GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

GHANA

OECD

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

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

October 2014
(reflecting the legal and regulatory framework
as at July 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 Ghana 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 (1 July 2010 to 30 June 2013).

2. Although not a member at the time, Ghana was identified in 2008 as a jurisdiction relevant to the Global Forum's work as a result of the establishment of the Ghana International Financial Services Centre (the Ghana IFSC). As a non-member of the Global Forum, Ghana was given the same opportunity to participate in its Phase 1 review as Global Forum members. Ghana participated co-operatively, but late in the review process. Ghana has since become a member of the Global Forum in April 2011 and co-operated fully in its Phase 2 review.

3. In 2007, the Ghana IFSC was established, which permitted offshore banks to operate in Ghana and therefore making it possible for non-resident individuals and foreign companies to open offshore bank accounts in Ghana. As at October 2010, only one offshore bank had been issued a license to operate in Ghana and at that time Ghana planned to have a full range of non-bank financial services as part of a comprehensive financial sector development programme. However, in 2011, on further analysis by the Ministry of Finance, the development of an offshore banking concept was viewed as non-viable and the one licence that had been issued was returned by that bank. Officials from the Ministry of Finance have advised that there are no current plans to reintroduce offshore banking operations in Ghana.

4. Ghana has a comprehensive legal and regulatory framework for transparency and exchange of information for tax purposes which ensures that accurate, adequate and updated information concerning legal ownership and control of legal entities is maintained in Ghana. Bank information and accounting records are also required to be maintained.

5. In practice, the obligations in place to ensure the availability of ownership and identity information, as well as accounting and banking information for account holders are accompanied by appropriate penalties for

non-compliance. Over the review period, ownership and accounting information has been made available where it has been requested. While there is a regular system of oversight in place by the GRA and the regulator (Bank of Ghana) via a system of desktop monitoring and onsite inspections, the lack of a comprehensive system of oversight and enforcement of penalties by the Registrar-General over the review period may not ensure that complete ownership information is being maintained in respect of all legal entities. The Registrar-General should implement a regular system of oversight of registered entities compliance with ownership and identity requirements and ensure that its enforcement powers are sufficiently exercised in practice.

6. Ghana's tax authorities have powers to obtain bank, ownership, identity and accounting records and have measures to compel the production of such information.

7. Some portion of Ghana's framework for transparency and exchange of information is relatively new, in particular with respect to:

- availability of ownership and identity information of external companies doing business in Ghana and of owners of companies where shares are held by nominees;
- maintenance of identity information concerning trusts; and
- maintenance of underlying documentation as part of the obligation to maintain accounting records.

In particular, as the requirements for professional nominees and trusts to maintain ownership information on all clients for whom they act were introduced after the review period and have not been tested in practice, Ghanaian authorities should monitor the practical implementation of these requirements.

8. Ghana has a wide network of EOI mechanisms comprised of one TIEA and 11 bilateral DTCs. In addition, Ghana became a signatory to the multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) in July 2012, which it ratified in October 2012, extending its network to over 80 treaty partners. With the ratification of the Multilateral Convention in October 2012, Ghana's tax treaty network, now covers all significant economies with which Ghana has sizeable business.

9. Ghana has been exchanging information in accordance with the international standards since 2008. During the review period, there was a change in the competent authority contact information which Ghana did not provide consistently to all of its treaty partners. Further, Ghana experienced many difficulties with the postal service. As a result, out of ten requests sent by one treaty partner to Ghana over the review period, only one of these was successfully received by the EOI Unit during the review period.

The remaining nine requests were resent via encrypted email to Ghana in February 2014 who provided the full information to the requesting jurisdiction in April 2014. Ghana has since alerted all treaty partners to its new competent authority contact details and has also began receiving requests via encrypted email to ensure their timely delivery to the EOI Unit.

10. Previously, there was no formal EOI process in place in Ghana. Since 2012, a formal EOI Unit has been in place within the Commissioner-General's Secretariat of the Ghana Revenue Authority (GRA) with two officials responsible for the day-to-day processing of EOI requests under the supervision of the Head of EOI. Ghana has also taken other measures to improve the processing of all EOI requests, such as developing a comprehensive EOI manual, implementing formal EOI process such as the use of model templates as well as rolling out an extensive educational programme within the GRA to highlight the importance of EOI. Proper oversight procedures for the processing of requests have also been put in place. Nevertheless, over the review period, Ghana experienced difficulties in successfully receiving all requests and ensuring that they were correctly transmitted internally to the EOI unit with the GRA. Further, in cases where information had to be provided by a third party, there were delays in providing the requested information. Therefore, Ghana should closely monitor all aspects of its EOI processes, especially in regards to regular and effective communication with its treaty partners to ensure that it successfully receives all requests and replies to them in an and timely efficient manner.

11. Ghana has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Ghana's legal and regulatory framework and the effectiveness of its exchange of information in practice. These ratings have been compared with the ratings assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach. On this basis, Ghana has been assigned the following ratings: Compliant for elements A.3, B.1, B.2, C.1, C.2, C.3 and C.4, Largely Compliant for elements A.1, A.2 and Partially Compliant for element C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Ghana is Largely Compliant.

12. A follow-up report on the steps undertaken by Ghana to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.

Introduction

Information and methodology used for the peer review of Ghana

13. The assessment of the legal and regulatory framework of Ghana was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer reviews and Non-Member Reviews*.

14. Ghana's Phase 1 review began on 6 April 2010 by the sending of a questionnaire on Ghana's legal regulatory framework. Ghana did not respond to the questionnaire. Ghana did, however, participate co-operatively, but late in the review process. As a result, the review was delayed by four months and the assessment was primarily based on publicly available laws, regulations, and exchange of information mechanisms in force or effect as at October 2010. Ghana's Phase 2 review was launched in December 2013, by which time Ghana had joined the Global Forum and was also a recent member of the Peer Review Group. Ghana was fully co-operative in the course of the preparation of the Phase 2 review including submission of a fully completed questionnaire, attendance and organisation of the onsite visit with the assessment team and supplying all necessary materials.

15. The Phase 2 review of Ghana analyses the practical implementation and effectiveness of the legal framework in the three year review period of 1 July 2010 to 30 June 2013, as well as any amendments made to the legal and regulatory framework since the Phase 1 review. This assessment is therefore based on the laws, regulations, and exchange of information mechanisms in force or effect as at 18 July 2014, other materials supplied by Ghana, and information supplied by partner jurisdictions.

16. 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) exchanging information. This review assesses Ghana'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.

17. The Phase 1 assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Mr. Oscar Echenique of the México Tax Administration Service; Mr. Duncan Nicol of the Cayman Islands Tax Information Authority and Competent Authority; and Mr. Stewart Brant from the Global Forum Secretariat.

18. The Phase 2 assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Mr. Diego Marvan Más of the Large Taxpayer Unit of the México Tax Administration Service; Mr. Duncan Nicol of the Cayman Islands Tax Information Authority and Competent Authority; and Ms. Mary O'Leary from the Global Forum Secretariat.

Overview

19. Ghana is located on Africa's West coast on the Gulf of Guinea. Ghana has an area of approximately 238 thousand square kilometres and an estimated population of 27.2 million. Accra is the capital and largest city of Ghana. While the country's official language is English, Ghana is home to over 100 different ethnic groups and 53 principle ethnic languages. The majority of Ghanaians claim fluency in both English and at least one other language. Ghana shares borders with Côte D'Ivoire to the West, Burkina Faso to the North, and Togo to the East. The Ghanaian cedi (GHS) is the national currency of Ghana. As at 15 July 2014, GHS 1 = EUR 0.51.[1]

20. Ghana's 2013 Gross Domestic Product (GDP) was GHS 86.5 billion (EUR 21 billion) with a GDP Per Capita of GHS 1 241 (EUR 302), which is one of the highest in Africa[2]. Ghana remains somewhat dependent on international financial and technical assistance as well as the activities of a considerable number of Ghanaians in the diaspora. Under British colonial rule, Ghana was officially named the Gold Coast for its large quantity of gold resources and Ghana remains one of the world's top gold exporters. Other large industrial sectors include cocoa and timber production, mining, and electricity production. The agricultural sector accounts for 22% of GDP which employs 54% of the workforce in Ghana. Ghana's major trading

1. www.xe.com/.
2. IFS – International Financial Statistics, International Monetary Fund, accessed 11 July 2014: www.imf.org/external/pubs/ft/weo/2010/01/weodata/weorept.aspx?sy=2009&ey=2010&scsm=1&ssd=1&sort=country&ds=.&br=1&c=652&s=NGDP%2CNGDPPC&grp=0&a=&pr1.x=56&pr1.y=14.

partners include Brazil, China, France, Germany, Italy, Netherlands, Nigeria, South Africa, Switzerland, the United Kingdom, and the United States.

21. As codified in the *1998 Trade Act*, Ghana operates in a free market economy. Since 1983, Ghana has pursued an economic agenda which pushes privatisation and reduces government involvement in its economy. Ghana has progressively reduced import quotas and tariffs as part of structural adjustment programmes attached to International Monetary Fund (IMF) and World Bank loans. Ghana is an active participant in the World Trade Organization (WTO).

22. The financial system of Ghana has been profoundly transformed since the joint IMF-World Bank Financial Sector Assessment Program (FSAP) in 2000. Notably, the banking system has grown rapidly, fuelled by fast credit expansion. Banks now account for about 70% of the financial sector. As of July 2014, the value of the assets held by banks in Ghana amounted to GHS 43.9 billion (approximately EUR 9.1 billion).

Financial institutions, 2014

	Total
Commercial Banks	27
Non-Bank Financial Institutions	57
Rural Banks	139
Microfinance Institutions	435
Bureau de Change	387
TOTAL	1 045

Other financial sector institutions and businesses, 2014

	Total
Insurance	
Non-Life Insurance Companies	26
Insurance Brokers	63
The Security and Capital Market	
Investment Advisors	91
Broker Dealers	23
Mutual Funds	20
Unit Trusts	14
Custodians	17
Trustees	2
Security Depositors – Operated by BOG	2
Listed Companies on the Ghana Stock Exchange	37

23. Ghana also has a range of formal, semi-formal and informal institutions providing microfinance services to the urban and rural poor and underserved sectors of the economy.

24. The following designated non-financial businesses and professions have the same obligations under the *Anti-Money Laundering Act* as apply to financial institutions; casinos, auctioneers, nominees, notaries, lawyers, non-governmental organisations, accountants, religious bodies, real estate developers, operators of games of chance, trust and company service providers, dealers in motor vehicles, and dealers in precious minerals and stones.

General information on legal system and the taxation system

25. Ghana declared independence from the United Kingdom on 6 March 1957, establishing its government under a parliamentary democracy. Following independence, Ghana alternated between military and civilian governments until the 1992 parliamentary and presidential elections replaced the military government with the Fourth Republic. The current *1992 Constitution* divides power between the Executive, Parliament, and an independent Judiciary. Ghana has a multi-party system with Presidential and Parliamentary elections held alongside one another every four years. Ghana is divided into 10 administrative regions which are further divided into 216 districts. Each district has its own District Assembly. District Assemblies collect their own revenues in the form of property taxes, user fees, licenses and permits. They have legislative power in respect of their district, though not with respect to taxation, financial sector or corporate matters.

26. The Parliament is a unicameral body composed of democratically elected members plus a Speaker. Parliament's power is limited by Article 108 of the *Constitution*, which prohibits the Parliament from passing laws with any financial implications. Article 108 states that the Parliament may not produce a bill concerning taxation, the use or allocation of public funds, or the composition or remission of any debt due to the Government of Ghana unless the motion or the bill itself is produced by or on behalf of the President. Almost all legislation requires the assent of the President in order to become law, granting the executive veto power on all laws except those passed with a vote of urgency.

27. Ghana has a traditional common law legal system based on English common law, customary (traditional) law, and the *1992 Constitution*. The highest court is the Supreme Court of Ghana, followed by the Court of Appeals and High Courts of Justice. Beneath these courts are circuit, magisterial, and traditional courts. The Constitution defines the laws of Ghana as comprising the Constitution; enactments made by Parliament (statutory law); orders, rules and regulations made by authorities under powers conferred by

the Constitution and customary law. While the Constitution, acts and some regulations hold the status of law or regulation, the orders and rules issued by authorities, though often binding on the entities they relate to, do not.

Tax system

28. Ghana taxes its residents (companies and individuals) on their worldwide income; however, income sourced outside Ghana is taxed in Ghana only if it is brought into or received in Ghana. Non-resident companies are taxed only on Ghana-source income. A company is resident in Ghana if it is incorporated under the laws of Ghana or its management and control are exercised in Ghana at any time during the year of assessment.

29. Ghana has moderate taxes which are collected at the national level. The top income tax rate and the standard corporate tax rate are 25%. Other taxes include a value-added tax (VAT) and excise duties.

30. Ghana offers various tax incentives under the *Internal Revenue Act*, *Investment Promotion Centre Act*, and the *Free Zones Act*. Most incentives relate to specific areas, including agriculture and agribusiness, tourism, infrastructure and industry, financial services and oil and petroleum services.

31. Ghana's free zone regime was created by the *Free Zone Act* (1995). Under that act, the imports of a free zone company are exempt from all indirect taxes and duties. In addition, free zone companies enjoy a tax holiday of ten years from the payment of income tax on profits. Thereafter, a free zone company pays corporate tax on profits at a reduced rate of up to 8%, while shareholders are exempted from the payment of withholding taxes on dividends arising out of free zone investments. Eligibility for free zone status is a function of the ability of a company to prove that it will export a minimum of 70% of its production, and that it will not violate any other provisions of the *Free Zones Act*. The Ghana Free Zones Board is responsible for monitoring free zone companies and preventing abuse. Companies operating in Ghana's free zones are required to register with Ghana's Registrar General and submit tax returns and audited financial statements on a yearly basis.

32. In 2009, the *Ghana Revenue Authority Act* was enacted establishing the Ghana Revenue Authority (GRA) in order to replace the then Customs Excise and Preventive Service, the Internal Revenue Service and the Value Added Tax Service to provide for a holistic approach to tax and customs administration. Under this Act, income taxes and value added taxes are administered directly under the Domestic Tax Revenue Division (DTRD) whiles customs taxes are administered by the Customs Division of the GRA.

33. The Chief Executive of GRA is the Commissioner-General. For the purpose of tax administration the *Ghana Revenue Authority Act* divides the

GRA into three main Divisions: DTRD, Customs and Support Services. Each Division is headed by a Commissioner. The Commissioner-General and Commissioners of each division together constitute the top management of GRA. The board of the GRA sits on top of top management. However, their role is mainly in relation to tax policy formulation.

Exchange of information for tax purposes

34. Ghana became a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes in April 2011.

35. Ghana's legal and regulatory framework relevant to exchange of information for tax purposes is presided over by Ghana's Ministry of Finance. The Commissioner-General of the GRA, or his authorised representative, acts as competent authority under Ghana's Double Taxation Conventions (DTCs).

36. Ghana signed its first DTC providing for exchange of information in tax matters in 1993 with the United Kingdom, which replaced the 1947 DTC between the United Kingdom and the then Gold Coast. At present, Ghana has bilateral tax treaties with 11 jurisdictions, eight of which are in force.

Recent developments

37. The *Anti-Money Laundering* (*Amendment) Act* 2014, introducing changes to the AML regime, was passed by Parliament and received presidential assent in April 2014, effectively broadening the scope of the AML regime. Most significantly for EOI purposes, the amendments broaden the scope of the AML regime to cover nominees. The amendments also impose an obligation for trust and service providers to maintain information for all settlors, trustees and beneficiaries of trusts for which they act. All accountable entities are now also obliged to conduct ongoing due diligence and update the records of all clients for whom they act.

38. In August 2013, the Ghanaian Judiciary set up a separate "Tax Court" which is mandated to deal specifically with tax cases. This initiative has been undertaken both to ensure the level of specific expertise required for dealing with complex tax cases and also to expedite the hearing of tax related cases. In May 2014, the GRA conducted a sensitisation programme for the tax court judges and is finalising other aspects, such as the logistical support for the Tax Courts, which are due to be fully operational in the latter half of 2014.

Compliance with the Standards

A. Availability of Information

Overview

39. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If the information is not kept or it 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 describes and assesses Ghana's legal and regulatory framework for availability of information.

40. Amendments to the *Internal Revenue Act* and AML legislation in 2013 and 2014 ensure that ownership and identity information is now available for all relevant entities and arrangements. All companies formed under Ghana law are obliged to maintain a register of shareholders that identifies the legal owners of the company. Any transfers in ownership must be recorded in the register. All companies doing business in Ghana must also register with the Registrar-General's Department. Bearer shares are prohibited under Ghanaian law.

41. External companies (companies incorporated outside of Ghana) that are operating in Ghana are required to register with the Registrar-General's Department. While, they are not obliged to provide information identifying their owners as a part of registration requirements, since May 2013, all external companies are required to compulsorily keep a share register in Ghana.

Therefore, information identifying the legal owners of all external companies operating in Ghana is available.

42. Since April 2014, there is a requirement under the *AML Act* for all nominees acting in a professional capacity to identify and maintain updated information on the persons for whom they are acting.

43. Partnerships conducting business in Ghana are obliged to register with the Registrar-General's Department and to maintain an up-to-date register identifying all partners in the partnership. Partnerships are also obliged to file yearly tax returns with the GRA which contains the names and addresses of the partners in the partnership.

44. Trusts are considered separate taxable entities in Ghana. With the implementation of the new "General-Registration" system by the Registrar-General in co-operation with the GRA in 2011, all trusts must now be registered in Ghana. Further, all registered trusts in Ghana are required to file returns for tax purposes and trustees are subject to the common law requirements to maintain ownership information. Since February 2014, there is a requirement under the *AML Act* for all trust and company service providers to identify and maintain updated identity information on the settlors, trustees and beneficiaries for all existing and future trusts for which they act.

45. The obligations imposed in respect of accounting records are satisfactory, with sufficient specificity in respect of the precise information to be maintained. Pursuant to the *Internal Revenue Act*, all accounting records, including underlying documentation, are required to be maintained for a period of at least six years.

46. Banks and other financial institutions in Ghana are obliged to maintain information for all account holders.

47. Therefore, Ghana has a comprehensive legal and regulatory framework to ensure that ownership, accounting and banking information is available for all entities. Nevertheless, as a number of the legal requirements have been recently enacted, Ghana should continue to closely monitor the practical implementation of the recently enacted legal requirements under the *Internal Revenue Act* and the AML regime to ensure the availability of underlying accounting documentation and identity information for all external companies, nominees and trusts operating in Ghana.

48. Compliance in respect of all entities' obligations to maintain ownership, accounting and banking information is strictly monitored by the GRA and other public authorities such as the Bank of Ghana. Monitoring is carried out via a combination of routine inspections, desktop examinations and onsite inspections. Sanctions are set at the appropriate level to ensure compliance with information keeping requirements and sanctions such as

fines are regularly enforced in practice. Over the review period, 2 970 onsite inspections were carried out by the GRA and an average of 215 onsite inspections were conducted annually by the Bank of Ghana for all licensed entities. However, the Registrar-General did not have a regular system of oversight in place during the review period to monitor compliance with ownership obligations and fines were not regularly enforced in practice.

49. Over the three year review period 1 July 2010-30 June 2013 (review period), ten EOI requests were sent to Ghana from one of its treaty partners. Of the ten requests, only one of the requests was received during the review period due to updated competent authority information not being provided to its treaty partners and problems with the Ghanaian postal service. The remaining nine requests, which originated during the review period, were resent via encrypted email and successfully received by Ghana in February 2014 with responses provided in April 2014. Of the ten requests, one request concerned company ownership and accounting information. All other nine requests concerned individuals. Ghana provided the requested company ownership information to this treaty partner in February 2014 and provided the requested accounting information in response to this request in June 2014. To date, no requests relating to banking information have been received.

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 3 A.1.1)

50. The *Companies Act* (1963) first schedule defines "company" as a body formed and registered under the *Companies Act.* The *Companies Act* s. 8 provides that one or more persons may form an incorporated company by complying with the *Companies Act* in respect of registration. The Registrar-General (Registrar) is responsible for the administration of the *Companies Act* (s. 328).

Types of companies

51. The *Companies Act* s. 9 provides for the incorporation of the following types of companies:

- company limited by shares – a company having the liability of its members limited to the amount unpaid on the shares respectively held by them. As of July 2014, there were 352 615 limited and

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

unlimited companies registered in Ghana as there is no distinction made between the number of unlimited companies and limited liability companies in the statistical data base of the Registrar General.

- company limited by guarantee – a company having the liability of its members limited to the amount that the members may respectively undertake to contribute to the assets of the company in the event of its being wound up. As of July 2014, there were 120 024 companies limited by guarantee registered in Ghana.
- unlimited company – a company not having a limit on the liability of its members. Although there is no distinction made between the number of unlimited companies and limited liability companies in the statistical data base of the Registrar General, officials from the Registrar-General have reported that in their experience unlimited companies form an insignificant number of all companies registered.

52. A company may also be classified as a private company or a public company. A private company is a company which by its regulations: restricts the right to transfer its shares; limits the total number of its members and debenture holders to 50; prohibits the company from making an invitation to the public to acquire shares or debentures of the company; and prohibits the company from making an invitation to the public to deposit money for fixed period or payable at call (*Companies Act* s. 9(3)). Any other company is a public company (s. 9(5)).

53. Companies limited by guarantee cannot create or have shares and cannot be incorporated with the object of carrying on a business for the purpose of making profits (ss.9; 10). Non-profit organisations are registered under the *Companies Act* as companies limited by guarantee. Companies limited by guarantee include associations, religious organisations, private organisations, social clubs and foundations.

Ownership information on domestic companies

Registration of companies

54. All companies conducting business in Ghana are obliged to register with the Registrar-General (*Companies Act* s. 8). The *Companies Act* s. 14 obliges all companies to register a copy of their proposed regulations with the Registrar-General. The regulations of the company must include: the company's name, the nature of the business or business which the company is authorised to carry on; and the names of the first directors of the company (s. 16). Upon receipt of a company's regulations, the Registrar-General issues a certificate of incorporation to the company (s. 14(4)).

55. The *Companies Act* s. 27 obliges all incorporated companies in Ghana to further register particulars with the Registrar-General prior to commencing business in Ghana. The particulars of a company include: the names and the former names, addresses and business occupations of its directors and secretary; the name and address of its auditor; the addresses of its registered office and principal place of business in Ghana; if its register of members is kept and maintained elsewhere than at the registered office of the company, the address at which it is kept; if the company has shares; the amount of its stated capital; and the number of its authorised shares (s. 27). Upon receipt of this information, the Registrar-General publishes a copy of the particulars in the Gazette (s. 27(4)). All companies are obliged to notify the Registrar-General of any changes to information registered with the Registrar-General (ss.27, 32, 119).

56. All companies are obliged, as from the date when they commence to carry on business or as from the 28th day after the date of incorporation, whichever is the earlier, to have a registered office in Ghana to which all communications and notices to the company may be addressed (s. 119).

57. In the event of default in complying with company registration requirements, the company and every officer of the company who is in default is liable to a fine (not exceeding 25 penalty units[4]) for each day during which the default continues (*Companies Act* s. 29(1)). Where there is an error or omission in a return delivered to the Registrar-General under the *Companies Act* s. 27, the company and every signatory of the return or declaration is liable to a fine (not exceeding 150 penalty units) (s. 29(4)).

58. The *Companies Act* s. 122 obliges all domestic companies to register with the Registrar-General an annual return containing particulars of every member of the company. The annual return must set forth, *inter alia*:

- the name of every member of the company, the nationality, addresses and the business occupation of that member of the company, the number of shares held by that member at the date of the return, particulars of shares transferred since the last return by persons who are still members of the company, particulars of shares transferred since the last return by persons who have ceased to be members of the company; and
- the names, countries of incorporation, and nature of the businesses of the subsidiaries of the company and of the bodies corporate in which the company is beneficially entitled to equity shares conferring the right to exercise more than 25% of the votes exercisable at a general meeting of the body corporate.

4. One penalty unit is equal to GHS 12 (EUR 3). See section A.1.6 for further analysis of the available penalties.

59. In the case of a private company, the annual return must be accompanied by documents specified in the *Companies Act* s. 269, which include: a certificate that the number of members and debenture holders of the company does not exceed fifty; and except in the case of a company limited by guarantee, a certificate that, to the best of the knowledge and belief of the persons signing the certificate, a body corporate is not or has not been at any time beneficially interested, otherwise than by way of security, in the issued shares of the company, or that if a body corporate is or has been so interested, it is an exempted body corporate (i.e. it is not a public company) (ss.122, 269).

60. In the case of a public company, the annual return must be accompanied by documents specified in the *Companies Act* s. 295, which include: a copy, certified by a director and the secretary of the company to be a true copy, of every balance sheet, profit and loss account, group accounts, directors' report and auditors' report sent to members and debenture holders of the company during the period to which the return relates (ss.122, 295).

61. Failure to file an annual return subjects the company and every officer of the company who is in default to a fine (not exceeding 25 penalty units) for every day during which the default continues.

62. The *Companies Act* s. 331(3) provides the Registrar-General the authority to verify the contents of all registered information. If the Registrar-General is of the opinion that any documents or particulars delivered to the Registrar-General for registration contain information contrary to law, or by reason of error or omission have not been duly completed, or otherwise do not comply with the provision of the *Companies Act*, or contain an error, the Registrar-General may request that the document or particulars be amended or completed and re-submitted. The Registrar-General may refuse to register documents and particulars until they have been appropriately amended or completed. (s. 331(3)).

63. All information at the Registrar-General's Department is available to the general public for inspection, including the application for certified copies of all filed documents, upon payment of a fee of GHS 10 (EUR 2.5) per search (s. 333).

Registration in practice

64. All company registrations are currently performed in person (usually by either a company director or a legal representative) at a local office of the Registrar-General (a statutory body within the Ministry of Justice and the portfolio of the Attorney-General). The first step of the registration process entails a business name reservation at a fee GHS 25 (EUR 6.25) for a period of three months, or an instant business name search at no fee. Domestic companies must complete a set of forms comprising Form No. 3, Form No. 4 and

the Company Regulations form. All forms are accessible on the Registrar-General's Department's website.

65. Form No. 3 requires information such as the company name, the authorised business objects, names of the directors, secretary, and auditors, the stated capital and the share structure of the company. Form 4 contains a declaration by all directors and secretary of a company that the minimum capital requirements of the Act have been met. The Regulations form will require the name of the company, first directors, the authorised business objects, shareholder information, shares held by various shareholders and consideration paid for the shares. The company regulations may be drawn up by the party proposing to incorporate the company or the standard form as proposed in the company regulation form may be adopted.

66. Applying for and obtaining a Tax Identification Number (TIN) is a prerequisite for company registration in Ghana. For tax purposes, an applicant must complete a TIN form and submit it for processing at the Registrar-General's Department or at any GRA office where the TIN can be processed. After the filling in of the form, officials of the GRA assist in the generation of a TIN for proposed officers of the company or the yet to be registered business entity. The TIN certificate is then issued by the GRA office at the Registrar-General's Department or the other GRA offices for registration of the company.

67. In December 2011, as part of Ghana's "E-Government" project to modernise the tax and business administration for all entities, the GRA in collaboration with the Registrar-General's Department commenced re-registering all existing businesses and taxpayers (see also section below *Tax filing*) and ensuring that all individuals and businesses are now registered for both tax and business purposes in Ghana. This project is referred to as the General-Registration system (Ge-Reg system). The first step in this process was the identification and updating of the files of all entities already registered for business purposes and in instances where entities were found to be registered for business purposes but not for tax purposes, they are required to do so at one of the local offices of the GRA. Ghanaian authorities have reported that by updating the records of all entities carrying on business in Ghana, the GRA and Registrar-General's Department are better positioned to offer more efficient and specifically-tailored services to businesses and taxpayers.

68. For all new entities, once they have been successfully registered for commercial purposes, all registered entities are issued a certificate of registration, incorporation as well as a certificate to commence business which lists their TIN. Pursuant to section 8 of the *Tax Identification Number Act*, persons (legal or natural) shall not be issued certificate to commence business without first obtaining a TIN at the time of registration. In order to encourage

compliance with this dual registration requirement, the GRA passed a tax amnesty law in 2012 allowing all entities registered prior to 2012 who had not already registered for tax purposes to do so by September 2013. As of July 2014, there were 69 new entities that had previously not been registered for tax purposes, now registered with the GRA, as a result of the tax amnesty law. The process of reregistration is ongoing and Ghanaian officials have reported that they hope for this process to be completed by the end of 2014.

69. All changes made to the information of a registered company must be filed with the Registrar-General within 28 days. All companies are also under an obligation to submit an annual return form which includes current information on the company as well as all changes including changes to shareholding information during the year. On cross-checking of the information provided in the annual return form with that information provided during the year (such as changes to shareholder information), officials from the Registrar-General's Department have reported that there is a high level of compliance with the requirement to update all information. All documents are archived after the six year mandatory retention period and are maintained indefinitely.

70. There are over 100 staff within the Registrar-General's Department who are responsible for the registration of companies, intellectual property and marriage registration. In regards to company registration, there are currently over 50 company inspectors within the Registrar-General's Department. Prior to the three year review period, onsite inspections were carried out on a regular basis. Over the three year review period, officials from the Registrar-General's department have reported that as all company inspectors were committed to the implementation of the Ge-Reg system, the company inspection programme was suspended during this time. Officials from the Registrar-General's department have further reported that in 2013, there was a series of media announcements made in Ghana to inform all businesses that onsite inspections would be carried out commencing in 2014 once the Ge-Reg system of registration had been fully implemented.

Company's register of members

71. The *Companies Act* s. 32 obliges all domestic companies to prepare and keep in Ghana a register of its members reflecting:

- the names and addresses of the members and, in the case of a company having shares a statement of the shares held by each member distinguishing each share by a number so long as the share has a number, and the amount paid or agreed to be considered as paid on the shares of each member and the amount remaining payable on the shares;

- the date at which the person was entered in the register as a member; and
- the date at which the person ceased to be a member.

72. Companies are obliged to maintain information on persons that cease to become members for six years from the date the person ceased to be a member (s. 32(3)). Each company is obliged to inform the Registrar-General of the place their registers of members are kept and is also obliged to notify the Registrar-General of any change in the place at which it is kept (s. 32(5)).

73. The register of members is available to members as well as the public for inspection and copying, on payment of a fee (free to members) (s. 33). If an inspection is refused, or if a copy of the register of members is not sent, the company and every officer of the company which is in default is liable in respect of each offence to a fine (not exceeding 25 penalty units) for every day during which the default continues (s. 33(4)). Further, the Court may by order compel an immediate production of the register for inspection or direct that the copies be sent to the person requiring them (s. 33(5)).

74. Where a company defaults in complying with the requirements to maintain a register of members, the company and every officer of the company which is in default is liable to a fine (not exceeding 25 penalty units) for every day during which the default continues (*Companies Act* s. 32(7)).

Tax filing

75. Previously, subsequent to registering with the Registrar-General's Department pursuant to the *Companies Act*, all companies were obliged to register with the GRA for a Tax Identification Number (TIN) to be used in filing tax returns. The TIN must be quoted on all correspondence to the GRA (*Internal Revenue Act* s. 119). To obtain a TIN, companies were obliged to go to a local GRA tax office and provide the GRA with certified true copies of its certificate of incorporation, certificate to commence business, company's regulations, manufacturing certificate (for manufacturing concerns), and vending agreement (if company was purchased). Previously, no information about a company's owners was required to be registered to obtain a TIN.

76. As outlined above (see section *Registration in practice*), in December 2011, as part of Ghana's "E-government" project to modernise both the tax administration at the GRA and business registration at the Registrar-General's Department, the GRA in collaboration with the Registrar-General's Department commenced re-registration of all existing businesses and taxpayers to ensure that all entities will now be registered for both tax and business purposes. Pursuant to section 8 of the *Tax Identification Number Act*, a person (legal or natural) shall not be issued a certificate to commence

business without first obtaining a TIN at the time of registration. Further, the *Internal Revenue Registration of Business Act* provides that an entity cannot carry on business unless they have also been registered with the GRA.

77. The TIN is a unique number given to all taxpayers in Ghana and necessary to: clear any goods in commercial quantities from any port or factory; register any title to land, interest in land or document affecting land; obtain a Tax Clearance Certificate from the GRA; and to receive payment from the Controller and Accountant General or a District Assembly in respect of a contract for the supply of goods or provision of any service.

78. Ghanaian resident companies are taxable on their world-wide income, separately from their shareholders (*Internal Revenue Act* ss.6, 44). Foreign business income and foreign investment income of a resident company, however, is only taxable in Ghana if it is brought into or received in Ghana during the year of assessment (s. 6(1)(i)). All companies liable to pay tax are obliged to file annual tax returns (s. 72). Company income tax returns include information on the: name and address of the company; total number of shareholders; total number of shareholders resident in Ghana; nature of the trade or business; name and address of the company's accountant/auditor; and name and salary of the company's directors (Company Income Tax Return). Company income tax returns do not contain information on the company's members or shareholders. However, since 2013, all company ownership information as filed at the time of registration with the Registrar-General, as well as all changes to this information is now also available with the GRA due to the implementation of the dual registration (Ge-Reg) system (see also section *Tax Filing in practice* below).

79. Failure to furnish a return to the GRA within the time required under the *Internal Revenue Act* is an offence and subject to a penalty (four currency points[5] in the case of a company and two currency points in the case of a self-employed person) in respect of each day during which the default continues (s. 142).

Tax filing in practice

80. As outlined above, in December 2011, as part of Ghana's "E-government" project to modernise both tax and business administration of all entities, the GRA in collaboration with the Registrar-General's Department commenced re-registering all existing businesses and taxpayers. The main objective of this project was to verify existing taxpayers and to further increase the tax net by requiring that all entities that are registered for business purposes must now also be registered for tax. Further, with the

5. Currency point =1GHS (Section 165 (2) of the *Internal Revenue Act*).

implementation of this programme, all entities (and individuals carrying on business) are now also simultaneously registered for tax purposes at the time of business registration. Dual registration is performed via the completion of a form at the office of the Registrar-General in order to obtain a TIN. Once successfully registered for commercial purposes, all registered entities are issued a certificate of registration, incorporation as well as a certificate to commence business which lists their TIN. Staff from the GRA is now posted at the office of the Registrar-General's Department in order to facilitate this dual registration process. (see also section *Registration in practice*).

81. In order to encourage compliance with this dual registration requirement, the GRA passed a tax amnesty law in 2012 (*Internal Revenue Tax Amnesty Act* 2012) allowing all entities registered prior to 2012 who had not already registered for tax purposes to do so. As of July 2014, there were 69 new companies that had previously not been registered for tax purposes, now registered with the GRA, as a result of the tax amnesty law. This process of reregistration is ongoing and Ghanaian officials have advised that they hope for this process to be completed by the end of 2014.

82. The secretariat in charge of this initiative has organised sensitisation sessions for all taxpayers to ensure that they comply with the dual registration requirement. This programme has included GRA publications and media announcements reminding taxpayers that they have to reregister by March 2014. The GRA has reported that as a result of this dual registration programme there has been an increase of approximately 20% in the number of entities registered in the taxpayer database.

83. Within the GRA, the Domestic Tax and Revenue Department (DTRD) is responsible for overseeing the filing of income tax returns and compliance with the obligations set out under the *Internal Revenue Act*. As of March 2014, there are 1800 auditors within the DTRD of the GRA responsible for all aspects of tax return filing and enforcement of tax obligations. Officials from the GRA have indicated that there is a very high compliance rate for annual filing requirements which is about 65-70% on average for companies and is higher for large taxpayers and in particular amongst multinationals operating in Ghana where compliance is about 90%. While no ownership information has to be filed at the time of completing the annual tax return, Ghanaian officials have indicated that because of the dual registration programme they can now readily access original ownership information as provided at the time of business registration and updated ownership information which must be provided to the Registrar-General's Department within 28 days of any change.

84. In the case of non-compliance with tax filing obligations, there are sanctions in place which are readily enforced. Officials from the GRA have reported that in the event of non-compliance with tax filing obligations, the

usual collection procedure is initiated with a demand notice which indicates the penalty for non-compliance (see also section A.1.6 *Enforcement in practice*). If there is continued non-compliance the GRA will raise a tax assessment based on previous returns, performance of the sector and other economic factors.

Ownership information on foreign companies

Registration of external companies

85. The *Companies Act* s. 302 defines "external company" as a body corporate formed outside of Ghana which has an established place of business in Ghana. The expression "established place of business" means a branch, management, share, transfer or registration office, factory, mine, or any other fixed place of business, but generally does not include an agency (s. 302(3)). The *Companies Act* ss.303-317 provides special rules for external companies. External companies are obliged to register with the Registrar-General within one month of the establishment of the place of business (s. 303). Information required to be registered includes, *inter alia* (s. 303(1)):

- a certified copy of the charter, statutes, regulations, memorandum and articles, or any other instrument constituting or defining the constitution of the company, in a language acceptable to the Registrar-General;
- the name of the company and the nature of its business or businesses or other main objects;
- the present and former name and the address and business occupation of one person or more persons authorised to manage the business of the company in Ghana (local manager);
- if the company has shares, the number and nominal value of its authorised and issued shares, the amount paid up on the shares and the amount remaining payable on the shares;
- the address of its registered or principal office in the country of its incorporation;
- the address of its principal place of business in Ghana; and
- the name and address in Ghana of a person authorised by the company to accept service of process and other documents on its behalf (process agent).

86. The Registrar-General registers documents received from external companies in the register of external companies and publishes the particulars contained in the registration in the Gazette (s. 303(3)). External companies are obliged to notify the Registrar-General of any changes to information

registered with the Registrar-General (s. 304). The Registrar-General maintains information in the register of external companies for six years after the date the external company is taken off the register of external companies (s. 311).

87. Where an external company or local manager or process agent of an external company fails to comply with registration obligations imposed on it or that manager or process agent, the external company which, and local agent or process agent who, is in default is liable to a fine (not exceeding 250 penalty units), or in the case of a continuing default an additional fine (5 penalty units) for every day during which the default continues (s. 313).

88. Companies incorporated outside of Ghana but having their central management and control in Ghana are not required to provide information identifying their owners as a part of registration requirements. Therefore, the availability of information that identifies the owners of such companies at the time of registration will generally depend on the law of the jurisdiction in which the company is incorporated.

Registration of external companies in practice

89. The process for registration of external companies is similar to that of domestic companies. In addition, at the time of registration, external companies must complete Forms 20 and 21. Form 20 requests information on the legal manager who is the legal representative of the company and the addresses of the registered office in Ghana and Form 21 is a declaration that there are no charges on the property of the company. Dependent on the law of where the foreign company is incorporated, ownership information may be submitted with the Company Regulations. However, generally ownership information on foreign companies is not required at the time of business registration.

90. There is a fee of USD 1 000 for initial registration as a foreign company and a renewal fee of USD 500 payable each year. The Registrar-General has indicated that the majority of external companies with their management and control in Ghana are to be found in extractive industries and natural resources.

External companies' register of members

91. Section 122A of the *Internal Revenue Act*, obliges any company which has its management and control exercised in Ghana at any time during the year to prepare and keep in Ghana a register of its members reflecting:

- the names and addresses of the members and, in the case of a company having shares a statement of the shares held by each member distinguishing each share by a number so long as the share has a

number, and the amount paid or agreed to be considered as paid on the shares of each member and the amount remaining payable on the shares;

- the date at which the person was entered in the register as a member; and
- the date at which the person ceased to be a member.

92. Where a company defaults in complying with the requirements to maintain a register of members, the company will be in breach of the *Internal Revenue Act* and is liable to a fine of not less than two and half penalty units and not more than twelve and half penalty units.

93. Further, in the case of any external companies operating in Ghana, the GRA would be able to demand further particulars under their general information gathering powers (see section *B.1 Access to Information).*

Tax filing

94. External companies (i.e. non-resident companies) are taxable on the company's total income from its business or investment accruing in or derived from Ghana (*Internal Revenue Act* s. 6(1)(ii)). External companies that are liable to pay tax have the same obligations as resident companies to file yearly tax returns. The tax return does not contain any information on the company's members or shareholders.

Tax law obligations in practice

95. Since December 2011, all external companies registered for business purposes in Ghana must now also be registered for tax purposes and obtain a TIN. Officials from the GRA have reported that there are as of July 2014, there were 296 external companies registered for tax and business purposes in Ghana. However due to the initiative currently underway by the GRA and Registrar-General for all external companies registered for business purposes to be registered for tax purposes, it is foreseen that the numbers of external companies registered for tax purposes will be increased as this project continues.

96. An obligation for all companies with management and control in Ghana to maintain an updated shareholder register was introduced into the *Internal Revenue Act* in May 2013. Ownership information is required to be submitted to authorities at the time of registration for tax purposes. Ghanaian officials have reported that external companies are subject to the same system of oversight and programme of enforcement as they already have in place for all domestic companies and in the course of an onsite visit of an external

company, compliance with the obligation to maintain an updated shareholder register will be verified (see also section *Enforcement provisions to ensure availability of information* A.1.6).

Ownership information held by service providers

97. Service providers in Ghana are governed by the *Anti-Money Laundering Act* (2008) (the "*AML Act*"). The *AML Act* is applicable to accountable institutions set out in the First Schedule to the *AML Act* (s. 21). Accountable institutions include: banks licensed under the *Banking Act* (2004) or non-bank financial institutions carrying on specified activities listed in the First Schedule; lawyers; notaries; accountants; insurance companies; nominees; auctioneers; religious bodies; non-governmental organisations; real estate companies or agents (only to the extent the company or agent receives funds in the course of the agent's business to settle real estate transactions); and trust and company service providers[6] (*AML Act*, First Schedule).

98. In its customer due diligence procedures, the *AML Act* requires all accountable entities that establish a business relationship[7] with a person to keep records of the identity of the person or the agent of the person, transactions[8] made through the accountable entity, and suspicious transactions reports made to the Financial Intelligence Centre (s. 23(1)). Accountable entities are obliged to keep records for each single transaction made with them (s. 23(3)).

99. As of April 2014, pursuant to section 23 of the *AML Act*, all accountable institutions are now obliged to apply customer due diligence measures and to conduct on-going customer due diligence (CDD) as prescribed by the regulations (s. 23(2)&(3)).

100. Accountable institutions are obliged to keep records for not less than five years after the date on which a relationship is terminated in case of a business relationship, or not less than six five years after the date a transaction is concluded (s. 24 (3)).

101. Non-compliance with the record keeping requirements of the *AML Act* is an offence and subject, on summary conviction, to a fine (of not more

6. Trust and company service providers means paid professional companies or unpaid persons who hold assets in a trust separate from their own assets (*AML Act*, s. 51).
7. A business relationship means an arrangement between a person and an accountable entity for the purpose of conducing a transaction (s. 51).
8. A transaction includes an act which establishes a right or obligation or gives rise to a contractual or legal relationship between parties to the contract or legal relationship and any movement of funds by any means with a covered entity (s. 51).

than 2 000 penalty units) or to a term of imprisonment of not more than five years, or both (s. 39(1)(c)). In the case of a body corporate, other than a partnership, each director or an officer is considered to have committed the offence. In the case of a partnership, each partner or officer is considered to have committed that offence (s. 39(2)).

AML obligations in practice

102. The Financial Intelligence Centre (FIC) is the financial intelligence unit of Ghana (an independent statutory body established under section 4 of the *AML Act*) and is responsible for issuing guidelines for all accountable institutions to ensure compliance with the AML regime. As at July 2014, the FIC has a staff of 34 full-time employees with 7 of these being seconded from other Ghanaian government institutions. The FIC was admitted to the Egmont group in June 2014.

103. There are three main directorates within the FIC; Compliance, International Cooperation and Research. The Compliance department is responsible for ensuring that accountable institutions comply with their obligations under the AML regime, including ownership obligations such as the identification of all persons who transact with an accountable institution. In regards to the compliance role of the FIC, they have issued guidelines (which have the force of law in Ghana) in conjunction with the regulators in order to ensure that they are complying with the CDD measures set out under the AML Act.

104. An amendment to the *AML Act* was passed in Ghana in April, 2014, effecting changes to the AML regime in response to recommendations made in the context of its review by the Intergovernmental Action Group Against Money Laundering in West Africa (GIABA). Relevant for EOI purposes, all accountable institutions must now conduct on-going customer due diligence and update their files accordingly. Alongside these legislative measures, the FIC has recently launched a campaign in order to attempt heighten compliance with CDD and raise awareness of the procedures to be implemented in order to effectively carry out CDD. This initiative has included the publication of information leaflets on CDD which have been distributed to all accountable entities. Open information sessions have also been held by the FIC.

105. In the context of their law enforcement function, the FIC has reported that over the review period, they have conducted offsite surveillance of entities based on suspicious activity reports of which to date they have received almost 1 000 such reports mainly generated from the commercial banks. In the course of the desktop inspections, the FIC has reported that there is generally a very high level of compliance with regulatory requirements. As of

July 2014, the FIC reported that all 27 banks operating in Ghana were fully compliant with their regulatory requirements, including obligations under the AML regime and that all non-banking financial institutions, insurance companies and capital market operatives were largely compliant with these requirements.

106. The Bank of Ghana (BOG) is the body responsible for overseeing licensed bank and non-bank financial institutions compliance with the know-your-customer (KYC) obligations as set out under the *AML Act* and Regulations. The BOG is responsible for the licensing and regulation of approximately 1 000 entities and is broken into three main departments: the licensing and supervision of banking entities, the licensing and supervision of the Other Financial Institutions Department (rural and community banks) and the Financial Stability Department which is specifically concerned with licensed entities compliance with the know your customer requirements. In order to encourage increased compliance with the CDD requirements, the AML unit has issued AML guidelines to all licensed entities detailing their KYC and CDD requirements. These guidelines have force of law in Ghana.

In terms of monitoring of licensed entities obligations, the system in place by the BOG is twofold. Firstly, the BOG has in place a system of on-going prudential supervision which is carried out via electronic submission of prudential returns which are sent in to the BOG on a quarterly basis which are analysed and on the basis of this information, a risk rating is derived for each entity. Prudential returns include mainly financial data such as the amount of deposits over the period, the amount of lending activity, their level of capital, lending ratios and exposure to risk as well as notes from internal prudential meetings must be submitted by all entities under the supervision of the BOG on a monthly, quarterly or annual basis. Staff then analyse the information submitted and on the finding of the risk analysis they visit certain entities.

107. Secondly, within the BOG, there are 160 inspectors that conduct a comprehensive system of onsite inspections on all licensed entities. Officials from the BOG have reported that they visit all 27 licensed commercial banks at least once a year and all other licensed entities (mainly consisting of micro-finance institutions) at least once every three years.

108. Once an entity has been selected for an onsite inspection, they usually receive notice of approximately two weeks. In the course of the onsite inspection, the BOG will check all aspects of their compliance with the obligations under the AML regime such as maintaining ownership information for the clients for which they act. The onsite inspections usually take between 1-5 days and on the final day the BOG holds an exit meeting with representatives to explain any deficiencies they have come across in the course of the visit and outlining the recommendations to address these deficiencies.

Entities are then allocated a period of time (usually one month) in which they have to address any deficiencies and send a report outlining these to the BOG. A report detailing the entity's compliance with the regulatory and AML obligations is also sent to the Financial Intelligence Unit.

109. In the event that the BOG does not receive an update from the company, it is usual practice to send a recommendation letter for the company to do so at their earliest convenience. Officials have reported that generally compliance is high due to the sanctions for not doing as set out under the *Banking Act* and the *AML Act* (see also section A.1.6 *Enforcement of penalties in practice).*

Ownership information held by nominees

110. The *Terms of Reference* requires that jurisdictions ensure that information is available to their competent authorities that identify the owners of companies and any bodies corporate. Owners include legal owners, and, in any case where a legal owner acts on behalf of another person as a nominee or under a similar arrangement, that other person, as well as persons in an ownership chain, to the extent that it is held by the jurisdiction's authorities or is within the possession or control of persons within the jurisdiction's territorial jurisdiction.

111. The Registrar-General of Companies does not maintain information on nominee shareholders or information that indicates whether shares are held for the benefit of a third party. Likewise, companies are not obliged to maintain this type of information in their own respective register of members.

112. The Registrar is, however, empowered under the *Companies Act* s. 227 to verify the ownership of shares or debentures of a company. The Registrar-General exercises this power where it appears to the Registrar-General that there is good reason to investigate the ownership of any shares in, or debentures of, a company or where the directors of a company so request in writing. The Registrar-General may personally carry out the investigation or by written order appoint one or more inspectors to carry out the investigation (s. 227(1)).

113. The Registrar-General may require a person whom the Registrar-General has reasonable cause to believe to be or to have been interested in shares or debentures, or to act or to have acted in relation to those shares or debentures as the agent or adviser of someone interested in those shares or debentures, to give the Registrar-General any information which that person has or can reasonably be expected to obtain as to the present and past interests in those shares or debentures and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares and debentures (s. 227(2)). For this purpose, a person has an interest in a share or debenture if that person has a right to acquire or dispose of the share or debenture or an interest in or to vote in respect of the share or debenture or

if that person's consent is necessary for the exercise of any of the rights of other persons interested in the share or debenture, or if the other person interested in the share or debenture can be required or are accustomed to exercise their rights in accordance with the instructions of that person (s. 227(3)).

114. A person who fails to provide information in response to a request from the Registrar-General under the *Companies Act* s. 227, or who knowingly provides false information, is liable to a term of imprisonment not exceeding six months or to a fine (not exceeding 750 penalty units) or to both (s. 227(4)).

115. Where it appears to the Registrar-General that there is difficulty in finding out the relevant facts about shares or debentures and that the difficulty is due wholly or mainly to the unwillingness of the persons concerned to give accurate information as required by the *Companies Act* s. 227, the Registrar-General may, by order, direct that the shares or debentures be subject to restrictions affecting *inter alia* the right to transfer the shares and the ability to exercise voting rights in respect of those shares (ss.227(5)-(6)).

116. An amendment to the *AML Act* was passed in Ghana in April, 2014, effecting changes to the AML regime in response to recommendations made in the context of its review by the Financial Action Task Force. Pursuant to the amendments, nominees are now a named accountable entity subject to the obligations under the Act in respect of all clients for whom they act (First Schedule, s. 21(m), *AML Act*). Further, section 23(9) sets out that a nominee holder of shares and debentures is under an obligation to maintain relevant ownership information where the nominee acts as the legal owner on behalf of any other person.

117. Nominees acting in a professional capacity will be subject to the AML regime ensuring the availability of information on the clients for whom a nominee acts. Ghanaian Authorities have indicated that in practice there will only be exceptional cases whereby a nominee will not be acting for profit or gain and therefore not deemed to be acting in a professional capacity, and hence this category represents a very small proportion of all nominees acting in Ghana. In addition, Ghanaian authorities have reported that they have never come across a nominee acting in a non-professional capacity.

118. To date no requests involving nominee shareholders have been received so far by Ghana, and of the EOI partners that provided peer input, none indicated that there were any issues in relation to nominee ownership.

Conclusion of company ownership information in practice

119. In the three year period under review (July 2010 – June 2013), one EOI request concerning company ownership information was received by Ghana. In this case the ownership information was obtained from the database of the

Registrar-General. The competent authority also conducted an onsite visit to the named company under the EOI request to ensure that the company was still in existence. Due to internal difficulties with the receipt of EOI requests (see also section C.5 *Timeliness of responses to requests for information*), some of the information was provided one year after the receipt of the EOI request at the offices of the GRA and the outstanding information relating to this request was provided, after the review period, in June 2014 within a period of 18 months from receipt of the original receipt of the request at the GRA.

120. Ghana has a comprehensive legal and regulatory framework ensuring that company ownership information is available. Over the review period, legal amendments to the *AML Act* were enacted in order to require all nominees acting in a professional capacity to maintain full ownership information for those persons for whom they act. This obligation will be monitored in the course of the onsite inspection programme as carried out by the Bank of Ghana to ensure that entities comply with their obligations under the *AML Act*. Legal requirements were also introduced to the *Internal Revenue Act* in order to require all companies exercising control or management in Ghana at any time throughout the year to maintain full ownership information in Ghana. This requirement will be monitored by the GRA in the course of their audit programme (see also section A.1.6 *Enforcement provisions to ensure availability of information*). Further, under the AML regime, all accountable entities are now subject to obligations to conduct on-going due diligence for all entities for which they act.

Bearer shares *(ToR A.1.2)*

121. Ghanaian law does not allow the issuance of bearer shares. The *Companies Act* s. 32 provides that a company is required to keep a register in Ghana of its members and enter in the register among other things, the names and addresses of the members and, in the case of a company having shares, a statement of the shares held by each member distinguishing each share by a number so long as the share has a number.

122. Once a company has issued shares or registered the transfer of shares, it shall within two months, deliver to the registered holder of the shares a share certificate under its common seal. The *Companies Act* s. 53 provides that a share certificate should state:

- the number and class of shares held by that holder and the definitive numbers of the class,
- the amount paid on the shares and the amount remaining unpaid, and
- the name and address of the registered holder.

123. Statements made in a share certificate under the common seal of the company are prima facie evidence of the title to the shares of the person named in the certificate as the registered holder and of the amounts paid and payable on the certificate (s. 54). The *Companies Act* s. 95 provides that, except as expressly provided in a company's regulations, shares are transferable without restriction by a written transfer in common form. A company is not allowed to register a transfer of shares unless a proper instrument of transfer duly stamped, if chargeable to a stamp duty, has been delivered to the company. The company may refuse to register a transfer unless it is accompanied by the appropriate share certificate. The *Companies Act* s. 122(1) requires a company to, at least once each year, deliver to the Registrar-General for registration an annual return including particulars of each member of the company.

Partnerships *(ToR A.1.3)*

124. The *Incorporated Private Partnership Act* (1962) ("*Partnership Act"*) is the statutory law governing the formation and governance of partnerships in Ghana. The *Partnership Act* s. 1 defines "partnership" as an association of two or more individuals carrying on business jointly for the purpose of making profits. Family ownership or co-ownership of property does not itself create a partnership whether or not the family or co-owners share any profits made by the use of the property (s. 1(3)).

125. Partnerships registered under the *Partnership Act* are considered separate legal entities (s. 10(1)). Although partnerships are considered separate legal entities, each partner is jointly and severally liable for the debts of the partnership, but are entitled to an indemnity from the partnership and to contribution from co-partners in accordance with the rights of that partner under the partnership agreement (ss.10(3), 14).

Registration of partnerships

126. The *Partnership Act* s. 3 obliges all partnerships consisting of 20 persons or less and of which a body corporate is not a member, to register with the Registrar-General's Department. A partnership or association consisting of more than 20 persons or of which a body corporate is a member, and has for its object the acquisition of gain, is obliged to be incorporated and registered under the *Companies Act* (*Companies Act* s. 5). Registration under the *Partnership Act* is effected by sending to the Registrar-General's Department a copy of the partnership agreement and statement signed by the partners containing (s. 3(1)):

- the firm name of the partnership;
- the general nature of the business;
- the address of the firm;

- the principal place of the partnership and any other places in Ghana at which the business is carried on;
- the names and the former residential addresses and business occupations of the partners;
- the date of commencement of the partnership; and
- particulars of any charges on the partnership.

127. Upon registration, the Registrar-General issues a certificate of registration to the partnership which states that names of the partners and that their liability is not limited (s. 4(1)). A notice of registration is issued in the Gazette stating the terms of the certificate (s. 4(2)). The *Partnership Act* s. 5 requires partnerships to notify the Registrar-General of any changes to information previously registered within 28 days after the change. Where the change is in the partnership's name or of the identity of the partners, the Registrar-General, upon notification of the change, issues an amended certificate of registration and issues a notice in the Gazette stating the terms of the new certificate (s. 5(3)). Partnerships are obliged to renew their registration annually by filing a statement of particulars with the Registrar-General that contains the same information required to be originally registered pursuant to the *Partnership Act* s. 3 (s. 6).

128. The *Partnership Act* s. 3 empowers the Registrar-General to inspect documents and request additional information (e.g. books and accounts of the partnership) to verify the correctness of any information registered. All information registered with the Registrar-General under the *Partnership Act* is available to the general public, on payment of a fee (s. 55)

129. Failure to provide a required statement for registration with the Registrar-General pursuant to the *Partnership Act* subjects each partner in the partnership to a fine (not exceeding 25 penalty unites) for each day during which the default continues (s. 7(1)). Were a statement required to be furnished to the Registrar-General contains an error or omission, the partner concerned is liable to a fine (not exceeding 250 penalty units) (s. 7(3)).

Tax filing

130. Formerly, subsequent to registering with the Registrar-General's Department pursuant to the *Partnership Act*, all partnerships were obliged to register with the GRA for a TIN to be used in filing tax returns. Since December 2011, there is now a process of dual registration for business and tax purposes in place in Ghana, whereby all partnerships must apply for their TIN at the time of registering with the Registrar-General for business purposes. The TIN must be quoted on all correspondence to the GRA (*Internal Revenue Act* s. 119). To obtain a TIN, partnerships are obliged to go to a

local GRA tax office and provide the GRA with certified true copies of its stamped partnership agreement, certificate of registration of the partnership (which states the names of its partners), and a copy of Form A which is the prescribed application form from the Registrar-General's Department.

131. Pursuant to section 8 of the *Tax Identification Number Act*, no persons (legal or natural) shall be issued certificate to commence business without first obtaining a TIN at the time of registration. The *Internal Revenue Registration of Business Act* 2005 provides that an entity cannot carry on business unless they have also been registered with the GRA.

132. Partnerships are not considered to be separate taxable entities, instead they are treated as transparent entities through which partnership income flows to the partners and such share of income is included in the tax returns of its partners (*Internal Revenue Act* ss.40, 42). The *Internal Revenue Act* s. 43 obliges all resident partnerships[9] or partnerships with a permanent establishment[10] in Ghana to file a yearly partnership return with the GRA. The partnership return must state the partnership's income for the year and the names and addresses of the partners and their allocable share of partnership income for that year. The duty to provide the partnership return rests with the active partner resident in Ghana or, where no partner is resident in Ghana by the attorney, agent or manager of the partnership resident in Ghana (Partnership Return).

133. Partnerships in Ghana are not liable for tax. The tax is levied on each partner according to their share of partnership income (s. 42). An individual is taxable in respect of income from each business, employment, and investment, less the total amount of deductions allowed to that person (s. 5). For a resident person, tax is payable on income accruing in, derived from, brought into, or received in Ghana. For a non-resident person, tax is payable on income accruing in or derived from Ghana whether the income is received in Ghana or not (s. 6).

134. Failure to furnish a return to the GRA within the time required under the *Internal Revenue Act* is an offence and subject to a penalty (four currency

9. A partnership is a resident partnership for a year of assessment if, at any time during the year of assessment, any partner in the partnership is a resident person (*Internal Revenue Act* s. 163).

10. "Permanent establishment" means a place where a person carries on business, and a place where a person carries on business through an agent, other than a general agent of independent status acting in the ordinary course of business as such; a place where a person has, is using, or is installing substantial equipment or machinery; or a place where a person is engaged in a construction, assembly, or installation project for ninety days or more, including a place where a person is conducting supervisory activities in relation to such project (s. 167).

points in the case of a company and two currency points in the case of a self-employed person) in respect of each day during which the default continues (s. 142).

Information held by service providers

135. Lawyers, notaries, accountants and banks (accountable institutions) that establish a business relationship with a partnership are obliged to maintain records concerning the partnership as part of their customer due diligence obligations (*AML Act*, s. 23). Accountable institutions are not, however, obliged to verify or maintain records on the identity of partners in a partnership.

Foreign Partnerships

136. A body corporate formed in accordance with the law of any foreign country, whether or not described as a partnership, cannot operate in Ghana unless it registers as a partnership under the Partnerships Act. Unlike the Companies Act, which allows for the registration of foreign companies as external companies, the Partnership Act does not allow for the registration of foreign partnerships. In the case that any association of persons, whether local or foreign, may wish to operate as a partnership in Ghana, it must register the partnership under Ghanaian law. Upon registration the entity will be obliged to comply with the filing of annual returns and the registration of changes in composition of partners. Therefore, the possibility to carry on business as a foreign partnership does not exist in Ghana.

Conclusion and practice

137. The *Partnership Act* establish obligations on all partnerships to provide identity information on each partner at the time of registration, to notify the Registrar-General of any change in this information and to submit renewals with ownership information on all partners. Further, the *Internal Revenue Act* requires that all partnerships submit an annual return containing the names and addresses of the partners. Therefore, there are comprehensive obligations to ensure that identity information on all partners of relevant partnerships is being maintained. The GRA has reported the compliance rate for filing of partnership income tax returns to be approximately 65-70%.

138. As of July 2014, there were 1 104 partnerships carrying on business in Ghana registered with the Registrar-General. Currently all partnerships must be registered in person at the Registrar-General's Department and the process for doing so is similar to that as above outlined for companies (see section A.1.1 *Registration of companies in practice*). In addition to completion

of the relevant forms (Form A), a stamped partnership agreement must be submitted containing all partners names, the general nature of the business, addresses of the partnership, names, address, occupation and TINs of the partners. Upon submission of the relevant forms and payment of the fee GHS 75 (approximately EUR 19) the partnership is issued a certificate of registration. All subsequent changes to the information submitted at the time of registration must be submitted to the Registrar-General's Department. Annual renewals must be filed annually. Officials from the Registrar-General's Department have indicated that the information submitted is cross-checked with all information as provided throughout the year in order to ensure that partnerships are in compliance with their obligations to update all changes with the Registrar-General. In the course of the cross-checking as performed by the Registrar-General's Department, compliance has been found to be very high.

139. All Ghanaian partnerships are also under an obligation to file an annual return with the GRA containing the names and addresses of the partners and their allocable share of partnership income for that year by March of the following year. The GRA monitors this obligation and in the event that a return has not been submitted, the GRA will send a reminder notification to the partnership. Officials from the GRA have indicated that in practice most partnership returns are filed on time and as yet the GRA has not had to enforce the penalties under the *Internal Revenue Act* on partnerships for failure to file a return.

140. There are both comprehensive legal requirements in place in Ghana and a system of oversight of these obligations by the the GRA in the form of desktop inspections and onsite visits to ensure that updated partnership ownership information is being maintained. In the three year period under review, Ghana has not received any EOI requests for information relating to the identity of partners in a partnership and of the EOI partners that provided peer input; none indicated that there were any issues in relation to partnership ownership.

Trusts *(ToR A.1.4)*

141. Trusts are recognised in Ghana under both common and statutory law. The law of trusts in Ghana is derived from the common law and the United Kingdom *Trustees Act* of 1860. Trust law was developed by the English Courts of equity and is a part of the common law which evolved into the laws of Ghana and is still retained as part of the existing law (*Courts Act* (1993)).

142. The only other statutes concerning trusts in Ghana are the *Public Trustee Ordinance* (1952) and the *Trustees (Incorporation) Act* (1962). The *Public Trustee Ordinance* creates the office of the Public Trustee and

provides the holder with corporate status. The Public Trustee operates under the Ordinance as a trustee with power to administer the properties of mentally incapacitated persons and to be appointed as an ordinary trustee among other functions. The *Trustees (Incorporation) Act* enables trustees of a voluntary association established for a religious, literary, scientific, sports, or charitable purpose on registration under the Act, to become incorporated to hold immovable property in trust for the members of the relevant association. Since these enactments are restricted in their application, a law related to a trust which does not fall within their confines depends on the trust instrument as executed by the trustee. If the trust instrument does not state all the powers of the trustee and the rights of the beneficiaries, the Courts are left to follow English common law on trusts.

143. At common law, trusts are generally created when assets are transferred by a person (the settlor) to a trustee for the benefit of another person. There are no apparent prohibitions for a resident of Ghana to act as a trustee or otherwise in a fiduciary capacity in relation to a trust formed in Ghana or under foreign law. Likewise, there are no apparent prohibitions for a resident of Ghana from administering a trust or acting as a protector of a trust governed under foreign law. There are requirements for trusts to be registered under the *Trustees (Incorporation) Act* 1962 and the *Land Title Registration* Act 1986. Further, since December 2011 all trusts are under the requirement to register with the Registrar-General and the GRA under the Gen-Reg system (see section below *Trust ownership information in practice*).

Tax filing

144. Trusts are considered separate taxable entities in Ghana. The *Internal Revenue Act* s. 167 defines "trust" as an arrangement affecting property in relation to which there is a trustee. Trusts are taxed as a "body of persons", which is defined to include trusts created or recognised under a law in force in Ghana or elsewhere (s. 167). The income of trusts is taxable to both the trust and its beneficiaries with double taxation being relieved through credit of any tax paid by the trust to the beneficiary (ss.46, 48). The *Internal Revenue Act,* Part VI, Division III, provides the principal rules for the taxation of bodies of persons (trusts) in Ghana.

145. Trusts created in Ghana are liable to pay tax on income accruing in, derived from, brought into, or received in Ghana. Foreign trusts are taxed on income accruing in or derived from Ghana whether the income is received in Ghana or not (s. 6).

146. The *Internal Revenue Act* s. 72 obliges all trusts with chargeable income to file a yearly tax return with the GRA. The form used by trusts to file a return is the same form used by partnerships (i.e. the Partnership

Return). The return must state the trust's income for the year and, where a distribution of trust property was made to a beneficiary during the year, the names and addresses of the trust's beneficiaries and the amount of their respective distribution for that year. The duty to provide the return rests with the manager or other principal officer of the trust in Ghana (Partnership Return).

147. Failure to furnish a return to the GRA within the time required under the *Internal Revenue Act* is an offence and subject to a penalty (four currency points in the case of a company and two currency points in the case of a self-employed person) in respect of each day during which the default continues (s. 142).

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

148. All trustees are subject to the common law requirements to have knowledge of all documents pertaining to the formation and management of a trust. These requirements are discussed in further detail below.

Information held by service providers

149. Trust and company service providers, lawyers, notaries, accountants, banks (accountable institutions) that establish a business relationship with a trust are obliged to maintain records concerning the identity of the person or agent acting on behalf of a trust as part of their customer due diligence obligations (*AML Act*, s. 23). Trust and company service providers means paid professional companies or unpaid persons who hold assets in a trust separate from their own assets (*AML Act*, s. 51).

150. An amendment to the *AML Act* was passed in Ghana on April 24, 2014 introducing a number of amendments to the *AML Act*. Relevant for EOI purposes, the definition of trust and company service provider under section 51(p) has been expanded to mean:

> Professional companies or unpaid persons who hold assets in a trust fund separate from their own assets and any person in a professional capacity who administers a trust or acts as a trustee but does not include a person who provides trust services as a nominee.

151. This definition extends the meaning of trust and company service provider to also cover individuals who act as trustee in a professional capacity, therefore broadening the scope of the AML regime. While the definition excludes persons providing trust services as a nominee, pursuant to the 2014 amendments, nominees are now a named accountable institution under the

AML Act. While nominee is not defined, under section 51(i), a "nominee" in relation to a nominee trust has been defined to mean:

a. a person who, whether paid or unpaid, holds property for a beneficiary whose identity may or may not be known at the time of the trust even though that beneficiary retains the power to direct the actions of the nominee with respect to the management of the trust property; or

b. a person or group of persons who holds title to real property under a written declaration of trust, where the person or group declares that the person or group will hold property acquired by that person or group as trustees for the benefit of one undisclosed beneficiary or more undisclosed beneficiaries, even though the beneficiary or beneficiaries retain the power to direct the actions of the nominee with respect to the management of the trust property.

152. As a listed accountable institution, all nominees including in those cases where they are providing trust services, will also come under the obligations of the *AML Act*. All accountable institutions are obliged to conduct on-going customer due diligence as prescribed by the regulations under the *AML Act* (*AML Act*, s. 23(2)&(4)). All accountable institutions (including all trust and company service providers and nominees that may provide trust services) are obliged to maintain identity information on a settlor, trustee and beneficiary of all trusts for which they act (*AML Act*, s. 23(8)).

Trust ownership information in practice

153. Since April 2014, there is a requirement under the *AML Act* for all trust and company service providers and professional trustees to identify and maintain updated identity information on the settlors, trustees and beneficiaries for all trusts for which they act. In practice, these obligations are presided over by the Bank of Ghana who monitors all licensed banks and non-bank financial institutions comply with their obligations under the *AML Act*. The Bank of Ghana has a regular system of monitoring in place to ensure that banks and non-bank financial institutions are complying with their obligations under the regulatory laws and the AML regime. This programme includes desktop reviews and a comprehensive onsite inspection programme. (see also section *Regulation of companies in practice*).

154. All trusts are required to be registered with the GRA and as of December 2011 are now subject to the dual registration procedure whereby they are registered for business and tax purposes at the same time. As of July 2014, there were 32 trusts registered with the GRA. In the case of an ordinary trust (where the trustee is not a licensed trustee) the trust must file

an annual return and where there has been a distribution of trust income to a beneficiary this must be detailed. Otherwise, no information on the settlor or beneficiaries of an ordinary trust is required. Officials from the GRA have reported that most trustees comply with the annual return filing requirement which are due by four months after the end of the basis period of the trust. In the event of non-compliance, it is the practice of the GRA to write a letter to the trustee reminding them of the annual return filing requirement. The GRA has reported the compliance rate for filing of trust income tax returns over the review period to be approximately 75%. (see also section A.1.6 *Enforcement provisions to ensure availability of information*).

155. The trustees of all ordinary trusts in Ghana are subject to the common law duties on trustees which should extend to an obligation to have full knowledge of all beneficiaries and in certain cases the settlors for all trusts for which they act. In the case of ordinary trusts, officials from the Attorney-General's Office of Ghana confirmed that English common law relating to trusts and the fiduciary duties of the trustee as applicable to trustees operating in Ghana is followed.

156. Due to the relatively recent independence from the United Kingdom (1957), as yet Ghana does not have its own case law setting down the fiduciary duties as applicable to trustees in Ghana. Officials from the attorney-general's department refer to the leading textbook on the Law of trusts in Ghana "Modern Principles of the Law of Equity"[11] as laying down the principles applicable to trusts. Amongst those principles, it sets out that trustees have a duty to account to the beneficiaries and must be able to provide a beneficiary with information concerning the operation and transactions of the trust. In such cases such information will extend to maintaining accounting information and other trust documents such as the trust deed and documents relating to transfers of property made by the settlor and all other documents required in order to ensure that the trustee's duty to the beneficiaries is carried out (see also section A.2 *Accounting Records*).

157. Further, the textbook also sets out the duty owed by the trustee to manage the trust in accordance with the instructions of the settlor, meaning that in many cases the settlor may also be identifiable in the trust deed. Finally, the fiduciary duty of the trustee to invest the assets of the trust on behalf of the settlor, the duty to keep accounts and records, and the duty not to favour beneficiary interest over those of others is also outlined. It is therefore foreseeable that the fiduciary duties imposed on trustees will extend to maintaining ownership and identity information on the settlor and beneficiaries for most ordinary trusts in Ghana.

11. Modern Principles of the Law of Equity, A.K.P. Kludze.

158. In the event of non-compliance with these duties by the trustee, beneficiaries have the right to enforce the trust (*Beswick v Beswick* [1968] AC 58). In the event of non-compliance of their duties, the settlor or beneficiaries can commence legal proceedings against the trustee. Generally, this should ensure that trustees are complying with their ongoing records keeping requirements.

159. Section 1 of the *Conveyancing Act,* 1973 requires a trust deed to be in writing where the trust deed conveys an interest in land. Where the assets of the trust include interest in land, the trust deed has to be filed with Land Title Registry. As of March 2014, there were 33 trust deeds filed with the land title registry in Ghana.

Conclusion of trust information in practice

160. The availability of ownership and identity information in respect of trusts in Ghana is in place through a combination of common law, AML and other regulatory requirements. Since April 2014, there is a requirement under the *AML Act* for all trust and company service providers and professional trustees to identify and maintain updated identity information on the settlors, trustees and beneficiaries for all trusts for which they act. As the requirement to maintain has been recently introduced, Ghana should closely monitor the practical implementation of these amendments to the *AML Act* to ensure that identity and ownership information on all settlors, beneficiaries and trustees in Ghana is being maintained.

161. For ordinary trusts, with a professional trustee, the obligations of the AML regime will also apply. Further, for trusts which are tax-resident in Ghana and where there is income distributed to beneficiaries (whether resident in Ghana or otherwise) and the trust does not have a professional trustee, the name and address of the beneficiary in receipt of income must be disclosed in the annual income return.

162. There may be a small class of trusts, being ordinary trusts without a professional trustee, for whom an obligation to know the identity of the settlor arises only from the requirements of the common law. However, in the event that an ordinary trust has taxable income the trustee will have to register for tax purposes and will be subject to the provisions of the *Internal Revenue Act* and must file an annual income tax return detailing any distributions made to beneficiaries. The beneficiaries will also have to file a tax return in respect of this income. Further, as a number of ordinary trusts are registered with the Land Title Registry, information on the settlor and beneficiaries will also be maintained at the Registry in respect of some ordinary trusts.

163. In the three year period under review, Ghana has not received any EOI request for information relating to the identity of the settlor, trustee or

beneficiary of a trust and of the EOI partners that provided peer input, none indicated that there were any issues in relation to trust information.

Foundations *(ToR A.1.5)*

164. Foundations in Ghana are registered under the *Companies Act* as companies limited by guarantee (see paragraph 45). Companies limited by guarantee cannot create or have shares and cannot be incorporated with the object of carrying on a business for the purpose of making profits (i.e. foundations in Ghana are non-profit organisations) (ss.9; 10). While the incorporation, registration and tax filing requirements for companies in Ghana ensures the maintenance of ownership and identity information on a foundation's members and managers (foundation council), there are no requirements in the *Companies Act* that information on a foundation's beneficiaries be maintained.

165. Ghana did not provide the assessment team with information regarding foundations or other non-profit organisations operating in Ghana. Ghana was, however, the subject of a mutual evaluation conducted by GIABA (Inter-Governmental Action Group against Money Laundering in West Africa) in 2009 that produced a report[12] which reviews Ghana's non-profit sector. The report states that for a non-profit organisation to gain recognition by Ghana's Government, it must satisfy certain conditions upon registration, including provision of a statement of sources of income and fields of expenditure and an annual report listing the activities carried out during the reporting year (listing expenditures). In addition the report notes, at paragraph 737, that non-profit organisations are required by their supervisor and the Registrar-General to keep records of the sums of money received and expended by, or on behalf of, the non-profit organisation.

166. Where a foundation is a client of an accountable institution under Ghana's *AML Act*, the accountable institution is obliged to maintain information of the foundation. Accountable institutions are obliged to verify or maintain records on the identity of beneficiaries of foundations.

Foundations in practice

167. Foundations in Ghana are registered in person (usually by one executive council member or a subscriber) with the Registrar-General's Department as a company limited by guarantee. Similar to all other business entities in Ghana, since December 2011 all companies limited by guarantee including foundations, must obtain a TIN for identification and tax purposes. As of May 2014, there were 120 024 companies limited by guarantee in

12. Accessible at: www.giaba.org/media/M_evalu/GHANA%20-MER%20-English-1[1].pdf.

Ghana. While separate figures for the number of foundations registered were not available, officials from the Registrar-General have reported that foundations are not a common entity in Ghana. All companies limited by guarantee are obliged to submit an annual return to the Registrar-General's Department which includes information on the members and subscribers (*Companies Act*, s. 122).

168. The Registrar-General's Department is the government agency responsible for overseeing compliance with the information keeping obligations as set out under the *Companies Act.* Over the review period, the Registrar-General has confirmed that due to the implementation of the Gen-Reg system, it has not performed any onsite inspections and that its monitoring activities took the form of desk-top inspections of the information submitted in the annual returns. Officials from the Registrar-General's Department have indicated that foundations are registered mainly for charitable purposes.

169. All companies limited by guarantee including foundations are now dually registered for tax purposes at the time of registration with the Registrar-General's Department and receive a TIN upon incorporation. All foundations are under the requirement to file an annual tax return and this obligation is monitored by the GRA. The annual return includes ownership information on the founders and in the event that there has been a distribution, certain beneficiary ownership information will also be included. The GRA has reported that there is high compliance in respect of the annual return filing by foundations and over the three year period compliance rates for companies limited by guarantee was between 65-70%. Further, the GRA also has a comprehensive onsite inspection programme in place. Over the three year review period, officials from the GRA conducted a total of 2 970 onsite inspections of taxpayers, including foundations.

170. In the three year period under review, Ghana has not received any EOI requests for information relating to a foundation and of the EOI partners that provided peer input, none indicated that there were any issues in relation to foundation identity and ownership information.

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

171. 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.

172. Ghana uses a system of penalty units for fines in its enactments. This method uses units instead of currency values. The Interpretation Act 2009 (Act 792) provides that one penalty unit is equal to 12 Ghana cedis (GHS) (EUR 3).

173. Failure to comply with company registration requirements subjects the company and every officer of the company who is in default to a fine not exceeding GHS 300 (EUR 75) [25 penalty units] for each day during which the default continues (*Companies Act* s. 29(1)). Where there is an error or omission in a return delivered to the Registrar-General under the *Companies Act* s. 27, the company and every signatory of the return or declaration is liable to a fine not exceeding GHS 1 800 (EUR 450) [150 penalty units] (s. 29(4)).

174. Failure to file an annual return subjects the company and every officer of the company who is in default to a fine not exceeding GHS 300 [25 penalty units] for every day during which the default continues.

175. Where a company defaults in complying with the requirements to maintain a register of members, the company and every officer of the company which is in default is liable to a fine not exceeding GHS 300 [25 penalty units] for every day during which the default continues (*Companies Act* s. 32(7)).

176. A person who fails to provide information in response to a request from the Registrar-General to verify the ownership of shares or debentures of a company, or who knowingly provides false information, is liable to a term of imprisonment not exceeding six months or to a fine not exceeding GHS 9 000 (EUR 2 250) [750 penalty units] or to both (s. 227(4)).

177. Where an external company or local manager or process agent of an external company fails to comply with registration obligations imposed on it or that manager or agent, the external company which, and local agent or process agent who, is in default is liable to a fine not exceeding GHS 3 000 (EUR 750) [250 penalty units], or in the case of a continuing default GHS 60 (EUR 15) [5 penalty units] for every day during which the default continues (s. 313).

178. Failure to provide a required statement for registration with the Registrar-General pursuant to the *Partnership Act* subjects each partner in the partnership to a fine not exceeding GHS 300 [25 penalty unites] for each day during which the default continues (s. 7(1)). Where a statement required to be furnished to the Registrar-General contains an error or omission, the partner concerned is liable to a fine not exceeding GHS 3 000 [250 penalty units] (s. 7(3)).

179. Failure to furnish a return to the IRS GRA within the time required under the *Internal Revenue Act* is an offence and subject to a penalty of GHS 4 (EUR 1) [four currency points] in the case of a company and GHS 2 (EUR 0.5) [two currency points] in the case of a self-employed person in respect of each day during which the default continues (s. 142).

180. Non-compliance with the record keeping requirements of the *AML Act* is an offence and subject on summary conviction to a fine of not more than GHS 24 000 (EUR 6 000) [2000 penalty units] or to a term of imprisonment of not more than 3 years, or both (s. 39(1)(a)).

Enforcement in practice

181. The enforcement of sanctions for non-compliance for each entity is outlined below.

Enforcement of registration requirements for companies and partnerships

182. All companies (including foundations) and partnerships must be registered with the Registrar-General's Department. Applicants are required to provide the Registrar-General with information on the proposed business including ownership information. All subsequent changes made to the particulars of business are to be filed with the Registrar-General within 28 days.

183. For failure to comply with registration requirements, there are penalties set out under the Companies and Partnership Acts which in practice are applied by the Registrar-General. Further, all registered companies must file annual returns within 42 days after the annual general meeting of the company (*Companies Act*, s. 122). Officials from the Registrar-General's Department have indicated there is currently no system in place that captures annual returns and annual renewals separately from other filed documents. As a result of the filed documents not being segregated, data specifically on compliance rates for the filing of annual returns over the review period was not available. Over the three year period, no fines were applied by the Registrar-General for non-compliance with the annual return filing obligation.

184. Gross non-compliance with the obligations under the *Companies Act* (such as the carrying on of business without being registered) are treated as criminal offences and are referred to the police. A breakdown of the amount of cases referred to the police related specifically to ownership information requirements under the Companies and Partnership Acts was not available. However, officials from the Registrar-General have confirmed that in the event that they have found gross omissions with obligations set out under the Companies and Partnership Acts, such as the carrying on of business without being registered with the Registrar-General, these cases have been handed over to the police to then take the appropriate enforcement action. The Registrar-General reported that over the three year period, no prosecution actions had taken place by the police. Officials from the Registrar-General have confirmed that it is very rare to find companies or partnerships carrying on business without having registered with them.

185. There are 50 company inspectors within the office of the Registrar-General who are responsible for verifying compliance with ownership information requirements as required by the entity Acts, mainly via onsite inspections. However, due to the rolling out of the new Ge-Reg system over the review period, company inspectors were actively engaged in the vetting and approving of all documents submitted for both registration and re-registration, the onsite inspection programme was suspended by the Registrar-General over the review period.

186. Since December 2011, a dual registration process operates in Ghana whereby all companies and partnerships must apply for a TIN and are subsequently registered for tax purposes at the same time as they register with the Registrar-General Department for business purposes. All information provided at the time of business registration (such as ownership information) and all changes to this information as filed with the Registrar-General are also provided to the GRA. Therefore, as the process to obtain a TIN also now requires registration for business purposes, this is another mechanism by which registration of companies and partnerships with the Registrar-General, including the submission and updating of ownership information, is assured.

Enforcement of tax law obligations for companies, partnerships and trusts

187. All companies incorporated in Ghana must also be registered with the tax authorities. Previously, officials from the GRA cross-checked the tax registers with the register of companies, and reminders were sent to the companies that had not yet registered for tax purposes. In the event that companies continued not to comply with the legal requirement to register for tax purposes, these entities were subject to an audit by company inspectors and fines were also imposed in some cases. In December 2011, a new dual registration procedure for tax and business purposes was implemented in Ghana. This programme has been gradually rolled out commencing with large to medium taxpayers and then imposing this obligation on smaller taxpayers, sole proprietors and individuals. Officials from the GRA have confirmed that as a result of the dual registration programme the difference between the number of registrations with the Registrar-General and the tax register has greatly decreased and the number of entities registered for both tax and business purposes is now almost equal.

188. In respect of the submission of tax returns, the Ghanaian authorities indicated that there is quite a high compliance rate and that 65-70% of the company tax returns are filed on time. Failure to furnish a return to the GRA within the time required under the *Internal Revenue Act* is an offence and subject to a penalty (four currency points in the case of a company and two currency points in the case of a self-employed person) in respect of each day during which the default continues (s. 142). In the event that tax returns are

not filed on time, a reminder notice is issued to the company one month after the deadline. In the event that there is continued non-compliance with the tax return filing requirement, the GRA has applied penalties. In addition, the GRA will raise an assessment on the person based on previous years assessment with interest(s77(2) of *Internal Revenue Act).* Therefore, there is an incentive for companies to file the tax returns with the GRA annually on a timely basis.

189. Partnerships are tax transparent and are treated as transparent entities through which partnership income flows to the partners and such share of income is included in the tax returns of its partners. All resident partnerships or partnerships with a permanent establishment in Ghana are obliged to file a yearly partnership return with the GRA. Failure to furnish a return to the GRA within the time required under the *Internal Revenue Act* is an offence and subject to a penalty (four currency points in the case of a company and two currency points in the case of a self-employed person) in respect of each day during which the default continues (s. 142). Similar to that for companies, in respect of the submission of tax returns, the Ghanaian authorities indicated that there is quite a high compliance rate and that on average over the three year review period about 70% of the partnership tax returns were filed on time.

190. Trusts are considered separate taxable entities in Ghana and must be registered for tax in Ghana with the GRA. All trusts which fail to furnish a return to the GRA within the time required under the *Internal Revenue Act* is an offence and subject to a penalty in respect of each day during which the default continues (s. 142). In the case that the trustee is an individual this will amount to two currency points and in the case of a company acting as trustee they will be subject to a fine of four currency points for every day in default. Ghanaian authorities indicated that there is quite a high compliance rate and that on average over the three year review period 70% of the trust tax returns were filed on time.

191. In addition to the monitoring of tax filing obligations, there is a comprehensive system of oversight of the ownership obligations under the *Internal Revenue Act* in place by the GRA in the form of desktop reviews and an active system of onsite audits of entities registered for tax purposes. Over the review period, the number of entities registered for tax purposes in Ghana was 80 480 in 2010, 87 895 in 2011 and 92 000 in 2012. In regards to onsite audits, 1 070 taxpayers were investigated by the GRA concerning their tax filing obligations in 2011, 800 were investigated in 2012, and 1 100 were investigated in 2013, representing approximately 1% of all taxpayers registered each year. The taxpayers investigated were chosen as a result of careful risk analysis where certain factors such as taxpayer profile, history, industry, compliance with information filing obligations, customer base and payment profile were assessed. Further, officials from the GRA have confirmed that in the course of these onsite inspections, certain ownership

information obligations such as the maintenance of an updated shareholder register will be verified. In the event of non-compliance with the ownership information obligations as set out under the *Companies Act*, the GRA auditor will report such omissions to the Registrar-General as the body responsible for the enforcement of penalties under the *Companies Act*.

192. Out of the 2 970 onsite inspections carried out over the review period, the GRA has stated that compliance with ownership information requirements was high and averaged 75 to 80% for all entities inspected. While records have not been maintained for those fines, which are specifically applied for failure to maintain accurate ownership information, Ghanaian authorities have confirmed that in cases where breaches were found, depending on the seriousness of the breach, fines have been applied.

193. Over the review period, the GRA imposed fines of GHS 2 .44 million (approximately EUR 503 044) in 2010, GHS 3.25 million (approximately EUR 670 018) in 2011, GHS 3.07 million in 2012 (approximately EUR 632 910) and GHS 2.77 million (approximately EUR 571 084) in 2013. Whilst the amount of fines specifically related to non-compliance with ownership information requirements by each type of entity was not maintained, officials from the GRA have reported that these amounts include fines for such breaches by companies, partnerships and trusts.

194. Officials have advised that in the course of ongoing structural reforms within the GRA, a "Debt Management and Compliance Enforcement Unit" has been implemented as one of a series of measures designed to optimise revenue collection and to overall reduce the debt stock of taxpayers. The Unit is responsible for directing and co-ordinating debt management and compliance activities in GRA offices countrywide. Amongst measures taken, a new prosecution unit (the power to prosecute has been authorised via executive instrument from the attorney-general) has been established within the legal unit of the GRA. To date, there have been no prosecutions undertaken.

195. In respect of foreign companies (referred to as "external companies" in Ghana), an obligation for all companies with management and control in Ghana to maintain an updated shareholder register was introduced into the *Internal Revenue Act* in May 2013. Ghanaian officials have reported that external companies are subject to the same system of oversight and programme of enforcement as they already have in place for all domestic companies and in the course of an onsite visit of an external company, compliance with the obligation to maintain an updated shareholder register will be verified (see also section *Enforcement provisions to ensure availability of information* A.1.6). However, as this is a relatively recent requirement, compliance with this obligation has not been verified by the tax authorities over the review period and enforcement of this obligation for external companies is untested in practice. It is recommended that Ghana monitors the

practical implementation of the legal requirement for all external companies to maintain a shareholder register to ensure that ownership information on all companies is available in all cases.

Obligations on service providers

196. Trust and company service providers that establish a business relationship with a trust are obliged to maintain records concerning the identity of the settlors, trustee and beneficiaries of the trust as part of their customer due diligence obligations. Ghanaian authorities have advised that the provision of company and trust services represents a relatively small category of professionals in Ghana and is mainly performed by lawyers and accountants who are both accountable institutions under the *AML Act* and are therefore required to keep ownership and identity information on their clients. Trustees having the obligation to carry out CDD under the *AML Act* are subject on summary conviction to a fine (of not more than 2 000 penalty units) or to a term of imprisonment of not more than five years, or both in case of non-compliance (s. 39(1)(a)).

197. In recent years the focus of the FIC, being the regulatory authority under the *AML Act,* has been on increasing service providers' familiarity with their obligations under the *AML Act.* As a result of the recent enactment of the obligations for all accountable entities to undertake regular customer due diligence, the penalties for non-compliance have not been imposed as yet. Instead, service providers received more time to comply, so ultimately full compliance has been achieved to date in the vast majority of cases.

Conclusion

198. Enforcement provisions are in place in respect of the relevant obligations to maintain ownership and identity information for all relevant entities and arrangements. The Registrar-General's Department has a regular oversight system in place in the form of monitoring of entities compliance with the obligation to submit annual returns. In the event of non-compliance, the Registrar-General's Department has the necessary tools to address non-compliance by companies and partnerships. However, over the review period, it is noted that due to the implementation of the Gen-Reg system, onsite inspections were not performed by the Registrar General. Further, fines for non-compliance were not regularly enforced in practice by the Registrar-General over the review period. Therefore, it is recommended that the Registrar implements a regular system of oversight of registered entities compliance with ownership and identity requirements and that its enforcement powers are sufficiently exercised in practice.

199. In respect of both domestic and foreign companies, partnerships and trusts, the tax law contains sufficient enforcement provisions in case of non-compliance and the GRA has a regular system of onsite visits in place. In addition, the FIC has an active system of monitoring of accountable institutions' compliance with the obligations under the *AML Act* and can address non-compliance by trusts and trustees. However, it is noted that the obligation for trust and company service providers to maintain ownership information on trustees, settlors and beneficiaries has recently been enacted in April 2014. Therefore, it is recommended that Ghana strictly monitors the practical implementation of these legal requirements to ensure that all trust and company service providers maintain updated information for the trustees, settlors and beneficiaries of all trusts for which they act.

200. Although specific statistics have not been maintained in all cases where the different enforcement provisions have been used to address non-compliance in relation to the availability of ownership information, it appears that in all cases the size of the applicable penalties is dissuasive enough to ensure compliance. In respect of the timely submission of income tax returns, which is particularly relevant in respect of external companies, officials from the GRA have made a considerable effort to improve compliance, including the implementation of a dual registration system for all entities at the time of their business registration. In practice, although there have been delays in receiving and processing requests over the review period, ownership information on relevant entities and arrangements was available for the one case where this was requested by an exchange of information partner over the review period.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
New obligations were introduced in the *AML Act* in April 2014 requiring nominees to maintain ownership and identity information in respect of all persons for whom they act as legal owners. As these amendments were passed after the end of the review period and onsite visit, the effectiveness of the new law could not be verified.	Ghana should monitor the operation of the new provisions in the *AML Act* requiring nominees to maintain ownership information for all persons for whom they act.

Phase 2 Rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
All trustees in Ghana are subject to the common law fiduciary duties which should ensure the availability of some information concerning trustees, settlors and beneficiaries. Further, an obligation for trust and company service providers to verify the identity of all settlors, trustees and beneficiaries for which they act was introduced to the *AML Act* in April, 2014. As this amendment was passed after the end of the review period and onsite visit, the effectiveness of the new law could not be verified.	Ghana should monitor the operation of the new provisions in the *AML Act* requiring all trust and company service providers to maintain information on all settlors, trustees and beneficiaries for which they act.
Although the GRA and the Bank of Ghana perform extensive oversight and regularly enforce sanctions, these activities may not ensure compliance with ownership obligations for all relevant entities and arrangements. Further, over the review period, the Registrar-General did not have a regular system of oversight in place to monitor compliance with ownership obligations and sanctions for non-compliance were not enforced in practice.	It is recommended that the Registrar-General implements a regular system of oversight of registered entities compliance with ownership and identity requirements and that its enforcement powers are sufficiently exercised in practice.

A.2. Accounting records

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

201. The *Terms of Reference* sets out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should *(i)* correctly explain all transactions, *(ii)* enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time

and *(iii)* allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, etc. Accounting records need to be kept for a minimum of five years.

General requirements (ToR A.2.1)

202. In Ghana, the *Internal Revenue Act*, *Companies Act*, *Partnership Act*, and *AML Act* collectively contain provisions that generally require the maintenance of accounting records that correctly explain all transactions, enable the financial position of entities and arrangements to be determined with reasonable accuracy at any time, and allow financial statements to be prepared.

203. The *Companies Act* s. 123 obliges all resident companies to keep proper books of account with respect to their financial position and any changes in the books of account. Proper books of account must reflect:

- all sums of money received and expended by, or on behalf of, the company and the matters in respect of which the receipt and expenditure takes place;
- the sales and purchases of the company of property, goods and services; and
- the assets and liabilities of the company and the interests of the members in the company.

204. Proper books of account of a company must give a true and fair view of the state of the company's affairs and must be detailed enough for the preparation of the company's profit and loss accounts and balance sheets (s. 123(2)). Companies are obliged to keep their books of account at their registered office or at any other place that the directors consider fit, and such place must be open during normal business hours for inspection by the directors, secretary and auditors of the company (s. 123(4)).

205. Private companies are obliged to include with their annual return (ss.122, 269):

- a copy of every profit and loss account, balance sheet and group accounts made during the period to which the annual return relates, and a copy of the report of the directors and of the report of the auditors accompanying those accounts, or
- a written statement by the auditors of the company that, to the best of their knowledge and belief, the company's accounts and reports have been sent to the company's members and debenture holders in accordance with the *Companies Act*, and a copy of the auditors' report so sent.

206. Public companies are obliged to include with their annual return a copy, certified by a director and the secretary of the company to be a true copy, of every balance sheet, profit and loss account, group accounts, directors' report and auditors' report sent to members and debenture holders of the company in accordance with the *Companies Act* during the period to which the return relates (ss.122, 295).

207. External companies are obliged, once in every year at intervals of not more than 15 months, to make out and deliver to the Registrar-General for registration a profit and loss account and balance sheet (s. 307(1)). The profit and loss account and balance sheet must give a true and fair view of the profit and loss of the company and the state of affairs of the company for the period to which they relate (ss.125, 126). The Registrar-General may accept for registration a profit and loss account, a balance sheet and group accounts prepared in the form required under the law of the place of the company's incorporation if, in the Registrar-General's opinion, the accounts give substantially the same, or greater, information as that required by the *Companies Act* for resident companies (s. 307(2)).

208. The *Partnership Act* s. 30(1) obliges all partnerships registered under the Act to maintain proper accounts with respect to their financial position and changes in that position and with respect to the control of, and accounting for, the property acquired whether for resale or for use in the partnership's business. Proper accounts must reflect:

- the sums of money received and expended by or on behalf of the partnership and the matters in respect of which the receipt and expenditure takes place;
- the sales and purchases by the partnership of property, goods and services; and
- the assets and liabilities of the partnership and the interests of the partners in those liabilities and interests.

209. Partnerships are further obliged, at intervals of not more than 15 months, to prepare a profit and loss account giving a true and fair view of the profit or loss of the partnership for the period to which it relates, and a balance sheet giving a true and fair view of the assets and liabilities and state of affairs of the partnership and of the value of the interest of each of the partners in the partnership as at the end of the period to which the profit and loss account relates (*Partnership Act* s. 30(2)). Failure to maintain or prepare the accounts and balance sheet required by the *Partnership Act* s. 30 subjects each partner to a fine not exceeding GHS 6 000 (EUR 1 500) [500 penalty units].

210. The *Internal Revenue Act* s. 122 obliges all persons liable to tax in Ghana, other than employees with respect to their employment income, to maintain in Ghana the necessary records to explain the information to be provided in a return or in any other document to be furnished to the Commissioner-General under the Act or to enable an accurate determination of the tax payable by that person. For this purpose, the Act requires all businesses to maintain records of all receipts and payments, all revenue and expenditure, and all assets and liabilities of the business (s. 122(4)). The term "business" is defined to include any trade, profession, or vocation, but does not include employment (s. 167). Such records are required to be maintained for a period of not less than 6 years (s. 122(3)). Where a person does not maintain such records, the Commissioner-General may adjust that person's liability to tax in a manner that is consistent with the intention of the Act (s. 122(2)). Moreover, a person who deliberately fails to maintain proper records for a year of assessment is liable to pay a penalty equal to 5% of the amount of tax payable by that person for the year (s. 141).

211. The tax return used by trusts (Partnership Return) requires trusts to attach copies of the "accounts including certified balance sheet as at the date to which the accounts are made up".

212. The *AML Act* s. 23 obliges all accountable institutions (e.g. trust and company service providers, lawyers, notaries, accountants, banks) that establish a business relationship with a person to keep records of each single transaction made through the accountable institution. Non-compliance with the record keeping requirements of the *AML Act* is an offence and subject on summary conviction to a fine of not more than GHS 24 000 [2 000 penalty units] or to a term of imprisonment of not more than five years, or both (s. 39(1)(a)).

Underlying documentation (ToR A.2.2)

213. There does not appear to be a requirement in the *Companies Act* for companies to maintain underlying documentation (such as invoices, contracts, etc.) in support of the accounting records. However, the *Companies Act* s. 136 specifies that auditors of companies, while acting in the performance of their functions under the Act, have a right of access to the books and account and vouchers of the company.

214. For income tax purposes, all persons required to register with the Commissioner-General under the *Internal Revenue Act*, other than employees with respect to their employment income, are obliged to maintain in Ghana the necessary records to explain the information to be provided in a return or in any other document to be furnished to the Commissioner under the Act or to enable an accurate determination of the tax payable by that person

(*Internal Revenue Act* s. 122(1)). In May 2013, Ghana amended section 122 of the *Internal Revenue Act* and inserted a new subsection 1A to clarify that:

> The necessary records required to be maintained by a person includes all underlying documents however described in the nature of receipts, invoices, vouchers, contracts or any electronic date from which information can be extracted.

215. In the event of a failure to maintain underlying accounting records, the Commissioner may adjust that person's liability to tax in a manner that is consistent with the intention of the Act (s. 122(2)). Moreover, a person who deliberately fails to maintain proper records for a year of assessment is liable to pay a penalty equal to 5% of the amount of tax payable by that person for the year (s. 141).

216. Moreover, the obligation under section 122 is further supported by declarations on the income tax returns generally stating that the person filing the return has all the necessary supporting accounts and statements to support all declarations on this return which will be retained for audit or inspection purposes.

Document retention *(ToR A.2.3)*

217. The *Internal Revenue Act* s. 122 requires the maintenance of accounting records by all taxpayers for a period of not less than six years (s. 122(3)).

218. The *Companies Act* is silent regarding the period for which companies are required to maintain accounting records.

219. Accountable entities under Ghana's *AML Act* are obliged to keep records for not less than five years after the date on which a relationship is terminated in case of a business relationship, or not less than five years after the date a transaction is concluded (s. 24).

Availability of accounting information in practice

220. The obligations to maintain reliable accounting records and underlying documentation pursuant to tax law are presided over by the GRA. All legal entities are subject to the same monitoring and inspection procedures by the GRA, with regards to their accounting record-keeping obligations under tax laws (see also section A.1.1 and the monitoring of *Tax law obligations in practice).*

221. Previously section 122 of the *Internal Revenue Act* required all persons liable to tax to maintain accounting records. However, the requirements to maintain accounting records were amended in May 2013 to require all persons registered for tax to maintain accounting records in line with the

international standard and effectively broadening the scope of entities subject to this requirement. Further, since December 2011, there is now a dual registration process in place in Ghana whereby all entities that register for business purposes are provided with a TIN at the same as registration with the Registrar-General. Officials from the GRA have reported that this has increased the numbers of those registered with the GRA by 12 979 in 2012 and 19 873 in 2013.

222. There is a comprehensive system of oversight of the accounting obligations under the *Internal Revenue Act* in place by the GRA in the form of desktop reviews and an active system of onsite audits of entities registered for tax purposes. In regards to onsite audits, 1 078 taxpayers were investigated by the GRA concerning their tax filing obligations in 2011, 800 were investigated in 2012, and 1 100 were investigated in 2013. These investigations covered both ownership and accounting information keeping obligations. The taxpayers investigated were chosen as a result of careful risk analysis where certain factors such as taxpayer profile, history, industry, compliance with information filing obligations, customer base and payment profile are assessed.

223. Out of the 2 970 onsite inspections carried out over the review period, the GRA has stated that compliance with accounting records was generally found to be high. There were a small number of cases where breaches were identified and depending on the seriousness of the breach, a range of fines were applied. While records have not been maintained for those fines, Ghanaian authorities have confirmed that in cases where breaches were found, depending on the seriousness of the breach, fines have been applied. Nevertheless, as the requirement to maintain underlying documentation in line with the standard was only introduced in May 2013, entities compliance with this requirement has not as yet been verified or tested by the GRA in the course of their onsite inspection programme. Ghana is recommended to monitor the implementation of this legal requirement to ensure that comprehensive accounting records in line with the standard are being maintained by all relevant entities.

Conclusion

224. All relevant entities and arrangements are subject to the obligations under the *Internal Revenue Act* to keep reliable accounting records, including underlying documentation for a period of at least five years. In addition, companies and partnerships are required to keep accounting records under their respective governing laws and certain accounting information must be maintained by accountable institutions subject to the *AML Act*. Over the review period, there was one case in which company accounting information was requested from Ghana by one of its treaty partners and that information

was provided to the requesting partner in June 2014. (see also section C.5 *Timeliness of responses*).

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
The 2013 amendments to the *Internal Revenue Act* to address the lack of express obligations to maintain underlying documentations are untested in practice.	Ghana should monitor the effectiveness of the new legal requirements to ensure that underlying documents are being maintained by all relevant entities.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

225. All persons carrying on the business of banking[13] are subject to both licensing requirements under Ghana's *Banking Act* (as amended in 2007) and customer due diligence and record retention requirements under Ghana's *AML Act* (2008).

226. With regard to licensing requirements, the *Banking Act* provides that the business of banking can only be carried on by corporate bodies which have obtained a licence issued by the Bank of Ghana (BOG) (ss.3, 4). The BOG, which has overall supervisory and regulatory authority in all matters relating to banks, is authorised to issue three categories of banking licences:

- Class I Banking Licence (previously classified as Universal Banking Licence): allows the holder to transact domestic banking business;

13. "Banking business" means: *(a)* accepting deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, orders or by any other means; *(b)* financing, whether in whole or in part or by way of short, medium or long term loans or advance, of trade, industry, commerce or agriculture; and *(c)* any other business activities that the Bank of Ghana may prescribe or recognise as being part of banking business (*Banking Act,* s. 90).

- Class II Banking Licence: allows the holder to conduct banking business or investment banking business with non-residents and other Class II bank licence holders in currencies other than the Ghanaian currency except to the extent permitted by the BOG for trading on the foreign exchange market of Ghana and investment in money market instruments; and
- General Banking Licence: allows both Class I and Class II banking business in and from within Ghana.

227. An amendment to the *Banking Act* was passed on 18 June 2007 which established a basis for an International Financial Services Centre (IFSC) in Ghana and provided for the licensing of offshore banks under a Class II licence in Ghana. Barclays Bank (Ghana) Limited was the first, and only, bank to be given a General Banking Licence in Ghana under this initiative. In 2011, as a result of further analysis on the feasibility of the development of an offshore sector in Ghana, the authorities decided to not proceed further with the development of an IFSC and the one licence that had been issued was revoked. Officials from the Ministry of Finance have advised that there are no further plans to redevelop an offshore facility in Ghana.

228. With regard to record-keeping requirements, the *AML Act* and the *Banking Act* oblige banks to maintain sufficient account information to permit reconstruction of individual transactions.

229. The *Banking* Act s. 71 obliges all licensed banks in Ghana, to maintain accounting records in a manner that gives an accurate and reliable account of their transactions. The records must give a true and fair view of the state of the affairs of the bank and its results for the accounting period. The BOG has also issued AML/CFT Guideline for Banks and Non-Bank Financial Institutions (The Guideline) including the Customer Due Diligence procedures which require banks to preserve their customer identification documents and all transaction records pertaining to the accounts.

230. The *AML Act* s. 23 further requires banks[14] and other accountable institutions[15] that establish a business relationship with a customer to keep

14. "Bank" means a company incorporated under the laws of Ghana, or a branch of a company incorporated abroad, which is licensed in accordance with the *Banking Act* (*Banking Act,* s. 90; *AML Act*, s. 51). This definition includes offshore banks with a Class II license. .
15. Relevant accountable entities include a bank or a non-bank financial institution which carries on any of the following activities: *(i)* accepting deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, orders or by any other means, *(ii)* financing, whether in whole or in part or by way of short, medium or long term loans or advances of trade,

records on the: identity of the person or the agent of the person. Accountable institutions are not however obliged to verify or keep records of beneficial owners or persons who exercise control over their customers. The Act also requires accountable institutions to maintain information on all transactions made through the accountable entity and on suspicious transaction reports they have submitted to Ghana's Financial Intelligence Centre. This requirement applies to each single transaction with an accountable institution. The *AML Act* s. 24 provides that such records must be kept for a period of not less than six years after the date a transaction is concluded or the termination of the business relationship. *The Guideline* as issued by the BOG also sets out guidance for banks on how to comply with these customer due diligence obligations under the *AML Act.*

231. There are penalties and court sanctions in place for non-compliance with the requirements under the *Banking* Act and the *AML Act*. As set out under section 67 of the *Banking Act*, any person who contravenes any provision of the Act, including the information keeping requirements, is deemed to have committed an offence and is liable on summary conviction to a fine not exceeding 500 penalty units or to imprisonment for up to two years or both. In the case of a company, each director or an officer will be considered to have committed the offence (s. 68(1)).

232. Similarly, non-compliance with the record keeping requirements of the *AML Act* is an offence and subject on summary conviction to a fine of not more than 500 penalty units (GHS 6 000 or EUR1 500) or to a term of imprisonment of not more than 3 years, or both (s. 39(1)(a)). Where the offence is committed by a company or body of persons the penalty is a fine of not more than 1 000 penalty units (GHS 12 000 or EUR 6 000) In the case of a body corporate, other than a partnership, each director or an officer is considered to have committed the offence. In the case of a company, each director or an officer will be considered to have committed the offence (s. 39(2)).

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industry, commerce or agriculture, *(iii)* the issue and administration of means of payment including credit cards, travellers' cheques bankers' drafts and other financial instruments, *(iv)* the trade in foreign exchange, currency market instruments or transferable securities, *(v)* securities portfolio management and advice concerned with the portfolio management, *(vi)* dealing in shares, stocks, bonds or other securities, *(vii)* leasing, letting or delivering goods to a hirer under a hire-purchase agreement, *(viii)* the conduct of any business, *(ix)* the collection of money or acceptance of employer contributions and payment from these funds of legitimate claims for retirement benefits; and *(x)* any other business activities that the Bank of Ghana may prescribe or recognise as being part of banking business (*AML Act*, First Schedule).

Availability of banking information in practice

233. The BOG is responsible for the licensing and on-going supervision of all banks and non-bank financial institutions carrying on business in Ghana. The functions and responsibilities of the Central Bank as a Regulator are defined in the *Banking Act* as follows:

- To regulate, supervise and direct the banking system and credit system to ensure the smooth operation of a safe and sound banking system;
- To appoint an officer designated as the head of Banking Supervision Department, who shall be appointed by the Board; and
- To consider and propose reforms of the laws relating to banking business.

234. Consequently the BOG is mandated to ensure that all licensed banks and non-banking financial institutions adhere to the statutory and regulatory requirements and that these requirements are enforced in the course of a comprehensive system of oversight and supervision. As of April 2014, there were 1 340 entities licensed with the BOG; 27 commercial banks, 57 non-banking financial institutions, 139 rural banks, 435 microfinance institutions, 387 bureau de change operators and 295 institutions operating in other financial sectors such as insurance and security and capital markets.

235. The supervision function of BOG is shared among three departments namely: the Banking Supervision Department (which oversees the licensing, regulation and supervision of commercial banks and Non-bank financial institutions), Other Financial Institutions Supervisory Department (which oversees the licensing, regulation and supervision of rural and community banks and microfinance institutions) and the Financial Stability Department which is responsible for ensuring that all licensed entities comply with their regulatory obligations, the under *Banking Act and* the AML regime.

236. The BOG has an AML unit in place since January 2011 which oversees all licensed financial institutions with regards to their compliance with the requirements under the AML regime which are expressed in the guidelines which have the force of law in Ghana.

237. In order to obtain a financial licence in Ghana, all applicants must undergo a fit and proper test. The BOG will first conduct due diligence on the applicants prior to issuing them with a licence. This due diligence procedure usually takes on average three months but in more complex cases this may last up to six months. The procedures carried out during this process are set out under the *Banking Act* and include security checks, a review of the business and strategic plan, a review of their tax compliance history and an

analysis on the quality of all assets held. Once the licences have been issued, then the Banking Supervision Department, the Other Financial Institutions Supervisory Department and the Financial Stability Department of the BOG are then responsible for their on-going monitoring to ensure their compliance with the provisions in the Banking Act and the AML regime. Finally, to enhance the legal and regulatory framework, the BOG supervisory functions are designed to be consistent with the Basle Core Principles for Effective Banking Supervision.

238. As of March 2014, there were 152 inspectors within the three Supervisory Department of the BOG who are responsible for the monitoring of banks and Non-bank financial institutions' compliance with statutory and regulatory requirements. Firstly, the BOG has in place a system of on-going prudential supervision which is carried out via the monthly electronic submission of prudential returns by all licenced banks and non-bank financial institutions. Based on offsite analysis of the information submitted by the banks and non-bank financial institutions, a composite risk rating is assigned to each institution and inspectors perform onsite inspections. Officials from the BOG have stated that they visit each bank at least once a year in line with the provisions of the Banking Act. Other financial institutions (mainly comprised of non-bank financial institutions, rural and community banks and micro finance institutions) are visited at least once every two to three years.

239. For the purposes of preparation for onsite inspections, the BOG usually gives the entity two weeks' notice. During these inspections, the BOG takes samples of customer files to verify whether sufficient banking information is being kept for all account holders. The BOG has reported that it has found compliance to be quite high. On completion of the onsite visit, the BOG conducts an exit meeting with the management of the bank and non-bank financial institution where they discuss any deficiencies they have found and remind them of the implications of non-compliance with the *Banking Act* and AML regime which includes the risks posed to the institution and the penalties to be levied against the institution. The institution is usually given one month in which to respond to BOG on measures to be taken to rectify any deficiencies found. Over the review period (July 2010 – June 2013), inspectors from the BOG performed approximately 215 onsite inspections of financial institutions per year. While percentages for fully compliant entities were not maintained in Ghana over this time, officials from the BOG have reported that the level for compliance has been found to be very high. Where breaches with requirements (mainly relating to liquidity breaches, capital deficiencies and credit portfolio misclassifications) under the regulatory laws or AML have been found, action was taken in the form of issuing warning letters or applying fines. The BOG did not have cause to revoke any licences over the review period.

240. In the event of continued non-compliance with the information keeping requirements under the *Banking Act* and *AML Act,* officials from the BOG have reported that they have enforced sanctions in the past. Over the review period, the BOG applied fines of GHS 334 981 (EUR 69 244) in 2011, GHS 391 789 (EUR 80 983) in 2012 and GHS 900 000 (EUR 193 275) in 2013. While not this entire amount is related specifically to failure to maintain adequate account and transaction information, officials from the BOG have reported that in the event that there has been non-compliance in this regard, fines have been readily applied.

Conclusion

241. The combination of the obligations as set out under the *Banking Act* and the AML regime for financial institutions ensure that all records pertaining to accounts as well as related financial and transactional information are available. These obligations should result in Ghana being able to provide banking information to its exchange of information partners when requested. Ghana actively undertakes monitoring of financial institutions and penalties are applied in practice in order to ensure that entities are complying with ownership information keeping obligations. Over the review period Ghana did not receive any request for banking information from treaty partners. However, in the event that they did receive a request, Ghana should be able to provide all the necessary banking information to its treaty partners.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant

B. Access to Information

Overview

242. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Ghana's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards would be compatible with effective exchange of information.

243. Ghana's Revenue Authority (GRA) has broad powers to obtain bank, ownership, identity, and accounting information and has measures to compel the production of such information. The ability of the GRA to obtain information for exchange of information purposes is derived from its general access powers under the *Ghana Revenue Authority* Act and *Internal Revenue Act* coupled with the authority provided by the relevant exchange of information agreements. There is no requirement that the income be related to Ghana, nor is there a requirement that the suspicion be of income concealed from the Ghanaian government. There are no statutory bank secrecy provisions in place that would restrict effective exchange of information and banking information can be accessed by the GRA in the same manner as all other types of information.

244. There are no rights or safeguards (e.g. notification, appeal rights) in Ghana that appear to restrict the scope of information that the GRA can obtain.

245. In practice, in order to obtain information requested pursuant to an EOI request, the competent authority will firstly check its own tax databases at the GRA as they have much information at their disposal. In the event that further information is sought, the competent authority usually then performs

a search of the Companies Registry database and the information retained by the Registrar-General. The information held by both the GRA and other public authorities has been sufficient to answer nine of the ten requests received over the review period and results were sent back to the requesting party within 60 days of successful receipt of these requests. In the one other remaining case, the competent authority had to obtain the requested company ownership and accounting information from a third party. Some of this information was provided in February 2014 over 1 year after receipt of the request at the offices of the GRA and the outstanding information was provided in June 2014 within a period of 18 months from the date of receipt of the request at the offices of the GRA.

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).

Bank, ownership and identity information (ToR B.1.1) and accounting records (ToR B.1.2)

246. The GRA has broad powers to obtain bank, ownership and identity information and accounting records from any person, whether or not liable to tax under the *Internal Revenue Act*. For this purpose, the *Internal Revenue Act* s. 125(1) provides that the GRA can require, by notice in writing, any person to furnish it within the time specified in the notice any information required in the notice, or to attend for purposes of examination under oath concerning the tax affairs of that person or any other person. Where the notice requires the production of a book, record, or computer-stored information, it is sufficient if the book, record, or computer-stored information is described in the notice with reasonable certainty in the notice (s. 124(2)). Persons to be examined under oath are entitled to a legal or other representation throughout the examination (s. 124(3)). Section 125 of the *Internal Revenue Act* has effect notwithstanding any rule of law or enactment in relation to the production of, or access to, the documents.

247. Failure to comply with a request for information from the GRA is an offence and subject, on summary conviction, to a fine of not less than 10 penalty units[16] and not more than 100 penalty units (s. 148(a)). Where the failure to comply results, or, if undetected, may result in an underpayment of tax

16. 10 penalty units = GHS 120 (EUR 30). One penalty unit is equal to GHS 12 (EUR 3). See section A.1.6 of this report for further information.

in an amount exceeding 500 penalty units, the fine is equal to not less than 50 penalty units and not more than 300 penalty units (s. 148(b)). Any person who, without reasonable excuse, makes a false or misleading statement to the GRA or omits any matter from a statement to the GRA commits an offense and is liable on summary conviction to a fine of not less than 5 penalty units and not more than 25 penalty units or imprisonment for a term of not less than 1 month and not more than 3 months, or both (s. 150). Increased sanctions are provided for where the statement or omission is made knowingly or recklessly (s. 150(1)(d)).

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

248. 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. Ghana has no domestic tax interest with respect to its information gathering powers. Information gathering powers provided to the GRA under the *Internal Revenue Act* can be used to provide exchange of information assistance regardless of whether Ghana needs the information for its own domestic tax purposes. Further, the *Internal Revenue Act* s. 111 provides that to the extent that the terms of an international arrangement are inconsistent with the provisions of the *Internal Revenue Act*, the terms of the international arrangement prevail. An "international arrangement" is defined, for this purpose, to include an agreement with a foreign government providing for the relief of international double taxation and the prevention of fiscal evasion, and an agreement with a foreign government providing for reciprocal administrative assistance in the enforcement of tax liabilities.

Compulsory powers (ToR B.1.4)

249. As previously described, the GRA has powers to compel the production of information from natural and legal persons, whether or not liable to tax under the *Internal Revenue Act*, in response to an exchange of information request. Under the *Internal Revenue Act*, the GRA has powers of discovery and inspection and is able to compel the production of information from taxpayers and third party record keepers.

Gathering information in practice

250. The following procedures are those in place by the GRA for accessing ownership, banking and accounting information.

Access to ownership information

251. On receipt of an EOI request at the offices of the GRA, the request is initially delivered to the Commissioner-General as the named competent authority under its agreements. The Commissioner-General reviews the request and then allocates the request to one of the three designated competent authorities within the GRA who is then responsible for ensuring this information is retrieved and for overall monitoring of the process. Currently, the three designated competent authorities are officers within the secretariat of the Commissioner-General being the Deputy Commissioner (Legal), the Assistant Commissioner (Legal) and the Assistant Commissioner (International Affairs). The Assistant Commissioner (International Affairs) is the officer responsible for the day-to-day processing of all EOI requests (here on referred to as the EOI officer).

252. On receipt of the request, the EOI officer firstly ensures that the request is valid and complies with the EOI request requirements set out in the agreement under which it has been made. On verification of the validity of the request, the officer will look at the information requested to decide if they are capable of finding it within the tax database at the GRA.

253. A total of ten requests were sent to Ghana by one EOI partner over the review period. However, Ghana experienced difficulties in successfully receiving these requests and only received one out of the ten original requests sent during the review period (see also section C.5 *Timeliness of responses to requests for information*). However, on becoming aware of these requests having been sent and not received, Ghana immediately made contact with the treaty partner, who resent the outstanding nine requests via encrypted email to the EOI officer in February 2014.

254. In regards to the nine requests concerning the confirmation of the residency of the taxpayers, the EOI officer retrieved this information by checking the data contained in the GRA database with information held by the Ghana Immigration Service. This information was able to be provided to the requesting jurisdiction within 60 days of the successful receipt of these requests.

255. Where cases are of a more complex nature, such as in the case of the one company request received over the review period, and the information must be accessed from a third party, the EOI officer drafted a letter requesting the information, as signed by the Commissioner-General, to the local branch of the GRA where the entity was domiciled for tax purposes. The letter outlined the nature of the request, the information requested and the urgency and confidentiality of the matter. No details of the request were shared with the local branch. On receipt of this letter, the auditor within this branch then proceeded to action this request by visiting the third party in person to deliver a notice in order to retrieve the requested information.

256. The time given to a third party who is served a notice is 14 days commencing on the date when the notice is served. In certain cases, where just cause is shown, the competent authority may grant an extension to the 14 day period. For the one request over the review period where information was sought from a third party, the competent authority experienced some difficulties in accessing this information. Ghanaian authorities have advised that this request required an onsite visit by the GRA auditor to the premises of a third party whose business premises were located in the forest reserves in Ghana. The visit to these premises was delayed due to the weather conditions prevailing over the rainy season and the auditor eventually gained access to the entity in question located in the forest in November 2013 when the weather condition had improved. Ghanaian officials have reported and peer input confirms that Ghana successfully transmitted some of this information (accounting) to the requesting jurisdiction in January 2014 and submitted all of the remaining information (ownership) to the treaty partner in June 2014, 18 months after receipt of the request by the GRA.

Access to banking information

257. To date, Ghana has not received any request for banking information. However, in the event that a request for banking information was received, Ghanaian authorities have reported that the competent authority would proceed to send a notice directly to the bank. The competent authority has reported that due to small nature of the banking environment in Ghana, they have a very strong relationship with all banks and will deliver any notice for information in person. In the event that this information was not made available the competent authority would elevate the matter to the BOG with whom they have a very strong relationship and who are well informed of Ghana's EOI obligations under its international agreements (see also section A.3. *Banking Information*). In such cases, officials from the BOG have reported that the BOG would then proceed to investigate the matter and apply the appropriate sanctions on the entity for non-compliance with its obligations to maintain banking information for all clients.

Access to accounting information

258. As outlined above, during the review period, there was one request concerning company accounting (as well as ownership) information. This information was retrieved by sending an auditor from the local branch of the GRA to retrieve this information in person. Although, there were difficulties with receiving the request and also with accessing the requested information Ghana has been able to provide the treaty partner with the company accounting information after the review period in June 2014, eighteen months after the receipt of the request at the offices of the GRA (see also section C5 *Timeliness of responses to requests for information*).

Secrecy provisions (ToR B.1.5)

259. There are no provisions under Ghana's laws relating to the secrecy of ownership, identity, or accounting information.

260. With respect to access to bank information, the *Banking (Amendment) Act* (2007) s. 31, which amended s. 84 of the *Banking Act* (2004) on Secrecy of Customer Information, provides exceptions to the duty of confidentiality imposed on banks to keep customer account information confidential. One exception is where an official from a bank is summoned to appear before a court or a judge in Ghana and the court or Judge orders the disclosure of information (s. 84(3)(h)).

261. There is a court procedure set out under the *Banking Act* for accessing banking information in Ghana. However, the Act provides that this procedure shall not be applied so as to limit the obligations of Ghana under an international treaty, convention or agreement. Further, the access powers of the GRA contained within the provisions of the *Internal Revenue Act* is intended to take precedence over the *Banking Act* and override this requirement for accessing information for tax purposes including for the exchange of information.

262. The *Banking Act* s. 84(9) provides that the BOG or any other competent authority in Ghana or outside Ghana which requires information held by a bank relating to the transactions and accounts of any person, may apply to a Judge in Chambers for an order of disclosure of the transaction and accounts or the part which may be necessary. The Judge is precluded from making an order of disclosure unless satisfied that the following grounds were met: *(a)* the applicant is acting in discharge of official duty; *(b)* the information is material to civil or criminal proceedings whether pending or contemplated or is required for the purpose of an inquiry into or related to the trafficking in narcotic and dangerous drugs, arms trafficking, offences related to terrorism or money laundering; or *(c)* the disclosure is otherwise necessary, in the circumstances (s. 84(10)). The *Banking Act* s. 84(11) provides that s. 84 shall be applied so as to not limit the obligations of Ghana under an international treaty, convention or agreement.

263. Further, section 125(5) of the *Internal Revenue Act* which sets out the powers of the competent authority for accessing information for EOI purposes sets out that "this section has effect notwithstanding any rule of law or enactment in relation to the production of, or access to, the documents". The intended effect of this section of the *Internal Revenue Act* includes the provisions of the *Banking Act* and therefore in practice a court order has never been necessary for the GRA to access banking information for any purpose including for an EOI request. Further, auditors from the GRA have mentioned that they have used this process in order to access banking information for domestic purposes and there have not been any issues in practice.

264. All of Ghana's exchange of information agreements permit Ghana to decline a request if responding to the request would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy. This follows the standards set forth in Article 26 of the OECD *Model Tax Convention* and the OECD *Model TIEA*.

265. Common law attorney-client privilege exists is Ghana. At common law, the privilege attaches to confidential written or oral communications between a professional legal adviser and his client, or any person representing the client, in connection with and in contemplation of, and for the purposes of legal proceedings or in connection with the giving of legal advice. Thus, where an attorney acts in any other capacity other than as an attorney (e.g. as a real estate broker), the attorney-client privilege should not apply. As a result, other than with respect to advice between a lawyer and his/her client, attorney-client privilege will not be a barrier to effective exchange of information.

266. Attorney-client privilege, as applicable in the course of legal proceedings, is also codified under the *Evidence Act* (1975) (ss. 87-110). A proceeding is defined as meaning any action, investigation, inquiry, hearing, arbitration or fact-finding procedure, whether judicial, administrative, executive, and legislative or not before a government body, formal or informal, public or private. Pursuant to section 100(2) of the *Evidence Act*, a client has the privilege not to disclose and to prevent any other person from disclosing a confidential communication made between the lawyer and the client. Pursuant to section 99 of the *Evidence Act*, a person making a record, report or disclosure required by law has no privilege to refuse to disclose or to prevent any other person from disclosing the contents of the record, report or disclosure except as otherwise specifically provided by any enactment. Further, under section 101A of the *Evidence Act*, the privilege can always be lifted where the communication was in order to commit a criminal offence. Therefore, the scope of attorney-client privilege as set out in the *Evidence Act* is confined to confidential communications produced between a client and their solicitor for the purposes of providing legal advice or for use in contemplated legal proceedings and is in line with the international standard.

267. As outlined above, the power of the competent authority to access books, records and computers and the power to obtain information or evidence via a notice are set out in sections 124 and 125 of the *Internal Revenue Act*. Pursuant to section 124(7) the powers to access books and documents has effect notwithstanding any rule of law relating to privilege or the public interest. Similarly under section 125(5) the power to obtain information via a notice has effect notwithstanding any rule of law or enactment in relation to the production of, or access to, the documents.

268. Officials from the GRA have reported that there has never been a case of attorney-client privilege claimed over information sought by the GRA either for domestic or EOI purposes. Of those peers that provided input in the course of the review, no issues related to claims of attorney-client privilege were reported.

Conclusion

269. In summary, the Ghanaian competent authority has wide-ranging and a comprehensive set of powers at their disposal under which they may access information from taxpayers. The same procedure is used to access ownership, accounting and banking information and there are no legal provisions or practical requirements relating to the secrecy of ownership, identity, or accounting information that should impede access to information in Ghana.

270. Further, in an effort to increase its co-ordination with other government agencies and the accessing of information for EOI purposes, the GRA has also implemented an educational programme to highlight the requirements and urgent nature of EOI requests. To date, officials from the GRA have held workshops with the Economic and Organised Crime Office (EOCO), the FIC, the Registrar-General and the BOG regarding EOI on request. The GRA also has an MOU in place with the FIC which envisages a certain amount of information flow between the two agencies (two way flow) but it is common that more information is transmitted to the GRA from the FIC. To date, this information has not been required for EOI purposes but it is envisaged that in cases such as where the GRA had encountered difficulties in locating the taxpayer, the FIC could then use their wide reaching intelligence network to locate the person. Officials from the GRA have reported that they do not share any details of the request with the FIC or any other government agency in order to seek any information for international EOI purposes,

271. Officials from the GRA have also advised that there is currently a programme in place for the implementation of an "E-co-ordination platform" which, once fully operational, will permit all government agencies access to commonly held information. Currently, the Registrar-General Department and the GRA are linked for easy access to information. This information will be subject to varying levels of confidentiality and while it will grant the GRA further online access to information held by other government bodies, confidential taxpayer information will not be accessible by any government officials outside of the GRA.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant

B.2. Notification requirements and rights and safeguards

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

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

272. Ghana's laws do not require the GRA to inform the person concerned of the existence of an exchange of information request. The procedure for accessing information is described under section B.1.

273. Any decision taken by the Commissioner-General under the *Internal Revenue Act*, including the decision to access information for the purposes of an EOI request is subject to judicial review by the High Court of Ghana. The grounds for judicial review are those set out under common law[17]: where it has been determined that the decision maker has acted illegally, in an irrational manner or unreasonably.

274. With a view to assisting development of the private sector, a commercial division of the High Court was established in Ghana in 2005 to address disputes where urgency of the case is a primary consideration. To date, there have been no applications in respect of any aspect of exchange of information. However, Ghanaian officials have reported that in the case that there was judicial review of a decision taken by the Commissioner-General to access information under the *Internal Revenue Act*, this dispute would be expedited to the Commercial Court where cases are usually adjudicated within a maximum time period of six months. Further, officials from the GRA have reported that as part of a series of new initiatives, the Judicial Service has set up two tax courts at the level of High Court, which once fully operative, will also serve to deal with tax cases expeditiously.

17. *Bromley Council v Greater London Council* (1983) 1 AC 768, *Associated Provincial Picture Houses Ltd Wednesbury Corp* (1948) 1 KB 223.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant

C. Exchanging Information

Overview

275. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. The legal authority to exchange information may be derived from bilateral or multilateral mechanisms (e.g. double tax conventions, tax information exchange agreements, the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters) or arise from domestic law. Within particular regional groupings information exchange may take place pursuant to exchange instruments applicable to that grouping (e.g. within the EU, the directives and regulations on mutual assistance).

276. Ghana has signed 13 agreements that provide for the exchange of information for tax purposes. This includes Double Tax Conventions (DTCs) with 11 jurisdictions, namely: Belgium, Barbados, Denmark, France, Germany, Italy, Netherlands, Serbia and Montenegro, South Africa, Switzerland and the United Kingdom. Ghana also signed its first TIEA in February 2011 with Liberia. In addition, Ghana became a signatory to the multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) in July 2012 extending its treaty network to over 80 partners. All but four of these agreements are in force and ten meet the internationally agreed standards containing sufficient provisions to enable Ghana to exchange all relevant information.

277. Only two agreements – the DTCs with the Netherlands and Denmark – include the current version of Article 26 of the OECD *Model Tax Convention*. The Netherlands agreement, however, is not to the standard as it contains additional language which limits the scope of bank information that can be exchanged by Ghana to cases involving tax fraud. Ghana's agreements with Belgium are not to the standard either due to domestic law limitations in Belgium. Formerly, the DTC with Switzerland was also not to the standard due to Switzerland's inability to access bank information for exchange of information purposes. Ghana and Switzerland signed an amendment to this DTC in May 2014 which now includes the current version of Article 26

of the OECD *Model Tax Convention* and is therefore now in line with the international standard. Further, as the Netherlands, Belgium and Switzerland are all signatories to the Multilateral Convention, which is in force in Ghana, exchange of information is facilitated with these jurisdictions under this agreement. Element C.1 is found to be in place.

278. Ghana's network of exchange agreements covers over 80 treaty partners. Comments were sought from Global Forum members in the course of the preparation of this report and in no cases has Ghana refused to enter into an EOI agreement. Consequently, element C.2 was found to be in place.

279. Ghana's domestic legislation does not appear to include secrecy provisions that could undermine the effectiveness of the exchange of information for tax purposes. Further, all EOI articles in Ghana's DTCs and TIEA contain confidentiality provisions that meet the international standard and its domestic legislation also contains appropriate confidentiality provisions and enforcement measures. While each of the articles might vary slightly in wording, these provisions generally contain all of the essential aspects of Article 26(2) of the OECD Model Tax Convention. Consequently, element C.3 was found to be in place.

280. Ghana's treaties are based on the OECD and UN *Model Tax Conventions*, and protect from disclosure any trade, business, industrial, commercial or professional secret or information which is the subject of attorney-client privilege or information the disclosure of which would be contrary to public policy. Bilateral provisions are backed by domestic legislation that, while imposing a duty of confidentiality on tax officials, allows exceptions in a fairly well defined number of circumstances, including for exchange of information purposes. Element C.4 was found to be in place.

281. There appear to be no legal restrictions on the ability of Ghana'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. However, in practice where response times were greater than 90 days, status updates were not routinely provided.

282. The competent authority for exchanging information under its EOI agreements is the Commissioner General of the GRA. In practice, this function is delegated to the, the Deputy Commissioner (Legal), Assistant Commissioner (Legal) and the Assistant Commissioner (International Affairs) who are responsible for overseeing the processing of all EOI requests. In the case that the information requested is directly accessible from the taxpayer database, this information is accessed immediately by the EOI Unit and forwarded to the requesting jurisdiction. In all ten cases over the review period, the request had to be forwarded to other government agencies or obtained by the local branch of the GRA where the subject of the request was registered for tax purposes.

283. Over the review period, there were issues in practice with Ghana's receipt of requests due to not having consistently informed its treaty partners of the correct competent authority details, due to internal issues with retrieving EOI requests within the GRA and also due to difficulties encountered with the Ghanaian postal service. In addition, the lack of clear communication between Ghana and its treaty partners in regards to the best means by which to dispatch EOI requests to Ghana and status updates once requests had been received may also have impeded the successful delivery of all requests to the Ghanaian competent authority and the efficient delivery of this information. Despite the issues with retrieving the requests, peer feedback indicates that the responses provided by Ghana were comprehensive and of good quality.

284. To date, Ghana has not sent any requests due to it being relatively new to the EOI process. The rate of incoming requests increased by over 100% annually over the review period and given the number of new bilateral relationships and its ratification of the Multilateral Convention, Ghanaian authorities anticipate incoming requests will continue to increase in coming years.

285. Details of all of Ghana's EOI agreements are set out in Annex 2 to this report, including their dates of signature and entry into force. The terms of Ghana's laws and agreements governing the exchange of information are set out below.

C.1. Exchange-of-information mechanisms

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

Foreseeably relevant standard (ToR C.1.1)

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

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

287. Ghana has bilateral tax treaties with 12 jurisdictions, namely: Barbados, Belgium, Denmark, France, Germany, Italy, Liberia, Netherlands, Serbia and Montenegro (see section C.1.8 for more explanation concerning the status of this agreement), South Africa, Switzerland and United Kingdom. Eight of Ghana's agreements provide for the exchange of information that is "necessary" for carrying out the domestic laws of the Contracting States concerning taxes covered by the agreement. Ghana's agreements with Denmark, Liberia and the Netherlands and its 2014 amended protocol to article 27 the Switzerland DTC use the term "foreseeably relevant" in place of "necessary". The term "relevant" is used in the treaty with Belgium. The terms "as is necessary" and "as is relevant" are recognised in the commentary to Article 26 of the *OECD Model Taxation Convention* to allow for the same scope of exchange as does the term "foreseeably relevant"[18].

288. The Ghanaian authorities have also stated that no EOI request has ever been declined for reasons of foreseeable relevance and this is consistent with the feedback received from peers.

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

289. 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 exchange of information mechanisms will provide for exchange of information in respect of all persons."

290. Ghana's agreements with Belgium, Denmark, France, Germany, Italy, Serbia and Montenegro, Netherlands, South Africa and its 2014 amended protocol to article 27 of the Switzerland DTC specifically mention that the exchange of information is not restricted by Article 1 (Personal scope). Ghana's domestic laws are applicable to non-residents. Since the agreements with Barbados, France and the United Kingdom provide for the exchange of information also for carrying out the provisions of the domestic laws of the contracting States, it can be stated that, even in absence of reference to Article 1, the information can be exchanged in respect of all persons. Similarly, Ghana's TIEA with Liberia is not restricted to certain persons such as those considered resident in or nationals of neither contracting party, nor do they preclude the application of EOI provisions in respect to certain types of entities.

18. The word "necessary" in paragraph 1 of Article 26 of the 2003 *OECD Model Taxation Convention* was replaced by the phrase "foreseeably relevant" in the 2005 version. The commentary to Article 26 recognises that the term "necessary" allows for the same scope of exchange as does the term "foreseeably relevant".

291. Although Ghana's EOI agreements vary in respect of explicitly stating that the agreement is "in respect of all persons", both discussions with Ghanaian authorities and feedback from exchange partners indicate that in practice no difficulties have arisen with any of its exchange of information partners regarding an exchange request relating to residents of either of the contracting states or residents of third party jurisdictions.

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

292. 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. The *OECD Model Taxation Convention*, which is an authoritative source of the standards, stipulates 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.

293. Ghana's TIEA with Liberia contains such a provision similar to 26(5) of the Model Tax Convention under section 4(a). Ghana's DTCs with Denmark and the Netherlands include provisions similar to paragraph 26(5) of the *OECD Model Taxation Convention*, which provides that a contracting state may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In the Netherlands DTC, this provision, however, only applies "in the case of the Netherlands". With respect to Ghana, the exchange of information Article contains an additional paragraph, which reads:

> "In the case of Ghana, Ghana shall at the request of the Netherlands supply information to the Netherlands if such information is obtained by Ghana in the course of court proceedings in relation to a prosecution involving acts of tax fraud in the Courts of Ghana."

294. The scope of information that can be exchanged under Ghana's treaty with the Netherlands is restricted, as bank information maintained in Ghana can only be exchanged in cases of tax fraud. However, as the Netherlands is a signatory to the Multilateral Convention, which has been ratified by both jurisdictions, Ghana and the Netherlands can exchange all types of information on request, including banking information, in line with the international standard under this agreement.

295. Ghana's treaties with, France, Germany, Italy, Serbia and Montenegro, South Africa, and United Kingdom do not contain paragraphs similar to paragraphs 4 and 5 of Article 26 of the *OECD Model Tax Convention*. Whilst Ghana's treaty with Barbados contains a paragraph similar to paragraph 4,

it does not contain a paragraph similar to paragraph 5 of Article 26 of the *OECD Model Tax Convention*. Nonetheless, under Ghana's *Internal Revenue Act* s. 127, secrecy provisions applicable to Ghanaian tax officials do not "prevent the disclosure of information or documents to … the competent authority of the government of another country with which Ghana has entered into an agreement for the avoidance of double taxation or for the exchange of information, to the extent permitted under that agreement". These treaties, therefore, may still meet the standard insofar as Ghana's counterparties do not have domestic law limitations with respect to access to bank information. Should this be the case, the absence of a specific provision requiring exchange of bank information unlimited by bank secrecy will serve as a limitation on the exchange of information which can occur under the relevant treaty. Ghana should consider renegotiating its DTAs with Barbados and Serbia and Montenegro to include paragraph 26(5) of the OECD *Model Taxation Convention*.

296. Previously, Ghana's treaty with Switzerland did not meet the standard due to limitations with exchanging banking information. Ghana and Switzerland signed a protocol amending article 27 (EOI article) of the agreement in May 2014. The EOI article contains the equivalent of article 26(5) of the model DTC permitting the exchange of banking information. Therefore, this agreement is now in line with the international standard.

297. Ghana's treaty with Belgium does not meet the standard as a result of limitations in its country's laws with respect to access to bank information. However, as Belgium is a signatory to the Multilateral Convention, once this agreement has been ratified by both Belgium, Ghana will be able to exchange information all types of information including banking information with Belgium under this agreement.

Absence of domestic tax interest (ToR C.1.4)

298. 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. An inability to provide information based on a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

299. As Ghana's agreements generally follow the OECD and UN *Model Tax Conventions*, they do not restrict the exchange of information to information that is relevant for the determination of tax in the requested state. Ghana's agreements with Barbados, Denmark and the Netherlands include Article 26(4) of the *OECD Model Tax Convention*, which provides that a

contracting state may not to decline to supply information solely because it has no interest in obtaining the information for its own tax purposes. Similarly, Ghana's TIEA with Liberia explicitly permits information to be exchanged, notwithstanding that it may not be required for a domestic tax purpose (article 5(3)). There are no domestic tax interest restrictions on Ghana's powers to access information, which require that the information be relevant to the determination of a tax liability in Ghana (see section B.1 of this report). Ghana is able to exchange information, including in cases where the information is not publicly available or already in the possession of governmental authorities. Ghana should, however, consider renegotiating its DTAs to include paragraph 26(4) of the *OECD Model Taxation Convention*.

300. In practice, Ghanaian authorities have indicated and feedback from peers confirms that in all cases Ghana has provided information to its contracting party regardless of whether or not it has an interest in the requested information for its own tax purposes.

Absence of dual criminality principles (ToR C.1.5)

301. 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 country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

302. There are no dual criminality requirements in Ghana's treaties that provide for the exchange of information in tax matters. Ghanaian authorities have reported and peer input confirms that no request has been turned down on this basis during the period under review.

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

303. 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").

304. All of Ghana's treaties provide for exchange of information in both civil and criminal tax matters. Ghana's TIEA with Liberia specifically mentions the provision of information that may be relevant to criminal tax matters.

305. Out of the ten requests sent to Ghana during the three-year review period, Ghana provided information equally for both criminal and civil tax matters. Further, the process of exchanging information related to criminal matters is the same as that for civil matters.

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

306. There are no restrictions in the exchange of information provisions in Ghana's exchange of information agreements that would prevent Ghana from providing information in a specific form, as long as this is consistent with Ghana's own administrative practices.

307. To date, Ghana has not yet been requested to provide requests in a specific form to a treaty partner. However, in the event that information is requested in a specific form, officials from Ghana's competent authority have reported that they will provide information in the specific form requested to the extent permitted under Ghanaian law and administrative practice.

In force (ToR C.1.8)

308. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where exchange of information agreements have been signed the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

309. Nine of the 13 agreements signed by Ghana are in force. Ghana signed a DTC with "Serbia and Montenegro" in April 2000. Subsequently, Montenegro declared its independence from "Serbia and Montenegro" on 3 June 2006. As the continuing state of "Serbia and Montenegro" Serbia is to be considered as signatory of the DTC concluded between Ghana and "Serbia and Montenegro". Ghana has made attempts to contact Serbia but as of September 2014, it not received any response. Once in force, the treaty will thus be applicable in relations between Serbia and Ghana. Montenegro, for its part, is not a continuing state and would need to sign a separate agreement with Ghana should it wish to have a bilateral relationship in place.

310. Five of Ghana's DTCs took longer than two years from the date they were signed to enter into force (Belgium 40 months; France 48 months; Germany 40 months; Italy 29 months; South Africa 29 months).Further, Ghana has not yet ratified its DTCs with Barbados even though the agreement was signed in October 2008 nor its TIEA with Liberia which was signed in February 2011. Ghanaian officials have confirmed that both of these agreements have been scheduled for ratification and should be in force in 2015. it is noted that Ghana became a signatory to the Multilateral Convention in July

2012 and ratified the agreement in October of the same year, in a timeframe of just three months after signature. Nevertheless, Ghana is recommended to bring its exchange of information agreements into force expeditiously.

Signature and ratification in practice

311. In practice, requests to enter into an exchange of information agreement are usually received at the Ministry of Foreign Affairs who will then proceed to send the request to the legal department of the Ghana Revenue Authority. On occasion, the request will be accompanied with a draft model DTC or TIEA as used by the requesting party. The GRA will then proceed to acknowledge receipt and respond via the same channels with their own draft model agreement. Ghana has never refused to enter into an exchange of information agreement. However, there have been occasional delays in responding from the GRA due to internal delays in the receipt of these requests.

312. Prior to 2009, preliminary discussion of exchange of information agreements involved officials from the office of the Attorney-General, the Ministry of Justice and the Ministry of Foreign Affairs. However, since 2009, Ghana has streamlined this process and internal discussion of the agreement prior to negotiation takes place amongst officials within the GRA and the Ministry of Finance only. On the finalisation of the internal discussion policy the GRA then communicates with the treaty partner through the Ministry of Foreign Affairs in order to decide on a time and venue for negotiation of the agreement.

313. Negotiations of all DTCs have taken place in person and while the negotiations for Ghana's first TIEA with Liberia were conducted in person, they intend to conduct all future TIEA negotiations via secure email correspondence. On the finalisation of negotiations, the leader of the Ghanaian delegation will initial the agreement. The agreement must get cabinet approval in Ghana prior to signature. The process for Cabinet approval usually takes approximately one month but depending on the sitting of parliament may take longer. Once approved by cabinet the Minister for Finance will then liaise with the treaty partner to set the time and place for signature. Ghanaian officials have reported that there are currently eight agreements which Cabinet has approved awaiting signature.

314. Upon signature the agreement will then be tabled in Parliament for ratification. Notice of ratification of exchange of information agreements is conveyed via diplomatic channels to the treaty partner. The EOI agreement is then published on GRA website and is also added to the agreements listed in the GRA internal manual as used by all auditors. Ghanaian officials have advised that the Ministry for Finance in co-operation with the Ministry of Trade and the Ghana Investment Promotion Centre is currently evaluating

its internal treaty policy in order to formulate a policy directive concerning the negotiation of bilateral investment treaties. While this process is underway, all agreements have been delayed from being ratified. As at July 2014, Ghanaian officials estimated that this policy review will be finalised over the coming months and they estimate that all remaining agreements will be ratified in 2015.

315. Since 2009, Ghana has made significant efforts to renegotiate agreements found not be to be to the standard and to negotiate new agreements in order to expand their EOI network. To date, Ghana has completed negotiations for 13 treaties (mainly European countries of economic significance). Negotiations are usually concluded over one or two rounds and on occasion three rounds of negotiation have been required. As at July 2014, there are 13 agreements in various stages of negotiation. Ghana is recommended to continue to renegotiate those agreements found not to be to the standard.

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

316. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

317. Article 75 of the *1992 Constitution* grants the President of Ghana the power to conclude treaties subject to ratification by an Act of Parliament or a resolution of Parliament supported by more than one-half of all members of Parliament. With respect to tax matters, the *Internal Revenue Act* s. 111 provides that, if an international arrangement is inconsistent with the provisions of Ghana's domestic tax laws, the terms of the international arrangement will prevail, provided that it has been ratified by Parliament under article 75 of the *Constitution*. Paragraph 6 specifies that, for the purposes of Section 111, the term "international arrangement" includes both "an agreement with a foreign government providing for the relief of international double taxation and the prevention of fiscal evasion" and "an agreement with a foreign government providing for reciprocal administrative assistance in the enforcement of tax liabilities".

318. All exchange of information agreements have been given their proper effect through domestic law in the manner as described above. In the three year period under review there have been no cases where information could not be made available due to any inconsistency or lack of domestic legislation being in force in Ghana.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant

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

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

319. Ultimately, the international standards require that jurisdictions exchange information with all relevant partners, meaning those partners 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.

320. Six of Ghana's agreements which are in force appear to provide for effective exchange of information in tax matters (France, Germany, Italy, South Africa, United Kingdom and the Multilateral Convention). These agreements are with counterparties which importantly represent all of Ghana's major trading partners (Brazil, China, France, Germany, Italy, the Netherlands, Nigeria, South Africa, Switzerland, the United Kingdom, and the United States).

321. There is no indication that Ghana has not entered into an agreement with a jurisdiction when requested to do so. As of July 2014, Ghana has two TIEAs and 11 DTCs in various stages of negotiation.

322. With the signature of the Multilateral Convention in July 2012 and its subsequent ratification by Ghana in October 2012, Ghana has an extensive network of international agreements for the exchange of tax information and covers all of the significant economies with whom Ghana has sizeable business, such as Nigeria, the United States, Brazil and China. Ghana's treaties with Belgium and the Netherlands are not taken into account in this regard as the agreements are not to the standard (see section C.1 of this report). Nor is its agreement with Serbia and Montenegro, which is not in force.

323. In summary, Ghana's network of information exchange agreements covers all relevant partners.

Determination and factors underlying recommendations

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

Phase 2 rating
Compliant

C.3. Confidentiality

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

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

324. 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, countries with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

325. All exchange of information Articles in Ghana's treaties contain confidentiality provisions modeled on Article 26(2) of the *OECD Model Tax Convention*.

326. Treaty obligations are complimented by domestic law and Ghana's domestic legislation also contains relevant confidentiality provisions. Importantly, the *Internal Revenue Act* s. 127(1) provides that tax officials are obliged to regard and deal with all documents and information which may come to their possession or knowledge in connection with the performance of their official functions as secret and "shall not disclose any information or document except in accordance with the provisions of the *Internal Revenue Act* or under an order of a superior court". Section 127(2) provides for a

limited numbers of exceptions to this rule, including the disclosure to the competent authority of the government of another country with which Ghana has entered into an agreement for the avoidance of double taxation or for the exchange of information[19].

327. The *Internal Revenue Act* s. 127(3) further provides that "A person receiving documents and information under subsection (1) or (2) shall keep them secret under the provisions of this section, except to the minimum extent necessary to achieve the purpose for which the disclosure is necessary". Failure to maintain the confidentiality of tax information is an offence and subject on summary conviction to a fine, or to imprisonment, or to both (s. 152).

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

328. The confidentiality provisions in Ghana's exchange of information agreements and domestic law do not draw a distinction between information received in response to requests or information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

Ensuring confidentiality in practice

329. In practice, the following measures have been adopted by the GRA to ensure the confidentiality of information exchanged pursuant to an EOI request.

Handling and storage of EOI requests and related information

330. The EOI office of the GRA is responsible for the day-to-day processing of EOI requests. The EOI official has their own office within the main GRA building. This office is where all EOI requests and related correspondence are stored and only the EOI official has keys to this office (see also section below outlining confidentiality obligations concerning Personnel).

19. Disclosure is also authorised to: *(a)* the Minister responsible for Finance or any other person where the disclosure is necessary for the purposes of this Act or any other fiscal law; *(b)* a person in the service of the Government in a revenue or statistical department where the disclosure is necessary for the performance of official duties; *(c)* the Auditor-General or a person authorised by the Auditor-General where the disclosure is necessary for the performance of official duties (*Internal Revenue Act*, s. 127(2)).

331. When a request for information is received at the office of the Commissioner-General, it will be opened and review by the Commissioner-General who is the competent authority of Ghana. The Commissioner-General will discuss the request with one of the three delegated competent authorities. Having discussed the contents of the EOI request, it is then hand delivered to the office of the EOI officer who carries out the day-to-day operations in relation to EOI matters.

332. All ten EOI requests which were sent to Ghana over the review period were originally sent to Ghana via regular mail. However, due to issues in retrieving regular mail in Ghana, only one of the original ten requests were successfully delivered to the offices of the GRA. Ghana has since been in contact with this treaty partner and for reasons of security has requested for all future requests to be transmitted via encrypted electronic mail, registered postal mail or courier. During the processing of an EOI request, when communicating with other competent authorities, this is generally carried out via email in which no confidential details of the request will be shared.

333. Once the request has been received by the EOI officer, all details of the request are filled into a hardcopy office spreadsheet (details such as jurisdiction, information requested, when received, where forwarded to, date of when forwarded to third party) which is accessible by the EOI officer only throughout its processing. A hard copy correspondence file is created which is stored in a locked secure cabinet of the EOI officer. Ghanaian officials have reported that there are plans for the future to start storing EOI requests and EOI related information in soft copy, in which case the computer network will be firewalled and the secure online space as assigned to the EOI Unit will only be accessible by the Commissioner-General, and the three other delegated competent authorities.

334. Ghanaian officials have advised that where information is requested from another government agency or from a third party they do not provide any details of the request in the notice unless in cases where it is necessary in order to identify the requested information (name of the taxpayer). Further on delivery of an EOI request to a government agency or a third party, the EOI officer will explain the nature of the request and highlight the sensitivity and confidentiality of all aspects related to the request and in particular to the information requested. The competent authority has advised that it has interacted regularly with other government agencies in the form of workshops and presentations in order to highlight, amongst other things, the confidential nature of EOI requests.

Provision of requested information to EOI partners

335. When the requested information is received by the competent authority this information is copied. The EOI officer maintains copies of the information produced as well as an inventory of all information produced and copies of the requests which are stored in the hard files in the EOI officer's office which is securely locked with limited access. When the information is provided to EOI partners, all information produced and an accompanying cover letter as signed by the Commissioner-General are sent via courier to the named contact in the requesting competent authority.

Personnel

336. The EOI process is overseen by the Commissioner-General. Under section 22 of the *Ghana Revenue Authority Code of Ethics and Conduct*, all revenue officials have an obligation, to hold work-related information in strict confidence, as part of their terms of employment. The delegated competent authorities have many years' experience within the GRA and have also previously worked in other Government departments and are professionally fully aware of their obligations of confidentiality. Ghana also adheres to the joint Global Forum/OECD publication *Keeping it safe: Guide On The Protection Of Confidentiality Of Information Exchanged For Tax Purposes* and, where relevant, it indicated that it will use it as a guide for best practices related to confidentiality.

Conclusion

337. Ghana has a comprehensive system of measures in place to assure confidentiality when processing EOI requests. There are clear handling and storage security measures and all personnel are bound by strict confidentiality rules against any disclosure of information concerning EOI requests. Ghana does not disclose any details of the request in the notice to produce as issued to the holder of the information. Further, Ghana has taken effective measures to ensure that all other government agencies are also aware of the EOI process and, in particular, of their confidentiality obligations.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant

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

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

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

338. Each of Ghana's exchange of information agreements ensures that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of professional privilege or information the disclosure of which would be contrary to public policy.

339. In practice, no issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice and from the EOI partners that provided peer input, no issues have been raised in this regard.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant

C.5. Timeliness of responses to requests for information

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

Responses within 90 days *(ToR C.5.1)*

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

341. There are no specific legal or regulatory requirements in place which would prevent Ghana responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

342. Further, pursuant to Article 5(6)(a) of its one signed TIEA (Liberia), Ghana is required to confirm receipt of any request in writing and identify any deficiencies within 60 days of receipt of the request. Article 5(6)(b) sets out in that in the event that Ghana is unable to provide the information within 90 days, then Ghana shall provide an update to the requesting jurisdiction.

Practice

343. In the three year period under review, 10 EOI requests were sent to Ghana, all from one treaty partner. In Ghana, a request is regarded as a single request irrespective of the number of entities involved for which information is requested. The response time for replying to a request starts running from the date that the EOI request is received by Ghana and only stops once a final reply with all the outstanding information has been sent. Ghana has not had cause to revert back to the requesting jurisdiction for further clarifications over the review period. However, in the event that Ghana had to make further clarifications regarding future requests, the competent authority has confirmed that Ghana will not include the time taken by the requesting jurisdiction to revert back to the Ghanaian competent authority in the course of processing the request. In cases where a supplementary request was made which sought new information arising out of information previously provided on a fully satisfied matter, the supplementary request is counted as a separate request and the timelines for this request would start on the date of its receipt. During the period under review, Ghana has not received any supplementary requests for information based on information it had already exchanged.

344. Out of the 10 requests sent to Ghana over the review period, only one of these requests was received by Ghana over the review period. The other nine requests, which were sent via regular mail between August 2010 and May 2011, were not received by the Ghanaian competent authority when they were originally sent by the requesting jurisdiction. The Ghanaian competent authority was not aware that these nine requests had been sent as they did not receive any notification nor follow-up correspondence from the treaty partner. Knowledge of the requests only became apparent in the course of the Phase 2 peer review at which stage Ghana then made every effort to communicate and liaise with the competent authority of the requesting jurisdiction in order to attempt locate and successfully receives the nine missing requests. The nine requests were subsequently resent via encrypted email and were successfully received by Ghana in February 2014. The information sought was accessed by the competent authority from government databases and responses for all nine requests were provided to the requesting jurisdiction within 60 days.

345. The exact reason for the failure of the nine requests to reach the Ghanaian competent authority could not be deduced. However, there are a

few possible explanations. First, the competent authority had changed during the review period and this information was not conveyed to its treaty partners. Therefore, in cases where the EOI requests were successfully delivered to the GRA, there was a possibility that they did not arrive successfully with the competent authority within the GRA due to the EOI request being addressed to the old competent authority. Second, even where the newly updated correct contact information was supplied and regular mail was used by the requesting party, Ghanaian officials have advised that regular mail is not systematically reliable in Ghana. Finally, a formal EOI Unit has only been in place in Ghana since July 2012. Prior to that time, EOI was managed on an ad-hoc basis and there were no formal EOI procedures in place which may have also contributed to the failure to successfully receive all requests.

346. The one request that was successfully received by the Ghanaian competent authority over the review period was sent in February 2012. Although this request was delivered to the offices of the GRA in December 2012, the request was not delivered to the EOI Unit until August 2013. By convention, requests for information are sent in the name of the competent authority who in this case had retired from the GRA. After some delay, the retired competent authority subsequently redirected the correspondence to the GRA. On receipt of this request at the offices of the EOI Unit, an acknowledgment receipt was sent to the treaty partner on the following day and the EOI officer immediately began processing this request.

347. The information requested in this one request was not available in the GRA database. in which case the request was then sent to Registrar-General where the requested ownership information was able to be accessed. The request was also forwarded to the local GRA office where the entity was domiciled for tax purposes in order to verify that the entity was still in existence and also to retrieve the requested accounting information. There were certain difficulties in processing this request by the local office branch as the information had to be accessed from the business premises of a third party which was located in a remote part of the Ghanaian forest reserve. For safety reasons, this area was inaccessible during the rainy season (September – November) and as a result the requested information could only be safely accessed and transmitted back to the competent authority from the local branch in December 2013. During this time, Ghana did not liaise regularly with the requesting jurisdiction to advise them of the status of this request or to inform them of the difficulties in accessing this information. The requested company ownership information was provided to the requesting jurisdiction outside of the review period in January 2014 and all the remainder of the requested information was finally provided in June 2014 after a total period of 18 months from receipt of the request by the GRA.

348. Ghana has since held a face-to-face meeting with this treaty partner in order to implement a more efficient process for exchange of request and Ghana has recommended the use of encrypted email for all future EOI requests. Ghana and this treaty partner are also considering drafting a competent authority agreement in order to streamline the process between the two partners for future requests. Ghana has reported that it is now a policy to establish a face-to-face meeting with the competent authority on the completion of an EOI in order to discuss the exact procedures for exchange of requests.

349. During the period under review, it has been standard practice in Ghana to send an acknowledgment of receipt to the requesting jurisdiction (see also section C.5.2 *Organisational process and resources*). However, in one case where Ghana was unable to provide the requested information within 90 days, Ghana did not keep its EOI partner well informed of any potential delays in retrieving the requested information and status updates were not regularly provided. The official within the EOI Unit communicates with the local units as to the status of an EOI request. However, over the review period, communication with the local units was not regular and there were no set deadlines for sending the requested information back to the EOI Unit. A formal EOI Unit was implemented in Ghana in July 2012. As a result, Ghana has recently revised its EOI processes and developed internal processes including a system of monitoring of response times and approaching deadlines. Further, the GRA has also developed an EOI manual to guide their EOI process and have reported that for all future requests it is procedure that a status update is provided in all cases.

350. For the one EOI request successfully received by Ghana during the review period, some of the information was provided to the requesting jurisdiction, over a year after receipt of the request at the offices of the GRA. The remaining information was provided in June 2014, 18 months after the original receipt of the request at the offices of the GRA. During this time, status updates were not regularly provided to the requesting jurisdiction. It is, therefore, recommended that Ghana provide status updates consistently to its EOI partners within 90 days where relevant.

Organisational process and resources (ToR C.5.2)

351. Ghana's competent authority under its DTCs is the Commissioner-General of the GRA.

Organisational process

352. Prior to July 2012, exchange of information operated on an ad-hoc basis within the GRA. However, since that time, a formal EOI Unit has been implemented with set processes for all aspects related to EOI. For EOI purposes in Ghana the Commissioner-General is the competent authority and he has delegated this authority to three officers within the secretariat of the Commissioner-General, being the Deputy Commissioner (legal), the Assistant Commissioner (Legal) and the Assistant Commissioner (International Affairs) all of whom sit within the secretariat of the Commissioner-General. The EOI office is responsible for the day-to-day processing of EOI requests. Throughout the processing of the requests, the EOI official has to update the other competent authority representatives who are also there to process requests in his absence.

353. When a request for information is received at the office of the Commissioner-General, it will be opened and review by the Commissioner-General who is the competent authority of Ghana. The Commissioner-General will discuss the request with one of the three delegated competent authorities. In most cases, the EOI officer will carry out the day-to-day operations in relation to EOI matters under the supervision of the Commissioner-General.

354. Once the EOI official has determined the request to be valid, the details of the request are submitted in a hard copy master ledger with details of all requests such as the requesting jurisdiction, the date of receipt, a description of the information requested, and the names of the taxpayer and holder of the information if they have been provided. A hard copy file is then opened for each request and these are stored in a locked cabinet for which only the EOI unit official has access. Acknowledgment of the receipt of the request is then sent via courier mail.

355. Once the EOI officer has determined the best source to access the information the practice is to issue a notice/letter to the holder of the information. Where the information has to be accessed from a third party, a letter detailing the required information is sent to the local GRA office where the entity is registered whereby a local auditor will then proceed to hand-deliver the notice in order to access the information. According to internal GRA guidelines, the local offices have 10 days within which to furnish this information. Once the notice has been issued to the holder of the information, be they another government agency, a third party or the taxpayer, all timelines are monitored automated reminders in the Outlook email system and are also recorded and highlighted in the hard copy master register.

356. Once the request has been satisfied at the local unit, all information is placed in a sealed envelope and sent back to the EOI Unit via internal mail. Once a request has been received from the local unit, all the information is

reviewed by the competent authority and provided to the requesting jurisdiction in the form of a letter with documents attached where relevant. The letter and any accompanying documents are placed in a sealed envelope and dispatched to the requesting jurisdiction via registered mail. A receipt of postage is maintained by the EOI Unit and placed on the hard copy file for the request.

357. As outlined above, Ghana's competent authority has experienced difficulties in receiving EOI requests in a timely manner, due to the lack of communication with treaty partners. These difficulties have negatively affected the competent authorities' ability to respond to requests on a timely basis. It is therefore recommended that Ghana communicates effectively with all treaty partners on all aspects related to the exchange of information to facilitate the successful receipt of all EOI requests and the provision of all requested information in a timely manner.

Resources

358. There are three permanent staff members in the GRA who sit within the EOI Unit. While the Commissioner-General is the competent authority, he has delegated this authority to the deputy Commissioner (legal), the Assistant Commissioner (Legal) and the Assistant Commissioner (International Affairs) all of whom sit within the secretariat of the Commissioner-General. The office of International Affairs (the EOI office) is responsible for the day-to-day processing of EOI requests. Throughout the processing of the requests, the EOI official has to update the other competent authority representatives who are also there to process requests in his absence. The Deputy Commissioner (legal) and the Assistant Commissioner (Legal) are senior attorneys with many years' experience in prosecution, other government departments and other parts of the tax administration such as the Customs Department. The EOI officer has a diploma in public administration and has worked as a tax administrator within the GRA for over thirty years. Ghana has indicated that current staff levels are set at an appropriate level and are sufficient to meet the number of EOI requests being received.

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

359. There were no aspects of Ghana's laws or practical requirements that appear to impose restrictive conditions on exchange of information.

Determination and factors underlying recommendations

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

Phase 2 rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
Over the review period, Ghana did not communicate a change in its competent authority details to its treaty partners nor the most efficient means by which to send requests to Ghana. As a result, out of 10 requests sent during the review period by one treaty partner, 9 of these were not received by Ghana in the first instance and the one request that was received took 17 months to reach the EOI Unit within the GRA, As a result, there were long delays in providing the requested information to the treaty partner.	Ghana should communicate regularly with all treaty partners and monitor its newly implemented EOI processes to ensure that all requests are successfully received by the EOI Unit and responded to expeditiously.
During the three-year review period, Ghana did not always provide a status update to its EOI partners within 90 days.	Ghana should provide status updates to its EOI partners within 90 days where relevant.

Summary of Determinations and Factors Underlying Recommendations

Overall Rating
LARGELY 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. *(ToR A.1)*		
Phase 1 determination: The element is in place		
Phase 2 rating: Largely Compliant	New obligations were introduced in the *AML Act* in April 2014 requiring nominees to maintain ownership and identity information in respect of all persons for whom they act as legal owners. As these amendments were passed after the end of the review period and onsite visit, the effectiveness of the new law could not be verified.	Ghana should monitor the operation of the new provisions in the *AML Act* requiring nominees to maintain ownership information for all persons for whom they act.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Largely Compliant *(continued)*	All trustees in Ghana are subject to the common law fiduciary duties which should ensure the availability of some information concerning trustees, settlors and beneficiaries. Further. An obligation for trust and company service providers to verify the identity of all settlors, trustees and beneficiaries for which they act was introduced to the *AML Act* in April 2014. As this amendment was passed after the end of the review period and onsite visit, the effectiveness of the new law could not be verified.	Ghana should monitor the operation of the new provisions in the *AML Act* requiring all trust and company service providers to maintain information on all settlors, trustees and beneficiaries for which they act.
	Although the GRA and the Bank of Ghana perform extensive oversight and regularly enforce sanctions, these activities may not ensure compliance with ownership obligations for all relevant entities and arrangements. Further, over the review period, the Registrar-General did not have a regular system of oversight in place to monitor compliance with ownership obligations and sanctions for non-compliance were not enforced in practice.	It is recommended that the Registrar-General implements a regular system of oversight of registered entities compliance with ownership and identity requirements and that its enforcement powers are sufficiently exercised in practice.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Largely Compliant	The 2013 amendments to the *Internal Revenue Act* to address the lack of express obligations to maintain underlying documentations are untested in practice.	Ghana should monitor the effectiveness of the new legal requirements to ensure that underlying documents are being maintained by all relevant entities.

Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders. *(ToR A.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(Tor B.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
Phase 1 determination: The element is in place		
Phase 2 rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
Phase 1 determination: The element is in place.		Ghana should continue to develop its EOI network with all relevant partners.
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
Phase 1 determination: The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		
Phase 2 rating: Partially Compliant	Over the review period, Ghana did not communicate a change in its competent authority details to its treaty partners nor the most efficient means by which to send requests to Ghana. As a result, out of 10 requests sent during the review period by one treaty partner, 9 of these were not received by Ghana in the first instance and the one request that was received took 17 months to reach the EOI Unit within the GRA, As a result, there were long delays in providing the requested information to the treaty partner.	Ghana should communicate regularly with all treaty partners and monitor its newly implemented EOI processes to ensure that all requests are successfully received by the EOI Unit and responded to expeditiously.
	During the three-year review period, Ghana did not always provide a status update to its EOI partners within 90 days.	Ghana should provide status updates to its EOI partners within 90 days where relevant.

Annex 1: Jurisdiction's response to the review report[20]

Ghana is extremely grateful to the Global Forum Secretariat, the highly competent and professional assessment team for their strong commitment and hard work throughout the review process and the presentation of the Report. Ghana expresses its appreciation to the Peer Review Group for their active participation and comments during the consideration of the Phase 2 Report culminating in a report that accurately reflects Ghana's practical implementation of the international standard for transparency and exchange of information.

Ghana agrees with the Report and continues to affirm its strong commitment to maintaining the international standards for effective exchange of information, transparency and confidentiality. We hope to count on the continued assistance of our development partners and the Global Forum.

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

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

Multilateral agreement

Ghana signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters in July 2012 and ratified it in October 2012. The status of the multilateral Convention and its amending 2010 Protocol as at 18 July 2014 is set out in the below table. For multilateral instruments, the date of the entry into force in the table is the latest date, among the two dates of entry into force in the two partners.

Bilateral agreements

The table below contains the list of Double Tax Conventions (DTCs) and Tax Information Exchange Agreements (TIEA) signed by Ghana.

For jurisdictions with which Ghana has several agreements, a reference to each agreement is made in the below list of EOI mechanisms signed by Ghana as of July 2014, in alphabetical order:

No.	Jurisdiction	Type of EOI agreement	Date signed/ extended	Date entered into force/status
1	Albania	Multilateral Convention	Signed	01-Dec-2013
2	Andorra	Multilateral Convention	Signed	Not in force
3	Anguilla*	Multilateral Convention	Extended	01-Mar-2014
4	Argentina	Multilateral Convention	Signed	01-Jan-2013
5	Aruba**	Multilateral Convention	Extended	01-Sep-2013
6	Australia	Multilateral Convention	Signed	01-Dec-2012
7	Austria	Multilateral Convention	Signed	Not in force
8	Azerbaijan	Multilateral Convention (Original)	Signed	01-Oct-2004
9	Barbados	Double Taxation Convention (DTC)	12-Oct-08	Not in Force

No.	Jurisdiction	Type of EOI agreement	Date signed/ extended	Date entered into force/status
10	Belgium	Multilateral Convention	Signed	Not in force
		DTC	22-Jun-05	17-Oct-08
11	Belize	Multilateral Convention	Signed	01-Sep-2013
12	Bermuda*	Multilateral Convention	Extended	01-Mar-2014
13	Brazil	Multilateral Convention	Signed	Not in force
14	Cameroon	Multilateral Convention	Signed	Not in force
15	Canada	Multilateral Convention	Signed	01 March 2014
16	Cayman Islands*	Multilateral Convention	Extended	01 January 2014
17	Chile	Multilateral Convention	Signed	Not in force
18	China	Multilateral Convention	Signed	Not in force
19	Colombia	Multilateral Convention	Signed	01-Jul-2014
20	Costa Rica	Multilateral Convention	Signed	01-Aug-2013
21	Croatia	Multilateral Convention	Signed	01-Jun-2014
22	Curaçao**	Multilateral Convention	Extended	01-Sep-2013
23	Czech Republic	Multilateral Convention	Signed	01-Feb-2014
24	Denmark	Multilateral Convention	Signed	01-Jun-2011
		DTC	20-Mar-14	Not in Force
25	Estonia	Multilateral Convention	Signed	Not in force
26	Faroe Islands***	Multilateral Convention	Extended	01-Jun-2011
27	Finland	Multilateral Convention	Signed	01-Jun-2011
28	France	Multilateral Convention	Signed	01-Apr-2012
		DTC	05-Apr-93	01-Apr-97
29	Gabon	Multilateral Convention	Signed	Not in force
30	Georgia	Multilateral Convention	Signed	01-Jun-2011
31	Germany	Multilateral Convention	Signed	Not in force
		DTC	12-Aug-04	14-Dec-07
32	Gibraltar*	Multilateral Convention	Extended	01-Jan-2014
33	Greece	Multilateral Convention	Signed	01-Sep-2013
34	Greenland***	Multilateral Convention	Extended	01-Jun-2011
35	Guatemala	Multilateral Convention	Signed	Not in force
36	Hungary	Multilateral Convention	Signed	Not in force
37	Iceland	Multilateral Convention	Signed	01-Feb-2012
38	India	Multilateral Convention	Signed	01-Jun-2012

No.	Jurisdiction	Type of EOI agreement	Date signed/ extended	Date entered into force/status
39	Indonesia	Multilateral Convention	Signed	Not in force
40	Ireland	Multilateral Convention	Signed	01-Sep-2013
41	Isle of Man	Multilateral Convention	Signed	01-Jan-2014
42	Italy	Multilateral Convention	Signed	01-May-2012
		DTC	19-Feb-04	05-Jul-2006
43	Japan	Multilateral Convention	Signed	01-Oct-2013
44	Jersey	Multilateral Convention	Signed	01-Jun-2014
45	Kazakhstan	Multilateral Convention	Signed	Not in force
46	Korea, Republic of	Multilateral Convention	Signed	01-Jul-2012
47	Latvia	Multilateral Convention	Signed	Not in force
48	Liberia	TIEA	24-Feb-11	Not in Force
49	Liechtenstein	Multilateral Convention	Signed	Not in force
50	Lithuania	Multilateral Convention	Signed	Not in force
51	Luxembourg	Multilateral Convention	Signed	Not in force
52	Malta	Multilateral Convention	Signed	01-Sep-2013
53	Mexico	Multilateral Convention	Signed	01-Sep-2012
54	Moldova	Multilateral Convention	Signed	01-Mar-2012
55	Montserrat*	Multilateral Convention	Extended	01-Oct-2013
56	Morocco	Multilateral Convention	Signed	Not in force
57	Netherlands	Multilateral Convention	Signed	01-Sep-2013
		DTC	10-Mar-08	12-Nov-08
58	New Zealand	Multilateral Convention	Signed	01-Mar-2014
59	Nigeria	Multilateral Convention	Signed	Not in force
60	Norway	Multilateral Convention	Signed	01-Jun-2011
61	Poland	Multilateral Convention	Signed	01-Oct-2011
62	Portugal	Multilateral Convention	Signed	Not in force
63	Romania	Multilateral Convention	Signed	Not in force
64	Russian Federation	Multilateral Convention	Signed	Not in force
65	San Marino	Multilateral Convention	Signed	Not in force
66	Saudi Arabia	Multilateral Convention	Signed	Not in force
67	Serbia and Montenegro	DTC	25-Apr-00	Not in Force
68	Singapore	Multilateral Convention	Signed	Not in force

No.	Jurisdiction	Type of EOI agreement	Date signed/ extended	Date entered into force/status
69	Sint Maarten**	Multilateral Convention	extended	01-Sep-2013
70	Slovak Republic	Multilateral Convention	Signed	01-Mar-2014
71	Slovenia	Multilateral Convention	Signed	01-Jun-2011
72	South Africa	Multilateral Convention	Signed	01-Mar-2014
		DTC	02-Nov-04	23-Apr-07
73	Spain	Multilateral Convention	Signed	01-Jan-2013
74	Sweden	Multilateral Convention	Signed	01-Sep-2011
75	Switzerland	Multilateral Convention	Signed	Not in force
		DTC	23-Jul-08	30-Dec-09
76	Tunisia	Multilateral Convention	Signed	01-Feb-2014
77	Turkey	Multilateral Convention	Signed	Not in force
78	Turks and Caicos Islands*	Multilateral Convention	extended	01-Dec-2013
79	Ukraine	Multilateral Convention	Signed	01-Sep-2013
80	United Kingdom	Multilateral Convention	Signed	01-Oct-2011
		DTC	20-Jan-93	10-Aug-94
81	United States	Multilateral Convention	Signed	Not in force
92	Virgin Islands, British*	Multilateral Convention	extended	01-Mar-2014

* The Government of the United Kingdom declared that the United Kingdom's ratification of the Convention as amended by its Protocol shall be extended to the territory of Montserrat (June 2013), the Turks and Caicos Islands (August 2013), the Cayman Islands (September 2013), Anguilla (November 2013), Bermuda (November 2013), Gibraltar (November 2013), Isle of Man (November 2013), the Virgin Islands, British (November 2013) and Jersey (February 2014).

** Extension of the Multilateral Convention to the countries of the Kingdom of the Netherlands. The amended Convention enters into force in the Kingdom on 1 September 2013.

*** Extension of the Multilateral Convention to the autonomous regions of the Kingdom of Denmark: "For the purpose of this Convention the term also includes the autonomous regions within the Kingdom of Denmark of Greenland and the Faroe Islands" (Declaration amended as from 1 January 2007). The amended Convention entered into force in the Kingdom in 2011.

DTCs and protocols are available in English on the EOI Portal at http://eoi-tax.org/.

The chart of signatures and ratification of the Multilateral Convention is available at www.oecd.org/ctp/eoi/mutual.

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

Commercial Laws

Companies Act
Incorporated Private Partnerships Act
Securities Industry Act
Fines Penalty Units Act
Investment Promotion Centre Act
Free Zones Act
Electronic Transactions (Amendment) Act

Taxation Laws

Internal Revenue Act
Internal Revenue (Amendment) Act
Tax Identification Number Act

Banking Laws

Banking Act
Non-Bank Financial Institutions Act

Anti-Money Laundering

Anti-Money Laundering Act
Anti-Money Laundering (Amendment) Act 2014

Other Laws

Evidence Act
Ghana Revenue Authority Code of Ethics and Conduct

Annex 4: People interviewed during the on-site visit

Officials from the Ghana Revenue Authority

Officials from the Bank of Ghana

Officials from the Ghanaian Ministry of Finance

Representative from the Office of the Attorney General of Ghana

Officials from the Ghanaian Financial Intelligence Centre

Officials from the Registrar-General's Department, Ghana

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: GHANA

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.

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

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