the identity and contact information of its competent authority and its authorised representative and updating its EOI partners regularly whenever there are any changes. This is also to ensure that all EOI requests are dealt with by the competent authority in a timely manner and there are avenues for the EOI partners to contact Antigua and Barbuda to discuss outstanding cases and ensuring all mails are received and adequately dealt with.

311. In addition, as the MLU was established after the review period in October 2013, the operation and efficiency of the MLU could not be assessed. There is also no established or written procedure of how an EOI request should be handled as the MLU is still in the process of drafting the EOI manual that will set out the duties and responsibilities of the officers and the procedure that has to be followed. Antigua and Barbuda should monitor the functioning of the new MLU and complete the drafting of the EOI manual so as to clearly set out the duties, responsibility of the relevant officers and the procedure that should be followed in handling an EOI request. Antigua and Barbuda should also put in place procedures to provide status updates to Antigua and Barbuda's EOI partners in cases where the MLU is unable to provide a complete response within 90 days.

Absence of unreasonable, disproportionate or unduly restrictive conditions on exchange of information (ToR C.5.3)

312. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. There are no aspects of Antigua and Barbuda's domestic laws that appear to impose additional restrictive conditions on exchange of information.

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	
Largely Compliant	
Factors underlying recommendations	Recommendations
There were some issues concerning communication as both Antigua and Barbuda and its EOI partners have experienced lost mails in their previous exchanges.	Antigua and Barbuda should strengthen communication with its EOI partners.
As the MLU was established in October 2013, after the review period, the operation and efficiency of the MLU could not be assessed. There were also no established or written procedures of how an EOI request should be handled when the on-site visit was conducted. During the period of review, Antigua and Barbuda has not responded to one of the four EOI requests it received. This request was cancelled by the requesting jurisdiction after two years. Moreover, Antigua and Barbuda not provided an update on the status of the requests when it has been unable to provide the information requested within 90 days.	Antigua and Barbuda should monitor the functioning of the new MLU and complete the drafting of the EOI manual so as to clearly set out the duties, responsibilities of the relevant officers and the processes to be followed in handling with incoming EOI requests (including providing status updates to its EOI partners if an EOI request cannot be responded to within 90 days) to ensure that requests can be replied to effectively and in a timely manner.

Summary of Determinations and Factors Underlying Recommendations

Overall Rating
PARTIALLY COMPLIANT

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Largely Compliant	During the review period, Antigua and Barbuda did not have a regular oversight programme in place to monitor the compliance of the obligations to maintain ownership and identity information and penalties for non-compliance were unenforced in practice. Antigua and Barbuda plans to commence the oversight programme for service providers in 2014.	Antigua and Barbuda should put in place an oversight programme to ensure the compliance of the obligations to maintain ownership and identity information for all relevant entities and arrangements and exercise its enforcement powers as appropriate to ensure that such information is available in practice.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i>		
Phase 1 determination: The element is not in place.	It is not clear whether the accounting obligations applicable to IBCs and ordinary trusts not carrying on business in Antigua and Barbuda cover underlying documentation and a minimum record retention period of five years. Moreover, there are no penalties for non-compliance with the obligation to keep accounting records.	Antigua and Barbuda should amend and clarify its laws to ensure that there are clear and comprehensive legal obligations requiring IBCs and ordinary trusts not carrying on business in Antigua and Barbuda to keep reliable accounting records; meeting the requirements of the Terms of Reference in all cases for at least five years. In addition, appropriate sanctions for instances of non-compliance should be established.
Phase 2 rating: Non-compliant	During the review period, Antigua and Barbuda did not have a regular oversight programme in place to monitor the compliance of the accounting record keeping obligations. In addition, there are no sanctions for non-compliance with the accounting record keeping obligations under the relevant laws.	Antigua and Barbuda should put in place an oversight programme to monitor the compliance of the obligations to maintain accounting records. Antigua and Barbuda should also ensure that there are effective sanctions for non-compliance of the accounting record keeping obligations under the relevant laws and should exercise its enforcement powers to ensure that accounting records for all relevant entities are available in practice.
Banking information should be available for all account-holders. <i>(ToR A.3)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Largely Compliant	The competent authority did not exercise its access powers to obtain information from third parties as it considered that this was not required to reply to the few EOI requests received by the competent authority during the review period. In addition, the amendments introduced to the IBCA, ILLCA, IFA and the ITA that were reviewed in the supplementary review in 2012 to remove the impediments relating to the access powers of the competent authority were not yet tested in practice.	Antigua and Barbuda should monitor the effectiveness of its access powers to obtain information from third parties when it receives EOI requests requiring the use of these access powers.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
Phase 1 determination: The element is in place.		Antigua and Barbuda should continue to develop its exchange of information network with all relevant partners and take all steps necessary to bring concluded agreements into effect as quickly as possible.
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i>		
Phase 1 determination: The element is in place.		
Phase 2 rating: Largely Compliant	There is no known government policy governing the use of public email account and the type of information that may be transmitted via the public email account. There have also been instances where the competent authority sent confidential information (i.e. response to an EOI requests) to its EOI partners via a public email account without prior agreement with such EOI partners and without any level of encryption.	If the need to communicate confidential information with its EOI partners via email arises, Antigua and Barbuda should only use encrypted or secured email.

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
Phase 1 determination: The element is in place.	Antigua and Barbuda's TIEA with Liechtenstein requires the requesting state to notify the taxpayer of its intent to make a request whenever the investigation does not relate to a criminal case. This can potentially prevent or delay the exchange of information by Antigua and Barbuda in non-criminal cases.	It is recommended that the TIEA with Liechtenstein be updated to allow appropriate exceptions to the requirement to notify taxpayers in non-criminal cases.
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
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.		

Determination	Factors underlying recommendations	Recommendations
<p>Phase 2 rating: Largely Compliant</p>	<p>There were some issues concerning communication as both Antigua and Barbuda and its EOI partners have experienced lost mails in their previous exchanges.</p>	<p>Antigua and Barbuda should strengthen communication with its EOI partners.</p>
	<p>As the MLU was established in October 2013, after the review period, the operation and efficiency of the MLU could not be assessed. There were also no established or written procedures of how an EOI request should be handled when the on-site visit was conducted. During the period of review, Antigua and Barbuda has not responded to one of the four EOI requests it received. This request was cancelled by the requesting jurisdiction after two years. Moreover, Antigua and Barbuda not provided an update on the status of the requests when it has been unable to provide the information requested within 90 days.</p>	<p>Antigua and Barbuda should monitor the functioning of the new MLU and complete the drafting of the EOI manual so as to clearly set out the duties, responsibilities of the relevant officers and the processes to be followed in handling with incoming EOI requests (including providing status updates to its EOI partners if an EOI request cannot be responded to within 90 days) to ensure that requests can be replied to effectively and in a timely manner.</p>

Annex 1: Jurisdiction’s response to the review report⁹⁶

The Government of Antigua and Barbuda herein expresses its appreciation to the Global Forum assessment team together with the Secretariat, for the professional manner in which they assisted and provided guidance to the jurisdiction during the Phase 1 Peer Review Group (PRG) assessment of the legal and regulatory framework on transparency and exchange of information for tax purposes; and the Phase 2 PRG assessment monitoring and reviewing the actual implementation of the standards. The jurisdiction also expresses appreciation to the PRG and our exchange of information partners for their contribution to the overall review process. The core delegation constituted by Mr. Ralph Warner Commissioner of Inland Revenue and Competent Authority and Ms. Jasmine Wade, Attorney at Law from the Financial Service Regulatory Commission remain committed to the work related to the Global Forum going forward.

As of May 2014, Antigua and Barbuda has signed 31 Exchange of Information (EOI) agreement of which 23 are in force. To date all of our EOI agreements satisfy the international standards. The jurisdiction will continue to work diligently towards bringing other EOIs into force. In addition, we are committed to signing additional Tax Information Exchange Agreements (TIEAs) with strategically relevant and any other members of the Global Forum.

In 2011, as a result of the Phase 1 assessment, the jurisdiction engaged in a process of taking corrective action and amended a number of laws in order to facilitate full compliance with the standards. The amendments were completed in respect of the Income Tax Act, The Companies Act, The Antigua and Barbuda Tax Information Exchange Act, The International Trust Act, The International Foundations Act, The International Limited Liability Act and the International Business Corporation Act. In so doing, as for Phase 1, the legal and regulatory framework closely reflects the Terms of Reference and the international standards for exchange of tax information for tax purposes.

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

In 2013, the jurisdiction went through its Phase 2 review facilitated by an on-site visit of the assessment team to Antigua and Barbuda. The review period of 2010 to 2012 was assessed to determine the implementation of the standards. During that on-site visit, all key stakeholders met with the assessment team. These stakeholders included the Minister of Finance of Antigua and Barbuda as a demonstration of the highest level of the commitment the jurisdiction attached to the standards of transparency and exchange of information process. The team also met with the head of the Office of National Drug Control and Policy, the money laundering authority within the jurisdiction. In addition, the team met with the Financial Services Regulatory Commission, the regulator of the international financial services sector as well as the non-bank financial services sector. Also the Eastern Caribbean Central Banks, the regulator of domestic banks provided comments. Finally, the Registrar of Intellectual Property, the regulator of domestic companies also participated in the meetings. The experience was very instructive and caused the jurisdiction to refine its regime. As a result of the ratings of the Phase 2 review, the jurisdiction has determined to commence additional corrective action. As for A.1 the jurisdiction undertakes to complete the monitoring processes during the last quarter of 2014. As for C.5, the jurisdiction has established a dedicated unit, headed by the Commissioner of Inland Revenue in order to facilitate incoming EOI requests to allow for timely and efficiently processing. Two members of this new unit have been exposed to training organized by the OECD on exchange of information for tax purposes in Mexico 2013. The aim of the unit is to strengthen the whole exchange of information procedures thereby allowing the jurisdiction to be in a position to respond to any request with completeness and with good quality.

Antigua and Barbuda expresses its highest regard and full commitment to advancing compliance with the international standards of transparency and the effective information exchange for tax purposes.

Annex 2: List of all exchange-of-information mechanisms

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
1	Aruba	Tax Information Exchange Agreement (TIEA)	30-Aug-10	02-Dec-10
2	Australia	TIEA	30-Jan-07	14-Dec-09
3	Belgium	TIEA	07-Dec-09	
4	CARICOM	Double Taxation Convention (DTC)	06-Jul-94	30-Nov-94
5	Curaçao ⁹⁷	TIEA	29-Oct-09	
6	Denmark	TIEA	02-Sep-09	23-Feb-11
7	Faroe Islands	TIEA	19-May-10	
8	Finland	TIEA	19-May-10	24-Mar-11
9	France	TIEA	26-Mar-10	28-Dec-10
10	Germany	TIEA	19-Oct-10	30-May-12
11	Greenland	TIEA	19-May-10	
12	Iceland	TIEA	19-May-10	
13	Ireland	TIEA	15-Dec-09	04-Mar-11
14	Liechtenstein	TIEA	24-Nov-09	16-Jan-2011
15	Netherlands	TIEA	02-Sep-09	23-Feb-10
16	Norway	TIEA	19-May-10	15-Jan-11
17	Portugal	TIEA	13-Sep-10	

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

	Jurisdiction	Type of EOI arrangement	Date signed	Date in force
18	Sint Maarten ⁹⁸	TIEA	29-Oct-09	
19	Sweden	TIEA	19-May-10	
20	Switzerland	DTC	20-Aug-64	01-Jan-61
21	United Kingdom	TIEA	19-Jan-10	28-May-10
22	United States	TIEA	06-Dec-01	10-Feb-03

98. See previous footnote.

Annex 3: List of all laws, regulations and other material received

Commercial Laws

Companies Act No 18 of 1995
International Business Corporation Act Cap. 222
Insurance Act No. 13 of 2007
Financial Institutions (Non Banking) Act, Cap.169
Partnership Act Cap. 306
International Trust Act, No.18 of 2007
Trustees and Mortgagees Act
Trust Corporations (Probate and Administration) Act
Trustee Act
The Trust Corporation (Probate and Administration) Act Cap 445
Trustees and Mortgagees Act Cap 447
Business Names Act Cap. 63
International Limited Liability Companies Act No. 20 of 2007
International Foundations Act No. 19 of 2007
Trustees' Relief Act
Corporate Management and Trust Service Providers Act No. 20 of 2008,

Taxation Laws

Personal Income Tax Act No. 1 of 2005
Income Tax Act
Inland Revenue Administration Act; Cap. 21

Antigua and Barbuda Sales Tax Act No. 5 of 2006

Antigua and Barbuda Tax Information Exchange Act No. 14 of 2002

Banking Laws

Money Services Business Act No. 9 of 2007

Banking Act No.14 of 2005

Anti-Money Laundering Laws

Proceeds of Crime Act No. 13 of 1993

Money Laundering (Prevention) Act No. 9 of 1996

Money Laundering Prevention Regulations No. 38 of 2007

Money Laundering Guidelines for Financial Institutions 2002

Others

Friendly Societies Act Cap. 184

Cooperative Societies Act No. 9 of 2010

Legal Professions Act No. 22 of 2008

Interactive Gaming and Interactive Wagering Regulations No. 34 of 2007

Antigua and Barbuda's laws can be found online at www.laws.gov.ag/acts/index.html

Annex 4: People interviewed during on-site visit

Ministry of Finance

Minister of Finance, the Economy and Public Administration

Inland Revenue Department

Commissioner

Project Manager

Programme Monitoring Officer

Attorney General's Office

Solicitor General

Registrar for Intellectual Property and Commerce

Deputy Registrar

Financial Services Regulatory Commission

Administrator / CEO

Manager of IBC's and Non-Banks

Supervisor of International Banks and Trusts

Legal & Research Officer

Office of National Drug and Money Laundering Policy

Director

Manager Financial Compliance Unit

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: ANTIGUA AND BARBUDA

This report contains a “Phase 2: Implementation of the Standards in Practice” review, as well as revised version of the “Phase 1: Legal and Regulatory Framework review” already released for this country.

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 work of the Global Forum on an equal footing.

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

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

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

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

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

Consult this publication on line at <http://dx.doi.org/10.1787/9789264217492-en>.

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