

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

GRENADA



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

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

October 2014
(reflecting the legal and regulatory framework
as at August 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 Grenada as well as its practical implementation. The international standard, which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain timely access to that information, and whether that information can be effectively exchanged with the jurisdiction’s exchange of information partners. The assessment of effectiveness in practice has been performed in relation to a three year period (July 2010 to June 2013).

2. Grenada is a small island located in the southern Caribbean Sea, north of Trinidad and Tobago. Grenada’s economy mainly relies on agriculture, construction and tourism. Its main economic partners are the United States, other Caribbean jurisdictions and European countries. While Grenada developed an international financial centre, with a peak of almost 4 000 international companies incorporated in 2002, this sector has downsized since then and now comprises 66 international companies. Although Grenada’s laws allow for the creation of offshore banks, international insurance companies and international trusts, no such entities are currently registered in Grenada and Grenada’s government does not intend to re-develop Grenada’s financial centre unless its legal framework is remodelled.

3. Grenada committed to the international standard in 2002 and renewed this commitment in 2009. Grenada’s network of EOI arrangements comprises 19 bilateral agreements. 17 jurisdictions are covered by a TIEA (Aruba, Australia, Belgium, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Ireland, the Netherlands, Norway, Poland, Sweden, the United Kingdom, and the United States) and 2 by a DTC (South Africa and Switzerland). In addition, Grenada is party to the CARICOM Treaty, which covers 10 jurisdictions. Grenada has therefore 29 EOI relationships, of which 27 are to the standard.¹

1. Aruba, Australia, Belgium, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Ireland, the Netherlands, Norway, Poland, Sweden, United Kingdom, United States and the jurisdictions covered by the CARICOM Agreement.

4. Grenada has introduced the Mutual Exchange of Information on Taxation Matters Act in November 2011. Under this Act, Grenada's competent authority, the Comptroller of the Inland Revenue, can ask anyone to provide any information notwithstanding secrecy provisions contained in other pieces of existing legislation. All treaties signed by Grenada, including the CARICOM agreement since August 2014 (except the treaty with United States) are covered by this Act. With regard to the treaty with United States, Grenada has enacted the U.S.A. – Grenada Taxes (Information Exchange) Act that provides for the same collection powers as the Mutual Exchange of Information on Taxation Matters Act.

5. No effect has been given to the DTCs signed with Switzerland and South Africa as these treaties are not in line with the standard. Grenada is currently under negotiation with South Africa and Switzerland to update the treaties in line with the standard. Grenada should have the powers to access information in order to respond to a request from all of its treaty partners.

6. Availability of ownership information is ensured in Grenada in relation to domestic companies and international companies. External companies (i.e. foreign companies) have obligations to make ownership information available upon registration with the Inland Revenue. Domestic companies are not allowed to issue bearer shares and, although international companies are allowed to do so, legal requirements ensure that information on holders of such shares is available. Ownership information on partnerships is available by virtue of information that must be provided to the Inland Revenue. As regards trusts, for both local trusts created under the common law and international trusts under the International Trusts Act 1996 (CAP 152), ownership information should be available in Grenada due to the common law obligations and in some instances due to anti-money laundering requirements. It was noted during the Phase 2 review that Grenada does not have an oversight programme to verify that obligations to maintain ownership and identification information are respected by companies and professionals (pursuant to the AML obligations). It is therefore recommended that Grenada put in place such oversight programmes. In addition, the oversight programme to verify that international companies comply with their obligation under the International Companies Act is very recent and should therefore be monitored.

7. Obligations to maintain accounting records including underlying documentation for a minimum of five years in compliance with the standard are in place in respect of all entities and arrangements that can be created under Grenada's laws.

8. Bank information is made available under Grenada's anti-money laundering legal framework. With regard to bank and other financial institutions, whilst the legal requirements to maintain information is in place, the

Phase 2 review showed that the programme to verify the compliance of banks and other financial institutions with these obligations has not yet been implemented. A recommendation is therefore made in this regard.

9. Grenada has put in place a process and attributed resources to collect information for exchange of information purposes. The processes and resources dedicated to EOI are considered sufficient to answer incoming EOI requests, although no requests were received during the period under review. Grenada is encouraged to ensure that an adequate level of resources remains dedicated to EOI purposes, should an increasing number of requests be received in the future.

10. A follow up report on the steps undertaken by Grenada to answer the recommendations made in this report should be provided to the PRG within one year after the adoption of this report. It should also provide an intermediary report within 12 months of this report.

11. Grenada 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 Grenada'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, Grenada has been assigned the following ratings: Compliant for elements B.2, C.1, C.2, C.3 and C.4., Largely Compliant for Elements A.2, A.3, B.1, and C.5 and Partially Compliant for element A.1. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Grenada is Largely Compliant.

Introduction

Information and methodology used for the peer review of Grenada

12. The assessment of the legal and regulatory framework of Grenada and the practical implementation and effectiveness of this framework was based on the international standards for transparency and exchange of information as described in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, and was prepared using the Global Forum's Methodology for Peer Reviews and Non-Member Reviews. The assessment has been conducted in two stages: Phase 1, performed in 2012, assessed Grenada's legal and regulatory framework for the exchange of information, while Phase 2, performed in 2014, looked at the practical implementation of that framework, 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 information exchange mechanisms in force or effect at 11 August 2014, other information, explanations and material provided by Grenada as well as information collected during an on-site visit to Grenada that took place in April 2014. During the on-site visit, the assessment team met with officials and representatives of the relevant Grenada government agencies, including the Inland Revenue, the registration authorities and anti-money laundering supervisory authorities.

13. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses Grenada's legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made regarding Grenada's legal and regulatory framework that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for

improvement where relevant. In addition, to reflect the Phase 2 component, recommendations are made concerning Grenada's practical application of each of the essential elements and a rating of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant is assigned to each element. An overall rating is also assigned to reflect Grenada's overall level of compliance with the standards.

14. The Phase 1 assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Advocate Laura de Lisle, Legislative Counsel for the Law Officers of the Crown in Guernsey; Mr. Miguel Ramiro, Ministry of Finance, Spain; and Mr. Rémi Verneau from the Global Forum Secretariat.

15. The Phase 2 assessment was conducted by a team consisting of two assessors and one representative of the Global Forum Secretariat: Advocate Laura de Lisle, Legislative Counsel for the Law Officers of the Crown in Guernsey; Ms. Mary Antoinette Musilek Alvarez, Ministry of Finance, Spain; and Mélanie Robert for the Global Forum Secretariat. The team evaluated the implementation and effectiveness of Grenada's legal and regulatory framework for transparency and exchange of information and its relevant information exchange mechanisms.

Overview of Grenada

16. The territory of Grenada consists of three islands – Grenada, Carriacou and Petit Martinique – situated between the Caribbean Sea and Atlantic Ocean, north of Trinidad and Tobago. Its total area is 340 square kilometres (133 square miles) and its coastline measures 121 kilometres (75 miles). Grenada's population was estimated as being 107 599 as at 2012. 23% of Grenadians are under the age of 15. The capital of Grenada is the city of St. George which lies on the island's southwest coast. English is the national language. The currency is the East Caribbean dollar (XCD) which has been pegged to the US dollar since 1976 at a rate of XCD 2.70 to USD 1.²

17. Grenada is a small open economy with a total nominal GDP of USD 802 million³ and a per capita GDP of USD 7 605 in 2012. The economy has been traditionally dependent on export-based agricultural crops, especially nutmeg and spices. In recent years, construction, tourism, education, manufacturing, financial services and ICT (Information and Communication

2. USD 1 = EUR 1.34 1.37 as at 6 December 2011 19 May 2014. In this report, all references will be in XCD with the conversion in USD except for laws that directly contain references in USD (i.e. International Company Act, International Trust Act and the AML framework).

3. IMF, World Economic Outlook Database 2014.

Technology) sectors have been identified as potentially important sources of economic growth. These sectors are expected to be the main growth drivers for the economy in the medium to long-term. Grenada's trade is conducted primarily with Trinidad and Tobago, North America and Europe.

18. Grenada belongs to the Caribbean Community (CARICOM).⁴ These countries are signatories to regional and co-operative agreements and treaties. Further, Grenada is also a signatory to other international treaties, such as those of the United Nations, the Organisation of American States (OAS) and the Commonwealth of Nations. Grenada is a member of the Global Forum. It committed to the international standards for transparency and exchange of information for tax purposes in 2002 and renewed this commitment in 2009.

General information on legal system and the taxation system

Legal system

19. Grenada is a parliamentary democracy and constitutional monarchy, with Queen Elizabeth II as Head of State, represented locally by a Governor General. There are three independent arms of government: the Judiciary, the Legislature, and the Executive, all subject to the supremacy of the Grenada Constitution Order 1973, which came into operation on 7 February 1974, the day that Grenada obtained its independence from the United Kingdom.

20. Grenada's parliament was convened in 1974, the same year that the island became a member of the Commonwealth. The Parliament is made up of the Queen, who is represented by the Governor General, the Senate and the House of Representatives. The 15 Members of the House of Representatives are elected for a five years term by the electorate whereas the 13 non-elected Senators are appointed by the Governor General on the advice of the Prime Minister, the Leader of the Opposition and represent national interest groups. Every bill must be passed through both the Lower and Upper Houses. The process of law making is contingent upon the contribution of all parts of the Parliament. While both the Senate and the House of Representatives have equal powers under the Constitution, only the House of Representatives can introduce financial legislation.

4. The CARICOM Members States are Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. The CARICOM Associate Members are Anguilla, Bermuda, the British Virgin Islands, Cayman Islands, and the Turks and Caicos Islands.

21. The judiciary is independent. The law provides for the right to a fair public trial, to a presumption of innocence, the right to remain silent, and to seek the advice of an attorney. Grenada is a member of the Eastern Caribbean Supreme Court (ECSC), which is headquartered in Saint Lucia and consist of a High Court of Justice and a Court of Appeal, the latter of which is itinerant with the other member states of the Organisation of Eastern Caribbean States (OECS) as well as the associate members of Anguilla and the British Virgin Islands. Three High Court judges of the ECSC, under the administration of the Chief Justice of the ECSC, are usually assigned to and resident in Grenada. There is no specific Court dealing with tax matters.

22. Grenada's legal system is based on English common law with most of its statute law originating from and or informed by the laws of the United Kingdom. The legal system relies on a single national law and covers all the islands which comprise the state of Grenada.

23. The hierarchy of laws is as follows: (i) the Constitution, to which all other laws are subject and must be tested for legality; (ii) Acts of Parliament; and (iii) Subsidiary Laws, Rules, Orders and Statutory Instruments, made in pursuance of Acts of Parliament. Treaties do not have automatic application in Grenada. By virtue of the Constitutional protection as to the role of each arm of government, treaties, which are concluded by executive action, cannot be implemented without the Legislature's sanction.

24. To the extent that an international treaty has been enacted as an Act of Parliament, or as a Subsidiary Law pursuant to an Act of Parliament, it will be subject to the hierarchy of laws set out above. If treaties are not incorporated into Grenada's domestic law, they cannot be considered as being part of the hierarchy of domestic laws. However, CARICOM Agreements (CARICOM Tax Treaty included) have direct effect in Grenada since the Caribbean Court of Justice (CCJ), the Caribbean regional judicial tribunal, was established on 14 February 2001 by the Agreement Establishing the Caribbean Court of Justice.

The tax system

25. In Grenada, assessment and collection of taxes is under the control and responsibility of the Inland Revenue.

26. Under Grenada's Income Tax Act CAP 149, the following persons are considered to be resident (i) an individual that has his permanent place in Grenada or is physically present in Grenada for not less than 183 days (ii) all companies incorporated in Grenada and companies incorporated outside Grenada to the extent that they are managed and controlled in Grenada (iii) a trust or a body of persons established in Grenada. Residents are taxed

on their worldwide income as it arises. Non-residents are subject to tax on income accruing directly or indirectly from Grenada.

27. Grenada's income tax system for earned income (Income Tax Act 1994) is based on a pay as you earn method. Individual income tax is levied at a rate of 30% on income above XCD 60 000 (USD 22 222) per annum and corporation tax is 30% on profit after allowable expenses. As at January 2014, a new rate of 15% was introduced for income over XCD 36 000 per annum (USD 13 333) up to XCD 60 000 per annum (USD 22 222) and the rate of 30% for income in excess of XCD 60 000 (USD 22 222) remained unchanged. Entities (including professionals) doing business in Grenada are further subject to a stamp tax based on the gross annual receipts. Grenada introduced a VAT system in 2010 (Value Added Tax Act 2009 CAP 33A). This tax is imposed on taxable activities, both delivery of goods and services, at a standard rate of 15% and a reduced rate of 10% for hotel accommodation and dive activities. A 20% rate specifically applies to mobile telecommunication services (voice and text). International financial offshore entities are subject to specific tax regimes and are usually non-taxable entities.

28. Grenada imposes a withholding tax on income and certain other payments made to non-residents under the Income Tax Act 1994. Any person in Grenada who makes payments to a non-resident is responsible for deducting and paying withholding tax at the rate of 15% (or a lesser rate if so provided by the applicable DTC). This applies, amongst other things, to: salaries, dividends, interest (except from bank deposits), rents, royalties, commissions and fees.

29. In relation to offshore entities, Grenada's law provides that international business companies are exempt from the payment of taxes, duties and similar charges for a period of 20 years from the date of incorporation. These companies are subject to the payment of an additional fee (see Schedule to the ICA). Section 49 of the International Trust Act, CAP 152 provides that the income from an international trust that is received by a beneficiary who is not resident in Grenada is exempt from income tax.

30. Grenada's treaty network comprises 2 DTCs, 17 TIEAs and a multilateral convention covering 10 jurisdictions (CARICOM Treaty to which Antigua and Barbuda, Barbados, Belize, Dominica, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago are parties). Under section 4(1) of the Mutual Exchange of Information on Taxation Matters Act 2011, the Comptroller of Inland Revenue is designated as the Tax Co-operation Authority for the purposes of the Act and any scheduled agreement and in relation to any scheduled country. One of the Authority's principal functions is executing requests relating to the exchange of information for tax purposes.

Overview of the financial sector and relevant professions

31. Grenada has a very small domestic financial sector which is composed of 5 commercial banks, 23 registered domestic insurance companies, 12 credit unions, 2 money remitters, 2 lending institutions, 1 building and loan association and 1 development bank. As of 30 July 2014, the value of the assets held by banks in Grenada amounted to XCD 2.8 billion (approximately USD 1.03 billion).

32. There are three regulatory bodies for financial sector regulation in Grenada: the Eastern Caribbean Central Bank (ECCB), the Eastern Caribbean Securities Regulatory Commission (ECSRC) and the Grenada Authority for the Regulation of Financial Institutions (GARFIN). The ECCB and the ECSRC are multi-jurisdictional regulators with responsibility for regulation in the following jurisdictions comprising the Eastern Caribbean Currency Union (ECCU): Anguilla, Antigua and Barbuda, Dominica, Grenada, Montserrat, Saint Lucia, Saint Kitts and Nevis, and Saint Vincent and the Grenadines. The ECCB is responsible for the regulation of domestic banking business while the ECSRC is responsible for the regulation of domestic securities business within the ECCU. GARFIN is responsible for the prudential regulation of all other financial institutions in Grenada.

33. The offshore sector, which is also regulated by GARFIN, currently comprises only 66 international business companies (IBCs). There are no offshore banks, international insurance companies and/or international trusts currently registered in Grenada.⁵ Grenada previously had 47 offshore banks but they have all either left or have had their licences revoked. With regard to international companies, the following statistics have been provided which show that the number of registrations increased until 2002, at which point, the numbers have dramatically decreased.

| Year | Companies | | | Year | Companies | | |
|------|------------|-------------|-----------|------|------------|-------------|-----------|
| | Formations | Strike-offs | on record | | Formations | Strike-offs | on record |
| 1999 | 1 239 | 0 | 2 183 | 2007 | 4 | 32 | 1 039 |
| 2000 | 936 | 0 | 3 119 | 2008 | 5 | 821 | 223 |
| 2001 | 593 | 0 | 3 712 | 2009 | 7 | 151 | 79 |
| 2002 | 81 | 0 | 3 793 | 2010 | 2 | 0 | 81 |
| 2003 | 68 | 1 661 | 2 200 | 2011 | 3 | 16 | 68 |
| 2004 | 5 | 1 143 | 1 062 | 2012 | 0 | 7 | 61 |
| 2005 | 6 | 0 | 1 068 | 2013 | 1 | 0 | 62 |
| 2006 | 1 | 2 | 1 067 | 2014 | 4 | 0 | 66 |

5. This information has been confirmed by GARFIN after review of its records and records maintained by registered agents licensed with GARFIN.

34. Grenada’s authorities have advised that there are no plans to register international financial service institutions in the near future, as the Government of Grenada has taken the decision to re-assess and re-model the legal and regulatory framework in Grenada for international financial services before re-commencing the registration of international financial services institutions. To this end, official information provided by Grenada’s Ministry of Legal Affairs indicates that a Committee has been established to review the entire compendium of offshore company and financial legislation. As of May 2014, no decision had been taken in Grenada on the future of the offshore sector and no changes have been made. Therefore, the sector is currently comprising only 66 international companies, of which 20 are inactive and Grenada has indicated that no new entity will be created in the offshore sector before a decision has been taken.

Anti-money laundering/combating financing of terrorism legislation

35. The Supervisory Authority is the committee responsible for advising the Minister of Finance on matters relating to the combating of money laundering and financing of terrorism. Other bodies of the anti-money laundering framework include the Ministry of Legal Affairs which is responsible for drafting laws pursuant to money laundering and financing of terrorism, the Financial Intelligence Unit (FIU) which is responsible for receiving, analysing, investigating and disseminating information which relates or may relate to the proceeds of criminal offences (see the Financial Intelligence Unit Act 2003), and the Office of the Director of Public Prosecutions (DPP) which is responsible for the prosecution of all criminal offences including money laundering and terrorist financing crimes.

36. Grenada introduced a Proceeds of Crime Act, No 6 of 2012 (“POCA”) in 2012. This Act also provides for new anti-money laundering rules, the purpose of which is to answer the deficiencies highlighted by the CFATF⁶ in its 2009 mutual evaluation report and which would strengthen Grenada’s AML/CFT regulatory regime. This Act aims at addressing the issues identified in Recommendations 5 (customer due diligence requirements), 12 (designated non-financial businesses and professions (DNFBPs) under the scope of the new AML framework), and 33⁷ (to ensure that bearer shares are not misused

6. Caribbean Financial Action Task Force.

7. New recommendations 10 (customer due diligence requirements), 22 (designated non-financial businesses and professions (DNFBPs) under the scope of the new AML framework) and 24 (to ensure that bearer shares are not misused for money laundering).

for money laundering) in the 2009 report.⁸ The Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) framework now consists of separate pieces of legislation, namely: the Proceeds of Crime Act 2012, the Proceeds of Crime (Anti-Money Laundering and Terrorist Financing) Regulations, SRO 5 of 2012 (“POCA Regulations”) and the Proceeds of Crime (Anti-money Laundering and Terrorist Financing) Guidelines, SRO 6 of 2012 (“POCA Guidelines”). Under this legislative framework, financial institutions as well as designated non-financial businesses and professions (DNFBPs)⁹ are required to perform customer due diligence when entering into relationship with new customers.

8. [www.cfatf-gafic.org/downloadables/mer/Grenada_3rd_Round_MER_\(Final\)_English.pdf](http://www.cfatf-gafic.org/downloadables/mer/Grenada_3rd_Round_MER_(Final)_English.pdf).

9. Including registered agents licensed under the International Companies Act, trusts licensed under the International Trust Act, barristers at law and solicitors, accountants and notaries.

Compliance with the Standards

A. Availability of Information

Overview

37. 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 such information is not kept or the information is not maintained for a reasonable period, a jurisdiction's competent authority¹⁰ may not be able to obtain and provide it when requested. This section of the report describes and assesses Grenada's legal and regulatory framework for availability of information. It also assesses the implementation and effectiveness of these frameworks in practice.

38. Grenada's legal framework permits the creation of a wide range of entities: companies, partnerships, trusts as well as offshore entities such as international companies, international trusts, offshore banks or international insurance companies. Ownership information in relation to companies incorporated under the Companies Act 1994, CAP 58A is available due to the requirement to maintain a share register where the identity of shareholders must be reported. International companies incorporated under the

10. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange.

International Companies Act 1996, CAP 152 are subject to a similar requirement though the obligation to keep this register does not rely on the company itself but its registered agent. External companies (i.e. companies incorporated under a foreign law) have obligations to make ownership information available upon registration with the Inland Revenue.

39. Grenada has enacted as of 23 December 2013, new provisions to its Companies Act, International Companies Act and International Trusts Act (CAP 152C) to address the recommendations made during the Phase 1 review and to ensure that updated ownership information is available in all cases. These amendments entered into force on 4 February 2014. However, considering that these new provisions have recently been introduced, the enforcement of the new provisions could not be assessed and therefore, Grenada should monitor the implementation of these new provisions to ensure that they are applied in accordance with the standard.

40. Bearer shares are prohibited in Grenada for domestic companies and international companies conducting financial services business. Legal requirements ensure that information on holders of bearer shares in relation to other international companies is available. Partnerships, which for formation are only regulated by common law principles, have to report information on their partners to the Inland Revenue Department. As regards trusts, for both local trusts created under common law and international trusts formed under the International Trusts Act 1996, Grenada's POCA Regulations and Guidelines require the maintenance of information on beneficiaries when the trust presents a higher level of risk. The common law as it applies to local and international trusts in Grenada requires that trustees must maintain information on the identity of the settlor, trustees and beneficiaries as well as maintain accounting records sufficient to report to the beneficiaries. Grenada's authorities have confirmed that there are no international trusts registered and they are not aware of the existence of any domestic or other trusts administered by trustees resident in Grenada. It is not possible to create foundations under Grenada's laws.

41. Following amendments made to the Offshore Banking Act, CAP 217A, the International Trusts Act and the International Companies Act, obligations to maintain accounting records including underlying documentation in compliance with the standard are now in place in respect of all entities and arrangement that can be created under Grenada's laws. However, in view of the short period between the introduction of the new provisions and the end of the period under review, the enforcement of the new provisions could not be assessed and therefore, Grenada is recommended to monitor the implementation of the new provisions to make sure they are interpreted in line with the standard. Trusts need to keep accounting records, including underlying

documents, and include accounting information with their tax return and in order to comply with their common law obligations.

42. Necessary information on bank transactions and identifying information of bank customers is available pursuant to the POCA Regulations and Guidelines. Nevertheless, the oversight programme has not yet been put in place to verify that banks and other financial institutions comply with their AML obligations. It is therefore recommended that Grenada implements a regular oversight programme to ensure that banks and other financial institutions comply with their AML obligations to maintain identity and accounting information and exercise its enforcement powers.

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 II A.1.1)

43. It is possible under Grenada’s Companies Act 1994 (“CA”) to set up the following type of companies:

- ***companies limited by shares*** – sections 26 to 57 of the CA. This type of company has shareholders with limited liability. If it is private, only one shareholder and one director are needed. Public companies must have at least three directors and shares are freely transferable. The CA does not set any minimum level of capital. Different classes of shares are possible but bearer shares are prohibited. There were 6 802 companies limited by shares registered in Grenada as at 21 March 2014;
- ***companies without share capital (non-profit companies)*** – sections 326 to 337 of the CA. A company without share capital (non-profit company) must limit its activities to purposes that are religious, philanthropic, educational, *etc.* There must be at least three directors. Rules for registration and keeping of ownership information that apply to companies limited by shares similarly apply to companies without share capital. There were 312 companies registered as companies without share capital in Grenada as at 21 March 2014;
- ***external companies (i.e. foreign companies)*** – sections 338 to 369 of the CA. An external company is any firm or body of persons,

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

whether incorporated or unincorporated, that is formed under the laws of a country other than Grenada. An external company must be registered before it does any business in Grenada. 111 external companies are currently registered in Grenada as at 21 March 2014; and

- **“former-act companies”** (all companies incorporated under previous legislation i.e. Companies Act Chapter 47 of the 1934 Edition of the Revised Laws of Grenada¹² – Sections 360 to 369 of the CA.) The CA states in section 362 that within two years after the commencement date of the Act, every former-act company had to apply to the Registrar of Companies (CAIPO) for a certificate of continuance. Grenada’s authorities advised that the provision for continuance under the CA brings former-act companies into obligation to comply with the terms of the CA.

44. Further, it is also possible to create companies under the International Companies Act CAP 152 (“ICA”). Companies incorporated under that Act cannot: (i) carry on business in Grenada with persons domiciled or resident in Grenada; (ii) own an interest in real property situated in Grenada; (iii) engage in offshore banking business, provide trust services or engage in investment brokerage unless licensed to do so; and (iv) engage in offshore insurance business unless licensed to do so (s. 5). Companies limited by shares, restricted purpose companies (e.g. insurance, banking etc.) and private trust companies can be created under the ICA. Currently, 66 international business companies (IBCs) are registered in Grenada, of which 20 are inactive.

Companies incorporated under the Companies Act (other than external companies)

Registration requirements

45. The authority in Grenada for the registration of companies incorporated under the Companies Act is the Registrar of the Corporate Affairs and Intellectual Property Office (CAIPO). CAIPO was established by the CAIPO Act, CAP 69A. Section 3 of this Act designates the Registrar of CAIPO as Registrar of Companies. The Registrar is appointed under contract by the

12. Former-Act companies had to keep a register of members containing the names, addresses and occupations of their members, the class of shares held and the date on which each person was entered as a member in the register or ceased to be a member (s. 26 of the Companies Act, 1934). These companies also had to provide a list of members (including names, addresses and occupations of all the past and present members) to the Registrar within 14 days after the general meeting of members.

Judicial and Legal Services Commission reporting to the Attorney General in the Ministry of Legal Affairs.

46. Companies are incorporated or registered with the Registrar of Companies (ss.4 and 328 CA). The Registrar maintains a register of companies in which the names of everybody corporate is kept (s.494). Documents kept by the Registrar are open for public examination, upon payment of a fee (s.495).

47. Pursuant to section 5 of the CA, articles of incorporation of companies must follow a prescribed form (see Third Schedule of the Companies Regulations 1995) and include: (i) the name of the company; (ii) the classes and any maximum number of shares that the company is authorised to issue; and (iii) the number of directors.

48. Pursuant to section 4 of the CA, one or more persons may incorporate a company by signing and sending articles of incorporation to the Registrar. In addition, under section 7 of the Act, the Registrar must be provided with the names of the director(s) and the address of the registered office and the company's articles. Companies must at all times have a registered office in Grenada (s.175). Upon receipt of the articles of incorporation, the Registrar issues a certificate of incorporation which provides proof of the incorporation of the company (s.8). A company comes into existence on the date shown on its certificate of incorporation (s.9). Further, any change in the registered office must be notified to the Registrar within 15 days of change (s.176). In practice, all information received by the Registrar is permanently preserved in the Companies Registry but s.507 of the CA states that the Registrar does not need to produce any document after six years from the date (s)he received it.

49. Companies are not specifically required under Grenada's law to make ownership information available upon registration with the Registrar of Companies. However, the identity of the incorporators, i.e. the persons who sign the articles of incorporation of the company (s.543 CA), is available in the articles of incorporation, which must be provided by the company upon registration with CAIPO. Further, section 4 of the CA provides that the name of every incorporator must be entered in the company's register of members as soon as may be after the company's registration, although no specific timeframe to do so is provided by Grenada's Laws. Further, shareholder information is disclosed in annual company returns to the Registrar of Companies (see below).

Information held by companies

50. Section 177 of the CA provides that the register of members, which is to be maintained by a company at its registered office in Grenada, must contain: (i) the names and the latest known address of each person who is a

member; *(ii)* a statement of the shares held by each member; and *(iii)* the date on which each person was entered on the register as a member and the date on which any person ceased to be a member.

51. Notice of change in ownership are required by substantial shareholders (i.e. a shareholder who holds at least ten per cent of the voting rights, either by himself or in the name of a nominee), who are required to notify the company within 14 days once they are aware that they have become or ceased to be a substantial shareholder (s. 183). Every company shall keep a register of substantial shareholders and failure to do so is an offence under the legislation. Other shareholders do not have any statutorily prescribed timeframe to inform the company of any changes occurred in shareholdings but these changes are revealed in the annual returns which companies are obliged to file with the Registrar (s. 194).

52. Companies are required to provide before the first day of April of each year after their incorporation an annual return to the Registrar detailing the number of shares issued or redeemed over the last financial period and the name of the persons holding shares in the company (including any persons who have held shares at any time since the provision of the last return) (see s. 194 of the CA in conjunction with the Companies (Amendment) Regulations 2009). Failure to do so is an offence under the legislation.

Tax requirements

53. Pursuant to section 3 of the Annual Stamp Tax Act, CAP 16A, all persons who are engaged in a business in Grenada are obliged to pay annual stamp tax. “Business” is defined in section 2 of the same Act to include calling, vocation, occupation, profession, trade, industry, service enterprise, manufacture, commercial activity or undertaking of any kind and has a broad scope. Pursuant to section 3A of the Act, every person liable for the payment of stamp tax must register with the Comptroller of Inland Revenue and provide the Comptroller with such information as may be required to give effect to such registration.

54. Grenada’s authorities also advised that by virtue of section 65 of the Income Tax Act, CAP 149, any domestic or external business is required to register with the Inland Revenue Department for income tax purposes and receive upon registration a Taxpayer Identification Number (TIN). The allocation of a TIN is a prerequisite for registration for stamp tax and VAT purposes.

55. For registration with revenue authorities, business entities must present the certificate of incorporation from the Registrar of Companies along with the articles of incorporation. The articles of incorporation must contain the following: *(i)* name of company; *(ii)* number (or minimum and maximum

number) of directors (*iii*) names of directors; (*iv*) address of the registered office. The “Non-Individual Enterprise Registration Form” that must be submitted by non-individual businesses upon registration requires the provision of ownership information including the last names and first names of shareholders/members, the date on which these persons became shareholders/members and the percentage of capital owned.

56. Under section 9 of the Value Added Tax Act, CAP 33A (“VAT Act”), persons who are engaged in an activity which involves or is intended to involve the supply of taxable goods or services (subsection 2) where the total value of such supply is equal to or greater than XCD 120 000 (USD 44 444) (“registration threshold”) must register with the Comptroller of Inland Revenue. Persons who do not meet the registration threshold may apply for registration (s. 13) but approval and registration will be based on a number of conditions and is discretionary. Suppliers of public entertainment, government entities and investors are required to register, irrespective of whether or not they meet the registration threshold (ss.10, 11 and 12).

57. Any person liable to stamp tax must file an annual return of the gross receipts of their business to the Comptroller of Inland Revenue by the 31 March of the year following that year to which the return relates (s. 6 Stamp Tax Act). Gross receipts include sale or disposal of goods and services, investment income, rental income, interest income, dividends, cost of material from stock, royalties and any other income of a capital nature (Second Schedule to the Stamp Tax Act).

58. Pursuant to section 65 of the Income Tax (Amendment) Act (CAP 149), any person liable to furnish a return of income in respect of any year of assessment must provide this return within 90 days after the basis period (fiscal year end). This obligation includes individuals, a trust, the estate of a deceased person, a company, a body of persons, a partnership and every other juridical person (s. 2). The tax return must take the form prescribed by the Comptroller of Inland Revenue (s. 125). There is a corporation income tax return in respect of companies, partnerships and body of persons where the names and addresses of partners and joint owners must be reported, but not shareholders. Individual shareholders are also obliged to report all income earned in Grenada from all sources, including investment in companies (see s.32 of the Income Tax Act which provides that the assessable income of every resident person shall include the gross amount of any dividend accrued to that person).

Companies incorporated under the International Companies Act

Registration requirements

59. The authority in Grenada for the registration of international companies is the Grenada Authority for the Regulation of Financial Institutions (GARFIN). GARFIN is a body corporate, created by the Grenada Authority for the Regulation of Financial Institutions Act 2008. It is also responsible for the registering of trusts under the International Trusts Act 1996 (see below).

60. Amongst other things, section 12 of the ICA provides that the memorandum of an international company must include: (i) the name of the company; (ii) the address in Grenada of the registered office of the company; (iii) the name and address in Grenada of the registered agent of the company; and (iv) the objects or purposes for which the company is to be incorporated. In addition to the memorandum, international companies must have articles of association (s. 13) although the ICA does not contain any requirements regarding the information that these articles must contain.

61. Under sections 38 and 39 ICA, an international company must have a registered office and a registered agent in Grenada at all times. Only the following persons can act as registered agents: (i) an attorney-at-law; (ii) a chartered accountant; (iii) a trust administration company practicing or incorporated in Grenada;¹³ (iv) a company registered under the Company Act that is authorised under its memorandum to act as a trustee; or (v) a company licensed under the Company Management Act 1996.

62. The memorandum and articles of association of an international company must be submitted to GARFIN who must retain and register them in the Register of International Companies (s. 14 ICA). Upon registration, the Registrar issues a certificate of incorporation. There is no legislative requirement to make ownership information in relation to international companies available upon registration.

63. Pursuant to section 16(2), a company incorporated under the ICA must inform GARFIN of all amendments made to its memorandum or articles of association within 14 days of alteration. This information is retained and registered in the Register of International Companies by GARFIN. Any amendment takes effect from the date on which it is registered by GARFIN.

13. That has an authorised and paid up capital of not less than XCD 1 5000 000 (USD 555 555).

Information held by companies

64. Under section 28 of the ICA, international companies are required to maintain share registers containing full details on owners of registered shares including the names and addresses of shareholders, when they became a shareholder and the number of shares held. This section further requires that the register includes the date when a person ceases being a shareholder and to whom, if any, their shares were transferred. The company is not required to treat a transferee of a registered share in the company as a shareholder until the transferee's name is entered in the share register (s. 30(3)). The Phase 1 report noted that the law did not provide for any express timeframe to update the register of shares and Grenada's laws did not provide penalties for failure to do so. Section 28(2) of the ICA was amended on 23 December 2013 to introduce an obligation for international companies to keep their share register up to date. Sanction for failure to comply with the obligations stated in section 28 also applies for the breach of this new obligation (see below section A.1.6 of the report on Enforcement). This amendment came into force on 4 February 2014. As a result of this amendment, the Phase 1 recommendation to ensure that identity information of international companies is updated, is removed. However, considering that this provision is new and the enforcement has not been reviewed, Grenada is recommended to monitor the application of the obligation for international companies to maintain their share register up to date.

65. Section 28 of the ICA provides that this share register must be kept at the registered office of the company in Grenada (which must be reported in the company's memorandum). The ICA mandates that Registered Agent to keep and maintain such a register. Sections 39(A) and 39(B) obligate the Registered Agent to produce such books records, minutes, register and other documents for examination within seven days of such a request from GARFIN.

Tax requirements

66. International companies are currently not subject to any tax obligations with Grenada's Inland Revenue Department as they are not liable to taxes in Grenada until 20 years after the date of incorporation (s. 110 ICA). There are currently no international companies that were incorporated for more than 20 years.

External companies (i.e. foreign companies)

Registration requirements

67. An external company can maintain a branch with its seat of effective management within or outside of Grenada.

68. The CA provides that no external company can do business in Grenada without being registered with the Registrar of Companies (s. 340(1)). To this extent, a company must file with the Registrar of Companies (i.e. CAIPO) a statement setting out, *inter alia*: (i) the name of the company; (ii) the jurisdiction within which it has been incorporated; (iii) the date on which it intends to start its business in Grenada; (iv) the full address of the registered or head office of the company outside Grenada; (v) the full address of the principal office of the company in Grenada; and (vi) the full names, addresses and occupations of the directors of the company. This statement must be accompanied by a copy of the corporate instruments of the company (s. 344). Upon receipt of the documentation, the Registrar issues a certificate of registration for the external company. The Phase 1 report noted that no ownership information had to be provided upon registration unless this information would be detailed in the company's articles of incorporation

69. Section 356(1) of the CA provides that an external company must, no later than the first day of April in each year after the day of its registration, send to the Registrar an annual return in the prescribed form containing the prescribed information made up to the preceding the thirty-first day of December. The Phase 1 Report noted that updated ownership information was not available in relation to external companies. The CA was amended on 23 December 2013 (the amendment came into force on 4 February 2014) to include an obligation for external companies to provide the Registrar of Companies with ownership information upon registration an annual update of ownership information (new section 344A). A sanction for failure to provide up to date information to the Registrar on an annual basis, as indicated in new section 344A of the CA, is applicable (see below section A.1.6 of the report on Enforcement). The Companies Regulations 1995 detail the forms external companies must file with the Registrar to comply with the obligations set out in the CA. Ownership information on external companies must now be updated in this annual return (section 344A(1) of the CA).

70. Considering the new obligation for external companies to provide ownership information to the CAIPO on an annual basis, the Phase 1 recommendation is removed. However, considering that this provision is new and the effectiveness in practice has not been assessed, it is recommended that Grenada monitor the application of this new provision.

71. Grenada's authorities advised that external companies are also covered by the Companies (Amendment) Regulations 2009 and the obligation imposed by these Regulations to file an annual return detailing companies' ownership information. However, the annual form prescribed by the Regulation is to be submitted pursuant to s. 194 of the CA and this section does not appear to apply to external companies. Section 356 of the CA provide for external companies to file an annual return under the form found in the Third Schedule of the Companies Regulations.

Tax requirements

72. Tax requirements above described for domestic companies incorporated under the CA similarly apply to external companies. Grenada's authorities clarified that by virtue of section 65 of the Income Tax Act, all external companies operating in Grenada are required to register for income tax purposes with the Inland Revenue Department. For registration for tax purposes, external companies must also submit a Non-Individual Enterprise Registration Form which contains the following information: trade name, start date, mailing address, business activities, representative information, enterprise ownership including the last the last names and first names of shareholders/members, the date on which these persons became shareholders/members and the percentage of capital owned.

In practice

Companies incorporated under the CA (including external companies)

73. Companies incorporated under the Companies Act (including non-profit companies) as well as external companies must register with the Registrar of Companies (CAIPO). The process for registration starts with the search and reservation of the name of the entity. The Registrar of Companies conducts a search to make sure that the name of the new entity is not already used by another entity. The Registrar also has discretion to reject a name that would be considered unacceptable. The search process for the name is performed in one day. Once the name is accepted, it is reserved for a period of 90 days.

74. The articles of incorporation are then prepared and filed with the Registrar of Companies, along with the form for registration, the notice of directors and the notice of address. Upon reception of the request for registration and the necessary documentation, the Registrar of Companies verifies that all the forms are completed and that the articles of incorporation contain all of the information required by the CA. The information is then entered into the register. When entering the information in the register,

particular attention is paid to the identification of the persons, the objectives of the company and the signature. When a company is a not for profit company, the Registrar of Companies specifically verifies that the objectives are non-profitable.

75. If the necessary information is not completed, the obligations under the CA are not complied with or there is a major error, the registration is rejected. Less than 1% of the applications are rejected. In practice, there is no rejection of non-profit companies since their articles of incorporation are reviewed by the Attorney General before being submitted to the Registrar of Companies.

76. The registration of a company can be discretionally rejected by the Registrar of Companies if the objectives are illegal. Generally, this decision is taken in collaboration with the Legal Affairs Department. There was one rejection of registration in the last three year based on the fact that the objectives were not proper.

77. The registration process takes between two to three days. Once it is completed, the Registrar of Companies issues a certificate of incorporation and the information from the register becomes public. The legal personality of a company is obtained upon the issue of the certificate of incorporation and the registration in the Registrar of Companies.

78. The process is the same for an external company that wishes to do business in Grenada. To be registered, an external company must file a copy of its articles of incorporation, along with a statement that includes the name of the company, the jurisdiction in which it was incorporated, the date when it intends to start its business in Grenada, the full address of its head office outside Grenada, the full address of the principal office in Grenada and the full names, addresses and occupations of the directors of the company. An attorney in Grenada must also file a statutory declaration of compliance of the company with all legal obligations in Grenada (the registration process is also needed for other business activities including those undertaken by self-employed individuals and partnerships, see below for partnerships).

79. In cases where the Registrar of Companies is made aware of an entity operating in Grenada without registration, the Registrar of Companies first contacts the entity and asks it to register within two weeks. In addition, it informs the entity that it is illegal to operate under a name that is not registered and that a sanction is applicable. If the entity has not registered within the two week timeframe allocated, the Registrar of Companies then sends the file to the Attorney General. In the last three years, there have been some cases where the Registrar of Companies has been made aware of entities operating without being registered, however, there have been no cases where sanctions were applied by the Attorney General as all entities contacted by the Registrar of Companies have registered within the two week deadline.

80. All companies incorporated under the CA also need to file an annual return with the Registrar of Companies, no later than 1 April of each year after their incorporation. This annual return must include the number of shares issued or redeemed over the last financial year and the name of the persons holding the shares in the company (including any persons who have held shares at any time since the provision of the last return).

81. Failure to file the annual return can lead to companies being struck off the register. In cases where a company is late in filing its annual return, the Registrar of Companies advises it and gives it four weeks to comply. If the annual return is not filed within the additional four week deadline, the company is struck off the register and the striking off is published in the Gazette.

82. There is currently no system in place that follows up on the filing of annual returns and that identifies a company's default to file their annual returns. The register is not automated and there is no electronic or manual process that identifies a company's filing due date. The Registrar of Companies indicates that Grenada's attorneys have been enlisted in an effort to improve compliance with the company law, by asking them to inform the directors of their client companies of their obligations. However, this effort has limited effect since companies that are not international companies do not specifically need a lawyer to register. A publication to this effect was also made in the Gazette.

83. There were 7 126 companies in the register as of 16 April 2014, of which 312 non-profit companies, 111 external companies (as well as 10 000 self-employed individuals). Three companies were struck off in 2012 for non-compliance, one in 2013 and 3 in 2014 (up to July), but these cases were discovered inadvertently as there is no automated system of verification of compliance with the annual returns obligations actually in place.

84. With regard to information that needs to be maintained by companies incorporated under the CA, such as the register of shares and the register of substantial shareholders, there is no control performed by the Registrar of Companies on whether these obligations are respected by companies and other entities. Companies created under the CA may engage a service provider that is subject to AML obligations, such as a financial institution or company management professional, and in such cases the service provider would generally be required to perform CDD and maintain ownership and identity information. However, there is no requirement that these companies engage such a service provider. Therefore, there may not be any person in Grenada that is responsible for maintaining information who is subject to regulatory oversight.

85. Companies incorporated under the CA, including external companies doing business in Grenada, must also register with the Inland Revenue Authority for direct taxes (including stamp tax) and VAT purposes. New entities need to go to the tax authorities to register for direct tax purposes. They need to provide the certificate of incorporation from the Registrar of Companies and the complete registration form. The information is entered in the tax register, the TIN is attributed to the entity and the tax authorities explained the types of taxes the entity is subject to (including stamp tax). Once the registration form is signed, it is a declaration that the information provided is true and accurate. If the tax authorities discover that the information provided on the tax registration form was false, penalties are applicable. The direct taxes registration process is done in a day.

86. VAT registration follows a similar process. The TIN used for direct taxes is the same as for VAT since this number is valid and used for all taxes obligations in Grenada. The VAT registration process takes approximately one week, as the tax authorities must validate the threshold applicable to the entity.

87. All taxable entities must file an annual tax return within 90 days of the end of their fiscal year. The tax return must include financial statements. The compliance rate for filing tax returns is 52%, before reminders (for all types of entities but excluding VAT) and 95% for filing VAT returns. When the tax authorities receive the tax return, a basic verification is performed by the agent to verify the risk criteria. This risk verification is reviewed by a supervisor. The risk profiling determines which entities will be audited. Taxpayers can have their tax return adjusted or a full audit can be performed. Generally, entities that are of significant economic importance are reviewed carefully. Other entities are only audited based on sample or risk profiling.

88. When an entity is late to file its tax return, it first receives a reminder to file the return. The additional deadline given to comply depends on each situation, such as the size of the entity (the largest entities have the shortest deadlines). If the entity has not complied after the additional time allocated, the tax authorities raise an assessment (generally the assessment is based on the prior year submission or a similar business submission and is substantial, to force the entity to object and to provide tax information). Since 2011, 266 of these assessments have been generated for a total of 53 entities (most entities received an assessment for more than one taxable period). The entity has one month to pay the tax due and after this deadline, interest is applicable. For 2011, there were 144 companies that were late in filing their corporate tax return and penalties for a total amount of XCD 1 257 755 (USD 465 835) were applied. For 2012, there were 86 late corporate tax return and penalties for a total amount of XCD 681 341 (USD 252 348) were applied, while for 2013, there were 30 late corporate tax return for XCD 367 968 (USD 136 284) of penalties.

89. Companies created under the CA (including external companies) have to register with the tax authorities (including VAT, if applicable) and have to comply with specific tax obligations. However, there is no requirement to maintain or file information on ownership or identity based on the tax laws. Ownership and identity information needs to be filed with the Register of companies. However, there is no oversight programme to ensure that companies comply with their obligation to maintain or file ownership and identity information pursuant to the CA. It is therefore recommended that Grenada put in place an oversight programme to ensure the compliance of the obligations to maintain or provide ownership and identity information for all relevant entities under the CA and exercise its enforcement powers as appropriate to ensure that such information is available in practice.

Companies incorporated under the ICA (including international insurance companies and offshore banks)

90. Companies incorporated under the ICA, including international insurance companies and offshore banks, must register with GARFIN. The registration is initiated by the registered agent. As for companies incorporated under the CA, the first step is to reserve the name. Once it is confirmed that the name is not used by any other entities and that it is acceptable, the name is reserved for a period of 90 days. GARFIN has a discretionary power to reject the name.

91. Then, the international company prepares and submits its articles of incorporation with a summary of the objectives and the registration form. GARFIN verifies that the form is completed and that the articles of incorporation contains all information required by the ICA. The international company is then registered and a certificate of incorporation is issued. The entire process of registration for international companies takes approximately one to two weeks. GARFIN can ask for the directors to be changed, if there is a concern with any one of them.

92. As for companies registered with the Registrar of Companies, international companies obtain their legal personality and special tax regime by their registration with GARFIN. Ownership information on international companies must be maintained in a share register kept by the international company itself. Since 4 February 2014, an amendment to section 28(2) of the ICA introduced the obligation for international companies to maintain their share register up to date. However, the oversight programme to ensure the compliance of the obligations to maintain ownership and identity information for all relevant entities under the ICA is very recent. 7 of the 10 registered agents have been examined so far to verify that they maintain both ownership, identity and accounting information. Considering that it is very recent, it is therefore recommended that Grenada monitors the oversight programme

for companies registered under the ICA to ensure the compliance of the obligations to maintain ownership and identity information for all relevant entities under the ICA and exercise its enforcement powers as appropriate to ensure that such information is available in practice.

93. As of 30 April 2014, there was 66 international companies in Grenada, of which 20 were inactive. At this date, there was no international insurance companies nor any offshore banks.

Ownership information held by service providers and nominee ownership

Anti-money laundering requirements

94. Under the Proceed of Crimes Act, No 6 of 2012 (“POCA”), section 64, Regulations may be made by the Minister of Finances for the purpose of detecting and preventing money laundering, in particular to establish and maintain procedures relating to the identification of clients and the keeping of records. Such Regulations have been in place since February 2012 and apply to relevant persons defined in its regulation 2 as to include:

- banking business within the meaning of the Banking Act or the Offshore Banking Act, CAP 217A;
- insurance business within the meaning of the Insurance Act or the International Insurance Act;
- company management within the meaning of the Company Management Act 1996;
- trust service providers or company service providers including when:
 - (i) acting as: a formation agent of legal person;
 - (ii) acting (or arranging for another person to act) as a director or partner of a partnership;
 - (iii) providing a registered office;
 - (iv) acting (or arranging for another person to act) as a trustee of a trust; and
 - (v) acting (or arranging for another person to act) as a nominee shareholder for another person; and
- the provision of services to clients by attorneys-at-law, firms, notaries public, accountants, accounting firms and auditors in particular when participating in the creation, operation, or management of legal persons or arrangements, or buying and selling of business entities.

95. Further, Regulations 4, 5 and 6 of the Proceed of Crimes (Anti-Money Laundering) Regulations (“POCA Regulations”) stipulate that all regulated persons and business entities must establish and maintain identification procedures which require any person seeking: (i) to form a business relationship; (ii) to enter into a one-off transaction above XCD 10 000 (USD 3 704); (iii) to carry out two or more transactions that appear to be

linked which have a total value of XCD 10 000 (USD 3 704) or more; or (iv) to enter into a one-off transaction (where the regulated institution knows or suspects money laundering) with a regulated institution to produce satisfactory evidence of their identity after first making contact. Under Regulation 10 of the POCA Regulations and section 47 of the POCA Guidelines, the relevant person must maintain records of verification of identity and nature of business transacted for at least five years from the time the business relationship was ended or, for one-off transaction or a series of linked transactions, from the time the transaction(s) was completed.

96. Paragraph 29 of the POCA Guidelines, 2012 makes clear that where there are underlying “principals”, e.g. beneficial owners, controlling shareholders, director, or beneficiary who are entitle to ten or more percent in the legal person, professionals and entities subject to customer due diligence (CDD) must verify the underlying principal and establish the true nature of the relationship between such principals and the person doing business on behalf of said principals.

Nominees

97. Grenada recognises the concept of nominee. The POCA imposes obligations on person acting as nominee shareholders. As noted above, when someone acts as a nominee shareholder for another person, they are deemed engaging in the business of company service provision and are thus subject to AML obligations. Company service providers acting (or arranging for another person to act) as a nominee shareholder for another person are included in the definition of “relevant business” under Regulation 2 of the POCA Regulations and are therefore required to perform CDD and to have knowledge of the identity of the real holder of shares.

Companies incorporated under the International Companies Act

98. In addition to the general obligation described in the previous paragraph, holders of bearer share certificates are, under the ICA, required to lodge these certificates with a registered agent (ss.27A and 27B). All registered agents are subject to CDD obligations and therefore required to know the beneficial owners of such certificates in all situations (irrespective of the number of shares held in the company).

Companies incorporated under the Companies Act

99. Section 182 of the CA provides that a person who is a substantial shareholder of the company (i.e. a shareholder who holds at least 10% of the voting rights, either by himself or in the name of a nominee, see s. 181) must

notify in writing the company stating his(her) name and address and giving full particulars of the shares held by him(her) or his(her) nominee¹⁴ by virtue of which (s)he is a substantial shareholder. This must be done within 14 days after that person becomes aware that (s)he is a substantial shareholder. When this shareholder ceases to be a substantial shareholder in a company, (s) he must also inform the company within 14 days of the date in which (s)he ceases to be a substantial shareholder (s. 183).

100. A company must keep a share register where the information on substantial shareholders is entered (s. 184). The Registrar can ask any company to provide this register within 14 days after the day on which the request is received (s. 184).

101. When a person does not act as a nominee in a professional capacity or where the shareholder holds less than 10% of the voting rights in a company incorporated under the Companies Act, the provision of nominee shareholders is not regulated.

In practice

102. The Financial Information Unit, has broad functions in Grenada. The Head of the FIU is part of the AML/CFT Commission and the FIU plays a major role in supervising the compliance of banks and professionals with AML obligations. The FIU works in collaboration with other government agencies and other international bodies.

103. All professionals providing services to companies or financial services in Grenada, including professionals acting as nominee or registered agent (services providers),¹⁵ are subject to AML obligations and CDD rules. The FIU is in charge of supervising the 30 accountants, 107 lawyers (including the 56 that act as notary) and 10 registered agents with regard to their compliance with AML obligations. The FIU is also in charge of the AML supervision for banks and other financial institutions.

104. The auditing system of the FIU is recent. They have started providing trainings sessions for the professionals (a training was performed for accountants and real estate agents on 28 January 2014), but routine controls of compliance of professionals with the AML obligations, including CDD, have not started yet. The FIU is currently in the process of the elaboration of this programme.

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14. Only the identity of the nominee must be provided although in practice, his(her) address will be provided as well.
 15. Lawyers, solicitors, real estate agents and accountants.

105. The AML/CFT Commission, of which the FIU is part of, is also involved in the supervision of professionals with regard to their AML obligations. The role of the Commission is provided for in section 63 the Proceed of Crimes Act (POCA). The Commission is in charge of advising the Minister for Finance in relation to detection and prevention of money laundering, issuing guidance, regulating AML activities, examining financial institution and monitoring compliance with the guidelines. The AML/CFT Commission and the FIU are both responsible for overseeing compliance obligations of regulated entities and professionals, and they work in partnership. The Head of the FIU is a member of the AML/CFT Commission and reports to the Commission on all matters relevant to AML/CFT. This allows for effective co-ordination of the work of the two agencies. As the legislation is relatively recent (2012), a structured programme of verification of the compliance of professionals with their AML obligations has not been implemented. It is therefore not possible to know whether ownership and identity information is available for professionals, including nominees and registered agent (service providers). As a result, no sanctions have been applied so far. Grenada should put in place an oversight programme, by the appropriate supervision authority, to ensure that all professionals maintain identity and ownership information in compliance with their AML obligations and exercise its enforcement powers as appropriate to ensure that such information is available in practice. Grenada authorities have confirmed that they are not aware of any non-professional nominees in Grenada.

Conclusion

106. Grenada's legal framework ensures the availability of the following ownership information in relation to companies:

- all domestic companies must keep registers of members where details of all shareholders are recorded. This information must under the law be kept updated on an ongoing basis in relation to substantial shareholders. Ownership information in relation to all shareholders must be further provided on an annual basis and under sanction to registration authorities, making ownership information in relation to these companies available in Grenada;
- international companies must keep up to date registers of shareholders or members where all particulars must be registered. The responsibility for ensuring that the register is updated lies with the company's registered agent. This register must be kept at the company's registered office in Grenada;
- external companies (i.e. foreign companies) must register with the Registrar of Companies and are subject to reporting obligations

with the registration authorities including ownership information, as provided by the new sections 344(1)(n) and 344A of the CA (see explanations above).

- all companies, both domestic or external, must register with the Inland Revenue Department when starting to operate in Grenada and provide upon registration the identity of their shareholders/members as well as the percentage of capital owned but this information does not have to be further updated; and
- information held by nominees and the persons for whom these nominees act is available pursuant to the legal requirements under the POCA Regulations and POCA Guidelines.

107. In practice, although there are clear legal obligations to keep identity and ownership information, there is no oversight programme in place to verify that ownership information is either provided to the Registrar of Companies or maintained for companies incorporated under the CA or for professionals including nominees and registered agent. It is recommended that Grenada put in place the appropriate oversight programmes for all these entities and professionals.

Bearer shares (ToR A.1.2)

108. With respect to domestic companies, section 29(2) of the CA expressly forbids the issue of bearer shares. International companies incorporated under the ICA were initially allowed to issue bearer shares and no ownership information in relation to such shares had to be noted on the share registers maintained by these companies.

109. The International Financial Services (Miscellaneous Amendments) Act 2002 amended the ICA by inserting new section 27(A) and 27(B) which now requires that:

- every bearer share certificate issued by a company on or after 30 April 1996 must be delivered to a bearer share agent (s.27A) which must keep the bearer share certificate in a safe place and hold the same to the benefit of the owner of the share. Under Grenada's law, only persons licensed as registered agents under section 39 of the International Company Act can be bearer share agents (s.27A(4)).¹⁶ All current IBCs registered in Grenada were established after 1999 and are covered by these rules. A review of these companies performed by GARFIN has shown that of the 66 companies currently

16. There are currently 10 registered in Grenada. All registered agents can act as bearer share agents. They are all under the supervision of GARFIN.

registered, GARFIN is able to confirm that none of these companies have issued bearer shares; and

- all companies to which paragraph *m* of section 12 of the Act applies¹⁷ had to recall and cancel all bearer shares and replace them with registered shares. Any bearer shares not recalled and cancelled within six months after commencement of the Act were declared null and void (s. 27B(2)).

110. As previously indicated, bearer share agents can only be persons licensed as registered agent under the ICA. Registered agents are required to perform customer due diligence and consequently have to identify their clients, including beneficial owners, and to maintain this information for five years. These CDD obligations, under the POCA Guidelines, ensure that bearer share agents will have knowledge of the identity of all shareholders for whom they are required under the law to keep bearer share certificate.

111. The issuance of bearer shares must be specifically provided for in the articles of incorporation of the international company, which must be filed with GARFIN. All bearer shares in Grenada need to be immobilised with the registered agent of the company. The system of immobilisation put in place by the registered agent is verified and approved by GARFIN. GARFIN verifies, amongst other checks, whether there are physical facilities for custody, the registration system of the bearer shares by the registered agent and the back-up system (in case of failure of the main system). The registered agent must prove to GARFIN that the registration system in place is adequate. An adequate registration system must include the following: a log of all bearer shares with the beneficial owner(s) listed, backup storage of the log, fireproof storage facilities, physical (and electronic) security over access to the log; a procedures manual on how changes are to be made to the log and who would have access, procedures for returning the bearer shares to the registered owners. GARFIN, as the regulatory supervisor of registered agent, is also responsible for the routine control of the registered agent in their capacity as custodian and bearer shares agent.

112. In practice, there are currently no international companies with the power to issue bearer shares in their articles of incorporation. If an international company would like to start issuing bearer shares, it would first need to amend its articles of incorporation and send the amended articles of incorporation to GARFIN so that it could review the immobilisation system and approve it before the bearer shares could be issued.

17. Companies involved in the following business activities: offshore banking, international insurance, company management, trusts business or international betting business.

Partnerships (ToR A.1.3)

113. There are no statutory rules regulating the formation of partnerships in Grenada and partnership formation is governed only by legal precedent. Partnerships do not constitute entities separate from their partners.

Registration requirements

114. Only a partnership wishing to operate under a business name which does not reflect the names of the owners, must register this business name with the Registrar of Companies and the name is recorded in the Business Name Register. Otherwise, partnerships are not subject to any registration requirements for commercial purposes.

Information held by partnerships

115. Partnerships are regulated by common law principles in Grenada and there are no statutory requirements for partnerships to keep information in relation to their members.

Tax requirements

116. While the Income Tax Act levies Income Tax directly on the partners, partnerships must register with revenue authorities under the Stamp Tax Act and the Income Tax Act. For registration under the Stamp Tax Act, partnerships must present a Registration of Business Name Certificate from the Supreme Court Registry when this name has been registered. By virtue of section 65 of the Income Tax Act, all partnerships, either domestic or foreign, are required to register with the Inland Revenue Department for income tax purposes and receive upon registration a Taxpayer Identification Number (TIN). The allocation of a TIN is a prerequisite for registration for stamp tax and VAT purposes.

117. Section 74(1) of the Income Tax Act also specifies that every partnership carrying on business in Grenada must at all times be represented by a resident individual who can be the precedent partner (the first mentioned in the partnership agreement) or the agent of the partnership in Grenada. Section 74(3) states that every partnership must notify the Comptroller of Inland Revenue of the name of the precedent partner or the representative within one month of commencement of business. Every partnership must, within the same timeframe, provide information on its address. Any amendment made to the partner, the representative or the registered address must be notified within 15 days of amendments to the Inland Revenue Department.

118. Pursuant to section 65 of the Income Tax Act 1994 any person that has to furnish a return of income in respect of any year of assessment must provide this return on or before 31 March in the year following that year of assessment. This obligation covers any person liable to pay tax under the Income Tax Act and includes individuals, a trust, the estate of a deceased person, a company, a body of persons, a partnership and every other juridical person (s. 2).

119. Partnerships fall under the definition of a person in the interpretation provision, section 2 of the Income Tax Act. The Income Tax Act at section 21(1) states that a partnership shall not be charged to tax in its own name but all income accrued thereto in the basis period for a year of assessment shall be charged on the partners for that year of assessment in accordance with this section. However, partnerships are required to lodge a tax return with the Inland Revenue declaring both “partnership income” and the share of the partnership assessable income between each partners. These tax returns contain detailed information on the partners, including their names, addresses and whether or not they are resident in Grenada. Section 21 of the Income Tax Act provides for the taxation of partnerships through its partners and information on ownership must consequently be recorded.

Information held by service providers

120. Regulation 2 of the POCA Regulations provides that relevant persons for AML purposes include financial institutions and company service providers¹⁸ In such cases, the POCA Guidelines (s. 27(5)) stipulate that for purposes of verification in relation to a legal person that is a partnership, the following information shall be required from the partnership:

- the partnership agreement;
- the full name and current residential address of each partner and manager relevant to the application for business; and
- the date, place of birth, nationality, telephone number, facsimile number, occupation, employer and specimen signature of each partner or other senior officer who has the ability to give directions, sign cheques or otherwise act on behalf of the partnership.

121. Thus, whenever a partnership in Grenada is a customer of a financial institution or a company service provider, or any other businesses which have AML obligations, these service providers will identify the partnership and all its partners.

18. i.e. those who provide services including: (i) acting as a partner of a partnership; and (ii) providing a registered office for partnership.

Conclusion

122. Partnerships are subject to registration requirements with the Inland Revenue Department and have to provide the name of the partner representing the partnership and to keep this information updated. Further, partnerships must lodge an annual return with revenue authorities and provide, on that return, detailed information on their partners. Consequently, ownership information in relation to partnerships is available in Grenada.

123. In practice, although it has no legal personality, a partnership must register its name with the Registrar of Companies if it is carrying on a business under a name other than the name of its partners. In such a case, the registration process, including the approval of the name, is the same as for companies incorporated under the CA, as explained above.

124. The income from the partnership is taxable directly to the partners, who have to include the income in their personal tax return. Each partner must include in the partner's tax return, the income from the partnership and the share of each partner. Detailed information on each partner is mandatory.

Trusts (ToR A.1.4)

125. Grenada recognises the concept of trusts and trusts are usually created under common law. Common law principles are supplemented by the provisions of the Trustee Act 1897, which sets out rules about the appointment of trustees, their powers and limitations. It is also possible to create trusts under the International Trusts Act 1996 ("ITA") to the extent that such trusts do not relate to property located in Grenada and that both settlors and beneficiaries¹⁹ reside outside Grenada (s. 2). At least one of the trustees of an international trust must be a trust corporation i.e. a company incorporated under the ICA for the purpose of managing international trusts.

Registration requirements/information held by government authorities

126. There are no legal requirements for local trusts to be registered. In relation to international trusts, section 6 of the ITA provides that an international trust may only be created by an instrument in writing. The Registrar (i.e. GARFIN) is responsible for maintaining a Register of Trusts (s. 50(1)) where a settlor of an international trust may apply (but is not obliged) to be entered on the Register (s. 50(2)). The Registrar, on receipt of the trust instrument and fee, will enter in the Register the name of the trust, settlor and either the names of the beneficiaries or the purpose for which the trust

19. Except an international insurance company, an off-shore bank or an international business company.

is established (s. 50(4). In case of variation or termination of the trust instrument, the trustee must notify the Registrar and the Register is amended accordingly (s. 50(5) and (6)).

127. On 23 December 2013, the ITA was amended to include an obligation for international trusts that are registered, to provide identity information to the Registrar and to update this information on an annual basis (no later than the first day of April each year). A sanction for failure to provide up to date information to the Registrar on an annual basis, as indicated in the new section 50A of the ITA, is applicable (see below section A.1.6 of the report on Enforcement). This modification entered into force on 4 February 2014. This modification is only applicable to international trusts that are registered and where the registration of international trusts is not mandatory, however, the obligations for other trusts to maintain identity and ownership information existed in Grenada, based on the common law, as explained below. A Phase 2 recommendation for Grenada to monitor the application of this new obligation is added. According to information provided by both the Registrar and the 10 registered agents who are licensed to act as trustees of international trusts in Grenada, there were no trusts formed under the ITA, as it was the case during the Phase 1 review. Grenada's Ministry of Legal Affairs has also confirmed that no such entities will be registered in the near future. the system is currently under review.

Information maintained by trustees or other persons

Local trusts

128. The Trustee Act does not state who can be a trustee but it does govern the conduct of trustees under domestic trusts. This Act does not explicitly provide that the trustee must maintain ownership information in relation to a local trust – including the identity of settlors and beneficiaries. These trustees are however subject to common law obligations (see below).

International trusts

129. Under section 17 of the ITA, the trustee shall keep in Grenada a register of the trust specifying: (i) the name of the settlor; (ii) summary of the purposes of the trust; and (iii) the name of the protector of the trust. The trustee must also keep such documents as are necessary to show the true financial position of the trust at the end of the trust's financial year, together with details of the application of principal and income during the financial year.

130. Sections 27 to 43 of the ITA detail the statutory duties of the trustee of an international trust. For instance, pursuant to section 28, upon request

of certain parties (including the court, the settlor or any beneficiary of the trust) a trustee has the duty to provide as far as is reasonable full and accurate information as to state and amount of the trust property and the conduct of the trust administration. To fulfil this duty, this trustee would be expected to have knowledge of the different parties to an international trust.

Foreign trusts

131. There are no apparent prohibitions for a resident of Grenada to act as a trustee or otherwise in a fiduciary capacity in relation to a trust formed under foreign law. Likewise, there are no apparent prohibitions for a resident of Grenada from administering a trust or acting as a protector of a trust governed under foreign law. There can be cases where there are no obligations, under the laws of Grenada, for trustees of foreign trusts to have information on the identity of the relevant persons involved in the trusts, including beneficiaries.

Tax requirements

132. Local trusts are subject to the tax requirements provided by section 15 (1) of the Income Tax Act 1994, under which “any income accruing to a trust, where there is no beneficiary entitled to the immediate benefit thereof is included in the assessable income of the trust and the chargeable income ascertained therefrom is charged to tax in the name of the trustee”. Where a beneficiary is entitled to the immediate benefit, this income is deemed to have accrued to the beneficiary and shall be included in his assessable income. These provisions may not ensure that ownership information in relation to local trusts will be available in all circumstances. No tax requirements apply to trusts created under the ITA or to their trustees in their fiduciary capacity (s.49 ITA).

Identity information maintained by service providers

133. Under the POCA, Regulations may be made by the Minister of Finance for the purpose of detecting and preventing money laundering, in particular to establish and maintain procedures relating to the identification of clients and the keeping of records. Financial institutions are covered by the POCA and are defined as including a registered agent licensed under the ICA or a trust licensed under the ITA. The following relevant business activities, without any regard to the person conducting them, fall under the provisions of POCA: trust and other fiduciary services, company formation and management services, and services performed by barristers-at-law, solicitors, accountants and notaries.

134. Regulation 4 of the POCA Regulations stipulates that a relevant person shall establish and maintain identification procedures after contact is first made between that person and an applicant for business concerning any particular business relationship or one-off transaction. A relevant person includes the business of acting as a trust service provider for the purpose of acting, *inter alia*, as a trustee of a trust. These persons must establish and maintain identification procedures which requires any person seeking (i) to form a business relationship; (ii) to enter into a one-off transaction above XCD 10 000 (USD 3 703); or (iii) to carry out two or more transactions that appear to be linked which have a total value of XCD 10 000 (USD 3 703) or more; or (iv) to enter into a one-off transaction (where the regulated institution knows or suspects money laundering) with a regulated institution to produce satisfactory evidence of their identity. Under Regulation 10 of the POCA Regulations, all such information must be recorded and kept for five years.

135. Further provisions have been made under section 30 of the POCA Guidelines 2012 which make it clear that trustees acting by way of business are subject to CDD. Section 30 provides rules for identification and verification of ownership information in relation to trusts and details that a trustee should obtain information on: (i) the name of the trust; (ii) the date and country of establishment of the trust; (iii) when there is an agent acting for the trust, the name and address of the agent; (iv) the nature and purpose of the trust; and (v) identifying information in relation to any person appointed as trustee, settlor or protector of the trust. Beneficiaries of trusts must be identified only where the trust present a higher level of risk.²⁰

Common law obligations

136. The Legal Affairs Department has confirmed that the rules governing trusts in Grenada are based on English common law. Case law in Grenada clearly states the importance of legal precedent. In addition, Grenada's Constitution (section 104) provides an appeal right to Her Majesty's Privy

20. With regard to “higher level of risk”, the explanatory note to section 30 of the POCA Guidelines specifies that “it should be noted that in circumstances where an entity or a professional makes a determination that, having regard to its or his risk assessment, a relationship with a trust or any product or service channel relative to the trust presents a higher risk, additional information may be obtained with respect to the trust. The nature of the identification to be made or verification to be effected is a matter of judgment for the entity or the professional. However, at the barest minimum, the entity or professional is required to obtain identification information in relation to all the beneficiaries with a vested right in the trust.”

Council (in England). This means that for a trust to be valid, it needs to meet the three certainties: the certainty of intention, the certainty of subject matter and the certainty of object. As a consequence, a trust is only valid if evidenced by a clear intention on behalf of the settlor to create a trust, clarity as to the assets that constitute the trust property and identifiable beneficiaries (*Knight v. Knight* (1849) 3 Beav 148).

137. In addition, the trustee has several obligations which all suggest that he/she is required to know who the beneficiaries of the trust are in order to be able to comply with these obligations. Examples are the obligation to avoid conflicts of interests between the trustee's fiduciary duties and their own self-interest (*Bray v Ford* [1896]) and the obligation to familiarise themselves with all information regarding the trust including the trust documents and assets (*Hallows v Lloyd* (1888) 39 Ch D 686, 691). In the case of a discretionary trust, the trustee has a fiduciary obligation to know who is included in the class of permissible beneficiaries of the trusts, in order to properly exercise the trustee's discretion regarding whether or not to make distributions to one or more such beneficiaries. Finally, trustees are under a fiduciary duty to keep accounts of the trust and to allow beneficiaries to inspect them as requested (*Pearse v. Green* (1819) 37 E.R. 327 at 329). These obligations will apply to all trustees of trusts governed by the common law of Grenada, whether or not the trust is acting in a professional capacity.

138. The obligations placed on trustees by English common law, which are applied in Grenada, ensure the maintenance of identity information on the settlors and beneficiaries. The common law applicable in Grenada places obligations on trustees to have a full knowledge of all the trust documents, to act in the best interests of the beneficiaries and to only distribute assets to the beneficiaries of the trust. These obligations implicitly require all trustees to identify all the beneficiaries of the trust since this is the only way the trustee can carry out its duties properly. If the trustees fail to meet these common law obligations they are liable to being sued. This means that even where a trustee may not be required under the AML laws to identify the beneficiaries of the trust because the trust is not considered to present a higher level of risk, (s)he would still be required to have this information available based on the common law obligations.

139. However, under the common law, only the settlor or beneficiaries can act against the trustees in case of breach of the common law obligation. In addition, it is noted that, for common law obligations for trustees, there appears to be no specific regulatory oversight or monitoring of whether the trustees maintain information and documents pertaining to the management of trusts, including ownership and identity information.

140. There are no obstacles preventing Grenada residents from acting as trustees or administrators of foreign trusts. Foreign trusts are governed

by foreign law (including common law), so it is unclear what statutory or common law obligations would apply with respect to these arrangements. It is conceivable that certain aspects of the common law may not be applicable in that jurisdiction or even that the jurisdiction is a civil law one. Moreover, certain aspects of Grenada's (or United Kingdom) common law may conflict with the common law of the jurisdiction governing the trust. In any event, even where the common law applies, the question remains whether there is sufficient oversight by Grenada government authority on whether information or documents are being kept in all cases.

141. In summary, although Grenada authorities have confirmed that they are not aware of any resident trustees, the concern remains if there are Grenada resident trustees whether they systematically keep documentation that identifies settlors and beneficiaries of the trust in all circumstances. Therefore, it is recommended that an oversight system be put in place by Grenada to ensure that information is available on the beneficiaries and settlor of trusts, in particular in the case of professional trustees. In addition, it is conceivable that a local trust or a foreign trust be administered by a non-professional trustee. In that case, the trustees would be subject to common law trust duties set out above and would only be likely to take on such duties if they personally knew the identity of the settlors and beneficiaries.

Conclusion

142. Grenada's AML/CFT framework also provides rules to make identity and ownership information available in relation to local trusts and international trusts. Under the POCA regulations and POCA Guidelines, trustees acting by way of business together with professionals who provide fiduciary services are required to have knowledge of the identity of the settlor and beneficiaries of the trust where the trust presents a higher level of risk. Ownership information is nevertheless not available in all instances under the AML/CFT legislation, due to the risk-based approach taken by trustees in identifying beneficiaries.

143. International trusts that are registered have a legal obligations to maintain information on settlors and beneficiaries and to update this information in its annual return. However, this legal obligation is recent and has not been tested in practice, so Grenada is recommended to monitor the operation of the new provision on the availability of updated ownership information for international trusts that are registered. Finally, other trustees have to maintain ownership and identity information pursuant to the fiduciary duties of the common law. However, there is no oversight programme by Grenada authorities on whether ownership and identity information is maintained by trustees. Grenada's authorities have confirmed that they are not aware of any trusts in Grenada, that no trusts were established under Grenada law and that no

international trusts are registered. In the event that trusts are established or registered in Grenada in the future, it is therefore recommended that Grenada monitors whether trustees maintain information that identifies the settlors and beneficiaries in all cases.

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

Foundations (ToR A.1.5)

145. Grenada's laws do not allow for the creation of foundations.

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

Sanctions tied to registration requirements

146. An entity that fails to register with the Registrar of Companies as a company is not considered to be a company and is not eligible for any protection under the Companies Act. This entity would not have an independent legal identity apart from that of its owner(s). In addition, a company that fails to comply with the registration requirements provided in the CA and its directors, managers or secretary that knowingly assist in committing such default, are liable to a penalty between XCD 50 000 (USD 18 519) and XCD 100 000 (USD 37 037), or to imprisonment for not less than two years, or to both. In the case of a continuing offence, to a further penalty of XCD 100 (USD 37) a day for each day on which the offence is continued after the conviction (section 528 to 537 of the CA).

147. An external company that fails to provide to the Registrar of Companies an update of its ownership information on an annual basis (no later than the first day of April each year) using the prescribed form (pursuant to section 344A of the CA), receives a written notice within one month of the due date. If the external company does not comply within the time specified in the notice, it can be struck off the register. However, since the new provisions providing for this obligation are recent, the enforcement of the new provisions could not be assessed.

148. An international company that fails to inform the Registrar of Companies of any amendment made to its memorandum or articles of incorporation is liable to a penalty of USD 500 in respect of each day during which the contravention continues (s. 15(4) ICA). A director who knowingly permits

the contravention is liable to the same sanction (s. 15(4)). A USD 500 sanction is also applied when a company does not have a registered office or a registered agent in Grenada (s. 41). In addition, the amendment is not considered to be in force until registered. Accordingly the amendment would have no effect without registration.

149. The oversight programme of GARFIN to verify the compliance of the international companies with their obligations under the ICA has just been established. In the last ten years, the number of international companies has decreased from 3 793 in 2002 to 66 in 2014, of which 20 are inactive. In addition, there are no international insurance companies and no offshore banks in Grenada. No sanctions for breach of this obligation were applied during the period under review.

150. Pursuant to new section 50A(3) of the ITA, an international trust that is registered and that fails to provide the Registrar with up to date information on an annual basis (no later than the 1st day of April each year) would receive a written notice within one month of the due date. Failure to comply within the time period specified in the notice could result in the trust being struck off the register. However, in view of the short period between the introduction of the new provisions and the end of the period under review, the enforcement of the new provisions could not be assessed.

Sanctions tied to information to be kept by other persons

151. Any person who is found not complying with the obligation to maintain a register of substantial shareholders as provided for by section 184 of the CA is guilty of an offence and liable to a fine of XCD 3 000 (USD 1 111) or to imprisonment for a term of 12 months or to both. The same sanction would apply to a substantial shareholder who failed to notify the company of its position in the company (s. 533) Grenada's authorities advised that companies incorporated under the Former-Companies Act are subject to the same fines.

152. In the event that a company fails to detail its shareholders in its annual return with the Registrar of Companies, the company is liable to a fine of XCD 5 000 (USD 1 852) (s. 530(1) CA). Directors and officers of the company knowingly permitting this default are guilty of an offence and liable upon summary conviction to a fine of XCD 5 000 (USD 1 852) or to imprisonment for a term of 18 months or both. If the annual return is not filed with CAIPO as required under section 194 of the CA, this company and its directors are guilty of an offence and liable on summary conviction to a fine of XCD 3 000 (USD 1 111) or imprisonment for a term of 12 months or both (s. 533 CA).

153. An international company not keeping its share register is liable to a penalty of USD 25 in respect of each day or part of day during which the contravention continues. Directors are subject to the same sanction (s. 28(6)). A

company that does not keep its share register up to date pursuant to new section 28(2) of the ICA would be liable to sanctions provided under section 28(6). Grenada's law does not provide for any specific sanctions in the event that the obligations in section 30 of the International Companies Act in relation to the transfer of shares are not respected. A registered agent which fails to produce any document it has to keep under the International Companies Act is liable to a fine of XCD 50 000 (USD 18 519) and a further XCD 5 000 (USD 1 852) fine for every day during which the contravention continues. Destruction or falsification of such documents is also sanctioned by a XCD 50 000 (USD 18 519) fine.

154. Any person who contravenes their obligation under section 17 of the International Trust Act to maintain a register of trusts commits an offence and can be liable to a fine of USD 10 000 or two years imprisonment or both.

155. When a bearer share agent does not properly keep information on bearer shares he holds, this agent is liable to a fine of USD 20 000 and to imprisonment for two years (s.27(5) of the International Company Act). There is currently no international company that has the power to issue bearer shares under its articles of association, therefore this penalty has not been applied in practice.

156. There is currently no oversight programme in place to ensure that companies (including external companies) and international trusts comply with their obligations to provide or keep ownership and identity information under the CA and ITA. Grenada is recommended to put in place such an oversight programme.

Sanctions tied to tax requirements

157. A person who is required to be registered with the Inland Revenue Department for VAT purposes and does not apply for registration within the required time, commits an offence and is liable to a fine not exceeding XCD 10 000 (USD 3 704) or to a term of imprisonment not exceeding two years (s. 73 VAT Act). There has been no sanctions applied under this provision during the period under review because no breaches were found.

158. Failure to file an annual income tax return results in sanctions. Section 111 Income Tax Act provides that taxpayers have 90 days after the end of their accounting period to file their returns. If they fail to furnish a return on time they will incur a penalty of XCD 100 (USD 37) or 10% of the taxes unpaid, whichever is greater. Further sanctions are provided by section 112 in the event that the taxpayer fails to furnish a correct return. For example, where the incorrectness of the return was attributable to fraud or wilful default he is liable to a penalty of up to three times the amount of tax which would have been lost. For the period 2011-13, penalties have been applied to 448 entities for a total of XCD 2 471 583 (USD 914 486).

159. The Income Tax Act (ss.115-124) provides further criminal sanctions in the most serious offences. For example in the event that the return is not furnished, the penalty is a fine of XCD 2 000 (USD 741) and an imprisonment for one year (s. 117). In a case of tax evasion, the penalty is a fine of XCD 4 000 (USD 1481) and imprisonment for two years (s.118). There has been no sanctions applied under this provision during the period under review because no breaches were found.

160. Under section 6 of the Stamp Tax Act, any person who fails to file his annual return or files a false return is guilty of an offence and is liable to a fine not exceeding XCD 2 000 (USD 741). If this return is still not submitted after notice delivered by the Comptroller, that person is liable to a fine of XCD 50 (USD 19) for each day during which the offence continues. For 2011, there were 443 entities that did not file their stamp tax return on time, with total penalties of XCD 406 615 (USD 150 598). There were 364 entities that did not file their stamp tax return on time in 2012 with total penalties of XCD 385 747 (USD 142 869). In 2013, there were 413 entities with total penalties of 263 540 (USD 97 607).

Sanctions provided by AML/CFT legislation

161. Under the POCA Regulations, a person carrying on a business in Grenada without complying with the requirements set out by the Regulations is guilty of an offence and is liable on conviction to a fine of XCD 15 000 (USD 5 556). In addition, s.59(1) of the POCA guidelines states that when a body corporate is guilty of an offence and that it is proved that a director, manager, secretary or any other similar officer is responsible, this person is also guilty of an offence and be punished accordingly. Schedule IV of the Guidelines sets out the offences and the corresponding range of penalties (see further details under section A.3). There is currently no oversight programme in place to ensure that professionals comply with their AML obligations, so no sanctions were applied. It is recommended that Grenada put in place such an oversight programme.

Conclusion

162. When relevant entities are required to make ownership information available under Grenada's laws, these requirements are supplemented by sanctions in cases where these obligations are not complied with. However, in some cases, the sanctions are not applied because there is no appropriate oversight programme in place to detect failures. Appropriate recommendations have been made for Grenada to put in place such oversight programmes and then exercise its enforcement powers.

Determination and factors underlying recommendations

| Phase 1 determination | |
|--|---|
| The element is in place | |
| Phase 2 rating | |
| Partially compliant | |
| Factors underlying recommendations | Recommendations |
| New provisions on the availability of updated ownership information for external companies that are resident in Grenada, for international companies and international trusts that are registered, were introduced in December 2013. Since these new provisions are recent, the enforcement of the new provision could not be assessed. | Grenada should monitor the operation of the new provision on the availability of updated ownership information for external companies that are resident in Grenada, for international companies and international trusts that are registered. |
| Grenada does not have a regular oversight programme in place to monitor the compliance of the obligations to maintain or provide ownership and identity information imposed on companies under the CA and on professionals providing services to companies or financial services under the AML/CFT framework and the oversight programme for International companies under the ICA is very recent. | Grenada should put in place an oversight programme to ensure the compliance of the obligations to maintain or provide ownership and identity information for all relevant entities under the CA and the AML/CFT framework, monitor the oversight programme put in place for the ICA and exercise its enforcement powers as appropriate to ensure that such information is available in practice |

A.2. Accounting records

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

163. 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)/Underlying documentation (ToR A.2.2)/Document retention (ToR A.2.3)

Companies under the scope of the Companies Act

Companies Act

164. Section 149 of the CA provides that the directors of a company, non-profit companies included, must present the company's financial statements to shareholders during the annual meeting as well as the report of auditor, if any, and further information in respect of the financial position of the company and the results of its operations in certain circumstances. Further, section 151(1) states that a copy of the financial statements of each of its subsidiary bodies corporate shall be kept at the company registered office in Grenada.

165. Pursuant to section 187 of the CA, all domestic companies must prepare and maintain accounting records, which must be kept at the registered office of the company in Grenada. When these records are kept outside Grenada, accounting records that are adequate to enable the directors to ascertain the financial position of the company with reasonable accuracy must be kept at the company's registered office in Grenada on a quarterly basis (s. 187(3)). Former-act companies are *de facto* covered by the CA and consequently subject to the same record keeping requirements.

166. Part V of the Companies Regulations 1995 requires the financial statements and auditor's report referred to in sections 149 and 171 of the CA to be prepared in accordance with standards approved by the Institute of Chartered Accountants (Regulation 9). The financial statements must contain at least: (i) a balance sheet; (ii) a statement of retained earnings; (iii) a statement of income; and (iv) a statement of changes in financial position (Regulation 10).

167. The CA does not provide for underlying documentation to be kept and does not prescribe that accounting records should be retained for at least five years. Grenada's authorities have advised that these requirements also apply to external companies. However, the Income Tax Act includes an obligation to keep underlying documentation (see below) and companies are required to keep accounting records and underlying documentation for a minimum period of seven years. In addition, pursuant to section 154 of the CA, public companies or large companies (where the gross revenue exceeds XCD 2 million or the assets exceed XCD 1 million) must file their audited financial statements with CAIPO on an annual basis.

Tax laws

168. Section 71(1) of the Income Tax Act provides that every person carrying on any business must keep records or books of accounts necessary to reflect the true and full nature of transactions of the business regard being had to the nature of activities concerned. Section 71(4) of the Income Tax Act further provides that all books and accounts and other records which are essential to the explanation of any entry in such books of accounts must be kept. This would therefore include the underlying documentation. Pursuant to section 71(4), any person required to keep accounting records for the purpose of the Act must retain such records for seven years after the end of the year to which these records relate. These records must be kept in Grenada (s. 71(3)) unless the Comptroller of Inland Revenue would approve them to be kept at some other place. Grenada's authorities have advised that no such requests have ever been received. In addition, irrespective of the place where such records are kept, the Grenada's authorities have the necessary powers to access this information (see section B.1 of the report below).

169. Anyone who fails to keep a proper record of his transactions or to preserve any books of account or document required under section 71 is guilty of an offence and liable to a fine of XCD 2 000 (USD 741) and to imprisonment for one year (s. 117). During the period under review, this penalty was not applied as no reviews were performed.

170. For tax purposes, pursuant to section 4 of the Income Tax (Amendment) Act of 1999, any business liable to tax in Grenada, whatever its form and irrespective of the place where it has been set up, must file on an annual basis and within 90 days following the year of assessment a tax return with the Inland Revenue. Both companies incorporated in Grenada and external companies having their seat of effective management in Grenada must then declare their worldwide income. In addition to the annual return, any business must provide a copy of the final accounts of the business together with a reconciliation of the income shown in the account with the assessable income disclosed in the return in relation to the accounts (s. 72). This obligation covers domestic companies, external companies, and partnerships.

171. For VAT purposes, under section 43 of the VAT Act businesses must maintain underlying documentation such as invoices, credit notes, and debit notes whether issued or received as well as customs documentation relating to imports and exports of goods by the person. Any business subject to this tax must maintain accounts, documents and records for seven years after the end of the tax period to which they relate (s. 110). A person who contravenes section 43 commits an offence and is liable on summary conviction to a fine not exceeding XCD 5 000 (USD 1 852) or a term of imprisonment not exceeding eighteen months (s. 81).

172. All companies carrying on a business in Grenada and incorporated under the CA, including external companies, must file an annual income tax return within 90 days after the end of the taxation year. This tax return must include a copy of the final accounts of the business and a reconciliation of the income shown in the account with the assessable income disclosed in the return. In addition, the Income Tax Act required that underlying documentation be kept for a minimum of seven years.

173. A tax return that is submitted without a copy of the financial accounts would be considered incomplete and thus, penalties for late filing would be applicable. In practice, this penalty has not yet been applied. Although Grenada has never received any EOI requests, for domestic purposes, the Inland Revenue have asked for accounting information, including underlying documents, in a number of cases and they have always obtained the information requested in due time. During the period under review, Grenada has requested accounting information in 15 cases for domestic purposes. The information was provided in all cases in an average of 14 days.

International companies

174. For companies registered under the ICA, section 66 provides that the company must keep and maintain reliable accounts and records as the directors consider necessary to reflect the financial position of the company. These books must be kept at the registered office of the company or at such other place as the directors determine (s. 66(3)). A company that contravenes to these requirements is liable to a penalty of USD 100 in respect of each day during which the contravention continues. Directors are liable to the same sanction (s. 66(4)). These records are open to the members for inspection (s. 67). The Phase 1 report noted that the ICA did not provide neither for the underlying documentation to be kept nor for accounting records to be retained for at least five years.

175. Since the Phase 1 report, section 66 of the ICA was modified and the modifications entered into force on 4 February 2014. The new provision includes a clear requirement to keep “underlying documents such as contracts, invoices and any other relevant documentation detailing: (i) all sums of money received and expended; (ii) matters in respect of which the receipt and expenditure takes place; (iii) all sales, purchases and other transactions; and (iv) the assets and liabilities of the relevant entity or arrangement for a minimum period of five years from the date of the transaction to which the record relates”. As of 16 April 2014, there were 66 international companies in Grenada, of which 20 are inactive.

176. Considering that this new provision entered into force recently, it has not been tested in practice. Grenada should monitor the operation of the new

provisions on the availability of underlying documents for a minimum period of five years for international companies.

177. International insurance companies are required, under section 14(1) of the International Insurance Companies Act to keep business records. “Business records” includes working papers and other documents as are necessary to explain the methods and calculations by which its accounts are made up. “Accounts” are defined as profit and loss accounts, balance sheets and explanatory notes. These business records must correctly explain the company’s financial position and transactions and enable true and fair accounts to be prepared (s. 14(2)). International insurance companies must keep all business documents include working papers and other documents as are necessary to explain the methods and calculations by which annual accounts are made up (s. 14 International Insurance Act 1996. These records must be kept in Grenada (s. 14(2)). Any person who refuses to provide such accounts and documents during an inspection by the supervisory authorities would commit an offence (s. 24) and be liable to a fine of XCD 50 000 (USD 18 519) or imprisonment of two years or both (s. 38). If the offender is a legal person, the fine is XCD 100 000 (USD 37 037).

178. Section 15(1) of the International Insurance Companies Act provides that the provisions of the International Companies Act relating to accounts and records apply to the International Insurance Company Act, except to the extent that they are inconsistent with the International Insurance Company Act. Grenada authorities have confirmed that the modifications made to the ICA with regard to underlying documentation are therefore applicable to international insurance companies. The Phase 1 recommendation for international insurance companies to maintain underlying documentation is therefore removed. There have been no international insurance companies registered in Grenada since the date of the Phase 1 review.

179. Offshore banks are required under the Offshore Banking Act to provide quarterly accounts (statement of assets and liabilities and profit and loss) to the Central Bank (s. 41(1)). The Central Bank may require any document it thinks necessary for the proper understanding any statement and return furnished (s. 41(2)). Under section 42, it must provide to the supervisory authorities, within three months after the end of the financial year, a balance sheet, a profit and loss account as well as cash flow statements. The balance sheet must be approved by an auditor. Anyone who contravenes this obligation commits an offence and is liable to a fine of XCD 5 000 (USD 1 852) and a further XCD 1 000 (USD 370) for each day during which the offence continues after a first or subsequent offence (s. 41(5) and s. 42(4)).

180. The Offshore Banking Act was amended (the amendment entered into force of 4 February 2014) to include a specific legal requirement for offshore banks to keep underlying documents : “such as contracts, invoices and

any other relevant documentation detailing: (i) all sums of money received and expended; (ii) matters in respect of which the receipt and expenditure takes place; (iii) all sales, purchases and other transactions; and (iv) the assets and liabilities of the relevant entity or arrangement for a minimum period of five years from the date of the transaction to which the record relates” (section 94A). The general penalty provision of the Offshore Banking Act is applicable (s. 88). Under this provision, a person who contravenes any provision of the Offshore Banking Act for which there is no specific penalty, is liable to a fine of XCD 50 000 (USD 18 519), or imprisonment for one year, or both. In practice, there have been no offshore banks registered in Grenada since the date of the Phase 1 review.

Partnerships

181. Tax requirements previously described similarly apply to partnerships, which are relevant entities for tax purposes. Partnerships are therefore required to keep, under sanction, books and accounts reflecting the true and full nature of transactions of the business regard being had to the nature of activities concerned (s. 71 and s. 117 Income Tax Act). Further, partnerships are subject in all situations to the provision of an annual return with revenue authorities (s. 4 of the Income Tax (Amendment) Act 1999) and when submitting their annual return, partnerships have to attach a copy of the final accounts of the business (s. 72). In the same manner as companies incorporated under the CA, the tax return of a partners of a partnership that would be submitted without a copy of the financial accounts would be considered incomplete and thus, penalties for late filing would be applicable. Although Grenada never received any EOI requests, for domestic purposes, the Inland Revenue have asked for accounting information, including underlying documents, in a number of cases and they always obtained the information in due time. During the period under review, there have been over 360 requests for accounting information in respect of all types of taxpayers, including partners of partnerships. The information was generally obtained between 15 to 30 days.

Trusts

182. Section 2 of the Income Tax Act defines “person” and “resident in Grenada” as including, amongst others, “a trust” established in Grenada (local trusts). Under section 15(1) “any income accruing to a trust, where there is no beneficiary entitled to the immediate benefit thereof, shall be included in the assessable income of the trust and the chargeable income ascertained therefrom shall be charged to tax in the name of the trustee”. Where there is a beneficiary entitled to the immediate benefit of the income, this income is deemed to have accrued to the beneficiary and shall be

included in his assessable income (s. 15(2)). Further, section 65 requires every person who derives any income which would be charged to tax under the Act to submit an annual tax return. This requirement encompasses trustees and beneficiaries covered by section 15 of the Act. Where any person who is required to furnish a return of income for any year of assessment fails to do so within the prescribed timeframe, this person is liable to a penalty not exceeding 10% of the amount of tax charged for that year of assessment or XCD100 (USD 37), whichever is greater. The legal requirements of the Income Tax Act are sufficient to ensure that accounting information, including underlying documents, are maintained and provided to the tax authorities with the tax return of local trusts, however, the Inland Revenue Authority is not aware of any trust in Grenada. The Inland Revenue Authority has confirmed that for the period under review, there was no trust income reported in the tax return of any person in Grenada acting as a trustee or receiving income as a beneficiary of a trust.

183. Trustees acting by the way of business are required, as professionals, to keep accounting records in compliance with section 71 of the Income Tax Act (see above paragraphs 121 and 122). This obligation covered any trustee established in Grenada to the extent that this trustee acts by way of business. These obligations ensure that accounting records will be kept in compliance with the standard in relation to the trusts they manage. However, this statutory duty does not extend to legal persons or arrangements who act as trustees but who are not carrying out a business (i.e. the provision of trust services). The Grenadian authorities have confirmed that they are not aware of any person acting as non-professional trustee in Grenada.

184. As part of its duties, a trustee of an international trust must keep the trust property separate from his(her) own property and maintain accurate accounts and records of his(her) trusteeships (s. 27(7) and (8) ITA). In addition, section 17 of the ITA provides that the trustee of an international trust must keep in Grenada, such documents as are necessary to show the true financial position of the trust at the end of the trust's financial year together with details of the application of principal and income during the financial year. Any trustee that would not respect its statutory duty to keep accounting records under section 17 of the ITA commits an offence and is liable to a fine of USD 10 000 or two years imprisonment or both. The Phase 1 review found that there were no legal obligations under the ITA for trustees of international trusts to keep underlying documentation and retain accounting records for at least five years and a recommendation was made.

185. The ITA was amended on December 2013 to include a new obligation for international trusts to keep and maintain reliable accounting records, for a minimum period of five years from the date of the transactions to which the record relates. These records shall accurately reflect the financial

position of the international trust and include underlying documents, such as contracts, invoices and any other relevant documents detailing (i) all sums of money received and expended, (ii) matters in respect of which the receipt and expenditure take place, (iii) all sales, purchases and other transactions, and (iv) the assets and liabilities of the relevant entity (section 50B). These amendments entered into force on 4 February 2014.

186. All trustees, including resident trustees of foreign trusts, are also be subject to common law obligations to keep accurate accounts and records. The English common law establishes the obligation to avoid conflicts of interests between the trustee's fiduciary duties and their own self-interest (*Bray v Ford* [1896]) and the obligation to familiarise themselves with all information regarding the trust including the trust documents and assets (*Hallows v Lloyd* (1888) 39 Ch D 686, 691). Moreover, trustees are under a fiduciary duty to keep accounts of the trust and to allow beneficiaries to inspect them as requested (*Pearse v. Green* (1819) 37 E.R. 327 at 329).

187. Pursuant to English common law, 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. 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. In any event, under the common law all trustees are subject to an obligation to ensure that records and accounts are prepared and maintained for a reasonable period of time to ensure that the trust is properly managed. 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) and the settlor or beneficiaries can commence legal proceedings against the trustee.

188. The Grenada authorities confirmed that the common law requirements are those principles as set out under English common law. It is a well-established principle of English common law that it is the "duty of a trustee to keep clear and distinct accounts of the property he administers, and to be constantly ready with his accounts". In any event, the question remains whether there is sufficient oversight by Grenada's government authority on whether information or documents are being kept in all cases.

189. In practice, the Inland Revenue Authority has confirmed that there are no local trusts in Grenada. Should there be any, the trusts and the trustees would be required to maintain accounting information, including underlying documents and provide accounting information with the tax return of the trust, pursuant to the Income Tax Act. In addition, GARFIN, the supervisory authority for the offshore sector has confirmed that there are no international trusts registered in Grenada since the date of the Phase 1 report, however, the

oversight programme in place to verify that trustees of international trusts would comply with the obligation of the ITA to maintain accounting records, including underlying documents is very recent. Grenadian authorities have also confirmed that they were not aware of any non-professional acting as trustees and that if this situation exists, it must be extremely rare. Finally, a fiduciary duty to maintain accounting information exists for all trustees in Grenada, including resident trustees of foreign trusts, based on the common law.

190. In sum, Grenada should continue, in the context of its tax audit procedures and in conjunction with the oversight of service providers generally, to monitor the issue of trusts and observance of obligations to maintain accounting information.

Accounting records to be kept by AML-regulated entities.

191. AML-regulated entities are required under regulation 9 of the POCA Regulations to maintain transactions and reports. Sections 44 and 46 of the POCA guidelines elaborate on what must be included in these records. Essentially, every transaction carried out on behalf of or with a customer in the course of relevant business must be recorded. Transaction records include the name of the customer, the kind of currency and amount involved, the beneficiary of the transaction, the date of the transaction, the nature of the transaction, account files and business correspondence with respect to a transaction, and sufficient details for the transaction to be understood.²¹ The records must be retained for a period of at least five years from the date on which the transaction is completed or after the business relationship has ceased (Regulation 10). However, while the standard requires accounting records to correctly explain all transactions, which is the case in Grenada, they must also enable the financial position of the relevant entity to be determined with reasonable accuracy at any time. Under the POCA Regulations and POCA Guidelines, there is no express requirement for the financial position of the entity to be determined.

Conclusion

192. The following record keeping requirements are in place in Grenada:

21. As further detailed in the explanatory note to section 46 of the POCA Guidelines, “the transaction records required under section 46 must be viewed as the minimum obligated under the guidelines. The responsibility is on the relevant professional to ensure that sufficient information is obtained with respect to every transaction.”

| | Record keeping requirement | Underlying documentation | Five years |
|-----------------------------------|--|---|--|
| Domestic companies | Ss.71(1) and 72 Income Tax Act | Ss.71(4) Income Tax Act Ss.43 VAT Act | Ss.71(4) Income Tax Act Ss.110 VAT Act |
| External companies | Ss.71(1) and 72 Income Tax Act | Ss.71(4) Income Tax Act Ss.43 VAT Act | Ss.71(4) Income Tax Act Ss.110 VAT Act |
| IBCs | S.66 ICA | S.66 ICA as amended | S. 66 ICA as mended |
| Offshore banks | S.41 and 42 of the Offshore Bank Act | S. 94A of the Offshore Banking Act | S. 94A of the Offshore Banking Act |
| International insurance companies | S.14 of the International Insurance Act | S.14 of the international Insurance Act | Pursuant to S. 15(1) of the International Insurance Act, S.66 ICA is applicable to international insurance companies |
| Partnerships | Ss.71(1) and 72 Income Tax Act | Ss.71(4) Income Tax Act Ss. 43 VAT Act | Ss.71(4) Income Tax Act Ss. 110 VAT Act |
| Trusts | Ss.71(1) and 65 Income Tax Act Regulation 9 of the POCA Regulation and s. 44 and 46 POCA Guidelines (in relation to service providers acting as trustees only) and the common law | Ss.71 (4) and 65 Income Tax Act Regulation 9 of the POCA Regulation and s. 44 and 46 POCA Guidelines (in relation to service providers acting as trustees only) and the common law | Ss.71(4) and 65 Income Tax Act Regulation 9 of the POCA Regulation and s. 44 and 46 POCA Guidelines (in relation to service providers acting as trustees only) and the common law |
| International trusts | Regulation 9 of the POCA Regulation and s. 44 and 46 POCA Guidelines (in relation to service providers acting as trustees only) | Regulation 9 of the POCA Regulation and s. 44 and 46 POCA Guidelines (in relation to service providers acting as trustees only) and S. 50B of the International Trusts Act. | Regulation 9 of the POCA Regulation and s. 44 and 46 POCA Guidelines (in relation to service providers acting as trustees only) and S.50B of the International Trusts Act. |

193. It is clear that companies incorporated under the CA together with external companies, partnerships and trusts falling under the provisions of the Income Tax Act are required in Grenada to keep accounting records correctly explaining all transactions, enabling the financial position of the entity to be determined and allowing financial statements to be prepared. In

addition, legislative changes have established obligations for international companies, international insurance companies, offshore banks and international trusts to keep accounting records including underlying documents for a minimum period of five years. Therefore, the Phase 1 recommendation is removed but considering the short period between the introduction of the new provisions and the end of the period under review, as well as considering the fact that there are currently no offshore banks, nor International trusts in Grenada, the enforcement of the new provisions could not be assessed.

194. With regard to trusts, local trusts established in Grenada need to maintain accounting information, including underlying documents and to provide accounting information with their annual tax returns. International trusts are required to maintain accounting information, including underlying documents, pursuant to the ITA. Finally, all trustees, are also subject to a fiduciary duty to keep accurate accounts and records, pursuant to the legal obligations of the common law.

195. Grenada authorities have confirmed that they are not aware of any local or international trusts in Grenada, nor of any resident trustee of a foreign trust. Therefore, Grenada should continue, in the context of its tax audit procedures and in conjunction with the oversight of service providers generally, to monitor the issue of trusts and observance of obligations to maintain accounting information. With regard to offshore entities, for which new provisions have entered into force, it is recommended that Grenada monitor its oversight programme to make sure that the obligations to keep accounting information is respected, Grenada has confirmed that there is currently only 66 international companies registered in Grenada, of which 20 are inactive.

Determination and factors underlying recommendations

| Phase 1 determination |
|---------------------------------|
| The element is in place. |

| Phase 2 rating | |
|--|--|
| Largely compliant | |
| Factors underlying recommendations | Recommendations |
| New provisions were introduced in December 2013 for international companies, international insurance companies, offshore banks and international trusts to keep underlying documentation for a minimum period of five years. In view of the short period between the introduction of the new provisions and the end of the period under review, the enforcement of the new provisions could not be assessed. | Grenada should monitor the operation of the new provisions on the availability of underlying documents for international companies, international insurance companies, offshore banks and international trusts. |
| Grenada's oversight programme in place to control the compliance of the obligations for international companies to maintain accounting information, including underlying documents is very recent. Therefore no sanctions have been applied. | Grenada should monitor its oversight programme to ensure the compliance of the obligations for international companies (including international insurance companies and offshore banks, if any) to maintain accounting information, including underlying documents, and exercise its enforcement powers as appropriate to ensure that such information is available in practice. |

A.3. Banking information

Banking information should be available for all account-holders.

196. In Grenada, obligations for financial institutions to keep customer and transaction records are dealt with in the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) framework which consists of separate pieces of legislation, namely: the Proceeds of Crime Act 2012 (“POCA”); the Proceeds of Crime (Anti-Money Laundering and Terrorist Financing) Regulations 2012 (“POCA Regulations”); and the Proceed of Crime (Anti-Money Laundering and Terrorist Financing) Guidelines 2012 (“POCA Guidelines”).

197. Pursuant to Regulation 3 of the POCA Regulations 2012, in conducting relevant business, a relevant person (which includes a bank and offshore bank) shall not form a business relationship or carry out a one off-transaction

(above XCD 10 000 (USD 3 704)) with or for another person unless that person maintains identification and record keeping procedures. Identification procedure requires satisfactory evidence of identity and is defined under Regulation 4 of the POCA Regulation as identifying the customer whether the customer enters in a business relationship or a one-off transaction. The POCA Guidelines further detail the CDD and record keeping requirements.

198. In verifying this identity, the relevant person must establish and maintain in Grenada a record that *(i)* indicates the nature of the evidence obtained; and *(ii)* comprises a copy of that evidence, or where this is not reasonably practicable, contains such information as would enable a copy of the evidence to be obtained (Regulation 8). Further obligations regarding the verification of a customer's identity are provided by the POCA Guidelines (s.26 for individuals; s.27 for legal persons).

199. Where a relevant person is required to verify the identity of a person, the relevant person shall maintain a record of all transactions carried out by or on behalf of that person (such as records sufficient to identify the source and recipient of payments) (Regulation 9). Sections 44 and 46 of the POCA Guidelines elaborate on what must be included in these records. Essentially, all transactions carried out on behalf of or with a customer in the course of relevant business must be recorded. Transaction records include the name and address of the customer, the kind of currency and amount involved, the beneficiary of the transaction, the date of the transaction, the nature of the transaction, account files and business correspondence with respect to a transaction, and sufficient details for the transaction to be understood.

200. All records required to be maintained must be kept for at least five years from the date when: *(i)* all transaction relating to a one-off transaction or a series of linked transactions were completed; or *(ii)* when the business relationship was formally ended (Regulation 10).

201. A person who fails to comply with the requirements of the POCA Regulations or any directive issued pursuant to Regulation 14(2), commits an offence and is liable (Regulation 17): *(a)* on summary conviction, to a fine of XCD 10 000 (USD 3 704); and *(b)* on conviction on indictment, to a fine of XCD 15 000 (USD 5 555). Section 15 of the AML Guidelines sets out the roles and duties of an entity and professional under the POCA. An entity or a professional that fails to comply with the requirements of section 15 commits an offence and is liable under section 32(4) of the POCA (fine not exceeding XCD 50 000 (USD 18 500) or a term of imprisonment not exceeding two years or both. Directors and partners are subject to the same sanction. Section 59 of the POCA Guidelines sets out a wide range of offences and penalties ranging from XCD 7 000 (USD 2 590) to XCD 40 500 (USD 14 985) in the event that the Guidelines are not complied with.

202. As of 16 April 2014, there was 5 local banks (no offshore banks), 11 credit unions, 24 insurance companies and 1 development bank in Grenada. In practice, banks in Grenada are under the regulatory supervision of the Eastern Caribbean Central Bank (ECCB) and the supervision of the AML/CFT Commission, supported by the Financial Intelligence Unit (FIU), for AML purposes.

203. The ECCB was established in 1983 by a group of eight Caribbean Islands with the purpose of maintaining the stability of the local currency and the integrity of the banking system in order to facilitate the balanced growth and development of member states.²²

204. The ECCB's main responsibilities in the member jurisdictions are to:

- regulate and supervise the commercial banks in the ECCU,
- monitor economic and financial conditions in the local, regional and international environment,
- establish a regional regulatory framework through policy recommendations,
- promote corporate governance, and
- facilitate institutional and infrastructural strengthening by promoting a single financial space.

205. All commercial banks under the supervision of the ECCB are required to report specific information on a monthly, quarterly or annual basis to the ECCB. Information required to be reported includes changes in the minutes, budget plan, auditors report, policies, strategic plan and manuals including changes in directorship, management and senior staff or significant changes in ownership.

206. Supervision and monitoring of compliance with AML is performed by the FIU. The new law that introduced AML obligations entered into force in 2012. Grenada's authorities have designed a programme based on a system of both on-site and off-site evaluations. The first step is, for banks and financial institutions, to provide the FIU with a copy of their AML programme. This step has started and two institutions have provided a copy of their AML programme. The second step, which has not started yet, will be an off-site audit of the programme, followed by an on-site evaluation. The off-site audit

22. The Agreement establishing the Eastern Caribbean Central Bank (ECCB) as the monetary authority for eight ECCB participation governments was signed in July 1983 and the ECCB was officially commissioned in October 1983. The members are; Anguilla, Antigua and Barbuda, Dominica, Grenada, Montserrat, St. Kitts and Nevis, Saint Lucia and St. Vincent and the Grenadines.

will verify whether the programme is in line with the POCA Guidelines. The FIU estimates that the off-site audit will take between two to three weeks. Then the on-site audit will be performed by the same team. The FIU has indicated that the on-site audit will review all the aspects of the AML framework, including in respect of CDD. However, no audits has been performed so far as the review process is still in the elaboration process. Only specific evaluation related to Suspicious Transaction Reports were carried out by the FIU. The FIU was not in a position to provide a date when the routine evaluation of banks and other financial institutions to verify their compliance with their AML obligations will be in place.

207. Once both the on-site and of-site evaluations are completed, the FIU will prepare a pre-report, which will highlight any breaches found. This pre-report would be shared with the financial institution for discussion. Minor deficiencies would trigger a warning, provided that the institution accepts to fix the deficiencies. Sanctions would only be applicable in cases where the deficiencies found have not been fixed within the allocated timeframe or are found to be major. For sanctions to be applied, the FIU has to report to the AML Commission who will decide the appropriate sanction. The sanction can be made public.

208. Every time a deficiency is found, even if it is only minor, a follow up process will be put in place to verify that the deficiencies found have been solved. In addition, the ECCB has conducted on-site examinations of three banks during the last three years where checks to ensure compliance with AML/CFT obligations were performed. However, no indications were provided about the findings of these examinations and whether sanctions were applied.

209. In practice, the Inland Revenue Authority has requested information from banks and other financial institutions for domestic purposes in 181 cases since 2010. and the information was available and provided in all but one case, in due time (the average answering timeframe is between 15 and 30 days, including extension requested). There was only one case where the banks did not comply and a sanction of XCD 5 000 was applied. The institution provided the information after the sanction was applied.

Conclusion

210. The requirements set out in the AML/CFT framework, POCA, POCA Regulations and POCA Guidelines ensure that financial institutions keep accurate records pertaining to bank accounts. However, as of 16 April 2014, the oversight programme had not been implemented. Only two institutions had provided the FIU with their AML programme, as required by the first step of the process. No deadline was given to the other institutions

to provide a copy of their AML programme and no on-site inspection was done or is planned for the coming months. It is therefore recommended that Grenada implement a regular oversight programme to verify that banks and other financial institutions comply with their AML obligations to maintain identity and accounting information and exercise its enforcement powers.

Determination and factors underlying recommendations

| Phase 1 determination | |
|--|---|
| The element is in place. | |
| Phase 2 rating | |
| Largely Compliant | |
| Factors underlying recommendations | Recommendations |
| The oversight programme to verify that banks and other financial institutions comply with their AML obligations was not yet implemented. | Grenada should implement its plan for a regular oversight programme to ensure that banks and other financial institutions comply with their AML obligations to maintain identity information and exercise its enforcement powers. |

B. Access to Information

Overview

211. 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 assesses Grenada’s legal and regulatory framework, the effectiveness of its practice and whether it gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards are compatible with effective exchange of information.

212. The Minister of Finance is the competent authority in Grenada and the operational aspects of the competent authority’s functions are delegated to the Tax Co-operation Authority (the Comptroller of Inland Revenue) under the Mutual Exchange of Information on Taxation Matters Act 2011 (“EOI Act”).²³ Under this Act, the Comptroller has broad powers to request anyone to provide information which is the subject of an EOI request notwithstanding the existence of confidentiality provisions in other laws in force in Grenada. Information can be obtained in a variety of forms: questionnaire, copies of documents or interview, whether Grenada has an interest in obtaining this information for its own domestic purposes or not.

213. Under the EOI Act, Grenada’s competent authority is also required to notify the person who is the subject of the request to the extent that the whereabouts of this person are known. The Phase 1 report noted that there were no exceptions to the prior notification procedure in Grenada and a recommendation was made. Since the Phase 1 report, Grenada has introduced

23. Grenada’s competent authority under the United States-Grenada TIEA is the Permanent Secretary (Finance) or his authorised delegate (see Art. 2(2) U.S.A.-Grenada Taxes (Information Exchange) Act).”

exceptions to the notification procedure in cases where the whereabouts of the person are unknown; the request for information is urgent in nature; or the notification of the person is likely to undermine the success of the investigation conducted by the requesting jurisdiction. However, considering that the introduction of the exceptions is recent and considering the absence of Grenada's experience in this respect, the application of the exceptions has not been assessed. Grenada is therefore recommended to monitor the application of these exceptions in practice.

214. By Order adopted on 23 December 2011, Grenada declared all TIEAs signed since 2010, including the CARICOM Agreement, as scheduled agreements under the EOI Act. Grenada has since informed its treaty partners of its completion of all the necessary steps to bring the agreements into force in Grenada. EOI cannot take place under the DTCs with South Africa and Switzerland as effect has not been given to these treaties by Grenada. Although these powers are wide, their use is restricted to obtaining information when Grenada has a domestic interest in obtaining the requested information. Grenada's wide ranging authority to access information as it relates to other agreements does not enable it to fully access information in compliance with the standard to answer incoming requests made by these two partners.

215. To answer EOI requests, Grenada's authorities can use a wide range of access powers to collect the information requested, either by letters or with search and seizure powers pursuant to the Mutual Exchange of Information on Taxation Matter Act 2011 or the U.S.A. – Grenada Taxes (Information Exchange) Act. These access powers have never been used for EOI in practice since Grenada has not received any EOI requests, but Grenada has experience in collecting information for domestic purposes, based on the same processes.

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)

Grenada's competent authority

216. The Minister of Finance, who is also currently the Prime Minister, is the competent authority in Grenada for the purposes of each of its EOI agreements, except for Grenada's TIEA with the United States. The position of the

competent authority is established in the Mutual Exchange of Information on Taxation Matter Act 2011 (the EOI Act). The competent authority under the United States – Grenada TIEA is the Permanent Secretary (Finance) or his authorised delegate, pursuant to the U.S.A. – Grenada Taxes (Information Exchange) Act. For requests in respect of all EOI agreements (including the TIEA with the United States), the operational aspects of the competent authority's functions are delegated to the Tax Co-operation Authority, a position established in the EOI Act. The Tax Co-operation Authority is the Comptroller of the Inland Revenue Department of the Ministry of Finance.

217. The Tax Co-operation Authority has established a unit within the Inland Revenue Department with specific responsibilities for EOI (the Unit). The Unit is headed by the Deputy Comptroller of Inland Revenue and is supervised by a senior and experienced tax administrator who is assisted by an experienced tax investigator. The Unit is in charge of carrying out all tasks in relation to EOI and has access to the support services of the Inland Revenue Department, such as IT support, administrative facilities, legal and document management services. The Unit can also draw on additional support staff from the Inland Revenue Department, if needed.

218. Grenada's competent authority is identified in all EOI agreements, contact details of Grenada competent authority are provided on the site of the Global Forum, and arrangements are being made to provide this information to the competent authority of Grenada's treaty partners.

Agreements falling under the Mutual Exchange of Information on Taxation Matters Act 2011

219. Section 3(5) of the EOI Act specifies that the Minister of Finance may by order add a schedule to the EOI Act for the purpose of setting out and giving effect to any agreement for the provision of information in taxation matters. Section 3(6) further states that the Minister of Finance may by order add a schedule to the EOI Act for the purpose of specifying the countries that are entitled to make information requests under the EOI Act. The Order detailing the countries to which the newly introduced Act is applicable was taken on 23 December 2011. Two additional agreements (with Aruba and Poland) have been added to the schedule to the EOI Act. The agreement between the United States and Grenada was given effect through a specific Act, the U.S.A. – Grenada Taxes (Exchange of Information Act). As for the CARICOM agreement, it is now part of the schedule to the EOI Act and therefore, Grenada can now rely on the powers of the EOI Act to access information requested under this agreement. Powers to access information under

these agreements will be discussed below. Most of Grenada’s EOI agreements that are in force are in the schedule to the EOI Act.²⁴

220. The two DTCs (with South Africa and Switzerland) concluded by the United Kingdom and extended to Grenada when it was not yet an independent country have not been given effect in Grenada since they are not in line with the standard. Grenada is in the process of renegotiating the agreements with these two jurisdictions.

221. Section 4 of the EOI Act designates the Comptroller of Inland Revenue as the Tax Co-operation Authority for EOI purposes. Section 5 of the EOI Act provides that Grenada’s Tax Co-operation Authority “has the powers to do all things necessary or convenient to be done for, or in connection with, the performance of his functions under this or any other Act or any scheduled agreement, or in relation to any scheduled country”. The Tax Co-operation Authority has created the Unit, under his control, to perform all tasks in relation to EOI.

222. Section 5 also details the principal functions of the Tax Co-operation Authority to include executing requests, including, but not limited to, providing assistance in relation to:

- taking the testimony or statement of any person;
- providing information²⁵ and articles of evidence;
- serving documents; and
- executing searches and seizures.

223. The degree of specificity required to consider the incoming request as valid is determined by each individual agreement signed by Grenada but also by the Schedule to the EOI Act detailing the Rules for the Exchange of Information on Tax Matters (“the Rules”) which mirrors the 2002 OECD TIEA Model Agreement. In particular, pursuant to rule 5 of the Schedule,

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24. The scheduled countries encompass Aruba, Australia, Belgium, Denmark, the Faroe Islands, Finland, France, Germany, Greenland, Iceland, Ireland, Poland, the Netherlands, Norway, the United Kingdom and the CARICOM. Each of these countries has entered into a TIEA with Grenada. Grenada has informed each of these jurisdictions of the completion of the necessary steps in Grenada to bring the agreements into force in Grenada.
25. Pursuant to section 2 of the Act, “information” means any fact, statement, document or record in whatever form and includes: (i) any fact, statement, document or record held by any bank, other financial institution, or any person, including any nominee and trustee, acting in an agency or fiduciary capacity; and (ii) any fact, statement, document or record regarding the beneficial ownership of any company, partnership and any other person.

the competent authority of the requesting State must provide the following information when making a request for information in order to demonstrate the foreseeable relevance of the information to the request:

- the identity of the person under examination or investigation;
- as statement of the information sought including its nature and the reasons for in which the applicant country wishes to receive the information from the requested country;
- the tax purpose for which the information is sought;
- grounds for believing that the information requested is held in the requested country or is in the possession or control of a person within the jurisdiction of the requested country;
- to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- a statement that the request is in conformity with the law and administrative practices of the applicant country, that if the requested information were within the jurisdiction of the applicant country that the competent authority of the applicant country then the competent authority would be able to obtain the information under the laws of the applicant country or in the normal course of administrative practice and that it is in conformity with those Rules; and
- a statement that the applicant country has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

224. Upon receipt of the request, the Tax Co-operation Authority determines whether the request complies with the relevant agreement or the Rules as the case may be, and if the request complies with this agreement or the Rules (as the case may be), the Authority shall execute the request (s. 7).

225. Where, pursuant to a request, the Tax Co-operation Authority considers it necessary to obtain specified information or information of a specified description from any person, the authority will:

- in the case of information required for proceedings in the territory of the requesting party or related investigations, apply to a judge for an order to produce such information (s. 8(4)(i)) (see discussion below, under section B.2.1); or
- in any case other than that referred to in the previous bullet point, issue a notice, in writing, requiring the production of such information within the timeframe and under the format specified by the authority (s. 8(4)(ii)). Information requested pursuant to section 8(4)(ii) of the EOI Act, can be taken in the form of copies or extracts.

226. Where, pursuant to a request, *any person is required to testify*, the Tax Co-operation Authority will apply to a judge in order for the judge to receive such testimony as it appears to him to be appropriate for the purpose of giving effect to the request, and such testimony will be provided to the competent authority of the requesting party (s. 8(1)). A judge can also require a person to give evidence under oath but that person will not be required to give evidence which they could not be compelled to give in proceedings in Grenada (s. 8(2) and (3)).

227. Grenada's authorities also have the power to search and enter any premises to take specified information or information of a specified description (s. 16(3)). In such a case, the Tax Co-operation Authority must apply to the High Court for the issue of a search warrant. The Court will determine whether the request is serious enough to justify the use of this procedure and if satisfied it will authorise the search. Any information seized under a warrant is brought immediately to the Authority to be dealt with according to the law (s. 16(5)).

Information gathering in practice

Information directly available to the Unit

228. In Grenada the Unit has direct access to a wide range of information to answer incoming EOI requests. When the information is already directly available to the Unit, further inquiry is not necessary and the request would generally be processed and answered directly by the Unit within 30 days.

229. The Unit, as part of the Inland Revenue Department, has access to all information available to the tax administration, including information on direct tax (individuals, corporations – including external companies, partnerships and trusts that are not exempted), VAT returns, stamp tax returns and property taxes.

230. In addition, as described under Section A.1 of the report, certain ownership information in relation to companies – including external companies – and partnerships is directly available to the Unit through the Registrar of Companies. However, the Registrar of companies only exists since 2009 and so holds only information from 2009. The Unit also has a direct access to the Supreme Court Registry (for all registration information from 1897 until the creation of the Registrar of Companies in 2009). The Unit can also view the database of the Customs Department, but has to request the information from the Customs Department if a copy is needed.

231. With regard to information held by other departments or offices of the government, the Unit can request information from the Customs Department, the Accountant General's Office (information on payments

made by the Government of Grenada to the taxpayers), the Ministry of legal Affairs (information on judgments and rulings), and the Statistics Department, by way of an inter-office memorandum. In these cases, the other office or department must provide the requested information within two to three days, but the Unit also can ask in person and obtain the information immediately (which is generally the case). For domestic purposes, the Inland Revenue Department often requests information from other government agencies and they have always received it on time (for instances, 80 requests were received from other government agencies during the year 2013).

232. Information from the National Insurance Scheme (information on individuals, employers, address, whether a person is married or not, children, name of spouse, salary, pension, nature of business for self-employed) can also be requested by letter, under the provisions of the relevant Act. A request for information can also be made to the Financial Intelligence Unit under a memorandum of understanding. Generally, internal requests are responded within a week.

Collection process

233. In respect of information that is not available internally or with another agency, the Unit would ask a third party. In that case, the collection process would be handled directly by the Unit, as the employees of the Unit are senior auditors/investigators of the Inland Revenue Department. The decision to collect the information from the person concerned, from a third party in possession of the information or from both belongs to the Head of the Unit.

234. The information can be collected by notice issued pursuant to s. 8(4) (ii) of the EOI Act. The Unit also has search and seizure powers and the power to take the testimony or statement of any person (s. 5(2) of the EOI Act). There is a standard template used to request the information. The template is the same for both domestic and EOI purposes, except that the EOI Act is mentioned when the notice is issued for EOI purposes. This notice does not identify the jurisdiction requesting the information and in no instance can the person concerned or the third party see the request for information.

235. When information is requested from a third party, a 14-day deadline to provide the information is given. This deadline can be shorter in urgent cases. A reminder is sent (generally by fax) before the expiration of the 14-day deadline. An extension can be granted on a case by case basis. If the information is not provided at the expiration of the 14-day deadline, a fixed penalty is applicable.

236. Grenada did not receive any EOI request during the period under review, but during the period 2011 to 2013, Grenada requested information from third parties, including banks and other financial institutions for

domestic purposes in more than 2 500 cases (approximately 630 cases in 2011, 1 554 cases in 2012 and 540 cases in 2013, – 181 of the cases related to banks and other financial institutions) and the information was available and provided in all cases but one, where penalties were applied in this case. The average answering timeframe is seven days (between 15 to 30 days for banks requesting an extension). However, the collection of bank information in these cases was made for domestic purposes and Grenada has no experience in collecting bank information for EOI purposes.

Collection of bank information

237. In Grenada, the collection of bank information for EOI purposes would be carried out under the same process as explained above in respect of EOI. The information that is not directly available to the Unit would be collected from the person concerned, directly from the bank, or both. For domestic purposes, the information is generally requested from the bank first. The only difference with the collection process is that the notice requesting the information from the bank must be signed by an authorised person from the Unit, to guarantee that this request has a higher level of authorisation.²⁶ The Deputy Comptroller of Inland Revenue, who is also the Head of the Unit has the authorisation to request information from banks, as well as the two other employees in the Unit.

238. When registering for tax, companies and other business in Grenada, the name of the bank where the business has a bank account must be provided. Moreover, there are only 5 banks in Grenada, so it is possible for the Unit to send a request for information to the 5 banks simultaneously if the name of the bank is unknown. In practice, the Inland Revenue Department has requested information from banks in 181 cases since 2010 for domestic purposes. The information was available and provided in due time in all cases but one. In this case, a penalty was applied for default to comply.

Collection of accounting records

239. In practice, the collection of accounting information would be subject to the same collection process as ownership and banking information, as explained above. Grenadian tax authorities have confirmed that they have obtained accounting information, including underlying documents, under their audit powers for domestic purposes and the information was available

26. The Bankers association requested, for control purposes, that signatories are designated at a particular level. As such the Comptroller delegated the authority to a few of the managers. This is to ensure that the request that are being made are legitimate for the purposes intended in the law.

and provided in due time. During the period under review, Grenada has requested accounting information in 15 cases for domestic purposes. The information was provided in all cases in an average of 14 days.

240. In sum, the Unit has several tools to collect information requested by a treaty partner. All these tools are flexible and can be used by the Unit, which gives broad assurance that Grenada will be in a position to provide information on request. In practice, despite the fact that Grenada does not have any EOI experience and measures to collect information for EOI purposes have not been tested, Grenada's authorities have confirmed that these measures are efficient as they are able to collect the requested information for domestic purposes.

USA-Grenada Taxes (Exchange of Information) Act

241. Grenada and the United States concluded a tax information exchange agreement in 1986. Specific provisions were enacted by Grenada on 15 May 1987 to give effect to this agreement. Pursuant to section 5 of this Act, when receiving a request from the United States, the competent authority in Grenada will, by notice in writing, ask the person subject to the request to provide the requested information within 28 days commencing on the day on which the notice was served (paragraphs 1 and 3 of s. 5). This information must be provided if it is in the possession, custody or control of the person subject to the request. This Act also gives to Grenada's authorities search and seizure powers and the ability to receive witness statements under oath (ss.6 and 9 of the Act).

242. Once information has been collected either under sections 5 or 6 of the Act, the competent authority will not disclose this information to anyone for at least 20 days. Once this timeframe has expired, and if the competent authority is of the opinion that the information gathered comprises elements sought by the inbound request, this information is transmitted to the United States.

243. There has been no request for information under the United States-Grenada agreement, so the procedure has to date never been used in practice. However, except for the 20-day period during which the information cannot be disclosed, the collection of information under this agreement is the same as for requests made under the other agreements that fall under the EOI Act, as explained above.

Agreements not falling under the Mutual Exchange of Information on Taxation Matters Act 2011

244. Grenada has advised that it intends, as far as the relevant jurisdiction are willing to participate, to place its other agreements (DTCs with South Africa and Switzerland) under the scope of the new EOI Act. Negotiations

with South Africa and Switzerland to update these two treaties to the standard are ongoing. In August 2014, the CARICOM agreement was scheduled under the EOI Act, which means that the authorities of Grenada can now rely on the collection power of this Act to collect information for EOI purposes.

245. Section 68 of the Income Tax Act states that for the purpose of the administration or the further enforcement of the Act, including the obtaining of information in respect of the income of any person who is or may be liable to tax, the Comptroller of Income Tax may, by written notice require that person or any other person (s. 68(1)):

- (i) to furnish the Comptroller within such time as may be specified in such notice such further return of income, statement of assets and liabilities or other information as may be required by him;
- (ii) to produce, at such time and place as may be specified in such notice for examination by the Comptroller or for retention by him for such period as may be reasonable for their examination, any accounts, books of account, statement of assets and liabilities or other documents which the Comptroller may consider necessary for such purpose and, if any such information is not available in the English language, to produce at the expense of the person who is or may be liable to tax a translation in English prepared and certified by an approved translator.

246. The Comptroller can also require any bank to furnish details of any banking account or other assets which may be held on behalf of any person, or to furnish a copy of bank statements of any such banking account, to permit the Comptroller or any officer authorised by him to inspect the records of the bank with respect to the banking account of any person (s. 68(2)).

247. Whilst these powers are broad, it is noted that they can only be used for the administration and further enforcement of the Income Tax Act and that this Act does not cover exchange of information. In addition, these powers do not encompass offshore entities as these are outside the scope of taxation rules in Grenada.

248. Grenada has not given effect to its DTCs with South Africa and Switzerland²⁷ as they have not been incorporated into domestic laws. Grenada is currently negotiating with these two jurisdictions to update the treaties in line with the standard.

249. In practice, the collection process for domestic purposes, including deadlines and procedures are the same as the collection process mentioned

27. These two treaties were actually signed with the United Kingdom and extended to some former UK territories and which remained in force after Grenada's independence.

above. Grenada has good experience in requesting information for domestic purposes and, in general, the information requested is provided in due time, although Grenada has not received any EOI requests during the period under review and has no EOI experience in practice. The access powers granted by the EOI Act have not been tested in practice during the period under review. It is therefore recommended that Grenada continues to monitor access to information for EOI purposes to make sure that it is effective in all cases.

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

250. The EOI Act makes clear that the purpose of the Act is to give to the competent authority access to the necessary information powers to give effect to all EOI arrangements signed by Grenada. Similarly, the U.S.A.-Grenada Taxes (Exchange of Information) Act provides broad access powers to Grenada's competent authority for purposes of responding to a request under the United States-Grenada TIEA. Grenada's competent authority will collect information under these EOI agreements whether the information is of any interest for domestic purposes or not.

251. For countries covered by the CARICOM Agreement, as described above Grenada's authorities can only rely on their domestic gathering measures which can only be used to the extent that they have an interest for the information requested for domestic tax purposes.

Compulsory powers (ToR B.1.4)

252. In extreme cases, Grenada's authorities have the power to seize documents subject to the grant of a search warrant from the High Court further to a successful prior application from the competent authority.

253. Section 16 of the EOI Act clearly sets out that a person has to produce any information which is in his(her) possession or under his(her) control. An offence will be committed in the event that they: (i) without lawful excuse fail to do so, within such time as may be specified by a court order, or by the Authority by notice; or (ii) alter, destroy, mutilate, deface, hide or remove any information. That person will then be liable, on summary conviction, to a fine not exceeding XCD 20 000 (USD 7 407) or to a term of imprisonment not exceeding two years, or to both.

254. Section 5 of the U.S.A.-Grenada Taxes (Exchange of Information) Act provides the competent authority with compulsory powers to access information in response to a request made by the United States under the US-Grenada TIEA. Section 8 of this Act provides that an offence will be committed in the event a person: (i) wilfully disobeys or wilfully fails to comply with a request

from the competent authority; or (ii) wilfully obstructs an officer executing a search warrant; or (iii) without reasonable excuse destroys or damages any information which he knows to be the subject of direction given in a notice. That person will then be liable, on summary conviction, to imprisonment for six months and to a fine of XCD 10 000 dollars (USD 3 704).

255. For domestic purposes, anyone who fails to comply with a notification sent pursuant to section 68 of the Income Tax Act is liable to a fine of XCD 1 000 (USD 370).

256. Considering that no EOI requests have been received during the period under review, the enforcement provisions in relation to the EOI Act and in relation to the U.S.A. – Grenada (Exchange of Information Act) have not been assessed. With regard to the enforcement provisions for failure to comply with the Income Tax Act, no penalties were applied since no breaches were found during the period under review.

257. The sanctioning process starts within the Unit (or the auditor/investigator, for domestic purposes). For direct taxes, in case of default to provide the requested information in the allocated timeframe, the sanction is discussed between the auditor/investigator in charge of the file and the supervisor. Then the file is sent to the General Prosecutor. The sanctions can be directly applied by the Inland Revenue for default to provide information requested under the VAT Act.

Secrecy provisions (ToR B.1.5)

Confidentiality provisions

258. There are several laws in Grenada containing secrecy provisions that prevent people, under sanction, of disclosing information. This may hinder the access to information for EOI purposes:

- Section 32 of the Banking Act 2005 prohibits the disclosure of information except if lawfully required by any court in Grenada or under the provisions of any law of Grenada (i.e. when information is requested under the POCA or the Income Tax Act) or under the agreement with the participating governments (as defined in the Banking Act);²⁸
- the International Insurance Act provides that the Grenada's authorities in their supervisory duties can inspect any records kept or required to be kept under the law by offshore insurance companies, these records cannot be disclosed to any other authorities (s. 25);

28. Participating government include Antigua and Barbuda, Dominica, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines.

- under section 110 of the ICA, no person who has acquired information in relation to an international company can disclose information on these companies except: (i) with the written consent of the company; and (ii) when required to make disclosure by a court. Exceptions are provided under request of the Attorney General, or under the United State-Grenada (Exchange of Information) Act;
- Section 50(7) of the ITA provides that the Register of Trust maintained by the Registrar is not open for inspection, except if the trustee of an international trust may authorise in writing a person to inspect the entry of that trust in the Register. Further trustees are not generally allowed to disclose any information in relation to settlors and beneficiaries unless there is a court order or such action is permitted under the terms of the trust (s. 47); and
- under section 19 of the Company Management Act 1996 unless lawfully required to do so by the court or under the provisions of any other law, neither the Registrar nor any person acting under his authority can disclose any information which he has acquired in the performance or exercise of such duties or functions.

259. All of the above secrecy rules are waived in the case of a request made under the recently enacted EOI Act which makes it clear under section 11 that any person who divulges any confidential information or gives evidence in conformity with an order or a notice issued pursuant to a request will not be considered as committing any offence under any other law in force in Grenada. The USA-Grenada Taxes (Exchange of Information) Act contains a similar provision which waive any rule relating to confidentiality contained in another law or rule of law. Therefore, irrespective of the secrecy protections contained in other laws of Grenada, information can be accessed by the Comptroller of Inland Revenue for EOI under the schedule agreements. For the CARICOM agreement, these secrecy provisions cannot be waived for EOI purposes.

Legal professional privilege

260. With respect to legal professional privilege, section 8(6) of the EOI Act states that a court order or a notice issued by the competent authority will not confer any right to the production of, or access to “items subject to legal privilege”. Section 2 of the EOI Act defines “items subject to legal privilege” as:

- (i) any communication between an attorney-at-law and his client, or any person representing his client, made in connection with the giving of legal advice to the client;

- (ii) any communication between an attorney-at-law and his client, or any person representing his client or between such attorney-at-law or his client, or any such representative and any other person made in connection with or in contemplation of legal proceedings, and for the purposes of such proceedings; and
- (iii) any item enclosed with or referred to in such communications and made:
 - a. in connection with the giving of legal advice; or
 - b. in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when they are in the possession of a person who is entitled to possession of them;

except that any item held with the intention of furthering a criminal purpose, is not subject to legal privilege.

261. The scope of this definition goes beyond the exception for items subject to legal professional privilege contained in the 2002 OECD Model TIEA. Subsections (ii) and (iii) of the definition include elements of legal privilege that does not appear in Article 7(3) of the 2002 OECD Model TIEA. It is important to note that the extension of legal privilege to items made in contemplation of legal proceedings or in connection with the giving of legal advice does not mean that *any* document or piece of information provided to a legal adviser in contemplation of legal proceedings becomes an item subject to legal privilege. The document or piece of information itself must have been made in contemplation of those proceedings. The same would be the case with items enclosed with communications relating to the giving of legal advice.

262. During the three year period under review, Grenada has not received any EOI requests, so no information was requested from lawyers for EOI purposes. However, Grenada tax authorities have confirmed that they have requested information from lawyers for domestic purposes (a similar privilege exists for domestic purposes, there were 7 requests made to lawyers in 2013 and in no case has the legal privilege been invoked in order to refuse to provide the requested information. Considering that information will most likely be requested from lawyers in the future when Grenada will start receiving EOI requests, the impact of this provision on international exchange of information in practice should be monitored by Grenada.

Determination and factors underlying recommendations

| Phase 1 determination |
|--------------------------------|
| The element is in place |

| Phase 2 rating | |
|---|---|
| Largely Compliant | |
| Factors underlying recommendation | Recommendation |
| The access powers granted by the EOI Act have not been tested in practice during the period under review. | It is therefore recommended that Grenada continue to monitor access to information for EOI purposes to make sure that it is effective in all cases. |

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)

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

264. As mentioned above under section B.1.1, where information must be obtained in order to respond to a request for information relating to a “proceeding in the territory of the requesting party or related investigations” then the competent authority for EOI must apply to a judge for an order to produce that information (s. 8(4)(i) EOI Act). The term “proceeding” is understood to mean any civil or criminal legal proceeding which takes place in any civil or criminal court, and which may include a tax appeal in the requesting State.

265. Where the judge is satisfied that certain conditions are met, the judge may make an order that the person who appears to him to be in possession or control of the information to which the application relates shall produce it to a police officer to take away or give to a police officer access to it within such period as the order may specify (s. 8(7)). The conditions that must be met are the following (s. 8(9)):

- the competent authority has certified that the request is valid under the relevant agreement;
- the information to which the request relates is under the possession or control of a person in Grenada;

- the information to which the request relates does not include items subject to legal privilege or items subject to protection as secret, as defined under the relevant agreement;
- the notification requirements have been complied with; and
- there are no reasonable grounds for not granting the request.

266. Where an order is granted the period for producing the information is 14 days unless the judge considers that a longer or shorter period would be appropriate in the particular circumstances of the application (s. 8(8)).

267. This procedure adds a level of judicial oversight for cases in which a proceeding is ongoing. This oversight is narrowly prescribed and the conditions that must be met appear reasonable. The timeline for producing information pursuant to an order is short (14 days) and may be accelerated in certain cases. No appeal right is granted.

268. Nevertheless, where the judge is satisfied that the conditions are met, the judge “may” issue such an order, but is not bound to do so. Moreover, it is not clear what “reasonable grounds for not granting the request” would consist of, particularly where the competent authority has certified that the request is valid under the relevant agreement.

269. Although Grenada has never received any EOI requests and thus, never used these provisions, a similar provision exists in Grenada for AML and mutual assistance purposes. In such cases, they make sure that this judicial process does not create any delays. The cases are prioritised by the Court and are dealt with expeditiously. Therefore the whole judicial process can take only a few days.

270. Grenada’s authorities have confirmed that once the competent authority has certified that the request is valid, it is unlikely to be questioned by the Court. Therefore, the need for an order from a judge in cases where there is a proceeding in the territory of the requesting party or related investigations does not appear to create undue delays as the procedure in place is very fast and does not provide any appeal right.

271. To date, the Grenadian authorities have not had to apply the court procedure to gather information for EOI purposes. Therefore, the practical impact of these potential restrictions on the effectiveness of the Tax Co-operation Authority’s access powers could not be assessed, although they appear minimal and in line with the application of reasonable safeguards.

272. All other requests (i.e. not involving information required for proceedings in the territory of the requesting party) can be dealt with directly by the competent authority, without the court’s intervention.

273. For domestic tax purposes, Grenada's Income Tax Act does not provide for a prior notification procedure associated with EOI. Similarly, the USA-Grenada Taxes (Exchange of Information) Act does not contain such rule.

274. The Phase 1 report noted that for requests received under a TIEA signed since 2010, section 10 of the EOI Act provided for a prior notification procedure in circumstances where the incoming case relates to civil tax matters and where the address or whereabouts of the person who is subject of the request were made known to the Inland Revenue. At the time of the Phase 1 review, there were no possibilities to avoid such prior notification procedure in civil tax matters where the information request was of a very urgent nature or the notification was likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction. Therefore, the Phase 1 report concluded that the prior notification procedure recently enacted in Grenada was not completely in line with the Terms of Reference and a recommendation was made for Grenada to permit wider exceptions from prior notification. In practice, the prior notification has never created any issues since Grenada never received any EOI requests.

275. On 23 December 2013, Grenada amended the EOI Act to introduce wider exceptions to prior notification. Section 10 of the EOI Act was replaced and now states:

- (1) Subject to subsection (2), a person who is the subject of a request for information, solely in relation to a matter which is not a criminal matter or an alleged criminal matter, shall be served with a notice to that effect by the Authority.
- (2) The notice referred to in subsection (1) shall:
 - a. advise of the existence of the request;
 - b. specify the person being served with such notice;
 - c. specify the jurisdiction making the request; and
 - d. state the general nature of the information sought.
- (3) Notwithstanding subsection (1) and (2), a notice shall not be served where:
 - a. the whereabouts of the person are unknown;
 - b. the request for information is urgent in nature; or
 - c. the notification of the person is likely to undermine the success of the investigation conducted by the requesting jurisdiction.

276. Considering the exceptions introduced by the amendments to the EOI Act, the recommendation made under Phase 1 is removed. However, since these exceptions were introduced recently and since Grenada has never received any EOI requests, the application of the exception to the prior notification rule have not been assessed and therefore, Grenada should monitor the application of the exceptions in practice.

Determination and factors underlying recommendations

| Phase 1 determination | |
|--|---|
| The element is in place. | |
| Phase 2 Rating | |
| Compliant | |
| Factors underlying the recommendations | Recommendations |
| Grenada introduced exceptions to the prior notification procedure. However, considering the short period between the introduction of the exceptions and the end of the period under review, the application of the exceptions could not be assessed. | Grenada should monitor application of the exceptions to the prior notification procedure in practice. |

C. Exchanging Information

Overview

277. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. A jurisdiction's practical capacity to effectively exchange information relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report assesses Grenada's network of exchange of information agreements against the standards and the adequacy of its institutional framework to achieve effective exchange of information in practice.

278. Grenada has a network of EOI agreements that covers 29 jurisdictions, 10 covered by the CARICOM²⁹ Treaty and the other by bilateral treaties. Grenada has therefore 29 EOI relationships, of which 27 are to the standard.³⁰ All of the agreements signed before the Phase 1 report have entered into force but one (Sweden). Since the Phase 1 report, two agreements were signed with Aruba and Poland (that have not yet entered into force), and Grenada is currently negotiating with five additional jurisdictions (Canada, the Czech Republic, Portugal, South Africa and Switzerland).

279. With respect to the CARICOM Agreement, the Phase 1 report found that impediments in Grenada's Inland Revenue access to information powers for EOI purposes did not allow for EOI without restrictions. Since the Phase 1 report, the CARICOM Agreement has been scheduled under the EOI Act, which means that Grenada can now rely on the access powers provided by the EOI Act to collect information and this legislation is in line with the standard. Effect has not been given by Grenada to the DTCs signed with Switzerland and South Africa, however, Grenada is currently negotiating with these two jurisdictions to update the treaties in line with the standard. Grenada's

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

30. The agreements with South Africa and Switzerland do not meet the standard.

network of EOI arrangements to the standard therefore covers 27 jurisdictions and Grenada should renegotiate the treaties not meeting the standard or be in position to exchange information to the standard with all its partners.

280. Grenada's current EOI network covers its main partners and Grenada has never refused to enter into EOI negotiations with a partner seeking to do so. Grenada's legal framework assures that information received will be kept confidential and that the rights and safeguards of the taxpayer will be protected.

281. In practice, Grenada did not receive any EOI requests in the three year period under review (July 2010 to June 2013), or before that period. Accordingly, it has not been possible to assess Grenada's practice in terms of timeliness of responses to EOI requests.

282. In terms of resources and organisational processes, Grenada EOI Unit is part of the Tax Co-operation Authority, which was designated by the competent authority, the Minister of Finance, to execute the functions in relation to EOI. Grenada has put in place an EOI manual detailing the steps and deadlines for answering EOI requests and has allocated the Deputy Comptroller of Inland Revenue to head the EOI Unit and two senior tax auditors to be part of the Unit. The resources committed and procedures implemented should allow Grenada to effectively exchange information in a timely manner, but Grenada is encouraged to ensure that an adequate level of resources remains dedicated to EOI purposes should requests be received in the future.

C.1. Exchange-of-information mechanisms

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

283. Grenada's network of EOI arrangements comprises 19 bilateral agreements. 17 jurisdictions are covered by a TIEA (Aruba, Australia, Belgium, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Ireland, the Netherlands, Norway, Poland, Sweden, the United Kingdom, and the United States) and 2 by a DTC (South Africa and Switzerland). In addition, Grenada is party to the CARICOM Treaty, which covers 10 jurisdictions. Grenada has therefore 29 EOI relationships, of which 27 are to the standard.³¹

284. Since the Phase 1 report, two agreements were signed, with Aruba and Poland, and Grenada is currently negotiating with Canada, the Czech Republic, Portugal, South Africa and Switzerland. Grenada's policy is to negotiate in priority with partners that are significant and of strategic economic importance (such as North American partners, which led them to contact

31. The agreements with South Africa and Switzerland do not meet the standard.

Canada for an agreement). Nevertheless, Grenada’s policy is to always accept requests for the negotiation of an EOI agreement.

285. In addition, Grenada has five further DTCs which contain very limited provisions on exchange of information. These are the DTCs signed between the UK and Grenada, and the DTCs signed between the UK and the following countries, which were later extended by exchange of notes or amending protocols to apply to Grenada : Norway, South Africa, Sweden and Switzerland. These DTCs although still in force, were concluded by the UK and extended to have effect for Grenada when it still formed part of the British Empire (either as an “associated state” of the UK or otherwise). The EOI provisions of these DTCs are generally restricted to information available under each party’s domestic tax laws which are relevant for the purposes of the Convention, and with the exception of the agreement with Switzerland, also permit information exchange necessary for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes covered by the Convention. As Grenada now has more expansive exchange of information agreements in place with three of these five countries (with the exception of South Africa and Switzerland), the three earlier agreements are not considered further.

286. Grenada has not received any EOI request during the period under review. However, Grenada has exchanged information spontaneously with its CARICOM partners.

Foreseeably relevant standard (ToR C.1.1)

287. 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 Article 26(1) of the OECD *Model Tax Convention* set out below:

The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out of the provisions of 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.

288. All TIEAs signed by Grenada but the United States allow for the exchange of information foreseeably relevant to the administration and

enforcement of the domestic laws concerning taxes covered by the agreement. The TIEA with the United States provides that “the competent authorities shall exchange information to administer and enforce their domestic law” which is broader than the foreseeably relevant standard. The CARICOM Treaty and the DTC concluded with South Africa refers to the exchange of information that is “necessary” instead of the information which is “foreseeably relevant”. The commentary to Article 26 of the OECD Model Tax Convention recognises that contracting states may agree to an alternative formulation of this standard if it is consistent with the scope of the Article. The term “necessary” is recognised as one of the alternative formulations allowing for the same scope of exchange of information as the term “foreseeably relevant”.³²

289. The DTC with Switzerland provides only for the exchange of “such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary...”. This DTC therefore does not meet the standard.

In respect of all persons (ToR C.1.2)

290. 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.

291. All Grenada’s TIEAs provide for exchange of information in respect of all persons. The DTCs with South Africa and Switzerland do not allow for the exchange of information in respect of all persons and this may hinder the provision of information in particular in relation to offshore entities, as these entities are not under the scope of Grenada’s taxation laws. The CARICOM agreement does not specify that EOI is not restricted by article 1, however its EOI provision applies to “carrying out the provisions of the Convention or the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention”. Exchange of information in respect of all persons is thus possible under the terms of this agreement.

32. The word “necessary” in Article 26(1) of the 2003 OECD Model Taxation Convention was replaced by the phrase “foreseeably relevant” in the 2005 version.

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 Tax 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. All of Grenada’s TIEAs specifically provide 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. Effect has not been given by Grenada to both DTCs with South Africa and Switzerland and EOI cannot take place with these two jurisdictions.

294. The CARICOM agreement does not contain a provision similar to Article 26(5) of the Model Tax Convention. The absence of this paragraph does not automatically create restrictions on exchange of bank information: the commentary on Article 26(5) of the OECD Model Tax Convention indicates that whilst paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information. Grenada has access to bank information for tax purposes in its domestic law (see section B), and is able to exchange this type of information when requested.

295. In respect of the CARICOM Treaty, the obligation to exchange all types of information is only clearly available with respect to Antigua and Barbuda, Barbados, Belize, Jamaica, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines for the following reasons:

- In Dominica’s and Trinidad and Tobago’s Phase 1 report, serious deficiencies were found in element B.1 regarding the access powers of the competent authority. This resulted in the element being assessed as “not in place”. This suggests that Dominica and Trinidad and Tobago cannot exchange all types of information under their respective domestic law;
- In the Phase 1 review of Belize, St. Vincent and the Grenadines and the Phase 2 review of Antigua and Barbuda, Barbados, Jamaica, Saint Kitts and Nevis and St Lucia, no major deficiencies with regard to element B.1 were identified. This suggests that all of these 7 jurisdictions would be able to obtain all types of information under their respective domestic law.

- information about the competent authority’s power to access bank information is not available with respect to Guyana, so it is not possible to confirm that the CARICOM Treaty with this jurisdiction meets the international standard.

296. It is recommended that Grenada update the DTCs with South Africa and Switzerland and work with the parties to the CARICOM Treaty to ensure that exchange of information complies with the required standard.

Absence of domestic tax interest (ToR C.1.4)

297. 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 they may be invoked solely to obtain and provide information to the other contracting party.

298. Grenada’s 17 TIEAs specifically allow information to be obtained and exchanged notwithstanding that the information is not required for any domestic tax purpose. The CARICOM Treaty does not contain such a provision and this creates restrictions for information to be exchanged with Dominica and Trinidad and Tobago, as a domestic tax interest requirement exists in these jurisdictions, although there is no domestic tax interest in Grenada. In addition, Grenada has not given effect to its DTCs signed with South Africa and Switzerland and no EOI can take place with these two countries. Exchange of information which meets the standard can therefore not take place with these two partners.

Absence of dual criminality principles (ToR C.1.5)

299. 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.

300. There are no dual criminality requirements in Grenada’s agreements for exchange of information in tax matters.

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

301. 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”).

302. All Grenada’s TIEAs are based upon the OECD Tax Information Exchange Model Agreement and provides for exchange of information in both civil and criminal tax matters. Article 26 of the DTC with South Africa and the CARICOM agreement provides for exchange of information in civil tax matters. In addition, these treaties refer to fighting fiscal evasion as one of their objects and therefore allow for exchange in both civil and criminal tax matters to take place. The DTC with Switzerland restricts exchange of information to the avoidance of double taxation.

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

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

304. There are no restrictions in the exchange of information provisions in Grenada’s DTCs and TIEAs that would prevent Grenada from providing information in a specific form, as long as this is consistent with its own administrative practices. The newly introduced EOI Act allows for a wide range of access to information means: testimony, providing information and articles of evidence, serving documents and executing searches and seizures. Grenada’s competent authority is prepared to provide information in the specific form requested to the extent permitted under Grenada’s law and administrative practice.

305. In practice, the Grenadian authorities indicate that they would do their utmost to satisfy the procedural requirements of their treaty partners.

In force (ToR C.1.8)

306. 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.

307. Grenada has a treaty network that covers 29 partners, 17 covered by a TIEA, 2 by a DTC and 10 by a multilateral tool. All the 15 TIEAs signed before the Phase 1 report have been ratified with the EOI Act released on 11 November 2011 and it took between 6 and 20 months to Grenada to ratify these TIEAs. Grenada has informed its partners that it has completed its ratification process, and all of these agreements are in force. Two agreements have been signed since the Phase 1 report (Aruba and Poland), but they have not entered into force yet.

308. In Grenada, the Comptroller of Inland Revenue is the designated Tax Co-operation Authority and as such, he/she has the power to enter into EOI agreement negotiations. The Tax Cooperation Authority has established a technical team to assist with treaty negotiations, which includes representatives from Grenada Authority for the Regulation of Financial Institutions (GARFIN) (the financial sector regulator), the Ministry of Finance, the Inland Revenue Department (Tax Co-operation Authority) and the Ministry of Legal Affairs. Once the text of the treaty is agreed, it is generally signed by an ambassador upon the approval of the Cabinet. The Order is prepared by GARFIN and reviewed by the Legal Affairs Department, before being sent to the Cabinet for approval. It must then be presented before the House of Representatives without delay.

309. Upon being presented, it comes into force after being passed by the House of Representatives at the first sitting. At the next sitting of the House of Representatives, if the Order receives no objections it remains in effect. This process therefore, envisions a maximum of two sittings of the House of Representatives but in any event, it takes effect after the first sitting when it is presented before the House. When approved, the treaty is added as an addendum to the Schedule of the Mutual Exchange of Information on Taxation Matters Act 2011 (EOI Act).

310. After the agreements has been approved by the House of Representatives and after it has been added to the schedule of the EOI Act, Grenada informs the treaty partner by letter that the legal process has been completed. Up to now, no agreement has ever been objected to, and therefore annulled on the second sitting of the House of Representatives.

In effect (ToR C.I.9)

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

312. With the adoption of the EOI Act on the 11 November 2011 and the Order taken on 23 December 2011, Grenada has fully given effect to all the TIEAs it has signed since 2010. Likewise, Grenada has given full effect to its

TIEA with the United States pursuant to the U.S.A-Grenada Taxes (Exchange of Information) Act. The three agreements signed since the Phase 1 report have been ratified but have not yet entered into force. Full effect has not been given to the DTCs signed with South Africa and Switzerland and the CARICOM treaty. Grenada has contacted South Africa and Switzerland to negotiate new agreements to the standard and the negotiations have started but the new agreements have not yet been signed. The agreement with Sweden has not yet entered into force

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.

313. Ultimately, the international standard requires 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.

314. Grenada's network of EOI agreements comprises 17 bilateral agreements. 15 jurisdictions are covered by a TIEA (Aruba, Australia, Belgium, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Ireland, the Netherlands, Norway, Poland, Sweden, the United Kingdom, and the United States) and 2 by a DTC (South Africa, and Switzerland). In addition, Grenada is party to the CARICOM Treaty, which covers Antigua and Barbuda, Barbados, Belize, Dominica, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago. Grenada now has 27 EOI relationships which meet the standard and 2 EOI relationships³³ which do not.

33. . Agreements with South Africa and Switzerland.

315. All Grenada’s partners except the Faroe Islands, Greenland, and Guyana are members of the Global Forum, 15 are OECD members and 6 are G20 members. The main economic partners of Grenada are the CARICOM members, the United States, and some European countries. Grenada’s network of EOI agreements covers them, although some of Grenada’s CARICOM partners are not covered by EOI relationships that meet the standard. The CARICOM Secretariat has been reviewing the tax treaty signed among members since the peer review process has begun. It intends to complete this review following the completion of the peer review process.

316. When Grenada receives a request for treaty negotiation, its policy is to always accept it. Since the Phase 1 report, two TIEAs have been signed with Aruba and Poland, but they have not yet entered into force. In addition, Grenada authorities have advised that five TIEAs are still under negotiation (with Canada, the Czech Republic, Portugal, South Africa and Switzerland).

317. Ultimately, the international standard requires jurisdictions to exchange information with their relevant partners, meaning those partners who are interested in entering into an exchange of information agreement. During the course of the assessment, no jurisdictions have advised that Grenada had refused to enter into negotiations or conclude an EOI agreement.

Determination and factors underlying recommendations

| Phase 1 determination | |
|------------------------------------|--|
| The element is in place | |
| Factors underlying recommendations | Recommendations |
| | Grenada should continue to develop its exchange of information network to the standard 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)

318. 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 within information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

319. All exchange of information provisions in Grenada's EOI arrangements have confidentiality provisions modelled on Article 26(2) of the OECD Model Taxation Convention or Article 8 of the OECD Model TIEA.

320. In addition, Section 6 of the Income Tax Act provides that the Comptroller of Inland Revenue, and every person employed by the Inland Revenue shall treat any document or information relating to any person and all confidential instructions that may be in his(her) possession or knowledge as secret. Any person who contravenes the secrecy provisions commits an offence and is liable to a fine of XCD 2 000 (USD 741) and to imprisonment of one year (s. 116).

321. The EOI Act provides in its section 12 a “no tipping off” provision such that, if instructed by the competent authority, the particulars of all matters relating to a request will be treated as confidential. Section 13 further provides that the requesting party will not use information transmitted by Grenada for purposes other than those detailed in the incoming request, unless the prior written consent of Grenada's authorities has been obtained.

322. In practice, Grenada has strict confidentiality measures and controls in place. All employees of the Inland Revenue Department, including the employees of the Unit, as well as all employees of the Government of Grenada in general, sign confidentiality agreements which restrict them, with the penalty of termination of employment, from disclosing any information collected in the process of their job to unauthorised third party.

323. When a request will be received, it will be registered and a number will be assigned. A paper copy will be confidentially stored in the office of the Head of the Unit, in a locked cabinet. Access to the buildings is restricted

to authorised persons and is under surveillance. Moreover, although the tax network is shared by all the employees of the tax administration (with limited access to need-to know users), the files of the Unit is restricted only to employees of the Unit. The use of the tax network and the EOI Unit database are monitored and its use can be traced.

324. In addition, all information pertaining to EOI investigation (past, current and pending) are to be stored in a fireproof filing cabinet with restricted access to the Tax Co-operation Authority and the head of the EOI Unit. The Grenadian authorities have confirmed that they have never encountered a problem of confidentiality in practice.

All other information exchanged (ToR C.3.2)

325. The confidentiality provisions in Grenada’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.

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)

326. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

327. All of the agreements concluded by Grenada, except with Switzerland and South Africa, incorporate wording modeled on Article 26(3) of the OECD Model Tax Convention or Article 8 of the OECD Model TIEA providing that requested jurisdictions are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney-client privilege/legal privilege or information the disclosure of which would be contrary to public policy. Nevertheless, in the case of Switzerland and South Africa it is unlikely that this variation will materially affect the exchange of information to the international standard as Grenada has not given effect to these two treaties.

328. The reservation in the CARICOM treaty appears to apply when the disclosure of the information would cumulatively be contrary to public policy and disclose certain secrets such as trade secrets. As such, the grounds for declining to provide information in response to a request appear to be narrower than those contemplated in the OECD Model Tax Convention.

329. Considering that Grenada did not receive any EOI requests during the three years under review, the application of the CARICOM treaty and the scope of the possibility to decline a request has not been evaluated in practice. Nevertheless, Grenada's authorities have demonstrated their commitment towards implementing effective exchange of information.

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)

330. 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 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.

331. There appear to be no legal restrictions on the ability of Grenada'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. Neither the CARICOM agreement nor Grenada's bilateral agreements specifically address the question of timeliness of responses or provision of status updates. Nothing in their provisions would restrict Grenada's ability to respond expeditiously or to provide status updates to its counterparts.

Response time in practice

332. Grenada received no request during the three year period under review (July 2010 – June 2013), therefore the response time in practice could not be assessed.

Organisational process and resources (ToR C.5.2)

333. Grenada's competent authority for its EOI agreements is the Minister of Finance or the Minister's authorised representative, the Comptroller of Inland Revenue. Under section 4(1) of the Mutual Exchange of Information on Taxation Matters Act 2011 the Comptroller of Inland Revenue is designated as the Tax Co-operation Authority for the purposes of the Act and any scheduled agreement and in relation to any scheduled country. One of the Authority's principal functions is executing requests relating to the exchange of information for tax purposes (by the Unit).

Organisational process

334. When an EOI request will be received by the Unit it will first be registered with the time, date, name of the requesting jurisdiction and a reference number will be assigned. The request will then be reviewed by the Head of Unit to ensure that it meets the conditions of the EOI agreement and to determine the appropriate sources from which the information can be obtained. The request will then be transferred to the investigator for this person to collect the information.

335. If a request would be incomplete or unclear, the competent authority would inform the treaty partner and ask for additional information/clarification, but if there are aspects of the request that may be addressed this is undertaken while the additional information is being awaited.

336. If the requested information is directly available to the Unit, the request would be answered directly by the investigator in charge of the request within one month. If the information is not directly available to the Unit, the Unit would request the information from another government

agency by letter or email. In these cases, the other office or department must provide the requested information within two to three days, but the Unit can also ask in person and obtain it immediately.

337. If the information were not available internally or with another government agencies, the Unit would ask a third party. In that case, the collection process would be taken care of directly by the Unit, as the employees of the Unit are senior auditors/investigators of the Inland Revenue Department. The decision to collect the information from the person concerned, from a third party in possession of the information or from both belongs to the Head of the Unit.

338. When information is requested from a third party, a 14-day deadline to provide the information is given. This deadline can be shorter in urgent cases. If the information is not provided, a reminder would be sent by fax before the expiration of the 14-day deadline. The reminder would not grant any additional deadline, but simply be a reminder of the initial request and of the deadline. If the information is not provide at the expiration of the 14-day deadline, a penalty is applicable. Extensions can be granted on a case by case basis. For financial institutions, the notice requesting the information from the bank must be signed by an authorised person from the Unit, as a higher level of authorisation is required for bank information. The Deputy Comptroller of the Inland Revenue, who is also the Head of the Unit has the authorisation to request information from banks, as well as the two other employees of the Unit.

339. Once the information is obtained, the investigator verifies the information to make sure it is complete, and transfers the answer to the Head of Unit that performs a second verification. Then the information is sent to the Tax Co-operation Authority, along with a report explaining the enquiries undertaken. The Tax Co-operation Authority reviews the information and issues a response to the treaty partner no later than one week after receipt of the information from the Unit. The objective of Grenada's authorities is to answer the treaty partner's requests within two months.

340. An EOI manual has been prepared and is ready to be used, which explains the steps and deadlines to be respected in answering EOI requests. This manual also includes a section on sending EOI requests.

Resources

341. The EOI Unit is staffed with three employees, the Head of the Unit who is the Deputy Comptroller of Inland Revenue Department and two investigators, the Lead tax auditor from the tax department and the immediate supervisor of tax audit. Considering their experience, these persons are very familiar with tax audits and the process to collect information for domestic

purposes. In addition, the Unit is part of the audit and investigation section of the Inland Revenue Authority, where the information is collected for domestic purposes. Therefore the Unit can use the experience and resources of the Inland Revenue Authority (which comprises 106 employees), as well as the administrative staff. The Legal Affairs Department also provides support and advice on legal issues.

342. With regard to training, all employees of the Unit are senior employees of the tax department and as such, have received the regular training of this department. They are all senior tax auditors, with years of experience in collecting information for domestic tax purposes. In addition, they were all involved in the drafting of the EOI manual, so they are were aware of the process for EOI.

343. The level of resources and training dedicated to EOI in place are considered sufficient to answer incoming EOI requests, although no requests were received during the period under review. Grenada is encouraged to ensure that an adequate level of resources remains dedicated to EOI purposes, should more requests be received in the future.

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

344. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. As noted in Part B of this Report, there are no laws, regulations or practices in Grenada that impose unreasonable, disproportionate, or unduly restrictive conditions on exchange of information.

Determination and factors underlying recommendations

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

| Phase 2 rating | |
|--|--|
| Largely compliant | |
| Factors underlying recommendations | Recommendations |
| Grenada has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with EOI requests. Grenada did not process any EOI requests during the period under review. Consequently, the organisational processes have not been sufficiently tested in practice. | Grenada should monitor the practical implementation of the organisational processes for EOI requests as well as the level of resources committed to EOI purposes, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that both the processes and level of resources are adequate for effective EOI in practice. |

Summary of Determinations and Factors Underlying Recommendations³⁴

| 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 (<i>ToR A.1</i>) | | |
| Phase 1 determination: The element is in place | | |
| Phase 2 rating: Partially Compliant | New provision on the availability of updated ownership information for external companies that are resident in Grenada, for international companies and international trusts that are registered were introduced in December 2013. Since these new provisions are recent, the enforcement of the new provision could not be assessed. | Grenada should monitor the operation of the new provision on the availability of updated ownership information for external companies that are resident in Grenada, for international companies and international trusts that are registered. |

34. The ratings will be finalised as soon as a representative subset of Phase 2 reviews is completed.

| Determination | Factors underlying recommendations | Recommendations |
|--|---|--|
| <p>Phase 2 rating: Partially Compliant <i>(continued)</i></p> | <p>Grenada does not have a regular oversight program in place to monitor the compliance of the obligations to maintain or provide ownership and identity information imposed on companies under the CA and on professionals providing services to companies or financial services under the AML/CFT framework and the oversight program for International companies under the ICA is very recent.</p> | <p>Grenada should put in place an oversight program to ensure the compliance of the obligations to maintain or provide ownership and identity information for all relevant entities under the CA and the AML/CFT framework, monitor the oversight program put in place for the ICA and exercise its enforcement powers as appropriate to ensure that such information is available in practice</p> |
| <p>Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements (<i>ToR A.2</i>)</p> | | |
| <p>Phase 1 determination: The element is in place.</p> | | |
| <p>Phase 2 rating: Largely Compliant</p> | <p>New provisions were introduced in December 2013 for international companies, international insurance companies, offshore banks and international trusts to keep underlying documentation for a minimum period of five years. In view of the short period between the introduction of the new provisions and the end of the period under review, the enforcement of the new provisions could not be assessed.</p> | <p>Grenada should monitor the operation of the new provisions on the availability of underlying documents for international companies, international insurance companies, offshore banks and international trusts.</p> |

| Determination | Factors underlying recommendations | Recommendations |
|---|--|--|
| Phase 2 rating: Largely Compliant <i>(continued)</i> | Grenada's oversight program in place to control the compliance of the obligations for international companies to maintain accounting information, including underlying documents is very recent. Therefore no sanctions have been applied. | Grenada should monitor its oversight program to ensure the compliance of the obligations for international companies (including international insurance companies and offshore banks, if any) to maintain accounting information, including underlying documents, and exercise its enforcement powers as appropriate to ensure that such information is available in practice. |
| Banking information should be available for all account-holders (<i>ToR A.3</i>) | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: Largely Compliant | The oversight program to verify that banks and other financial institutions comply with their AML obligations was not yet implemented. | Grenada should implement its plan for a regular oversight program to ensure that banks and other financial institutions comply with their AML obligations to maintain identity information and exercise its enforcement powers. |
| Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) (<i>ToR B.1</i>) | | |
| Phase 1 determination: The element is in place | | |
| Phase 2 rating: Largely Compliant | The access powers granted by the EOI Act have not been tested in practice during the period under review. | It is therefore recommended that Grenada continue to monitor access to information for EOI purposes to make sure that it is effective in all cases. |
| The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information (<i>ToR B.2</i>) | | |
| Phase 1 determination: The element is in place. | | |

| Determination | Factors underlying recommendations | Recommendations |
|---|--|--|
| Phase 2 rating: Compliant | Grenada introduced exceptions to the prior notification procedure. However, considering the short period between the introduction of the exceptions and the end of the period under review, the application of the exceptions could not be assessed. | Grenada should monitor application of the exceptions to the prior notification procedure in practice. |
| Exchange of information mechanisms should allow for effective exchange of information (<i>ToR C.1</i>) | | |
| Phase 1 determination: The element is in place | | |
| Phase 2 rating: Compliant | | |
| The jurisdictions' network of information exchange mechanisms should cover all relevant partners (<i>ToR C.2</i>) | | |
| Phase 1 determination: The element is in place | | Grenada should continue to develop its exchange of information network to the standard 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(<i>ToR C.3</i>) | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: Compliant | | |
| The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties (<i>ToR C.4</i>) | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: Compliant | | |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|---|
| The jurisdiction should provide information under its network of agreements in a timely manner (<i>ToR C.5</i>) | | |
| <p>This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.</p> | | |
| <p>Phase 2 rating: Largely Compliant</p> | <p>Grenada has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with EOI requests. Grenada did not process any EOI requests during the period under review. Consequently, the organisational processes have not been sufficiently tested in practice.</p> | <p>Grenada should monitor the practical implementation of the organisational processes for EOI requests as well as the level of resources committed to EOI purposes, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that both the processes and level of resources are adequate for effective EOI in practice.</p> |

Annex 1: Jurisdiction’s response to the review report³⁵

The Government of Grenada takes this opportunity to place on record its continued support for the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and its commitment to the Global Forum review process. Grenada’s commitment to tax transparency goes beyond stated intentions, and is reflected in the tangible changes that Grenada has introduced to relevant legislation, the establishment of an Exchange of Information (EOI) Unit, the resources committed to the EOI process and the number of Global Forum compliant agreements signed. Grenada’s commitment to transparency is not restricted to the requirements of the Global Forum, but is also reflected in its adherence to the FATF standards on anti-money laundering and combating the financing of terrorism and its work on complying with its US FATCA obligations.

We are very pleased that the assessment has recognised the strength of Grenada’s tax regime and the additional efforts made over the last five years to ensure compliance with the international standards for the exchange of information for tax purposes. We are particularly pleased that the Global Forum has recognized Grenada’s actions with regard to the implementation of the Phase I recommendations. In doing so, Grenada has shown that it has the legislative framework to meet the international standard. The successful completion of this Phase II review is an important milestone in Grenada’s continued engagement with the international community as a credible, compliant and well regulated jurisdiction.

Grenada recognises that its compliance rating was affected by the assessor’s inability to fully judge the effectiveness of its EOI regime; to date Grenada has not received or made any EOI request. We are confident that Grenada will be assessed as being fully compliant with the Global Forum standards once there is an opportunity to assess actual EOI activities.

Grenada takes this opportunity to reconfirm its commitment to the Global Forum’s peer review process, tax transparency and the avoidance

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

of harmful tax competition. Grenada is also committed to continuing to establish tax exchange agreements with its main trading partners and other interested jurisdictions.

Grenada looks forward to continuing its positive engagement with the Global Forum and the Peer Review Group.

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

Multilateral agreement

Grenada is party to the CARICOM agreement. The different jurisdictions as well as the date on which they joined this agreement are showed in the table below:

| No. | Jurisdiction | Date signed | Date in force |
|-----|-------------------------------|--------------------------|---------------|
| 1 | Antigua and Barbuda | 6 Jul 1994 | 18 Feb 1998 |
| 2 | Barbados | 7 Jul 1995 ³⁶ | 7 Jul 1995 |
| 3 | Belize | 6 Jul 1994 | 30 Nov 1994 |
| 4 | Dominica | 1 March 1996 | 19 Jun 1996 |
| 5 | Grenada | 6 Jul 1994 | 1 Mar 1996 |
| 6 | Guyana | 19 Aug 1994 | 26 Nov 1997 |
| 7 | Jamaica | 6 Jul 1994 | 16 Feb 1995 |
| 8 | St Kitts and Nevis | 6 Jul 1994 | 8 May 1997 |
| 9 | St Lucia | 6 Jul 1994 | 22 May 1995 |
| 10 | St Vincent and the Grenadines | 6 Jul 1994 | 12 Feb 1998 |
| 11 | Trinidad and Tobago | 6 Jul 1994 | 29 Nov 1994 |

Bilateral agreements

Tax Information Exchange Agreements (TIEAs) and Double Tax Conventions (DTCs) signed by Grenada as at August 2014.

36. Date of accession.

| No. | Jurisdiction | Type of EOI agreement | Date signed | Date in force |
|-----|----------------|---|--------------|---------------|
| 1 | Aruba | Tax information exchange agreement (TIEA) | 21 June 2012 | |
| 2 | Australia | TIEA | 30 Mar 2010 | 9 Jan 2012 |
| 3 | Belgium | TIEA | 15 Mar 2010 | 9 Jan 2012 |
| 4 | Denmark | TIEA | 19 May 2010 | 9 Jan 2012 |
| 5 | Faroe Islands | TIEA | 19 May 2010 | 9 Jan 2012 |
| 6 | Finland | TIEA | 19 May 2010 | 9 Jan 2012 |
| 7 | France | TIEA | 31 Mar. 2010 | 9 Jan 2012 |
| 8 | Germany | TIEA | 3 Feb 2011 | 9 Jan 2012 |
| 9 | Greenland | TIEA | 19 May 2010 | 9 Jan 2012 |
| 10 | Iceland | TIEA | 19 May 2010 | 9 Jan 2012 |
| 11 | Ireland | TIEA | 31 May 2011 | 9 Jan 2012 |
| 12 | Netherlands | TIEA | 18 Feb 2010 | 9 Jan 2012 |
| 13 | Norway | TIEA | 19 May 2010 | 9 Jan 2012 |
| 14 | Poland | TIEA | 19 July 2012 | |
| 15 | South Africa | DTC | 6 Aug 1960 | 5 Oct 1960 |
| 16 | Sweden | TIEA | 19 May 2010 | |
| 17 | Switzerland | DTC | 20 Aug 1963 | 1 Jan 1961 |
| 18 | United Kingdom | TIEA | 31 Mar 2010 | 10 Jan 2012 |
| 19 | United States | TIEA | 18 Dec 1986 | 13 Jul 1987 |

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

Constitution of Grenada

Commercial Laws

Companies Act, No.35 of 1994 and amendments thereto

Companies Regulations SRO. 2 1995 and amendments thereto

Companies Regulations SRO. 5 2009

Trustee Act (CAP 329):

Banking Act 2005:

Insurance Act, No.5 of 2010

GARFIN Act No.1 of 2008

Offshore legislation

International Insurance Act 1996 and amendments thereto

Company Management Act 1996 and amendments thereto

The Offshore Banking Act and amendments thereto

International Trusts Act 1996 and amendments thereto

International Companies Act 1990 (CAP 152) and amendments thereto

International Financial Services Act No.2 of 2002

Tax legislation

Income Tax Act of 1994 and amendments thereto

Stamp Tax Act No.36 of 1992

VAT Act of 2009

Exchange of information

The Mutual Exchange of Information on Taxation Matters Act No.24 of 2011 and amendments thereto

S.R.O. 37 of 2011: Mutual Exchange of Information on Taxation Matters Order 2011

Anti Money Laundering legislation

Money Laundering (Prevention) Act 1999

Proceeds of Crime Act 2012

Proceeds of Crime (Anti-Money Laundering) Regulations 2012.

Anti Money Laundering Guidelines 2012

Terrorism Act 2003

Financial Intelligence Unit Act 2003

Annex 4: People interviewed during the on-site visit

Representatives of the Ministry of Finance

Deputy Permanent Secretary
Financial Sector Development Officer

Representatives of the Grenada Authority for the Regulation of Financial Institutions (GARFIN)

Executive Director of GARFIN
Deputy Executive Director of GARFIN

Representatives of the Inland Revenue Department and Tax Co-operation Authority (EOI Unit)

Comptroller of Inland Revenue Department and Head of the Tax Co-operation Authority
Deputy Comptroller of Inland Revenue and Head of EOI Unit

Representative of the Office for Money Laundering Prevention

Assistant Superintendent of Police and Head of FIU

Representative of the Registrar of the Corporate Affairs and Intellectual Property Office

Representatives of the Attorney General's Chambers

Solicitor General
Crown Counsel

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: GRENADA

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

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions which participate in the work of the Global Forum on an equal footing.

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

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

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

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

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

Consult this publication on line at <http://dx.doi.org/10.1787/9789264223035-en>.

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