

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

SAINT VINCENT AND THE GRENADINES

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Saint Vincent and the Grenadines 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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Table of Contents

| | |
|--|----|
| About the Global Forum | 5 |
| Executive Summary | 7 |
| Introduction | 11 |
| Information and methodology used for the peer review of Saint Vincent and the Grenadines | 11 |
| Overview of Saint Vincent and the Grenadines | 12 |
| Recent developments | 18 |
| Compliance with the Standards | 19 |
| A. Availability of Information | 19 |
| Overview | 19 |
| A.1. Ownership and identity information | 22 |
| A.2. Accounting records | 52 |
| A.3. Banking information | 59 |
| B. Access to Information | 65 |
| Overview | 65 |
| B.1. Competent authority’s ability to obtain and provide information | 67 |
| B.2. Notification requirements and rights and safeguards | 75 |
| C. Exchanging Information | 79 |
| Overview | 79 |
| C.1. Exchange of information mechanisms | 81 |
| C.2. Exchange of information mechanisms with all relevant partners | 89 |
| C.3. Confidentiality | 90 |
| C.4. Rights and safeguards of taxpayers and third parties | 93 |
| C.5. Timeliness of responses to requests for information | 95 |

| | |
|---|-----|
| Summary of Determinations and Factors Underlying Recommendations | 103 |
| Annex 1: Jurisdiction’s response to the review report | 109 |
| Annex 2: List of all exchange-of-information mechanisms | 110 |
| Annex 3: List of all laws, regulations and other material received | 112 |
| Annex 4: Persons interviewed during on-site visit | 114 |

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 Saint Vincent and the Grenadines, as well as the practical implementation of that framework.
2. The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and whether that information can be effectively exchanged with its exchange of information (EOI) partners.
3. Saint Vincent and the Grenadines is an independent island nation located in the Eastern Caribbean Sea on the boundary with the Atlantic Ocean. Its economy is based primarily on agriculture, tourism, construction, and to a small extent financial services.
4. Saint Vincent and the Grenadines has worked with the OECD in respect of tax information exchange since 2002 and since 2006 has participated in all of the Global Forum's annual assessments. In 2009 it became a member of the Global Forum and renewed its commitment to the international standard for transparency and exchange of information for tax purposes. Since then it has quickly built up a network of exchange of information agreements that includes its key trading partners. As at 11 August 2014, it has signed EOI agreements with 31 jurisdictions, of which all have been brought into force.
5. Most of Saint Vincent and the Grenadines' EOI agreements allow it to exchange information according to the international standard. They contain adequate safeguards to protect the rights of taxpayers and third parties, and these safeguards are consistent with the international standard. The EOI agreements also ensure the confidentiality of all information exchanged.
6. With regard to the authorities' powers to access information requested by foreign counterparts, the International Co-operation (Tax Information Exchange Agreements) Act gives Saint Vincent and the Grenadines' competent authority broad powers to access all types of information from all persons for EOI purposes. The rights and safeguards that apply to persons in

the requested jurisdiction are compatible with effective exchange of information. In practice, the competent authority has exercised its powers to access information in a timely and efficient manner.

7. Saint Vincent and the Grenadines' incorporation and AML laws ensure that ownership information is available for all relevant legal entities and arrangements. In respect of International Business Companies and Limited Liability Companies, up to date ownership information was not always available as their service providers were not obliged in all cases to maintain information on ownership changes after conducting the initial customer due diligence measures. The new Proceeds of Crime (Anti-Money Laundering and Terrorist Financing) Regulations 2014, introduced in August 2014 an obligation for service providers to keep up-to-date ownership information, when there is a change in the identification information or beneficial ownership information of a customer. Banks are required to maintain information on their account holders.

8. The main gap in Saint Vincent and the Grenadines legal and regulatory framework for exchange of information relates to the availability of accounting information for International business companies and limited liability companies, which were until recently not required to maintain adequate accounting records. A new obligation on the IBCs and LLCs has been introduced by the Financial Laws (Miscellaneous Amendments) Act 2014, with effect from June 2014, but the practical application of this obligation has not been tested and requires active monitoring.

9. The delegated competent authority in charge of exchanging information for tax purposes is the Financial Services Authority, except in the case of exchange of information under the CARICOM Multilateral DTC. The exchange process is very well organised with internal processes in place for handling EOI requests as well as the unit being well resourced in personnel, and technical expertise. Saint Vincent and the Grenadines received only two requests during the three-year review period from 1 July 2010 to 30 June 2013. For both requests, the requested information was provided within 90 days. The peers were satisfied with the quality and the timeliness of the responses.

10. The two peer inputs received by Saint Vincent and the Grenadine's treaty partners are very positive and reflect the efficient EOI process in place in Saint Vincent and the Grenadines and the appropriate resources devoted to it.

11. A follow up report on the steps undertaken by Saint Vincent and the Grenadines to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.

12. Saint Vincent and the Grenadines 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 Saint Vincent and the Grenadines' 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, Saint Vincent and the Grenadines has been assigned a rating of Compliant for elements B.1, B.2, C.1, C.2, C.3 and C.4, and Largely Compliant for elements A.1, A.2, A.3 and C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Saint Vincent and the Grenadines is Largely Compliant.

Introduction

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

13. The assessment of the legal and regulatory framework of Saint Vincent and the Grenadines was based on the international standards for transparency and exchange of information as described in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information for Tax Purposes*, and was prepared using the Global Forum’s *Methodology for Peer Reviews and Non-Member Reviews*. The Phase 1 assessment was based on the laws, regulations, and exchange of information mechanisms in force or in effect as at February 2012, other materials supplied by Saint Vincent and the Grenadines, and information supplied by partner jurisdictions.

14. The Phase 2 assessment is based on the laws, regulations, and exchange of information mechanisms in force or in effect as at 11 August 2014, the Saint Vincent and the Grenadines responses to the Phase 2 questionnaire, supplementary questions and other materials supplied by Saint Vincent and the Grenadines, information provided by exchange of information partners, and explanations provided by Saint Vincent and the Grenadines during the on-site visit that took place from 10-13 February 2014 in Kingstown, Saint Vincent and the Grenadines. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance (including the Minister of Finance), Ministry of Foreign Affairs, the Financial Services Authority, the Comptroller of Inland Revenue, the Commerce and Intellectual Property Office (CIPO), the Attorney General, the Banking and Supervision Department of the Eastern Caribbean Central Bank (ECCB, via teleconference) and a number of registered agents and lawyers operating in Saint Vincent and the Grenadines (see Annex 4).

15. The following analysis reflects the 2012 Phase 1 and Phase 2 assessments of the legal and regulatory framework of Saint Vincent and the Grenadines in effect as at 11 August 2014, and the practical implementation and effectiveness of this framework in the three-year review period of 1 July 2010 to 30 June 2013.

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

17. The assessment in respect of the 2012 Phase 1 Report was conducted by an assessment team which comprised two expert assessors: MrMustupha Mosafeer, Director, Mauritius Revenue Authority, MsGraciela V. Liquin, Head of Division, International Taxation Directorate, Tax Administration of the Argentine Republic; and one representative of the Global Forum Secretariat MrGuozhi Foo. The assessment team assessed the legal and regulatory framework for transparency and exchange of information and relevant exchange of information mechanisms in Saint Vincent and the Grenadines.

18. The Phase 2 assessment was conducted by an assessment team which consisted of two expert assessors and two representatives of the Global Forum Secretariat: MrMustupha Mosafeer, Director, Mauritius Revenue Authority, MsGraciela V. Liquin, Head of Division, International Taxation Directorate, Tax Administration of the Argentine Republic; and MsSéverine Baranger and MrMikkel Thunnissen from the Global Forum Secretariat. The assessment team assessed the practical implementation and effectiveness of the legal and regulatory framework for transparency and exchange of information and relevant EOI arrangements in Saint Vincent and the Grenadines.

Overview of Saint Vincent and the Grenadines

19. Saint Vincent and the Grenadines is an archipelago of islands situated in the Eastern Caribbean at the southern end of the Windward Islands chain, north of Trinidad and Tobago. It comprises a group of 32 islands and cays, with Saint Vincent being the largest island having an area of approximately 388 square kilometres. Kingstown is the capital and is located on

Saint Vincent. Saint Vincent and the Grenadines has a total population of approximately 110 000. The official language is English and the official currency is the Eastern Caribbean dollar (XCD) which is currently pegged to the United States Dollar (USD) at XCD 2.70 to USD 1.

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

21. The two main economic resources of Saint Vincent and the Grenadines are hydropower and arable land. Agriculture and agricultural products dominate the country's economy. Banana is the chief commodity and is also an important export item representing 50% of all merchandise exports. Other products are spices, arrowroot, coconuts, taro, sweet potatoes and eddoes. Tourism has grown to become a very important part of the economy. In 1996, new cruise ship and ferry berths came on-line, sharply increasing the number of passenger arrivals. In 2012, total visitor arrivals stood at 199 840 with most of visitors originating from countries in the Caribbean, the UK and the USA¹. Other important sectors include construction and financial services. Saint Vincent and the Grenadines' main trading partners are Barbados, Canada, Trinidad and Tobago, the UK, and the USA.²

22. In the fiscal year ending in 2012, Saint Vincent and the Grenadines' gross domestic product was approximately USD 713 million, translating to a GNI per capita of approximately USD 6 400³.

Legal system

23. Saint Vincent and the Grenadines is a parliamentary democracy within the Commonwealth of Nations. The House of Assembly forms the legislature and comprises a total of 23 members, including 15 elected members, six senators appointed by the Governor General on the advice of the Prime Minister, the Attorney-General and the Speaker. The parliamentary term of office is five years, although the Prime Minister may call elections at any

1. Source: www.discoversvg.com/images/docs/Docs10/Nov_and_Dec_Copy_of_ECCBLIB-551138-v1-DATA_ENTRY_TEMPLATE_2012-TOURISM_SVG_3.pdf, retrieved in March 2014.
2. Sources: <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Country=VC&Language=S>, World Trade Organization (data updated in September 2013), and Saint Vincent and the Grenadines.
3. http://data.worldbank.org/country/st-vincent-and-the-grenadines#cp_wdi.

time. The power of Parliament to make laws is exercised through the process of Bills being passed by the House. These Bills must be assented to by the Governor-General and published in the Gazette before they have effect.

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

Tax system

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

26. Resident persons are assessed for income tax on all income accruing directly or indirectly from all sources, whether domestic or foreign. This includes income from any business; rent and royalties; interest or discounts; premiums, commission, fees and licence charges; and any other gains or profits accrued to the person. Non-residents are subject to income tax only with respect to income accrued, directly or indirectly, from sources in Saint Vincent and the Grenadines. A company is tax resident in Saint Vincent and the Grenadines if it is incorporated in Saint Vincent and the Grenadines; or if it is incorporated outside of Saint Vincent and the Grenadines and effectively controlled or managed therein. An individual is resident in Saint Vincent and the Grenadines if (a) his permanent place of abode is located therein and he is physically present there for some period of time during the tax year, or (b) if he is physically present there for at least 183 days during the tax year, or (c) if he is physically present in Saint Vincent and the Grenadines for some period of time during the tax year and the tax year is continuous with a period of physical presence in a preceding or succeeding basis period of such duration as to qualify the person as a resident for the preceding or succeeding year under the 183-day rule.⁴

4. Section 2 of the Income Tax Act.

27. Partnerships are tax transparent entities in Saint Vincent and the Grenadines. A partnership is not charged to tax in its own name, but all income accrued thereto in the basis period for any year of assessment is charged on the partners for such year of assessment.⁵ Each partner will be taxed according to its own circumstances.

28. The taxation of trusts in Saint Vincent and the Grenadines depends on whether there are any beneficiaries immediately entitled to the trust income. This is independent of whether the trust actually distributes the income to the beneficiaries. If there are no beneficiaries immediately entitled to the trust income, the income is taxed in the hands of the trustee. Otherwise, the income is taxed in the hands of the beneficiaries. A trust is tax resident in Saint Vincent and the Grenadines if it was “established” in Saint Vincent and the Grenadines. The word “established” is not defined under the Income Tax Act and the Saint Vincent and the Grenadines authorities advise that a trust is “established” there if any one of the following conditions is met: (a) the trustee is resident in Saint Vincent and the Grenadines; (b) the trust is governed by its laws; (c) the beneficiary is resident in there; or (d) the trust property is located there.⁶

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

30. VAT was introduced in 2007, replacing hotel tax, entertainment tax, consumption tax, tele-communications service surcharge and stamp duty. Businesses with annual taxable supplies in excess of XCD 120 000 (USD 44 444) are required to register for VAT. VAT is charged at 15% on goods and services, 10% on hotel accommodation. Some essential items are zero-rated (e.g baby formula) and certain supplies (e.g financial services) are exempted.

31. International Business Companies and other offshore entities regulated by the Financial Services Authority (“FSA”) such as international trusts, limited liability companies etc. are exempt from taxes in Saint Vincent and

5. Section 21 of the Income Tax Act.

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

the Grenadines. They may however opt to pay a 1% income tax annually so that they can utilise the provisions of the CARICOM DTC. These entities are prohibited from carrying on business in Saint Vincent and the Grenadines.

Saint Vincent and the Grenadines' commercial laws and financial sector

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

33. On the domestic front, commercial banks are supervised by the Eastern Caribbean Central Bank, which is responsible for maintaining the stability of the common currency (XCD) and preserving the integrity of the banking system. In addition, the Eastern Caribbean Central Bank's broad supervisory mandate also includes the regulation of non-bank financial institutions (excluding credit unions and insurance companies) carrying on banking business on behalf of and in collaboration with Participating Governments in its member countries e.g Saint Vincent Co-operative Bank and First Saint Vincent Bank Limited. The legislation governing the regulation of banking business is the Saint Vincent and the Grenadines Banking Act. The Commerce and Intellectual Property Office is the Registrar of Companies and administers domestic and foreign companies pursuant to the Companies Act. As of December 2013, there were 23 insurance companies, four domestic banks with assets totalling USD 777 million, six credit unions, four money services business, one building society and 3 689 domestic companies.⁷ Domestic insurance companies are regulated by the Financial Services Authority.

34. Saint Vincent and the Grenadines has a small international financial services sector, offering international business companies (IBCs), international trusts, international mutual funds, limited liability companies (LLCs) and allowing for establishment of international banks and international insurance companies. IBCs, LLCs, international mutual funds, international insurance companies, international banks and Registered Agents are regulated by the Financial Services Authority (FSA), a regulatory body formed

7. Source: Financial Services Authorities of Saint Vincent and the Grenadines.

under the Financial Services Authority Act. The FSA is the result of a merger of the regulatory functions of the former International Financial Services Authority (IFSA), the Co-operatives Department and the Supervisory and Regulatory Division of the Ministry of Finance under the Financial Services Authority (FSA) Act, which was enacted on 22 November 2011. The Act created a new single regulatory authority (the FSA) to regulate and supervise the international financial services sector and non-bank financial services sector previously supervised by IFSA, the Supervisory and Regulatory Division of the Ministry of Finance and the Co-operatives Department. As at 30 June 2013, there were four international banks, four international insurance companies, 127 international mutual funds, 29 mutual fund managers, two international insurance managers/brokers, 104 international trusts, 8132 IBCs, 44 LLCs and 16 Registered Agents. The total value of the bank assets of international banks was USD 376.7 million as at December 2013. The provision of corporate services to these offshore entities is a regulated activity and such service providers are known as Registered Agents and Trustees, which must be licensed under the Registered Agents and Trustee Licensing Act (RATL Act). Saint Vincent and the Grenadines also has an important international ship registry.

35. The regulatory framework for the financial services sector is complemented by Saint Vincent and the Grenadines' Anti-money Laundering (AML) and Counter Financing of Terrorism (CFT) regime which is applicable to a range of institutions including banks, Registered Agents and trust settlements. Until 2013, the AML regime was governed by the Proceeds of Crime and Money Laundering (Prevention) Act (PCML Act). Money Laundering Prevention Guidance Notes (19 May 2006 version) provide further guidance to the regulated sector in complying with their AML/CFT obligations. While the guidance notes were not legally binding, the PCML Act expressly stated that the Court can take into consideration any guidance made pursuant to the PCML Act in making a determination in any case of compliance with the Regulations.⁸ In 2013, the Proceeds of Crime Act, No. 38 of 2013 repealed and replaced the PCML Act, 2001 in order to update and modernise the AML/CFT law in Saint Vincent and the Grenadines, to reflect the FATF 40 Recommendations. The Anti-Money Laundering and Terrorist Financing Regulations 2014 (AML/TF 2014 Regulations), introduced in August 2014 provide further guidance on CDD obligations, record keeping, compliance and reporting obligations of service providers.

36. The accounting profession in Saint Vincent and the Grenadines comprises both accountants and auditors. There are no statutory provisions regulating accountants, auditors or lawyers, but lawyers and accountants are legally obliged to comply with Saint Vincent and the Grenadines' AML/CFT

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

requirements. Lawyers and accountants who act as financial fiduciaries for the purposes of offering international financial services to entities registered or licensed by FSA are required to obtain Registered Agent and Trustee licenses from the FSA and are similarly regulated.

Recent developments

37. Saint Vincent and the Grenadines committed to the international standard for transparency and exchange of information in 2002. It renewed its commitment in 2009 and since then has rapidly built up its network of EOI agreements. As of 11 August 2014, it has concluded EOI agreements with a total of 31 jurisdictions, all of which have been brought into force.

38. The Co-operatives Societies Act, No12 of 2012 repealed and replaced the Co-operative Societies Act 1999. The new Act updated the old legislation in many areas with particular attention to ensure that reliable accounting information is available for Co-operatives.

39. Saint Vincent and the Grenadines modernised its AML/CFT legislation by enacting in 2013 the Proceeds of Crime Act, No.38 of 2013. The Proceeds of Crime Act repealed and replaced the PCML Act, 2001 in order to update and modernise the AML/CFT law in Saint Vincent and the Grenadines, to reflect the FATF 40 Recommendations. Introduced on 7 August 2014, the 2014 AML/TF Regulations provide further rules on CDD obligations, record keeping, compliance and reporting obligations of service providers. The 2014 AML/TF Regulations revoke the Proceeds of Crime (Money Laundering) Regulations, 2001. Further practical guidance is expected to be issued soon through the Proceeds of Crime (Anti-Money Laundering and Terrorist Financing) Code 2014. Until then, the guidance contained in the AML Guidance Notes continues to apply.

40. Finally, Saint Vincent and the Grenadines passed the Financial Laws (Miscellaneous Amendment) Act 2014, with effect from June 2014, to introduce, among other changes, accounting obligations on IBCs and LLCs.

Compliance with the Standards

A. Availability of Information

Overview

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

42. Saint Vincent and the Grenadines law provides for the formation of a wide range of legal entities and arrangements. Ownership information of these entities and arrangements is available. Ordinary domestic profit and non-profit companies and registered foreign companies are required to submit annual returns to the Registrar of Companies containing information on the identities of their shareholders and/or maintain an up to date register of their shareholders/members. Companies, partners of partnerships, trustees and trust beneficiaries that are liable to tax in Saint Vincent and the Grenadines must register with the Comptroller of Inland Revenue for

tax purposes and submit annual tax returns.⁹ The above requirements are supplemented by AML obligations on relevant service providers, which are required to identify all the beneficial owners of the IBCs, LLCs and trusts for which they act. In addition, service providers need to maintain information on subsequent changes to the beneficial owners of IBCs or LLCs, and to make regular checks on a risk-basis. Saint Vincent and the Grenadines introduced in the 2014 AML/TF Regulations an obligation to update ownership information in specific cases, including when there is a change in the beneficial ownership of a customer. The results of on-site inspections by the FSA, taking place every twelve to eighteen months, indicate that registered agents generally keep sufficient CDD information as well as the register of members for IBCs and LLCs, and update such information on a regular basis. However, the obligation to keep the register of members only applies to IBCs and LLCs themselves, and no penalties apply for failure to comply with this requirement. It is therefore unclear how the Saint Vincent and the Grenadines authorities would enforce the availability of legal ownership information on IBCs and LLCs. Saint Vincent and the Grenadines is encouraged to continue to use all mechanisms at its disposal to ensure that ownership information in respect of companies is available in practice.

43. The competent authority of Saint Vincent and the Grenadines received only one request pertaining to ownership information regarding an IBC and an LLC during the three-year peer review period. In that case, the competent authority asked the registered agent to provide the ownership information for the purposes of exchanging it with the requested jurisdiction. Peer input indicated that this information has been exchanged in a timely manner.

44. Bearer shares can only be issued by IBCs, and since 2007 they must be immobilised through a custodial arrangement. This custodial arrangement immobilises all bearer shares as the physical share must be in the possession of a custodian, being the registered agent of the issuing company or an approved custodian. This service provider is also required to maintain full ownership information on the direct owners of bearer shares. However, where the custodian is located outside Saint Vincent and the Grenadines, it may be difficult to enforce the availability of information.

45. Professional trustees in Saint Vincent and the Grenadines of any trust, whether domestic, foreign or international, must keep full identity information on all other trustees, settlors, protectors and beneficiaries. All international trusts in Saint Vincent and the Grenadines must be registered with the Registrar of Trusts. Trustees of international trusts (Registered Trustees) have an additional obligation under the International Trust Act to

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

maintain key information on the international trusts they act for, including the identities of the settlors and all beneficiaries.

46. Accounting records are generally available on taxpayers due to record keeping obligations under the Income Tax Act¹⁰. These records explain all transactions, and enable the financial position of the relevant entity to be determined. They also include underlying documents backing up the accounting records and must be kept for at least seven years from the date of the transaction. Before June 2014, there were no sufficient requirements on IBCs and LLCs to keep reliable accounting records although the registered agents of IBCs and LLCs have always been required to keep records of transactions they are involved in under the Proceeds of Crime Act. In practice, Registered Agents in Saint Vincent and the Grenadines are rarely involved in fiduciary activities for their clients (including keeping accounting records, or dealing with monetary aspects of transactions). However, the Financial Laws (Miscellaneous Amendments) Act amended the IBC Act¹¹ and the LLC Act¹² to introduce accounting record keeping requirements on IBCs and LLCs with effect from June 2014. The new provisions impose on IBCs and LLCs an obligation to keep accounting records for a minimum period of seven years from the date on which they are prepared. The definition of “accounting records” includes underlying accounting documents¹³. Penalties for failure to produce or to keep the “accounting records” for the minimum 7-year period amount to USD 20 000.

47. Banks are obliged under Saint Vincent and the Grenadines’ AML laws to maintain information on account holders and transaction information. They may rely on AML-regulated foreign introducers to identify the customer, but must obtain immediately from the introducer the customer due diligence information concerning the customer and its beneficial owner.¹⁴

48. In general, where an obligation exists in Saint Vincent and the Grenadines to keep relevant records, enforcement provisions are in place to

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10. Section 86 (1) of the Income Tax Act requires every person carrying on any business to keep, in the English language, such records or books of accounts as are necessary to reflect the true and full nature of the transactions of the business, regard being had to the nature of the activities concerned and the scale on which they are carried out.
 11. Section 72 of the IBC Act on Financial records was repealed and replaced.
 12. Section 39 of the LLC Act was amended.
 13. “Accounting Records” are defined as “all books, vouchers, invoices, contracts and financial statements and any other relevant records pertaining to the financial affairs, including the assets and liabilities of an international business company”.
 14. Regulation 17(3) of the 2014 AML/TF Regulations.

address non-compliance. In most cases, the FSA is responsible for monitoring and enforcing the relevant record keeping obligations, although the Inland Revenue Department and the CIPO may also apply enforcement measures in some cases. Enforcement measures consist of fines and, in the case of licensees, suspension or revocation of a licence is also possible. The FSA has an active monitoring and enforcement programme in place in respect of all licensed service providers, which are subject to regular on-site inspections where samples are taken of the information they are required to keep. This includes ownership information and banking information. Accounting information is generally kept by the entity rather than by the service provider, although for IBCs and LLCs an obligation to keep accounting records was introduced only recently and is therefore untested in practice. It is recommended that the authorities of Saint Vincent and the Grenadines sufficiently exercise their monitoring and enforcement powers to support the new legal requirements which ensure the availability of accounting information of IBCs and LLCs.

A.1. Ownership and identity information

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

Companies (ToR A.1.1)

Overview of companies under Saint Vincent and the Grenadines Corporate law

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

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

- Ordinary companies – incorporated under the Companies Act and formed for the purpose of carrying on a trade or business for gain. Ordinary companies may conduct their business in Saint Vincent and the Grenadines. There were 2 152 ordinary companies in Saint Vincent and the Grenadines as at 30 June 2013.

- Non-profit companies – non-profit companies do not have share capital and may only be formed with the approval of the attorney-general. They must restrict their business to socially useful objects, such as charitable, educational, scientific, literary, artistic or sporting activities.¹⁵ There were 253 non-profit companies in Saint Vincent and the Grenadines as at end 2013.

51. The IBC Act allows for the incorporation of international business companies (IBCs). IBCs are formed for the purpose of carrying out business activities outside of Saint Vincent and the Grenadines and enjoy a wide range of tax benefits.¹⁶ IBCs can be limited by shares, limited by guarantee, or have unlimited liability. IBCs that are limited by guarantee or have unlimited liability may also be authorised to issue shares. As of 30 June 2013, there were 8132 IBCs duly incorporated in Saint Vincent and the Grenadines.

52. An IBC can be incorporated as a segregated cell company whose assets, equity and liabilities may be segregated into individual cells. Segregated cell companies may only be used by insurers and collective investment schemes, and may only be incorporated with the written consent of the FSA. The regulations applicable to IBCs under the IBC Act apply similarly to segregated cell companies.¹⁷

53. LLCs are part of the range of entities that may be formed under Saint Vincent and the Grenadines' international financial services sector and like IBCs, enjoy a wide range of tax benefits. LLCs are regulated under the LLC Act and may generally not carry on business or own any real estate in Saint Vincent and the Grenadines. LLCs have no share capital and ownership is determined by the LLC agreement or in the case where the agreement does not specify, the ratio of members' contributions. As of 30 June 2013, there were 44 LLCs duly incorporated in Saint Vincent and the Grenadines.

54. Saint Vincent and the Grenadines law provides for the creation of co-operatives under the Cooperative Societies Act. A co-operative is defined as an entity comprising a group of people with a commitment to joint action on the basis of democracy and self-help to secure a service or economic arrangement that is both socially desirable and beneficial to all taking part. Only citizens or residents of Saint Vincent and the Grenadines may be members of co-operatives.¹⁸ Co-operatives are exempt from income tax in Saint Vincent and the Grenadines.

15. Section 326 and 328 of the Companies Act.

16. Section 180 of the IBC Act.

17. Section 111 of the IBC Act.

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

55. Building societies may be incorporated under the Building Societies Act. Building societies are self-contained entities formed for the purpose of accepting member subscriptions and using these subscriptions to make loans to their own members in return for real property pledged as collateral. They may not conduct any other forms of business.¹⁹ Given the limited scope of their activities, their self-contained nature, and the fact that there is only one building society in Saint Vincent and the Grenadines, building societies in Saint Vincent and the Grenadines do not appear to be relevant for the purposes of this review.

Regulated entities

56. Saint Vincent and the Grenadines law also provides for the formation of international mutual funds, international banks and international insurance companies, which are regulated under the Mutual Funds Act, International Banks Act and International Insurance Act respectively.²⁰ However, these businesses must first be constituted as a legal entity under another act, such as the IBC Act, and are therefore subject to the regulations of the relevant constituting act in addition to any requirements spelt out in the Mutual Funds Act, International Banks Act or International Insurance Act.

57. Regulated entities are subject to on-site and off-site monitoring by the FSA. In a number of cases, the FSA asked for substitution of directors or appointment of directors. The FSA has revoked licenses and two banks have been put into liquidation (one in compulsory liquidation failing capital adequacy and one voluntary liquidation).

Information required to be provided to government authorities

Overview of Registrars

58. The Commerce and Intellectual Property Office (CIPO) is the Registrar for Companies and is responsible for administering the Companies Act; i.e. to administer the ordinary companies, the non-profit companies and foreign companies doing business in Saint Vincent and the Grenadines. It is responsible for maintaining a register of every company that is incorporated or registered under the Act and receiving all relevant documents that are filed by companies. The Registrar is obliged to keep all the documents it receives for at least six years from the date of receipt.²¹

19. Section 4 of the Building Societies Act.

20. International banks and international insurers are business entities that conduct banking and insurance businesses outside of Saint Vincent and the Grenadines.

21. Section 507 of the Companies Act.

59. The Registrar of International Business Companies administers the IBC Act. The Registrar is obliged to retain all “qualifying documents”²² filed by IBCs and segregated cell companies and any other information it “sees fit”.²³ IBCs receive a certificate of incorporation, Certificate of Exemption from Direct Taxes and a Certificate of Exemption from Import Duties upon payment of a registration and annual fee. The IBC Act is silent as to how long these documents must be kept, but the FSA stated that the Registrar keeps the documents on a perpetual basis. In 2010, an internal audit of the Register of IBCs was carried out, whereby all the files were checked and updated. Any non-active IBCs and non-compliant IBCs were struck off the Register. Since then, a list of IBCs that need to be struck off is compiled on an annual basis and action towards actual strike-off is taken. The number of IBCs struck off annually since the IBC audit in 2010 is 1569 IBCs in 2010, 1698 in 2011, 1097 in 2012 and 1187 in 2013.

60. The Registrar of LLCs administers the LLC Act and maintains the Register of Limited Liability Companies. It keeps all the filings that LLCs are required to make under the LLC Act. The LLC Act is silent as to how long these filings must be kept, but the FSA stated that the Registrar keeps the documents on a perpetual basis. The information in the Registers of LLCs and IBCs is directly available at the FSA.

61. The Registrar of Co-operative Societies administers the Co-operatives Societies Act and maintains the Register of Co-operative Societies. The information in that Register is directly available at the FSA.

Ordinary companies and non-profit companies

62. All ordinary and non-profit companies in Saint Vincent and the Grenadines must register and provide their articles of incorporation to the Registrar of Companies at the time of their incorporation. The articles of incorporation must include general information on the company such as name, address, classes and any maximum number of shares the company is authorised to issue, number of directors, and restrictions on the business that the company may undertake.²⁴

63. All ordinary companies in Saint Vincent and the Grenadines must submit an annual return that details any changes in key company information such as its directors, address of registered office and secretaries. The annual return must also contain a share capital schedule spelling out the names

22. “Qualifying documents” are documents that are required or permitted to be filed under Saint Vincent and the Grenadines law.

23. Sections 5 and 183 of the IBC Act.

24. Section 5 of the Companies Act.

and addresses of all shareholders over the past year, including particulars of shares held or transferred since the date of the last annual return.²⁵ This obligation applies similarly to non-profit companies, but their returns do not contain a share capital schedule as non-profit companies have no share capital.

IBCs and LLCs

64. IBCs must file their articles of incorporation with the Registrar of IBCs in order to be incorporated. The articles of incorporation must set out the name and address of the IBC and its registered agent, details on the nature of the company (limited by shares, guarantee or unlimited), as well as the number of registered shares and any bearer shares it will issue.²⁶

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

- details of the functionaries²⁷ who are, or who will be appointed as functionaries to the applicant company;
- a list of the initial segregated cells that it is intended will be created, including the name, identification or designation of each segregated cell; and
- in respect of each proposed initial segregated cell, details of the functionary who will be appointed by the company to act in respect of the cell.²⁸

66. One or more persons may form a LLC by having a registered agent sign articles of formation in the prescribed form and filing them with the Registrar of LLCs. The articles of formation must contain among other information the name of the LLC, the address of its first registered office and the name and address of its registered agent.²⁹

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

26. Section 14 of the IBC Act.

27. A functionary is in the case of a mutual fund segregated cell company, the manager, administrator, investment advisor, custodian or any other person approved by the FSA; and in the case of an insurance company segregated cell company, a manager, broker, agent, actuary, or any other person approved by the FSA.

28. Regulation 27 of the IBC Regulations.

29. Section 12 of the LLC Act.

67. IBCs and LLCs incorporated with the Registrar of IBCs and LLCs must be represented by a licensed Registered Agent established in Saint Vincent and the Grenadines. The Registered Agent acts as an intermediary between the IBC/LLC and the FSA at all times. The incorporation application for IBCs/LLCs consists of the Articles of Incorporation, Articles of Formation, Articles of Continuation, Notice of Directors, By-laws, LLC Agreement, the latter three (3) documents being optional. The application is reviewed by a Senior Registry Clerk and the Registrar/Deputy Registrar of IBCs/LLCs. Once registration is completed, the Registry's electronic database is updated and certificates are issued (Certificate of Incorporation, Certificate of Exemption from Direct Taxes, Certificate of Exemption from Import Duties, Certificate of Continuation and Certificate of Formation – LLC). A file is opened and maintained for each IBC and LLC upon registration. The Registry retains all documents and other relevant information pertaining to all respective entities, irrespective of whether or not they have been struck off, on a perpetual basis.

68. For IBCs or LLCs that have elected to pay income tax of 1% on annual gains and profits (see Introduction for further details), the Comptroller of Income Tax is notified by way of letter. The number of IBCs that have opted to be subject to the 1% tax is low. The total number of IBCs that have opted to be subject to the 1% tax is 72. Only 16 new IBCs elected for the option in 2011, 4 in 2012 and 12 in 2013.

Co-operatives

69. A co-operative must register with the Registrar of Co-operative Societies before it can carry on business in Saint Vincent and the Grenadines. Information to be submitted at the point of registration includes the co-operative's by-laws, address and names of directors.³⁰ Income derived by co-operatives is exempt from income tax.

70. In practice, the co-operative form is used generally by Credit Unions. The application for registration of a Credit Union is made to the Registrar based on section 12 of the Cooperative Societies Act and shall include the name of society, the registered address, the area of operation, the objects of Society and the date of establishment. The six credit unions currently registered with the FSA are operating only locally (e.g. credit unions of police officers and teachers).

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

Foreign companies

71. Any firm or body of persons, whether incorporated or unincorporated, that is formed outside Saint Vincent and the Grenadines, is known as an “external company” and must register with the Registrar of Companies before it can carry on a business in Saint Vincent and the Grenadines.³¹ Section 338 of the Companies Act defines the following as “carrying on business” in Saint Vincent and the Grenadines:

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

72. At the point of registration, foreign companies must provide a statement to the Registrar of Companies containing, among other information, details on the jurisdiction within which the company was incorporated, the date of its incorporation, the extent, if any, to which the liability of the shareholders or members of the company is limited, the business that the company will carry on, the date on which the company intends to commence any of its business in the State; the authorised, subscribed and paid-up or stated capital of the company, and the shares that the company is authorised to issue and their nominal or par value, if any, the full address of the principal office of the company in Saint Vincent and the Grenadines, and the full names, addresses and occupations of the directors of the company.³² There were 116 foreign companies registered in Saint Vincent and the Grenadines as at end 2013.

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

31. Section 340 of the Companies Act.

32. Section 344 of the Companies Act.

transferred since the date of the last annual return.³³ Information regarding beneficial owners of foreign companies may not be available in Saint Vincent and the Grenadines in the event that the foreign company does not use the services of a service provider in Saint Vincent and the Grenadines (for example, a bank, an accountant or a lawyer).

74. Prior to May 2014, the Minister for Legal Affairs could exempt a foreign company from compliance with all or any of the provisions of Division B of the Companies Act (Division B applies to foreign companies), such as certain registration requirements. The CIPO confirmed that the Minister for Legal Affairs exercised the powers conferred by Section 339(1) of the Companies Act only once in an exemption Order dated January 23, 2007. The Exemption Order covered 137 companies and only granted an exemption from filing of a statutory declaration by an attorney at law that Section 344 has been complied with by the companies. However, the Exemption Order did not cover an exemption from the Registration Process as a whole. The CIPO stated that to date, the application for registration for these companies has not been completed subsequent to the Exemption Order being issued, and is now considered void by the authorities. Accordingly, these companies do not form part of the record of External companies, and cannot carry on business in Saint Vincent and the Grenadines.

75. The Financial Laws (Miscellaneous Amendments) Act 2014, introduced in June 2014, repealed Section 339 (1) of the Companies Act, and an exemption from certain registration requirements for foreign companies is therefore no longer available. Should the 137 companies mentioned above intend to be domiciled in Saint Vincent and the Grenadines, they would have to present new applications and would not be entitled to the exemption previously available before the amendment made to Section 344.

76. Moreover, any service provider, such as a registered agent or a bank, supplying services to the foreign companies (accounting services or assistance in filing tax returns) is obliged under the 2014 AML/TF Regulations to have CDD information on the foreign companies.

Income Tax Act

77. All companies that are chargeable to tax under the Income Tax Act must register with the Comptroller of Inland Revenue.³⁴ These include IBCs and LLCs that opt to pay a 1% income tax in Saint Vincent and the Grenadines so as to utilise the provisions of the CARICOM DTC, which

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

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

represent less than 1% of the total number of IBCs. The registration form for non-individual enterprises (i.e. companies and partnerships) requires the submission of information on the owners of the enterprise, including the name, address and percentage owned by each owner, and the date on which ownership became effective. There is no requirement for changes in these shareholding details to be advised to the Comptroller. These companies must also file annual tax returns; ownership details need not be provided in these returns.

78. Co-operatives are exempted from income tax.³⁵

79. As at 30 June 2013, 2152 domestic companies, 8 non-profit companies and 116 external (foreign) companies were registered with the Inland Revenue Department.

80. In practice, the taxpayers must first be registered with the relevant Registrar and subsequently must fill-in a form with the Inland Revenue Department, which includes, among other information, the name and the address of the foreign parent company (if any) and the bank account details of the company. The number of IBCs that have opted to be subject to the 1% tax and therefore registered with the Inland Revenue Department is limited – only 16 new IBCs registered in 2011, 4 in 2012 and 12 in 2013. None of the 44 LLCs registered by the FSA as at the end of 2013 had opted to pay 1% income tax to the Inland Revenue Department.”

Information required to be held by companies

Ordinary companies and non-profit companies

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

- the name and address of each person who is a shareholder;
- a statement of the shares held by each shareholder;
- the date on which each person was entered on the register as a shareholder, and the date on which any person ceased to be a member.³⁶

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

36. Section 177 of the Companies Act.

Co-operatives

82. Every registered co-operative must keep a register of members containing the names and addresses of members; and the date on which each member became a member and the date, if any, on which he ceased to be a member.³⁷

IBCs

83. Section 52 of the IBC Act defines members and shareholders as persons whose names are entered in the register, and the registers of members are prima facie evidence of any matters directed or authorised by this IBC Act to be contained in them (Section 54(4) of the IBC Act). In addition, Section 41(3) of the IBC Act sets out that IBCs shall not be required to treat a transferee of a registered share in the company as a shareholder until the transferee's name has been entered in the share register. Even though the IBC Act states that IBCs “may” maintain shareholder registers, which implies that this is fully discretionary³⁸, an overall reading of the Act leads to the conclusion that IBCs must have a register of members. The word “may” was chosen to reflect that an IBC may maintain one or more registers³⁹, depending on its constituency (shareholders and/or members by guarantee). Under Section 54(2) of the IBC Act, the registers of members/shareholders may be in any such form as the directors may approve but if it is in magnetic, electronic or other data storage form, the international business company must be able to produce legible evidence of its contents. Further, copies of the register(s) shall be kept at the registered office or at such other place as the directors may determine⁴⁰. There are no penalties in the IBC Act for failure of keeping a register of members. However, shareholder information on IBCs may be available in practice through their Registered Agents (see section on service providers below), as part of the CDD information to determine the beneficial owner.

LLCs

84. Under Section 34 of the LLC Act, a person becomes a member of an LLC if the person's admission appears in the records of the LLC upon compliance with the LLC agreement or, if the LLC agreement does not so provide, upon the consent of all members. In addition, each LLC member

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

38. Section 54 of the IBC Act.

39. Section 54(1) of the IBC Act.

40. Section 54(3) of the IBC Act.

has the right to obtain a current list of members⁴¹. In order to comply with a request from a member, an LLC must therefore keep a register of its register of members. There are no penalties in the LLC Act for failure of keeping a register of members. However, in practice, information on the members of LLCs is generally available through their Registered Agents (see section on service providers below), as part of the CDD information to determine the beneficial owner.

Information held by service providers

85. The regulation of service providers in Saint Vincent and the Grenadines is an avenue through which identity and ownership information of relevant entities and arrangements can be made available. Many legal persons and arrangements conducting business from or in Saint Vincent and the Grenadines will have some involvement with a licensed service provider through either a one-off transaction or an ongoing business relationship and it is through these instances that the relevant regulatory requirements are triggered and ownership information of relevant entities made available. In particular, all companies incorporated under the IBC Act (i.e. IBCs and segregated cell companies), all LLCs formed under the LLC Act, all mutual funds regulated under the Mutual Funds Act, and all international banks and international insurers are required to have at all times a registered agent licensed under the Registered Agent and Trustee Licensing Act (“RATL Act”).⁴²

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

- acting as agent or representative in the establishment, registration, renewal or continuation of a IBC; the continuation or registration of an international trust; or the registration of mutual funds under the Mutual Funds Act;
- providing registered office or registered agent services in Saint Vincent and the Grenadines for companies incorporated, licensed or continued under the IBC Act;
- providing or appointing nominee directors, nominee shareholders or nominee officers for companies incorporated under the IBC Act or the International Banks Act, or

41. Section 38 of the LLC Act.

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

- acting as a local trustee or fiduciary for an international trust, or trust settled elsewhere and which subsequently adopted the Saint Vincent and the Grenadines International Trust Law as the applicable law of the trust.⁴³

87. Until May 2014, the provision of services to LLCs was not specified as a regulated activity under the RATL Act as the LLC Act was enacted in 2010 and the RATL Act was enacted in 1996. The RATL Act was amended to capture LLCs by the Financial Laws (Miscellaneous Amendments) Act. In addition, the LLC Act makes it clear that all LLCs must have a registered agent licensed under the RATL Act.

88. In practice, the Registrars of IBCs and LLCs do not accept the registration of IBCs and LLCs that do not have a registered agent. Replacement of the registered agent can be initiated by either the company or the registered agent itself. A company that wishes to replace its registered agent must file a notice in an approved form, identifying the new registered agent. Only twenty-two notices for change of registered agents were filed with the FSA in 2011, 11 in 2012 and 11 in 2013. In these cases, the company's registered office changed to the address of the new registered agent. The numbers of resignations of registered agents from IBCs during the period were 396 in 2011, 370 in 2012 and 168 in 2013. These were usually due to the liquidation of the IBC.

89. RATL Act licensees and other service providers that are not regulated under the RATL Act (e.g. service providers to ordinary companies and partnerships) are separately regulated under the Proceeds of Crime Act 2013 and subject to Saint Vincent and the Grenadines' AML laws. The service providers subject to AML laws are defined in Schedule 1 of the 2014 AML/TF Regulations and include, amongst others, banks, insurance companies or brokers, money providers, registered agents, investment fund managers, and independent legal professionals (such as lawyers and notaries).

90. The 2014 AML/TF Regulations require service providers to establish and maintain procedures that identify and verify the identity of all clients prior to establishing a business relationship. Where the client is a corporate entity, the information to be obtained by the service provider includes its full name; the location of the registered office or head office; the names and address of all officers and directors of the corporate entity; and the names and addresses of the beneficial owners of the corporate entity (except where the entity is a publicly traded company).⁴⁴

43. Sections 2 and 4 of the RATL Act.

44. Regulation 6 of the 2014 AML/TF Regulations.

91. Regulation 4 of the 2014 AML/TF Regulations defines a beneficial owner to be an individual “(a) who is an ultimate beneficial owner of the legal person, partnership or legal arrangement, whether or not the individual is the only beneficial owner; and/or (b) who exercises ultimate control over the management of the legal person, partnership or legal arrangement, whether alone or jointly with any other person or persons”. Once the beneficial owners’ identities have been established and verified, the service provider must periodically update the customer due diligence information that it holds and adjust the risk assessment that it has made accordingly.⁴⁵ Regulation 11(1)(c) of the 2014 AML/TF Regulations then states that a service provider shall apply customer due diligence measures to existing customers (i) at other appropriate times, as determined on a risk-sensitive basis; and (ii) at least once in each five year period. Nevertheless, Saint Vincent and the Grenadines authorities stated that where an entity presents a normal or low risk for money laundering or terrorist financing, service providers would be expected to carry out an update at least every three years.

92. Service providers may rely on another AML-regulated institution for the client identification information. Before August 2014, a written assurance from the introducing institution to the effect that evidence of the identity of a client had been obtained and recorded under procedures maintained by the introducing institution was sufficient. However, Regulation 17(3) of the 2014 AML/TF Regulations provides that the service provider relying on an introducer (being foreign or not) or an intermediary must immediately obtain from that introducer or intermediary the customer due diligence information concerning the customer, third party or beneficial owner. As a result of this new provision, CDD information should be available with the service provider in Saint Vincent and the Grenadines in case the client is introduced by another AML-regulated institution.

93. The 2014 AML/TF Regulations⁴⁶ oblige all service providers to keep client identity and account transactions information for a minimum of seven years after a business relationship is terminated.

94. The FSA maintains a Register of licensed Registered Agents in the State, recording the name of the registered agent, its address, the date when the registered agent was issued a license under the RATL Act and when it obtained the approval to provide registered agent services, and in case it ceased to be approved licensed registered agent, the date on which this occurred and the reason. As at December 2013, there were 16 registered agents authorised by the FSA to offer registered agent services.

45. Regulation 13(2)(c) of the 2014 AML/TF Regulations.

46. Regulation 21 of the 2014 AML/TF Regulations.

95. Regular on-site visits to the Registered Agents' place of business have been conducted since 2008, approximately every 12-18 months. In addition, offsite supervision is ongoing and has at its objective quickly identifying negative trends and emerging problems. Offsite supervision is conducted through supervisory contacts, reviewing reports, financial statements and monitoring filings and submissions with the legislation to ensure compliance (see A.1.6 for further details).

Nominee identity information

96. The business of providing nominee shareholders is regulated under the Proceeds of Crime Act. The 2014 AML/TF Regulations require professional nominee shareholders to establish and maintain procedures that identify and verify the identity of all clients prior to establishing a business relationship. Nominee shareholders are not covered by these obligations if they are not acting in the course of business.

97. In addition, the Companies Act requires every person who has a substantial shareholding in a company (defined as having at least ten percent of the unrestricted voting right), whether directly or through nominees, to give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder. He is required to do so within 14 days after he becomes aware that he is a substantial shareholder. If he ceases to be a substantial shareholder, he must give notice in writing to the company stating his name and the date on which he ceased to be a substantial shareholder of the company, giving full particulars of the circumstances under which he ceased to be a substantial shareholder. The company is required to keep a register of all such filings it has received.⁴⁷

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

99. The authorities of Saint Vincent and the Grenadines indicated that most licensed service providers do in practice provide services as a nominee shareholder. During the on-site inspections, the FSA verifies whether, for the

47. Sections 181 to 184 of the Companies Act.

relevant companies, the service provider has the identity details of the actual beneficial owner on file. In the three-year review period, Saint Vincent and the Grenadines did not receive any request for EOI on the identity of nominees and beneficial owners of the shares.

Conclusion

100. Legal ownership and identity information on ordinary, non-profit and registered foreign companies is available as the Companies Act obliges these companies to maintain a shareholder register and/or to furnish an annual return providing details of their shareholders. All IBCs and LLCs must maintain a register of members and are required to engage a licensed Registered Agent who is subject to AML obligations, which require the Registered Agent to identify all the beneficial owners of the IBC or LLC before establishing a business relationship, and to keep such information updated. Additionally, the law provides that service providers remain liable for any client identification that is not carried out by the introducing institution, and requires CDD information to be obtained immediately from the (foreign) introducer.

101. In the three year period under review (July 2010- June 2013), the competent authority of Saint Vincent and the Grenadines received only one EOI request concerning company ownership information. The authorities of Saint Vincent and the Grenadines have confirmed that in this case ownership information was partly obtained from the service provider by issue of a notice and partly from the FSA's own records. Feedback from the peer confirms that ownership information on an IBC and an LLC was provided in a timely manner.

Bearer shares (ToR A.1.2)

102. The IBC Act has historically allowed IBCs to issue bearer shares. The Saint Vincent and the Grenadines authorities however took steps in 2007 to immobilise them. The IBC Act was amended in 2007 to specify that any bearer share issued by an IBC must remain in the custody of the IBC's registered agent or in the safe custody of any other approved custodian⁴⁸. The IBC Act defines "approved custodians" as those properly regulated custodians or financial institutions approved in writing by the Authority where the custodian or financial institution is required to hold bearer shares subject to a mortgage, charge or other form of security interest. An approved custodian may be located abroad.

48. Section 30(1) of the IBC Act.

103. Every registered agent or approved custodian must maintain a record of each bearer certificate issued or deposited in its custody that includes following information:⁴⁹

- the name of the company issuing the bearer certificate;
- the identification number of the bearer share certificate;
- the number of shares and the class of shares in the company contained in the bearer share certificate;
- the identity of the beneficial owner of the shares contained in the bearer share certificate, including but not restricted to the name, address, date of birth and other details of identification as may be prescribed;
- where the beneficial owner of the shares contained in the bearer share certificate is a corporation, including a trust corporation, the evidence of identity shall be evidence of the identity of the persons who are the beneficial owners of that corporation, except where the corporation is a publicly traded corporation on a recognised stock exchange under the International Insurance Regulations; and
- where issued, a copy of the relevant certificate of immobilisation.

104. Where custody of the bearer certificates is transferred to another registered agent, the registered agent must notify the Registrar of IBCs and the FSA within seven days of such transfer and of the particulars of the new registered agent.⁵⁰

105. IBCs which had issued bearer shares prior to the amendments to the IBC Act in 2007, were given six months to provide to their registered agents information as to the beneficial owners of the shares and a full and detailed account of changes if any, in the beneficial ownership of such shares since their issuance by the IBC. IBCs that fail or refuse to comply with these requirements are liable to be struck off from the register by the Registrar of IBCs or the FSA.

106. As at 30 June 2014, a total of 2 500 IBCs were authorised to issue bearer shares. In 2011, 62 IBCs issued bearer shares, 33 in 2012 and 41 in 2013. The FSA stated that in practice, the issuance of bearer shares is limited and the bearer shares are immobilised with a registered agent or approved custodian in Saint Vincent and the Grenadines, or with a foreign approved custodian. The application for approval to act as a custodian of bearer shares is made by the registered agent, and is in practice an administrative

49. Section 30(4) of the IBC Act.

50. Section 30(5) of the IBC Act.

arrangement between the registered agent and the custodian for the holding of the bearer shares, with the subsequent approval of the FSA. As at 30 June 2013, a total of 219 custodians had been approved, which are all foreign custodians, and cumulatively they held bearer shares of 1 658 IBCs. The FSA stated that the issue of bearer shares is of specific focus in the on-site inspection programme of the FSA, and that it has found that regulated institutions are fully aware of their obligations.

107. Issues may arise in respect of the availability of information in Saint Vincent and the Grenadines regarding bearer shares that are in the custody of a foreign approved custodian. When a request for ownership information on an IBC that has issued bearer shares is made, a notice would usually be served on the registered agent of the IBC. Where the bearer shares are in the custody of a foreign custodian, the registered agent would then seek the information from that custodian. However, as information on the owners of the bearer shares in that case is not in the possession or control of a person within Saint Vincent and the Grenadines, it is unclear what steps can be taken to compel the foreign custodian to make that information available in Saint Vincent and the Grenadines.

108. Enforcement issues result from the fact that the FSA does not have territorial jurisdiction over the foreign approved custodians. Whilst the FSA may withdraw their approval for the approved custodian to act as such, in practice this measure does not guarantee that the information on direct beneficial ownership of bearer shares can be made available within Saint Vincent and the Grenadines' jurisdiction. It is noted that the delisting of an approved custodian as such would force the owners of the bearer shares to deposit the shares with another custodian, who could subsequently be requested to provide ownership information.

109. Where the bearer shares are in the custody of a foreign custodian, the information may still be available in Saint Vincent and the Grenadines where the direct beneficial owner is also the ultimate beneficial owner. This is because under the AML/FT legislation, the registered agent of the IBC is required to have ultimate beneficial ownership information on all its clients, irrespective of the legal form and types of shares issued, as described above under A.1.1. Even where the direct beneficial owner(s) and the ultimate beneficial owner(s) are not the same person(s), the registered agent may still have obtained the identity of the direct beneficial owner through its due diligence measures, which must be enhanced for companies having issued bearer shares.⁵¹

110. The authorities of Saint Vincent and the Grenadines have indicated, and feedback from peers has confirmed, that there have been no requests for ownership information involving bearer shares during the three-year review

51. Regulation 14(2)(f) of the 2014 AML/TF Regulations.

period. Nevertheless, Saint Vincent and the Grenadines should ensure that ownership information with respect to all bearer shares is made fully available to authorities (see also section A.1.6 regarding enforcement of obligations on custodians).

Partnerships (ToR A.1.3)

111. Saint Vincent and the Grenadines law allows the creation of ordinary partnerships. Ordinary partnerships are governed by the Partnership Act, which defines an ordinary partnership as a relation which subsists between persons carrying on a business in common with a view of profit. Every partner is an agent of the firm and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the partnership of which he is a member, bind the partnership and all the partners. Every partner in a partnership is liable jointly with the other partners for all debts and obligations of the firm.⁵²

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

Information required to be provided to government authorities

113. The Partnership Act does not require ordinary partnerships to register with the Saint Vincent and the Grenadines authorities. Partnerships do not have legal personality and are usually only used for carrying out activities locally. The authorities of Saint Vincent and the Grenadines have confirmed that foreign partnerships cannot operate in or from within Saint Vincent and the Grenadines, as they are not considered separate entities and cannot be registered in Saint Vincent and the Grenadines.

Tax requirements

114. Every partnership that carries on business or derives taxable income under the Income Tax Act must register with the tax authority giving details of every partner (including the name, address and percentage owned by each owner, and the date on which the ownership became effective), and the partnership and each of its partners must submit an annual tax return to the Comptroller containing a calculation of the chargeable income and tax payable of each partner.⁵³ Taxable partnerships registered with the Inland Revenue Department amounted to 78 partnerships as at 30 June 2013.

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

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

Ownership and identity information required to be held by partnerships

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

Conclusion

116. The income tax obligations of partnerships ensure that ownership and identity information of every partnership that carries on a business or which has income, deductions or credits for tax purposes in Saint Vincent and the Grenadines is available. The authorities of Saint Vincent and the Grenadines have indicated, and feedback from peers has confirmed, that there have been no requests for ownership information involving partnerships during the three-year review period.

Trusts (ToR A.1.4)

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

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

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

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

- the trust is created neither by or on behalf of nor for the benefit of a person who is a resident;
- all of the trust income (other than interest from regular bank accounts or portfolio investments of securities) either accrues or is derived outside Saint Vincent and the Grenadines, and would not, if it had been received directly by the beneficiary of the trust, be liable to tax under the Income Tax Act; and
- the terms of the trust expressly prohibit the ownership of real property situated in Saint Vincent and the Grenadines and exclude residents as persons who either are or may be beneficiaries or any class or classes of beneficiary of the trust.

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

120. There is no obligation for ordinary trusts or foreign trusts (defined as trusts which are governed by the law of a jurisdiction other than Saint Vincent and the Grenadines) to be registered. However, trusts that derive taxable income are liable to tax either at the trustee or beneficiary level and must register with the tax authority, giving details of its beneficiaries (including the name, address and percentage owned by each owner, and the date on which the ownership became effective).⁵⁴ Additionally, the trustee or beneficiaries, as the case may be, must file annual tax returns. Trusts that do not derive income or which otherwise are not liable to tax in Saint Vincent and the Grenadines need not register with the tax authority or file tax returns. There were 27 ordinary trusts registered for tax purposes with the IRD as at 30 June 2013.

121. Until June 2014, the registration of an international trust with the Registrar of Trusts was optional. However, the authorities of Saint Vincent and the Grenadines stated that all international trusts were registered with the Register of Trusts. There were 104 registered international trusts registered in Saint Vincent and the Grenadines on 31 December 2013. The obligation to register the international trust into the Trust Register was codified following an amendment made in the ITA⁵⁵ by the Financial Laws (Miscellaneous Amendments) Act 2014, such that it is now clear that the registration requirement is mandatory. To register, an international trust must provide details of its trustees, domicile, and a copy of the trust deed to the Registrar of

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

55. Section 52 of the ITA.

International Trusts.⁵⁶ Otherwise, an international trust need not submit any information to the government authorities. Trust ownership and identity information required to be held by the trust.

122. Common law obligations on the trustee to maintain information on the trust beneficiaries and settlors apply in the case of all trusts. The common law places obligations on trustees to have full knowledge of all the trust documents, to act in the best interests of the beneficiaries and to only distribute assets to the right persons. These obligations implicitly require all trustees to identify all the beneficiaries of the trust since this is the only way the trustee can carry out his duties properly. If the trustees fail to meet their common law obligations they are liable to being sued.

Ordinary trusts

123. The authorities of Saint Vincent and the Grenadines indicated that ordinary trusts are not widely used in Saint Vincent and the Grenadines. The only instances where an ordinary trust would be established relate to charitable projects or specific non-lucrative projects (for example the restoration of a church). The trustee is usually an unpaid person. Ordinary trusts and in particular the obligations of a trustee of an ordinary trusts are governed by English common law, and are not regulated under AML legislations. Section 4 of the Application of English Law Act Chapter 12 of the Revised Laws of St. Vincent and the Grenadines, 2009 provides as follows:

“...without prejudice to the provisions of any Act of Parliament of St. Vincent and the Grenadines and in particular, the provisions of the Eastern Caribbean Supreme Court (SVG) Act, the common law and the rules of equity from time to time in force in England shall be in force in St. Vincent and the Grenadines in so far as they may be applicable to the circumstances thereof and subject to such modifications thereto as the circumstances may require, save to the extent to which such common law or any such rule of equity may be excluded by any Act of the Parliament of St. Vincent and the Grenadines.”

124. Under English case law, a trustee’s obligations and duties in relation to the trust property are dependent on the terms of the trust. However, trustees are also subject to general fiduciary duties imposed by equity. Fiduciary duties extend to the duty to ensure that adequate information is kept on all aspects of the trust including information on the settlors and beneficiaries of the Trust. The cases of *Bartlett v Barclays Bank Trust Co Ltd* [1980] 1 Ch (Chancery) 515 and *Speight v Gaunt* [1883] UKHL (United Kingdom House of Lords) 1 provide further elaboration on the fiduciary duties of Trustees.

56. Section 3 of the International Trust Regulations.

Professionally managed trusts

125. As mentioned above, all international trusts must at all times have at least one (professional) trustee which is licensed under the RATL Act. The ITA requires this Registered Trustee to keep the following information:

- a copy of the instrument creating the trust and copies of any other instrument amending or supplementing such information;
- a register in which the following information is set out:
 - the name of the settlor and the name of the beneficiary or the beneficiaries and the names of the trustee or trustees and where applicable the name of the protector,
 - if a purpose or charitable trust, a summary of the purposes of the trust and the name of the protector(s) of the trust, and
 - such documents as are necessary to show the true financial position of the trust, which shall be current as of one month following the close of each fiscal quarter.⁵⁷

126. In addition, all professional trustees in Saint Vincent and the Grenadines are subject to the AML/TF Regulations and the AML Guidance Notes. In that context, they are under an obligation to collect and keep, among other information, the following information in respect of the trust(s) they manage:⁵⁸

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

127. These requirements ensure that professional trustees must keep full identity information on the trusts they manage.

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

58. Regulations 10-22 of the 2014 AML/TF Regulations and paragraph 78 of the AML Guidance Notes.

Conclusion

128. Professional trustees in Saint Vincent and the Grenadines of any trust, whether ordinary, foreign or international, must keep full identity information on all other trustees, settlors, protectors and beneficiaries. In respect of ordinary trusts, which may have non-professional trustees that are not subject to identity information requirements under AML rules, reliance may also be placed on common law for trustees to maintain information on the settlors and beneficiaries of the trusts they act for. Ordinary trusts are rarely formed in practice, and their use is limited to charitable purposes. All international trusts in Saint Vincent and the Grenadines must be registered with the Registrar of Trusts. Trustees of international trusts (Registered Trustees) have an additional obligation under the International Trust Act to maintain key information on the international trusts they act for, including the identities of the settlors and all beneficiaries.

129. It is conceivable that a trust, other than an international trust, could be created which has no connection with Saint Vincent and the Grenadines other than that the settlor chooses the trust to be created under or governed by common law applicable in Saint Vincent and the Grenadines, with the settlors, beneficiaries, trustees and trust assets all located outside Saint Vincent and the Grenadines. In that event, there may be no information about the trust available in the Saint Vincent and the Grenadines. In addition, it is conceivable that a local trust or a foreign trust may be administered by a non-professional trustee. In this case, the trustee 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 settlor and beneficiaries.

130. In the three year period under review, Saint Vincent and the Grenadines received no requests for identity information with respect to a trust.

Foundations (ToR A.1.5)

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

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

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

international standard. In Saint Vincent and the Grenadines, where an obligation to retain relevant information exists, it is supported by an enforcement provision to address the risk of non-compliance.

Penalties regarding ownership information on domestic and foreign companies, monitoring and enforcement in practice

133. The relevant enforcement provisions regarding ownership information in respect of domestic and foreign companies are set out below:

- an ordinary or foreign company that files a false annual return to the Registrar of Companies is liable on summary conviction to a fine of XCD 2 000 (USD 740) or to imprisonment for a term of six months, or to both;⁵⁹
- an ordinary company that fails to file annual returns to the Registrar of Companies commits an offence and is liable on summary conviction to a fine of XCD 2 000 (USD 740). A foreign company that fails to file annual returns to the Registrar of Companies may be struck off the register.⁶⁰
- A co-operative society that fails to keep a register of members commits an offence and is liable on summary conviction to a fine not exceeding XCD 20 000 (USD 7 400) or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment⁶¹.
- a foreign company that carries on a business in Saint Vincent and the Grenadines without registering is liable to a penalty of XCD 350 (USD 130) for each day that the company is in default;⁶²
- an ordinary or non-profit company that does not maintain a register of its shareholders or members with the requisite information is liable upon summary conviction to a fine of XCD 2 000 (USD 740);⁶³

134. In practice, the Register of Companies is part of CIPO. The activities of CIPO are carried out by 8 permanent staff, and a computerisation programme of the Register of Companies is underway. For each type of company, a specific form, which includes changes to the identity of the shareholders, needs to be filled out and sent by email to the Registrar of Companies. The Forms are usually certified by an attorney or an accountant. CIPO monitors changes on the share register to levy stamp duties on the

59. Section 530 of the Companies Act.

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

61. Section 226 of the Cooperatives Societies Act 2012.

62. Section 340A of the Companies Act.

63. Section 533 of the Companies Act.

transfer of shares. CIPO has undertaken to manually check discrepancies between the incorporation form and the annual form. The authorities of Saint Vincent and the Grenadines have confirmed that the Registrar of Companies imposes various sanctions such as striking off and fines/penalties. From 2013 onwards, the CIPO strikes off companies which fail to file the annual return with the Register of Companies on a bi-annual basis. Striking off is more frequently used particularly in case of failure to file any return, notice, document or prescribed fee.

Penalties regarding immobilisation of bearer shares, enforcement and monitoring in practice

135. An IBC that does not immobilise its bearer shares in accordance with the requirements under the IBC Act is liable upon summary conviction to a fine of USD 10 000, and IBCs that fail or refuse to comply with transitional requirements to immobilise any existing bearer shares are liable to be struck off from the register by the Registrar of IBCs.

136. Bearer shares must always be in the hands of either a registered agent or an approved custodian. The FSA can revoke the licence of any registered agent or approved custodian that does not comply with the provisions on immobilisation of shares⁶⁴. This penalty has not been applied in practice as there have been no instances of failure to immobilise bearer shares by a registered agent or approved custodian. With respect to approved custodians located outside Saint Vincent and the Grenadines, no other penalties than the revocation of their approval by the FSA apply under the IBC Act in case of non-compliance with information keeping obligations.

137. In practice, registered agents and approved custodians that operate from within Saint Vincent and the Grenadines are subject to the FSA's ongoing monitoring programme (see below). In respect of approved custodians located abroad, no direct monitoring is carried out by the FSA. However, in order for a foreign custodian to obtain approval from the FSA, a primary requirement is that it must be a regulated institution in a jurisdiction with equivalent AML/TF standards to that of St. Vincent and the Grenadines. All approved custodians are in fact subject to supervision in the jurisdiction within which they operate. These include the British Virgin Islands, France, Gibraltar, Italy, Liechtenstein, Luxembourg and Switzerland. However, these authorities are not empowered to monitor the compliance of these custodians with the rules and regulations contained in the IBC Act of Saint Vincent and the Grenadines.

64. Section 30 (11) of the IBC Act.

138. Where an approved custodian or a registered agent does not make available ownership information, the FSA may withdraw their approval of that approved custodian and in the case of a registered agent, the FSA may withdraw their license. However, in practice this measure does not guarantee that the information on direct beneficial owners of bearer shares can be made available within Saint Vincent and the Grenadines' jurisdiction in case the foreign approved custodians fails to provide the information on the direct beneficial owners of the bearer shares, and such owners are not also the ultimate beneficial owners. Saint Vincent and the Grenadines should ensure that ownership information with respect to all bearer shares is made fully available to authorities.

Penalties on AML-regulated entities, monitoring and enforcement measures in practice

139. An AML-regulated entity (e.g.a Registered Agent) that fails to carry out its CDD obligations is liable on summary conviction to a fine of XCD 100 000 (USD 37 000)⁶⁵. In case of failure to comply with the record keeping obligations, the AML-regulated entity is liable on summary conviction to a fine of XCD 100 000 (USD 37 000)

140. IBCs, LLCs and regulated entities (such as international banks) must have a registered agent in Saint Vincent and the Grenadines. The registered agent must keep updated ownership information under AML/CFT legislation. In respect of international trusts, all professional trust service providers are subject to the obligations under the AML/CFT legislation and must therefore keep identity information on the trust(s) they administer. In addition, a Registered Trustee that does not maintain relevant trust information as spelt out in the International Trusts Act is liable upon summary conviction to a fine of up to XCD 10 000 (USD 3 700).

141. These requirements should ensure that ownership and identity information in respect of IBCs and LLCs, as well as in respect of international trusts administered in Saint Vincent and the Grenadines, is available with a registered agent/service provider. All of these service providers are generally subject to licensing and supervision by the FSA.

142. The FSA staff are given training in AML/CFT, training on the inspection process as well as other financial services matters. The unit in charge of auditing and inspection consists of 7 dedicated personnel and is responsible for the co-ordination of the on-site inspections of licensed service providers. An on-site inspection team, generally consisting of 3-4 persons, is headed by a manager and further consists of other FSA officers from the relevant areas of expertise, depending on which type of service provider is inspected.

65. Regulation 11(6) of the 2014 AML/TF Regulations.

143. The FSA uses a risk-based approach to determine which of the 16 service providers established in Saint Vincent and the Grenadines should be subject to inspection, taking into account, among other factors, the number of clients, the nature of the business of the clients and previous non-compliance. In addition, the continuing off-site monitoring carried out by each regulatory division within the FSA may trigger an on-site inspection. The FSA is currently in the third round of conducting its Registered Agents onsite examinations since late 2008. Up to the end of 2013, 42 examinations were conducted and there are 8 onsite visits planned for the year 2014, to complete the said third round of onsite examinations. The authorities of SVG have confirmed that all 16 Registered Agents have been subject to onsite examinations during the period under review. The third round of onsite examinations since 2008 is ongoing (only 1 remaining Registered Agent still to be examined). Further details on the number of Registered Agent onsite examinations conducted for the period 2008-13 are illustrated in the table below:

| Year-2008 | Year-2009 | Year-2010 | Year-2011 | Year-2012 | Year-2013 | TOTAL |
|-----------|-----------|-----------|-----------|-----------|-----------|-------|
| 2 | 6 | 12 | 12 | 5 | 5 | 42 |

144. A Registered Agent is subject to a full scope examination to test compliance with governing Legislation. Narrow scope follow-up examinations have also been held where corrective action requires verification. The onsite examination reviews and assesses the Registered Agent's compliance with the Registered Agent Act and its Regulations. In addition, the proper implementation of the Proceeds of Crime Act and its Regulations would be examined. Reasonable assurance has to also be obtained that the Registered Agent is conducting its operations in accordance with international best practice.

145. The on-site inspection programme follows the following steps:

- Preparation of a pre-Inspection report and discussed at a pre Inspection meeting. The details of the report highlight the corporate and ownership structure in place, status of the Registered Agent's solvency and any issues pending from the last onsite examination and ongoing follow up;
- The on-site inspection lasts approximately one (1) week and regular meetings are held with the team and Registered Agent management and staff;
- A final exit meeting is held with the Registered Agent to discuss the preliminary findings and recommendations;
- Two reports are prepared by the FSA. The first one is an internal report, which details the findings of the examination with recommendations

to adjust anomalies discovered and rectify any shortcomings that were identified. The second report is issued to the Registered Agent, which is a summary of the findings, the recommendations to be implemented and a fixed timeline to do so; and

- Ongoing follow up and offsite supervision continues.

146. During the on-site inspection, the FSA reviews among others, files and records to ensure proper customer identification, record retention and general soundness of business practices. This includes IBC and LLC Registers regarding Shareholders and Directors as well as beneficial ownership information. However, as described above under A.1.1, the legal obligation to keep a register of members in respect of IBCs and LLCs only applies to IBCs and LLCs themselves, and no penalties apply in the IBC Act or the LLC Act for failure to comply with this requirement. The Saint Vincent and the Grenadines authorities indicate that they could use Section 8(1)(g) of the Financial Services Authorities Act, under which the FSA can exercise such other powers as are necessary to enable it to effectively discharge its functions (including administering the IBC Act and the LLC Act) under that Act. However, it is unclear what powers that would be, and it should be clarified how the Saint Vincent and the Grenadines authorities would enforce the availability of legal ownership information on IBCs and LLCs.

147. As mentioned under A.1.1, Saint Vincent and the Grenadines, through the 2014 AML/TF Regulations, now requires that service providers relying on an introducer (being foreign or not) or an intermediary to immediately obtain from that introducer or intermediary the customer due diligence information concerning the customer, third party or beneficial owner. In practice prior to the 2014 AML/TF Regulations, the FSA does ensure that checks are made to determine whether beneficial ownership information was being kept where the customer was introduced by another service provider, and found that such information was generally available.

148. The FSA commenced their on-site inspection programme at the end of 2008, after a long lapse in any such examinations. After the “first” round of onsite examinations, deficiencies were noted in relation to many companies regarding Customer Due Diligence information, lack of maintenance of a bearer share register and not keeping bearer shares in sufficiently secured storage facilities. From late 2008, the then IFSA made a concerted effort to ensure compliance on the part of the Registered Agents. As a result of enhanced regulatory oversight, thirteen (13) licenses were either revoked or surrendered between 2008 and 2013 (3 between 2010 and 2013).

149. The statistics on enforcement actions provided during the assessment do not distinguish between the types of non-compliance. Before “revocation” the Registered Agent Act requires a “suspension” of the Registered Agent,

thereby giving them a 30 day period to rectify the issue/or the deficiency causing the suspension. As such, all of the Registered Agents which have been revoked were first suspended for 30 days. Other enforcement actions taken by the FSA include fines/penalties for late payment of annual fees and late submission of financial statements. The FSA considers that currently the level of compliance of Registered Agents is largely to fully compliant with the regulations of Saint Vincent and the Grenadines.

Penalties, monitoring and enforcement measures on taxpayers by the IRD

150. Any person that fails to furnish a return of income for any year of assessment within the prescribed time is liable to a penalty of XCD 20 (USD 7) and to a further fine of not less than XCD 20 (USD 7) for each month or part of the month in which the default in payment continues.⁶⁶

151. In addition, any taxpayer that fails to comply with a notice to furnish returns or information, to produce books of accounts or documents or to attend the Comptroller for questioning is liable to a fine of XCD 500 to XCD 1 500 and to imprisonment for one year⁶⁷. After conviction, a further fine of XCD 75 and imprisonment of one month apply for each additional day default.

Conclusion

152. A combination of enforcement measures are in force in Saint Vincent and the Grenadines to ensure the availability of ownership and identity information in respect of companies, partnerships and trusts. In the only case where it was requested, ownership information on IBCs and LLCs has been made available.

153. The FSA supervises all licensed entities, which includes the licensed service providers as engaged by most companies, partnerships and trusts. This supervision includes compliance with AML obligations. An active monitoring and enforcement programme is in place, with regular onsite inspections being carried out and enforcement actions being taken. The FSA has found that service providers are generally compliant with their record keeping obligations.

66. Section 125 of the Income Tax Act.

67. Sections 124 to 131 of the Income Tax Act.

Determination and factors underlying recommendations

| Phase 1 determination | |
|--|---|
| The element is in place. | |
| Phase 2 rating | |
| Largely Compliant | |
| Factors underlying recommendations | Recommendations |
| Bearer shares may be held by approved custodians operating outside of Saint Vincent and the Grenadines. In such cases direct ownership information on those bearer shares may not always be available in Saint Vincent and the Grenadines. Furthermore, enforcement of penalties for non-compliance with these obligations may not be possible for those custodians located outside of Saint Vincent and the Grenadines. | Saint Vincent and the Grenadines should ensure that information on the direct owners of bearer shares is made fully available within Saint Vincent and the Grenadines in all cases. |
| Requirements on service providers to update ownership and identity information in all cases and to immediately obtain such information in case of introduced business have been introduced only recently. | Saint Vincent and the Grenadines should monitor the operations of the new provisions by service providers on keeping updated ownership and identity information and on obtaining such information immediately in case of introduced business. |
| Although the existence of a register of members in respect of IBCs and LLCs is monitored through the on-site inspections of their registered agents, the obligation to keep these documents only applies to IBCs and LLCs themselves, and no clear penalties apply for failure to comply with this requirement. It is therefore unclear how the Saint Vincent and the Grenadines authorities would enforce the availability of legal ownership information on IBCs and LLCs. | Saint Vincent and the Grenadines should clarify how the availability of legal ownership information on IBCs and LLCs would be enforced. |

A.2. Accounting records

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

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

Accounting records to be kept in respect of companies

Ordinary companies and non-profit companies

154. The Companies Act requires all ordinary companies and non-profit companies to place before the shareholders at every annual general meeting financial statements and any further information on the financial position of the company and the results of its operations as may be required by its articles, by-laws or any unanimous shareholder agreement. The Registrar may permit a company to omit items from the financial statements if he believes the disclosure of such information would be detrimental to the company. Companies must also prepare and maintain “adequate” accounting records.⁶⁸ Accounting records are considered “adequate” if they are prepared in accordance with standards approved by the Institute of Chartered Accountants of Saint Vincent and the Grenadines or any other recognised supervisory body. Financial statements must include a balance sheet, a statement of retained earnings, a statement of income and a statement of changes in financial position.⁶⁹ Records must also enable the directors of the company to ascertain the financial position of the company with reasonable accuracy on a quarterly basis.⁷⁰

Foreign Companies

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

IBCs and LLCs

156. Previously, IBCs and LLCs were not required to keep reliable accounting records in accordance with the Terms of Reference. However, the Financial Laws (Miscellaneous Amendments) Act amended the IBC

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

69. Regulation 8, Companies Act Regulations.

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

Act⁷¹ and the LLC Act⁷² to introduce accounting requirements on IBCs and LLCs with effect from June 2014. Under the new provisions, an international business company shall, maintain and make available at the registered office of the company financial accounts and records, including all books, cash receipts, vouchers, invoices and contracts, with respect to : (a) all sums of money received and expended by the company; (b) the matters in respect of which the receipt and expenditure takes place; (c) all sales and purchases of goods by the company; and (d) the assets and liabilities of the company. These new provisions impose on IBCs and LLCs an obligation to keep accounting records for a minimum period of seven years from the date on which they are prepared. Penalties for failure to produce or to keep the “accounting records” for the minimum 7-year period amount to USD 20 000.

Regulated entities

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

- international banks must file annual audited accounts with the FSA. They must also file quarterly returns with the FSA that include a current statement of assets and liabilities; current income statement; a schedule of different income sources; and any other information the FSA may require;⁷³
- an international insurer must maintain permanently at its principal office in Saint Vincent and the Grenadines such books of accounts and records of its insurance business and financial affairs as will show adequately the nature and extent of the insurance business carried on by the insurer in or from within Saint Vincent and the Grenadines; and as will enable the Commissioner of International Insurance to conduct a proper examination of the insurer’s affairs to ascertain with reasonable accuracy its financial position. The books and records to be kept by every licensed insurer include financial statements for the current year and the preceding three years for its insurance business; current record of premium income and claims paid by the insurer, including payments for re-insurance; and general and subsidiary ledgers and general journals, current through the next preceding month⁷⁴; and

71. Section 72 of the IBC Act on Financial records was repealed and replaced.

72. Section 39 of the LLC Act has been amended.

73. Section 13 of the International Banks Act.

74. Regulation 11 of the International Insurance Regulations.

- every mutual fund must maintain permanently at its principal office in the Saint Vincent and the Grenadines such books of accounts and records of its mutual fund business and financial affairs (a) as will describe in reasonable detail the type of mutual fund business carried on by that fund; and (b) as will enable the Registrar of Mutual Funds at any time to conduct a proper examination of the mutual fund's affairs and to ascertain with reasonable accuracy its financial position at the date of the examination.⁷⁵

158. Regulated entities are well monitored by the FSA. Penalties for non-compliance with accounting record keeping information range from monetary penalties to suspension and revocation of the license. The FSA stated that based on observations from onsite examinations, the FSA did not encounter any instances of non-compliance with accounting record keeping information by the regulated entities under its supervision.

Accounting records to be kept in respect of co-operatives

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

160. In 2012, the Co-operative Societies Act was revised and introduced an obligation on co-operative societies to keep and make available at all reasonable times at its registered office adequate and reliable accounting records⁷⁶. In addition, the Act introduced a penalty consisting of a fine of XCD 25 000 for failure to comply with accounting obligations⁷⁷. The Financial Laws (Miscellaneous Amendments) Act, introduced in June 2014, amended the Co-operative Societies Act to include in the definition of “accounting records” underlying accounting documentation. In addition, that law introduced a requirement to keep accounting records for a minimum period of seven years.

75. Regulation 23 of the Mutual Funds Regulations.

76. Section 21 (3) of the Co-operative Societies Act.

77. Section 21 (4) of the Co-operative Societies Act.

Accounting records to be kept in respect of partnerships

161. The Partnership Act requires all partners to “render true accounts and full information of all things affecting the partnership to any partner or his legal representatives”.⁷⁸ Saint Vincent and the Grenadines did not receive requests regarding accounting information of partnerships.

Accounting records to be kept in respect of trusts

162. The accounting record keeping obligations of trusts arise from Saint Vincent and the Grenadines’ common law, AML law and the International Trust Act. All professional trustees must keep accounting records of transactions that they conduct on behalf of their customers; the scope of which is outlined in the AML section below. Trustees of international trusts are subject to additional obligations under the International Trust Act, and must keep “such documents as are necessary to show the true financial position of the trust, which shall be current as of one month following the close of each fiscal quarter”.⁷⁹

163. Lastly, all trustees resident in Saint Vincent and the Grenadines, irrespective of whether the trust is governed by the laws of Saint Vincent and the Grenadines, are subjected to a broad fiduciary duty to the beneficiaries under the common law to keep proper records and accounts of their trusteeship. The Saint Vincent and the Grenadines authorities confirmed that the common law requirements are those principles as set out under English common law (see section A.1.4 Trust ownership and identity information required to be held by the trust). 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”.⁸⁰ Such accounts should be open for inspection at all times by the beneficiary and should trustees default in rendering such accounts, the beneficiary is entitled to have the accounts seized by the court. In such instances trustees would be held liable for paying the costs of such an order and in certain cases may also be removed. Furthermore where trustees are found guilty of active breaches of trust or wilful default or omission, they may be held personally liable for any loss.

164. At the onsite inspection of Registered Trustees, the FSA verifies that accounting records such as bank statements, receipts etc. pertaining

78. Section 30 of the Partnerships Act.

79. Section 63 of the International Trusts Act.

80. The trustee must allow a beneficiary to inspect the trust accounts and all documents relating to the trust. See *Halsburys Laws of England* Vol48, 4th Edition, para 961 and 962.

to the international trusts are (1) in the possession and control of the registered trustee and (2) that such records are of a certain quality to reflect the true financial position of the trust. The FSA has observed that generally, Registered Trustees do keep the relevant accounting records pertaining to trusts and in some cases a schedule to the trust deed is updated, which documents the different financial transactions undertaken by the trust.

Accounting records to be kept by AML-regulated entities

165. Under Regulations 21 and 22 of the 2014 AML/FT Regulations, a service provider must keep records of all transactions carried out by the service provider in the course of any business relationship with a customer. The AML Guidance Notes elaborate on what must be included in these records. Essentially, all transactions carried out on behalf of or with a customer in the course of relevant business must be recorded within the firm's records. Transaction records in support of entries in the accounts, in whatever form they are used, e.g. memoranda of sale and purchase, custody of title documentation etc., should be maintained in a readily retrievable form from which a satisfactory audit trail may be compiled where necessary, and which may establish a financial profile of any suspect account or customer. These should include underlying documents such as receipts, invoices, contracts, vouchers and all other documentation, which would be necessary to compile any audit trail. The records must be retained for a period of at least seven years from the date on which the transaction is completed.⁸¹

Accounting records to be kept under the Financial Services Authority Act

166. The FSA Act requires all "financial entities"⁸² to furnish quarterly financial statements to the FSA and include with the financial statements "any other information necessary for the understanding of the financial statements". In addition, the FSA has the authority to require financial entities and registered entities⁸³ to submit "all books, minutes, vouchers, invoices, contracts, and other documents and records relating to the assets, liabilities and businesses generally of the person concerned" to the FSA when the FSA

81. Regulation 21 AML/CFT Regulations 2014 and Paragraph 104 of the AML Guidance Notes.

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

83. "Registered entities" refer to entities registered under the International Trusts Act, IBC Act and the LLC Act.

considers it necessary.⁸⁴ However, the information access powers of the FSA does not necessarily by itself create an obligation for financial entities and registered entities to maintain these accounting records in the first place.

Income tax requirements

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

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

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

170. The term “business” is defined under the Income Tax Act as “any business, profession, trade, venture, or undertaking and includes the provision of personal services or technical and managerial skills and any adventure or concern in the nature of trade but does not include any employment”.⁸⁵ This is a wide definition that would cover all relevant entities in Saint Vincent and the Grenadines, although financial sector entities that are expressly exempted from income tax i.e. IBCs, LLCs and International Trusts would not be subject to the record keeping requirements under the Income Tax Act.

171. Any person that fails to keep the above accounting records is guilty of an offence and liable to a fine of XCD 1 500 (USD 555) and to imprisonment for one year.⁸⁶

84. Section 22 of the FSA Act.

85. Section 2 of the Income Tax Act.

86. Section 131 of the Income Tax Act.

Conclusion and practice

172. It appears that the records that must be kept by persons carrying on business in Saint Vincent and the Grenadines under the Income Tax Act meet the requirements under the international standard. These records explain all transactions, and enable the financial position of the relevant entity to be determined. They also include underlying documents backing up the accounting records. The records must be kept for at least seven years from the date of the transaction.

Monitoring and enforcement by the IRD in practice

173. For entities subject to income tax, the IRD conducts tax audits, which consists amongst others in checking the availability and accuracy of accounting records. The IRD stated that accounting records are generally available.

Monitoring and enforcement by the FSA in practice

174. During the period under review, some entities in Saint Vincent and the Grenadines were not fully covered under the income tax accounting record keeping obligations. These are co-operatives, IBCs and LLCs.⁸⁷ However, Saint Vincent and the Grenadines introduced an obligation for these entities to prepare and keep accounting records for a minimum of seven years in 2012 for co-operatives and in June 2014 for IBCs and LLCs, respectively. The FSA is responsible for ensuring compliance by the IBCs, LLCs, co-operatives and international trusts.

175. With respect to IBCs, LLCs and international trusts, the FSA found, in the course of the on-site inspections of registered agents, that registered agents are generally not involved in transactions carried out by their clients (including keeping accounting records, or dealing with monetary aspects of transactions). This means that accounting information on IBCs, LLCs and international trusts may not be available through that channel. Registered agents would need to request such accounting information, if available, to their clients. As a result, the absence of accounting obligation on IBCs, LLCs and international trusts during the peer review period constituted a large gap on availability of accounting information. This means that reliable accounting information may not have been available in respect of these entities in all instances during the peer review period. However, this gap was not tested in practice, as Saint Vincent and the Grenadines received no requests on accounting information during the peer review period. The new accounting obligations on IBCs, LLCs and co-operatives have not been tested in practice.

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

Therefore, Saint Vincent and the Grenadines is encouraged to monitor compliance of the new accounting obligations on IBCs and LLCs and their enforcement.

Determination and factors underlying recommendations

| Phase 1 determination | |
|--|---|
| The element is in place. | |
| Phase 2 rating | |
| Largely Compliant | |
| Factors underlying recommendations | Recommendations |
| During the review period, Saint Vincent and the Grenadines' laws did not require the keeping of reliable accounting records by International Business Companies, Limited Liability Companies and Co-operatives. Saint Vincent and the Grenadines has recently enacted new laws to ensure the keeping of accounting information and underlying documentation by all these entities in line with the international standard. Since the amendments are very recent they have not been tested in practice. | Saint Vincent and the Grenadines should monitor the practical implementation of the new laws to ensure that all International Business Companies, Limited Liability Companies and Co-operatives keep accounting records and underlying documentation and that all types of information are available in line with the international standard. |

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

176. All banks licensed under the Banking Act and the International Banks Act are subject to Saint Vincent and the Grenadines' AML laws.⁸⁸ Banks are required to carry out identification procedures prior to forming any business relationship, including the opening of a bank account for a client. Where the client is a natural person, identification procedures include obtaining the name, permanent address, date and place of birth and nationality of the client. Where the client is a corporate entity, banks will need to

88. Schedule 3 of the AML/CFT Regulations 2014.

obtain a copy of the certificate of incorporation, memorandum and articles of association of the entity, location of the registered office or registered agent of the corporate entity and names and addresses of the beneficial owners of the corporate entity (except where the corporate entity is a publicly traded company). Where the client is a partnership or un-incorporated business, banks will need to obtain the identity of all partners or beneficial owners and a copy of partnership agreement (if any) or other agreement establishing the unincorporated business.

177. Banks need not carry out identification procedures if a client is introduced by another AML-regulated institution (whether by Saint Vincent and the Grenadines or by a foreign jurisdiction). In the case where the introducer is a foreign AML-regulated institution, the level of AML regulation must be at least equivalent to the regulation in Saint Vincent and the Grenadines.⁸⁹ Before August 2014, in such cases a written assurance from the introducing institution to the effect that evidence of the identity of a client has been obtained and recorded under procedures maintained by the introducing institution was sufficient. However, Regulation 17(3) of the 2014 AML/TF Regulations, introduced in August 2014, provides that the service provider relying on an introducer (being foreign or not) or an intermediary must immediately obtain from that introducer or intermediary the customer due diligence information concerning the customer, third party or beneficial owner. The definition of “service provider” includes, amongst others, banks. As a result of this new provision, beneficial ownership information of bank account holders should be available with banks in case the client is introduced by another AML-regulated institution. Saint Vincent and the Grenadines should monitor that service providers relying on an introducer/intermediary have immediately obtained from that introducer/intermediary the customer due diligence information concerning the customer, third party or beneficial owner, especially in situations where the introducer is located abroad.

178. Prior to 2002, there were no laws prohibiting the creation of anonymous or fictitious bank accounts. Regulations were enacted in 2002 to do so and these regulations included transitional provisions to deal with any existing anonymous or fictitious bank accounts then. The transitional provisions required banks to establish the beneficial ownership of all “anonymous” accounts and accounts in obviously “fictitious” names within one year of the regulations coming into force (i.e. by 2003). The Saint Vincent and the Grenadines authorities advise that the FIU has not received any reports from banks regarding anonymous or fictitious accounts in Saint Vincent and the Grenadines. This implies that there were no anonymous or fictitious accounts in respect of which banks were unable to identify the beneficial owner. The authorities of Saint Vincent and the Grenadines confirmed that the

89. Regulations 17 and 18 of the AML/CFT Regulations 2014.

on-site inspections made since 2008 have not identified any issue regarding anonymous or fictitious bank account. Regulation 19(1) of the 2014 AML/TF Regulations explicitly prohibits the maintenance or the set-up of “a numbered account, an anonymous account or an account in a name which it knows, or has reasonable grounds to suspect, is fictitious”.

179. Banks are required to keep records containing “the details relating to its business as may be necessary to assist an investigation into suspected money laundering”. These details are prescribed under the AML Guidance Notes and include all transactions carried out on behalf of or with a customer in the course of relevant business. Transaction records in support of entries in the accounts, in whatever form they are used, e.g. memoranda of sale and purchase, custody of title documentation etc., should be maintained in a readily retrievable form from which a satisfactory audit trail may be compiled where necessary, and which may establish a financial profile of any suspect account or customer. These should include underlying documents, which would be necessary to compile any audit trail.⁹⁰

180. The information on client identity and account transactions must be kept for a minimum of seven years after an account is closed.⁹¹

181. A bank that does not comply with keeping all relevant information is guilty of an offence and is liable on summary conviction to imprisonment for two years or to a fine of XCD 100 000 (USD 37 000) or to both.⁹²

182. There are currently 4 licensed international banks in Saint Vincent and the Grenadines. They are required to have at least one resident director and physical presence in Saint Vincent and the Grenadines. They are also required to have a designated registered agent. Before granting the international banking license, the FSA met with the ultimate beneficial owners of the four international banks.

Availability of banking information in practice

183. All international banks operating in Saint Vincent and the Grenadines are required to be licensed by the FSA. In the case of international banks, the FSA will first conduct due diligence on the entity including Shareholder (s) and proposed directors and an assessment of the suitability of the bank before issuing an international banking licence. In the case of commercial banks and credit institutions, prior to them being issued a license,

90. Regulation 21 AML/TF Regulations 2014 and Paragraph 104 of the AML Guidance Notes.

91. Regulation 21 AML/TF Regulations 2014 and paragraph 102 of the AML Guidance Notes.

92. Regulation 21(6) AML/TF Regulations 2014.

the Ministry of Finance must consult with the secretariat of the ECCB who will perform the relevant due diligence on the applicant entity based on the information they have submitted in the application to the Ministry of Finance. The ECCB has the authority to request any additional information directly from the applicant or other relevant person when conducting the due diligence procedure. The ECCB will then proceed to issue a legal opinion making a recommendation as to whether or not the entity should be approved to function as a commercial bank or credit institution. This opinion is not binding on the Ministry of Finance, but in practice the Ministry of Finance has always followed the opinion of the ECCB. As of January 2014, there were 4 domestic commercial banks and 6 credit unions licensed in Saint Vincent and the Grenadines.

184. There is a comprehensive set of legal obligations in place to maintain banking information both pursuant to the licensing requirements set out under the Banking Act⁹³ as well as those obligations imposed on all financial institutions under the AML regime to ensure that banking information is made available when requested. A condition of being issued a license and continuing to carry on business in the banking sector is that the entity is in compliance with their obligations under the AML regime including ownership information requirements and transaction information for all account holders. The obligations of the AML regime are mainly regulated and supervised by the FSA and the ECCB.

Enforcement and monitoring by the FSA

185. The International Financial Services Department of the FSA has put in place a programme of on-site inspections to monitor the compliance of international licensed banks with their obligations under regulatory and AML/CFT legislation, headed by 3 managers and 4 examiners (see A.1.6 for a detailed description of the on-site inspection process). Banks are subject to an on-site inspection at least once in every two years. During these inspections, the FSA takes samples of customer files to verify whether sufficient information is being kept. The FSA reported that the compliance rate is generally high, and deficiencies detected did not relate to the non-keeping of information on their client's accounts, but to other requirements (e.g. capital adequacy etc.). During the peer review period, two licenses have been revoked. Over the three-year period there was only one request made for information in the possession of an international bank, which was responded to within 90 days. The requested information was obtained from a licensed international bank in Saint Vincent and the Grenadines.

93. Act No33 of 2006.

Enforcement and monitoring by the ECCB

186. The ECCB, as the regulator for commercial banks in Saint Vincent and the Grenadines, has reported that its inspection programme combines both onsite examination and offsite surveillance adopting a risk based approach to supervision. The risk focused criteria will be drawn from the prudential returns which entities under the supervision of the ECCB must submit to the ECCB on a monthly, quarterly or annual basis. These returns include mainly financial data such as the amount of deposits over the period, the amount of lending activity, their level of capital, lending ratios and exposure to risk. Other 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.

187. The onsite examinations carried out by the ECCB will mainly cover the financial conditions of their license including some aspects of their compliance with the AML obligations to maintain sufficient records on all account holders and transactions. Over the course of an onsite inspection of a bank, in the case that the ECCB finds that the financial institution or any affiliate, director, officer, employee or significant shareholder of the financial institution is engaging in unsafe or unsound practices in conducting the business of the institution or is in violation of any law, regulations or guidelines to which the institution or person is subject, the ECCB may:

- Issue a written warning;
- Conclude a written agreement with the financial institution providing for a programme of remedial action;
- Issue a cease and desist order that requires the financial institution, the affiliate or the person responsible for the management of the financial institution to cease or desist from the practice or violation specified in the order; or
- Issue such determinations as it deems necessary in relation to the persons comprising the management of the financial institution.

188. The ECCB has indicated that remedial action, normally by signing a letter of commitment to undertake action to address the issues in a specified time period, is taken as the first step when deficiencies are detected during an onsite inspection. If the issues are not appropriately addressed during the specified time period, the ECCB issues a memorandum with a specified restrictive timeframe to remedy the issues. If the issues are still not addressed, the ECCB would use its cease and desist power to restrict the bank's actions and in extreme cases, the ECCB would consider using its power to intervene and take control of the bank.

189. The ECCB has reported that generally, compliance, especially with account holder and transaction information is very high and the instances where there have been deficiencies in the past are more concerned with operational procedures. The ECCB has confirmed that they have not had reason to apply any penalties, fines or charges against any institutions licensed during the three-year period under review but have applied fines in other occasion in the past in Saint Vincent and the Grenadines. The most recent onsite inspection visit undertaken by the ECCB in Saint Vincent and the Grenadines was conducted in 2010.

Conclusion

190. The combination of the obligations as set out under the Banking Act, International Banking Act and the AML regime for licensed banks and other financial institutions ensures that all records pertaining to accounts as well as related financial and transactional information are available. These obligations resulted in Saint Vincent and the Grenadines being able to provide, within 90 days, banking information to its exchange of information partners for the only request received. The FSA undertakes monitoring of international banks and financial institutions in the form of desktop audits and onsite inspections on a regular basis. The ECCB, as the regulator for commercial banks has a regular system of monitoring and oversight in place. Therefore, the monitoring conducted by the FSA and the ECCB should ensure that Saint Vincent and the Grenadines will be able to provide banking information to its exchange of information partners when requested.

Determination and factors underlying recommendations

| Phase 1 determination | |
|--|--|
| The element is in place. | |
| Phase 2 rating | |
| Largely Compliant. | |
| Factors underlying recommendations | Recommendations |
| While enforcement provisions to ensure that information on bank account holders is available where the account holder is introduced by a foreign AML-regulated institution exist, those provisions have been introduced only recently. | Saint Vincent and the Grenadines should monitor the operations of the new provisions on introduced business and their enforcement. |

B. Access to Information

Overview

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

192. Saint Vincent and the Grenadines' competent authority for its EOI agreements is the Minister of Finance; he may designate any other persons to exercise the functions of the competent authority. Under the International Cooperation (Tax Information Exchange Agreements) Act 2011 (IC Act), the competent authority has broad powers to obtain and exchange all relevant information pursuant to an EOI request. These powers are exercised through the issue of a notice, either directly by the competent authority or through the High Court, to any holder of the information to produce the information. Non-compliance with such notices is an offence and penalties apply upon summary conviction. Under the sanction of the High Court the competent authority may also exercise search and seizure powers to obtain information. As the information was provided in the two requests received by the competent authority during the peer review period, the competent authority of Saint Vincent and the Grenadines has so far not applied any penalties to persons under an obligation to produce the information but failing to do so, nor did it have to obtain a Court order.

193. The safeguards applicable to EOI under the IC Act are compatible with effective exchange of information. The powers of the competent authority do not apply to items subject to legal privilege. The information covered

by legal privilege in Saint Vincent and the Grenadines is in accordance with the standards. There are also no other secrecy provisions which would prevent information from being obtained. Finally, no notification rights or similar procedures exist in Saint Vincent and the Grenadines which could unduly prevent or delay the exchange of information.

194. For requests under TIEAs, the administrative functions of the Competent Authority (Minister of Finance) are delegated to the Financial Services Authority (FSA), with the exception of the initial receipt and final transmission of the request to the requesting party. In contrast, the Comptroller of the Inland Revenue Department is the competent authority for requests received under the CARICOM Multilateral DTC⁹⁴.

195. In practice, all requests for information pursuant to a TIEA are received by the Competent Authority (Minister of Finance) and after preliminary review, are forwarded to the FSA. The FSA performs a preliminary search within the records of the FSA to determine whether the requested information is available. The FSA has the power to obtain information from any person. For each valid information exchange request handled by the FSA, the authorised officer first determines how to best gather the requested information. The following situations, which are described in B.1.1, may be distinguished:

- The information is in the possession of the FSA itself;
- The request deals with a resident taxpayer (individual or company). In that case, the FSA seeks the assistance of the Comptroller of the IRD in obtaining the requested information;
- The information (about a resident or a non-resident taxpayer) is already in the hands of another governmental authority; or
- The information is in the possession of any other person, for example an IBC, a bank or a registered agent.

196. During the peer review period, to answer the two requests received by the competent authority of Saint Vincent and the Grenadines, the latter served a Notice to a licensed international bank in Saint Vincent and the Grenadines in the first case and to a registered agent in the second case. However, in the second case, the FSA also used its internal database to retrieve part of the information, thereby only obtaining from the registered agent, information which was not required to be kept or not by the FSA.

94. The Inland Revenue Department acts on behalf of the Minister for tax matters, in particular the CARICOM Treaty. The designation was given on June 6th, 2011.

B.1. Competent authority’s ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

Ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2)

197. The relevant law governing the access to and exchange of information by the Saint Vincent and the Grenadines authorities under its TIEAs and DTCs is the International Cooperation (Tax Information Exchange Agreements) Act 2011 (IC Act). Saint Vincent and the Grenadines also exchanges information with other governments under the Exchange of Information Act 2008 (EOI Act). The scope of the EOI Act is not limited to exchange of information for tax purposes; it also facilitates the exchange of information for other purposes, such as for regulatory purposes and for the prevention of money laundering. The Saint Vincent and the Grenadines authorities have advised that the relevant law for processing EOI requests under TIEAs and DTCs is the IC Act. The IC Act covers “agreements”, which refer to TIEAs; and “arrangements”, which cover all other agreements that are not specifically referred to as TIEAs, such as DTCs.⁹⁵

198. Under the IC Act, the competent authority for EOI is the Minister for Finance or any other relevant person indicated in the relevant EOI arrangement. The Minister may designate any person or authority to perform his functions under the IC Act.⁹⁶ For all matters regarding tax exchange of information, the Minister of Finance has delegated its competence to the FSA pursuant to the IC Act. The delegation was formally documented on January 2nd 2014. However, with respect to the CARICOM Multilateral DTC signed in 1994, the designated competent authority is the Inland Revenue Department. No requests have been received during the peer review period under the CARICOM Multilateral DTC.

199. The information gathering powers under the IC Act may be exercised by the competent authority or the delegated authority to obtain any information from any person that he may need in order to respond to an EOI request. This includes ownership and identity information as well as accounting records.⁹⁷ These powers can be exercised through the issuance of a notice for information, through a high court order, and under certain circumstances through the use of search and seizure warrants.

95. Section 2 of the IC Act.

96. Section 4 of the IC Act.

97. Section 7 of the IC Act.

200. These powers may be exercised when the competent authority receives a valid request, defined as one that is in compliance with the relevant EOI arrangement.⁹⁸ Section 8 of the IC Act authorises the Competent Authority, by written notice served on “any person” in Saint Vincent and the Grenadines, to require the person to provide any information that the Competent Authority may require with respect to a request for assistance by the requesting jurisdiction. A person on whom a notice is served must provide the information within twenty eight days or such lesser or greater period as the competent authority thinks fit.

Gathering information in practice

201. The FSA is the delegated competent authority for all EOI agreements signed by Saint Vincent and the Grenadines, whereas the Inland Revenue Department is the competent authority under the CARICOM Multilateral DTC.

Gathering information under all EOI Agreements (except CARICOM Multilateral DTC)

202. The FSA has the power to obtain information from any person. For each valid information exchange request handled by the FSA, the authorised officer first determines how to best gather the requested information. The following situations may be distinguished:

- The information is in the possession of the FSA itself. For example, the identity of the members and directors of an entity may be available in the Co-operative Societies Register, the IBC Register or the LLC Register or other records kept by the FSA. In these cases, the information can be sent immediately to the requesting jurisdiction.
- The request deals with a resident taxpayer (individual or company). In that case, the FSA seeks the assistance of the Comptroller of the IRD in obtaining the requested information (see below);
- The information (about a resident or a non-resident taxpayer) is already in the hands of another governmental authority. In this case, the FSA formally requests (by letter, under confidential cover) the required information from the head of the relevant governmental department, and in the case of the Commerce and Intellectual Property Office (CIPO), to the Registrar of CIPO. CIPO stated that in practice, it may take as little as two (2) days to provide the requested information depending on the volume of information requested.

98. Section 8 of the IC Act.

- The information is in the possession of any other person, for example an IBC, a bank or a registered agent. In this case, a formal request by letter under confidential cover will be sent to the relevant entity.

203. Where the FSA needs to gather information from a person other than a government authority or a taxpayer, the FSA will serve a notice on that person requesting the provision of the information within 14 to 21 days. The FSA will usually obtain the information from a service provider or an entity not subject to income tax (such as an IBC or an LLC). The FSA will be able to retrieve the identity of the service provider as well as the registered office of the entity from the various Registries. Where information must be obtained in respect of those entities, a notice is served on the entity and sent at the address of its registered office (which is also the address of the registered agent). Notices served on the entity or the service provider are hand-delivered. In relation to banking information, the competent authority sends the Notice directly to the domestic or international bank.

204. With respect to information related to a taxpayer of Saint Vincent and the Grenadines, the FSA will request the assistance of the IRD to collect the information. Two situations may occur. First, the information is already in the files and database of the IRD, in which case the information is sent directly to the FSA. Section 6 of the Income Tax Act enables the Inland Revenue Department to disclose confidential information pertaining to a taxpayer to any person authorised by Cabinet or by any other written law to receive such information. The Competent Authority and its delegate (FSA) would be authorised to receive such information, without the breach of the secrecy provisions under the Income Tax Act.

205. Second, the information has to be collected from a taxpayer. This has not occurred in practice during the peer review period. However a procedure is in place, should that instance occur. Pursuant to Section 83 of the Income Tax Act, the Comptroller of the Inland Revenue Department can ask a taxpayer to provide any information as may be required for the administration or the enforcement of the Income Tax Act. As Section 60(1)(e) of the Income Tax Act allows the Minister to conclude Tax Information Exchange Agreements, the Comptroller can use its powers under Section 83 of the Income Tax Act to obtain information for EOI purposes.

206. The Comptroller would request the taxpayer to provide the information within 14 to 21 days, depending on the nature and volume of the information requested. Upon receipt of the information, the Comptroller of Inland Revenue Department will forward it to the FSA. The authorities of SVG have confirmed that in the case a requesting authority asks that the taxpayer should not be informed of the enquiry, the FSA would first seek to get the information from another source, before informing the requesting jurisdiction that it is unable to get the information unless it is collected from the taxpayer.

Gathering information under the CARICOM Multilateral DTC

207. The Inland Revenue Department is responsible for the execution of Requests under the CARICOM Multilateral DTC. Requests received under that treaty are received directly and executed by the Comptroller of the Inland Revenue Department (IRD). During the peer review period, no information request was received by the Inland Revenue Department under the CARICOM Multilateral DTC.

208. The Inland Revenue Department has set up a procedure for the exchange of information pursuant to the said Agreement, which is similar to that applicable when a request under a TIEA is received by the Inland Revenue Department and transmitted by the FSA (see above).

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

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

Compulsory powers (ToR B.1.4)

210. Jurisdictions should have in place effective enforcement provisions to compel the production of information.

211. In cases where the requested information is required for court proceedings or related investigations in the requesting state, the competent authority must apply to the High Court for a court order for the production of the requested information. The High Court may approve the order if it is satisfied that⁹⁹:

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

212. Such a court order may require that the information be provided in a given time, be in such a form as the competent authority may specify, and be verified or authenticated in such manner as the competent authority may require. The default time period for compliance is 14 days; this is subject to change at the High Court's discretion. It has not been necessary to issue

99. Section 10 of the IC Act.

any court orders during the peer review period in respect of exchange of information in tax matters. However, the Saint Vincent and the Grenadines authorities advise that the time taken for the competent authority to obtain a court order ranges from one to five days and matters pursuant to international requests are always treated as priority matters by Saint Vincent and the Grenadines and the Court.

213. Although no court orders have been issued during the peer review period regarding exchange of information in tax matters, it can be noted as an illustration that the Saint Vincent and the Grenadines authorities have gained experience in production and restraint orders in AML matters by requesting more than 100 production orders and more than 5 restraint orders to the High Court. In this procedure similar to that of the IC Act, the High Court's decision was rendered within one week of the filing of the Application.

214. In all other cases, the competent authority can issue a direct notice to any person in Saint Vincent and the Grenadines to provide the requested information that he may require to respond to the request. A person who has been served with such a notice must provide the requested information within 28 days, or any other timeframe as the competent authority may indicate. In practice, the person is given fourteen to twenty eight days within which they must respond to the request and provide the requested information therein. He need not comply with the notice if he is not in possession or control of the requested information.¹⁰⁰ Any person who fails to provide any requested information or who wilfully tampers with or alters such information so that it is not true when received by the competent authority is guilty of an offence and is liable upon summary conviction to a fine not exceeding XCD 10 000 (USD 3 700) or to imprisonment for a term not exceeding two years or both. Although the competent authority has so far never applied for a search warrant, the Saint Vincent and the Grenadines authorities confirmed that the Judge is expected to issue a search warrant upon the submission of a certificate by the competent authority. The certificate would be prepared by the Saint Vincent and the Grenadines competent authority and subsequently vetted by the Attorney General who would approach the Judge's Court on behalf of the competent authority. Any person who refuses to give evidence or comply with a court summon is liable on summary conviction to a fine of XCD 5 000 (USD 1 850) or to imprisonment for a term of one year or both.¹⁰¹

215. The Inland Revenue Department may also apply penalties for non-compliance with a request for information outlined in section 131 of the Income Tax Act, which include summary conviction amounting to imprisonment or fines or both.

100. Section 9 of the IC Act.

101. Section 15 of the IC Act.

216. In cases where the request relates to the taking of any evidence, the competent authority must apply to the High Court for the High Court to issue the necessary summons and to receive the relevant evidence. Once this is done the evidence may be transmitted over to the requesting State. The taking of evidence is however limited to evidence that any person would be compelled to give in a similar proceeding in Saint Vincent and the Grenadines.¹⁰²

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

- it is not practicable to communicate with any person entitled or authorised to produce the information;
- it is not practicable to communicate with any person entitled or authorised to grant access to the information or entitled or authorised to grant entry to the premises on which the information is situated; or
- the request for the purposes of which the application is made might be seriously prejudiced unless a police officer can secure immediate access to the information.¹⁰³

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

103. Section 11 of the IC Act.

Use of compulsory powers in practice

218. Where a person does not produce the information, the FSA would normally first contact the person again to explain that the information should be produced. Where the person still does not comply, the matter will be referred to the Attorney General, who, on behalf of the competent authority will make an application to the Court for the enforcement of the request.

219. In the three-year review period, the FSA and the Inland Revenue Department have not applied any penalties for failure to produce information or any other compulsory power, because the requested information has been provided in all two cases.

Secrecy provisions (ToR B.1.5)

220. Secrecy provisions applicable to various entities do not prevent the effective exchange of information by the Saint Vincent and the Grenadines competent authority. The IC Act specifically provides that any notice issued by the competent authority or order issued by the High Court for information “shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information whether imposed by any Act or the common law”.¹⁰⁴ This broad provision clearly overrides any confidentiality provisions that may be present in any other act in Saint Vincent and the Grenadines. Additionally, the IC Act provides that any person who divulges any confidential information or gives any evidence in compliance with an order or notice issued pursuant to a request shall be deemed not to commit any offence under any Act in force in Saint Vincent and the Grenadines.¹⁰⁵

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

Financial institutions

222. Domestic banks are required to keep all client information confidential, but may disclose such information to any government authority pursuant to any law in Saint Vincent and the Grenadines.¹⁰⁶ There are no express secrecy provisions relating to international banks.

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

105. Section 12 of the IC Act.

106. Section 32 of the Banking Act.

IBCs

223. Section 196 of IBC Act prohibits the disclosure of confidential information, broadly defined as including all information concerning any property and commercial transactions which have taken or may take place, which the recipient is not, otherwise than in the normal course of business or professional practice, authorised by the principal to divulge. The IBC Act provides that such information may only be disclosed for criminal investigation or prosecution purposes.¹⁰⁷

International trusts

224. The International Trust Act provides that subject to the terms of the instrument creating an international trust, no trustee, protector or other person shall disclose to any other person not legally entitled to any information or documents respecting an international trust, including (a) the name of the settlor or any beneficiary; (b) the trustees' deliberations as to the manner in which a power or discretion was exercised or a duty conferred by the terms of the trust or by law was performed; (c) the reason for the exercise of the power or discretion or the performance of the duty or any evidence upon which such reason might have been based; (d) any information relating to or forming part of the accounts of an international trust; or (e) any other matter or thing respecting an international trust. The list of authorised persons entitled to trust information comprises the Registrar of Trusts and the Comptroller of Inland Revenue, who may request for any information relating to the trust for regulatory purposes and for the purpose of determining the international trust's exempt status respectively.¹⁰⁸

Legal professional privilege

225. The IC Act defines privileged communication as “any information or other matter which is communicated between a client and attorney, solicitor or other admitted legal representative where such communication is (a) produced for the purposes of seeking or providing legal advice; or (b) produced for the purposes of use in existing or contemplated legal proceedings.”¹⁰⁹ The scope of privileged communication is consistent with the international standard. Under the IC Act, the competent authority may decline a request that relates to privileged information. The IC Act also provides that no one shall be required to disclose information that is subject to legal professional privilege. The general application of legal privilege (beyond evidence being admissible in court),

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

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

109. Section 2 of the IC Act.

is based on the common law principle of legal privilege, which is also applied in Saint Vincent and the Grenadines. Decisions of the House of Lords in the United Kingdom apply also in Saint Vincent and the Grenadines.

226. In practice, no person has ever invoked legal privilege, or made a secrecy claim, to refuse the production of information for EOI purposes. Also, no issues were raised by peers in this regard.

Determination and factors underlying recommendations

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

B.2. Notification requirements and rights and safeguards

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

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

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

228. Where the competent authority obtains any information pursuant to issuing a direct notice for information, he is obliged to keep it confidential and he may not provide it to the requesting party for a period of 20 days from the day he obtained the information¹¹⁰. This period allows taxpayers and any other interested parties adequate time to file any appeal they might wish against the action of the competent authority before the information is transmitted to the requesting state. Should such an appeal be filed, the exchange of information is suspended and any further action would be determined by the relevant court.

110. Section 13 of the IC Act.

229. The authorities of Saint Vincent and the Grenadines interpret Section 13 of the IC Act as providing discretion to the competent authority to observe or not the 20-day holding period¹¹¹. In fact, for the requests received by Saint Vincent and the Grenadines in the peer review period, the 20-day waiting period was not applied by the Competent Authority. No objections have been raised to the exchange of information. The authorities of SVG have indicated that it is intended that an amendment of the IC Act would be made to remove this provision on the basis that it is redundant.

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

- the requested information is not foreseeably relevant to the administration or enforcement of the tax laws of the requesting jurisdiction;
- the requesting party does not pay the costs as have been agreed under an EOI agreement;
- the information is protected from disclosure under the laws of Saint Vincent and the Grenadines on the grounds that the information constitutes or would reveal a privileged communication;
- the requesting party would not be able to obtain the information
 - under its own laws for the purposes of administration or enforcement of its tax laws; or
 - in response to a similar valid request from the competent authority under the relevant EOI arrangement; or
- the disclosure of the information would be contrary to public policy or national security.¹¹²

231. The above safeguards are consistent with the international standard. Upon receipt, the competent authority determines whether the request is in compliance with the agreement or arrangement pursuant to section 7 (1) of the IC Act. In applying this provision in practice, when the request is received by the Minister and his preliminary review is completed, a copy of the request is forwarded under private and confidential cover to the Executive Director of the Financial Services Authority (FSA). The assigned personnel at the FSA is responsible for reviewing the request to ensure that it meets

111. Section 13 of the IC Act provides that: “Where the competent authority obtains any information pursuant to issuing a notice under section 8. He or she shall keep it confidential and may not provide it to the requesting party for a period of twenty days, commencing on the day on which or she obtained the information.”

112. Section 6 of the IC Act.

the standard required by the TIEA existing between St. Vincent and the Grenadines and the Requesting Party (see C.5.2).

232. Based on the aforementioned review, the FSA will determine whether sufficient information is given to understand the request and whether the information is of a nature that can be provided having regard to the TIEA existing between the Requesting Party and SVG and the relevant laws of SVG.

233. Saint Vincent and the Grenadines has not declined a request for assistance, nor has any request been received which has been unclear or incomplete during the peer review period. The FSA has confirmed that should an unclear or insufficient request be received, it would inform the Requesting Party via electronic mail or by the most efficient means. It also confirmed that it would execute in the meantime the aspects of the request which are clear to the extent the request is valid.

Determination and factors underlying recommendations

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

C. Exchanging Information

Overview

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

235. Pursuant to the IC Act, the Minister for Finance is Saint Vincent and the Grenadines' competent authority for international exchange of information in tax matters. The Minister may also designate other persons to perform the functions of the competent authority. As noted above, the Minister has designated the FSA to perform the functions of the competent authority in the processing of the requests.

236. As of 11 August 2014, Saint Vincent and the Grenadines has signed 31 EOI agreements – one multilateral DTC covering 10 jurisdictions and 21 tax information exchange agreements (TIEAs) – of which all have been brought into force (see Annex 2). The CARICOM multilateral DTC was signed in 1994. For that particular agreement, the designated competent authority is the Inland Revenue Department. The 21 TIEAs were signed after September 2009, when Saint Vincent and the Grenadines became more active in negotiating EOI agreements.

237. Most of Saint Vincent and the Grenadines' EOI agreements allow Saint Vincent and the Grenadines to exchange information according to the international standard.

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

Article 26 of the OECD Model Tax Convention on Income and on Capital (the OECD Model Tax Convention).

239. Confidentiality of the information exchanged by Saint Vincent and the Grenadines is adequately protected both by the terms of the international agreements and under domestic law provisions. In practice, other confidentiality measures are also in place such as locked cabinets for the storing of information, the use of encrypted email for correspondence, and the use of a courier service to send all requested information to EOI partners. Hard copies of all documentation regarding exchange of information requests are stored in locked filing cabinets which can only be accessed by the members of the competent authority.

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

241. In 2011, the Financial Services Authorities Act brought together three distinct regulatory agencies¹¹³ into one umbrella body, the FSA, which has been delegated the handling of exchange of information requests under TIEAs on a daily basis. The FSA has set up procedures and an organisational process that have been sufficient to handle incoming requests under TIEAs in a timely manner. The IRD has also set up a procedure and organisational process to deal with exchange of information requests received under the CARICOM Treaty. To date, the IRD has not received any information requests under the CARICOM Treaty.

242. During the three-year period under review (1 July 2010-30 June 2013), Saint Vincent and the Grenadines received two requests for information from two partners pursuant to a TIEA. Saint Vincent and the Grenadines has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. As a result, Saint Vincent and the Grenadines has exchanged complete and accurate information. In terms of timeliness, a final response was provided within 90 days in both cases. Although the situation has not occurred during the peer review period, the EOI Manual of Saint Vincent and the Grenadines sets out that a status update should be sent to the Requesting

113. International Financial Services Authority (IFSA), the Supervisory and Regulatory Division of the Ministry of Finance and Co-operatives Division of the Ministry of National Mobilization and Social Development.

jurisdiction within 90 days if it is not possible to provide the requested information within that timeframe. As Saint Vincent and the Grenadines processed only two EOI requests during the three-year period under review, the organisational processes have not been sufficiently tested in practice. Accordingly, it is recommended that Saint Vincent and the Grenadines keeps monitoring the practical implementation of the organisational processes of the competent authority.

C.1. Exchange of information mechanisms

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

243. The responsibility for negotiating international tax agreements lies with the Ministry of Foreign Affairs, Foreign Trade, Commerce and Information Technology. During the negotiation process, the Ministry requests input from the FSA, the Inland Revenue Department and the Attorney General’s office. This input is used to prepare two Cabinet Memoranda (one for signing and one for ratification), which are signed for approval by the Minister.

244. After signing, the Attorney General gives its formal advice regarding the compatibility of the TIEA with domestic law. Paragraph 3(1) of the TIEA Act provides that an agreement may be given effect only by means of a publication in the Government Gazette. In general, the TIEA is also publicised in local newspapers. However, with respect to the TIEA signed by Saint Vincent and the Grenadines with Iceland, it was ratified upon Parliamentary approval and publication in the Government Gazette. The authorities of Saint Vincent and the Grenadines stated that this Parliament procedure was requested by Iceland, but is not a common practice of ratification. EOI agreements do not take precedence over domestic law but if the law is silent on any certain aspects then reference will be made to the provisions of the EOI agreement. Currently, no EOI agreement contradicts the domestic law. Each new EOI agreement is carefully reviewed by the Competent Authority and Attorney General to ensure consistency with domestic law.

245. Certain practical arrangements regarding the exchange of information have been agreed between Saint Vincent and the Grenadines and some of its TIEA partners in a Memorandum of Understanding to these TIEAs (Australia, Canada and Ireland). Commonly, such arrangements cover cost issues, in which language the communication should be conducted and in which form the EOI requests should be provided.

246. Saint Vincent and the Grenadines has not sent any request itself under a TIEA, but the Inland Revenue Department has sent information requests to various CARICOM partners regarding one taxpayer under the CARICOM Multilateral DTC.

247. Saint Vincent and the Grenadines currently does not carry out any other forms of exchange of information for tax matters.

Foreseeably relevant standard (ToR C.I.1)

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

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

250. However, the agreement with Liechtenstein provides in Article 7(1) (d) that the requested State may decline a request if the amount of tax or duty in question does not exceed the threshold of EUR 25 000. Although this agreement allows an exception to this rule when the case is “deemed to be extremely serious by the applicant party”, there is no guidance as to what constitutes an “extremely serious” case. It is also unclear how the requested party will determine the tax amount, as often the amount of tax involved can only be determined after information has been exchanged, and how this rule would be applied in a group of cases, where in each case the tax amount is less than the threshold but the overall tax effect might be large. In this regard, Saint Vincent and the Grenadines has advised that it will treat any international request for information which is foreseeably relevant to the administration and enforcement of tax laws as extremely serious in every case. Therefore, on Saint Vincent and the Grenadines’ part, there is no risk that a request will be declined if it meets the threshold of “foreseeably relevant”.

251. During the peer review period (1 July 2010 to 30 June 2013), Saint Vincent and the Grenadines has not sent or received requests under the agreement with Liechtenstein. The Saint Vincent and the Grenadines authorities stated that it has received proposed amendments to the TIEA between Liechtenstein and St. Vincent and the Grenadines on June 10th 2014. Article 1, Article 7 paragraph 1 (d) and paragraph 1 of the Protocol to the Agreement were amended. The amendments were found to be acceptable by St. Vincent and the Grenadines as there are in keeping with the

OECD standard. This has been already been conveyed to the authorities in Liechtenstein. The FSA uses a checklist to verify that all information to establish the foreseeable relevance of the request has been provided by the requesting jurisdiction. In case the information is not sufficient for the FSA to determine the foreseeable relevance of the request, the FSA will contact the requesting jurisdiction to ensure that this information is provided. The checklist was developed in the exchange of information manual (EOI Manual), which has been in use during the three-year review period, and is updated from time to time.

252. Under the checklist, the request must contain the following:

- The legal basis upon which the request is being made;
- The person (identification information should include as much information as is available to properly identify the person) under investigation in the Requesting jurisdiction;
- A statement of the information sought;
- The tax purpose for which the information is sought;
- The grounds for believing that the information requested is in the possession or control of a person in Saint Vincent and the Grenadines;
- A brief statement that the request is in conformity with the legislative and administrative practices of the Requesting jurisdiction;
- A statement that the Requesting jurisdiction has pursued all means available in its own State to obtain the information; and
- A brief statement that the request would only be used for purpose requested.

253. Saint Vincent and the Grenadines indicated that in the three-year review period, it has not asked the requesting jurisdiction for clarifications regarding the foreseeable relevance, as the foreseeable relevance was well-established in the two requests received.

In respect of all persons (ToR C.1.2)

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

255. All but one of Saint Vincent and the Grenadines' EOI agreements provide for EOI in respect of all persons. All of its TIEAs provide for EOI in respect of all persons. Its DTC with CARICOM does not specifically define the scope of persons in respect of which EOI may take place; however since the scope of EOI in the DTCs includes the enforcement of laws and provisions that also apply to non-residents, the DTC also allows for EOI in respect of all persons. No request has been received in respect of the CARICOM Treaty and its scope has so far remained untested. In practice, the authorities of Saint Vincent and the Grenadines advised that no issues have arisen regarding the jurisdictional scope in relation to an EOI request.

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

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

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

258. Saint Vincent and the Grenadines' CARICOM DTC does not contain provisions similar to paragraph 26(5) of OECD Model Taxation Convention.¹¹⁴

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

(2) In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Member States the obligation: (a) to carry out administrative measures at variance with the laws or the administrative practice of that or/of the other

However, the absence of this paragraph does not automatically create restrictions on exchange of bank information. The commentary in the convention to Article 26(5) indicates that while paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information.

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

260. In respect of the CARICOM DTC, the obligation to exchange all types of information is only clearly available with respect to seven of its signatories, Antigua and Barbuda, Barbados, Belize, Grenada, Jamaica, Saint Kitts and Nevis and Saint Lucia. As of May 2014, it is unclear as to whether Saint Vincent and the Grenadines can exchange information with the remaining signatories to the CARICOM tax treaty 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; and
- information about the competent authorities' powers to access banking information and to obtain ownership, identity and accounting information for purpose of EOI is not available with respect to Guyana, so it is not possible to confirm that the CARICOM Multilateral DTC with regard to Guyana meets the standard.

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

Member States; (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Member States; (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process the disclosure of which would be contrary to public policy.”

Absence of domestic tax interest (ToR C.1.4)

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

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

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

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

266. In practice, no situation of domestic tax interest has occurred in relation to the ability of Saint Vincent and the Grenadines to exchange information, as the access powers of Saint Vincent and the Grenadines are specifically designed for international exchange of information.

Absence of dual criminality principles (ToR C.I.5)

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

268. All of Saint Vincent and the Grenadines' TIEAs contain provisions similar to Article 5(1) of the 2002 Model TIEA, which obliges Contracting Parties to exchange information without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Contracting Party. There are no dual criminality provisions in Saint Vincent and the Grenadines' DTCs, and in practice no issue linked to dual criminality has arisen.

Exchange of information in both civil and criminal tax matters (ToR C.I.6)

269. 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”).

270. All of Saint Vincent and the Grenadines' EOI agreements provide for exchange of information in both civil and criminal tax matters. In practice, during the three year review period, the two requests received related to civil tax matters.

Provide information in specific form requested (ToR C.I.7)

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

272. This is reinforced in all of Saint Vincent and the Grenadines' TIEAs, which contain provisions similar to Article 5(3) of the 2002 Model TIEA. Article 5(3) obliges Contracting Parties to provide, on request, information in the form of dispositions of witnesses and authenticated copies of original records to the extent allowable under domestic law. In practice, peer input confirms that information has been provided in the appropriate form.

In force (ToR C.1.8)

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

274. Saint Vincent and the Grenadines has concluded 31 EOI agreements, of which all have been brought into force.

275. Once the text of a TIEA has been agreed between Saint Vincent and the Grenadines and another jurisdiction, the following steps are followed towards signing and ratification:

- The other jurisdiction is notified by a Diplomatic Note of SVG's agreement to the text of the TIEA.
- The Agreement is signed by the parties on an agreed date and at an agreed place.
- An Instrument of Ratification signed by the Prime Minister or Minister of Foreign Affairs is prepared and transmitted to the Attorney General for depositing.
- The Agreement is then Gazetted, which signifies entry into force.

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

276. For information exchange to be effective, the parties to an EOI arrangement need to enact any legislation necessary to comply with the terms of the arrangement. Saint Vincent and the Grenadines' EOI agreements are given the force of law once they are approved by the Parliament of Saint Vincent and the Grenadines and published in the Gazette. No issue has arisen in practice with respect to the effectiveness of the EOI agreements signed by Saint Vincent and the Grenadines.

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.

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

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

- 28 are Global Forum members;
- 13 are neighbouring jurisdictions within the Caribbean region;
- 15 are OECD countries; and
- 5 are G20 countries.

279. Saint Vincent and the Grenadines' EOI network covers all but one of its biggest trading partners. These include Canada, UK and the CARICOM countries. Saint Vincent and the Grenadines has advised that it is in the process of expanding its EOI network with other relevant partners, and that it has requested an EOI agreement with the remaining biggest trading partner.

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

Determination and factors underlying recommendations

| Phase 1 determination | |
|------------------------------------|---|
| The element is in place. | |
| Factors underlying recommendations | Recommendations |
| | Saint Vincent and the Grenadines should continue to develop its exchange of information network with all relevant partners. |
| 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)

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

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

283. However, Saint Vincent and the Grenadines' domestic laws are not fully consistent with these confidentiality provisions. Section 14 of the IC Act provides that information received by a requesting party (which includes information obtained pursuant to Saint Vincent and the Grenadines' EOI agreements) may also be disclosed to "persons employed or authorised by the government of the requesting party to oversee data protection". While this is

permissible under the international standard, it requires express consent by the jurisdiction that provided the information. The IC Act does not specify this as one of the conditions necessary for such disclosure.

284. The Saint Vincent and the Grenadines authorities advise that this provision was included in the IC Act in order to avoid being inconsistent with a proposed data protection law currently still in draft form. The objective of the proposed data protection law is to safeguard data and ensure that data is not exposed or leaked to unauthorised persons. As the data protection law has not been enacted, there is presently no data protection agency in Saint Vincent and the Grenadines, nor is there any person or agency authorised by the government to oversee data protection. Saint Vincent and the Grenadines law should ensure that any future disclosure of information to the proposed data protection agency is in line with the international standard. During the Phase 2 process, the Saint Vincent and the Grenadines competent authority indicated that the Data Protection Bill has been abandoned in the meantime, and that section 14 of the IC Act has lost relevance in practice.

285. Additional confidentiality provisions are applicable to the FSA staff. Under Section 17 of the Financial Services Authority Act, a director, an officer, an employee, an agent or an adviser of the Authority shall not disclose any information relating to the business or affairs of the Authority which they obtained in the course of their duties or in the exercise of the Authority's functions under the Act or any other law. The same confidentiality obligation applies to the staff of the Inland Revenue Department under Section 6 of the Income Tax Act. The FSA has introduced an additional Oath of Secrecy on EOI for tax purposes.

286. Section 5 of the EOI Manual specifically deals with Confidentiality and provides for practical confidentiality and security measures to be followed by staff to ensure confidentiality. These include for example the avoidance of hard copies unless strictly necessary, checking of the identity of the requesting competent authority, encryption of information sent via emails, storage in locked cabinet, clean desk policy, etc.

All other information exchanged (ToR C.3.2)

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

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

Ensuring confidentiality in practice

289. The offices of the competent authority are located in a Central Administration Complex which hosts several government departments. The offices of the Executive Director of the FSA, the Deputy Executive Director and the Legal office are all separate rooms. The requests for information sent via registered mail are delivered to the generic PO Box of the Minister of Finance.

290. All incoming requests for information pursuant to a TIEA are received by the Competent Authority at the Office of the Prime Minister (as the Minister of Finance is also the Hon. Prime Minister of Saint Vincent and the Grenadines) and logged by the Secretary in a confidential file with limited access by the Minister himself and his secretary. Requests are forwarded to the FSA under Private and Confidential Cover.

291. The requests handled by the FSA are first registered in a logbook and when completed, logged on a secure electronic database by Manager, Administration and Finance. This database is accessible only by the relevant personnel within the FSA, who are involved in EOI Requests. The request and response thereto are filed on a confidential file, and stored in a cabinet in the Office of the Executive Director, with limited access by the Executive Director, Deputy Executive Director and Manager, Administration and Finance.

292. During the processing of the requests, details pertaining to the request are kept confidential at all times. In the three-year review period, no template notice existed but details from the EOI request which were not necessary for him/her to locate the information have not been disclosed to the perceived information holder. According to a statement from the FSA, letters of request sent to licensees or third parties requesting the submission of information do not refer to the reason for or contents of the request from the Requesting Party, thereby preserving its confidentiality.

293. When requested information is provided to EOI partners, all information produced and an accompanying letter of production are sent via registered mail to the named contact in the requesting competent authority, mostly the contact point identified in the request for assistance. The authorities stated that it would be possible for them to transmit information through encrypted emails upon request. EOI files are kept indefinitely, currently in the secured cabinets of the Executive Director of the FSA and in a secured Cabinet at the Ministry of Finance, both with restricted access. With respect to other Governmental departments involved in the request (CIPO, IRD), all correspondence relating to the request are kept in a secure area with limited access to the persons involved in the EOI Requests for tax purposes.

294. Furthermore, the relevant officers employed at the Office of the Prime Minister/Minister of Finance, and all employees of the Inland Revenue

Department and FSA must sign an Oath of Secrecy, sworn to or affirmed before a Notary Public, and the need to treat the request being made as confidential is also emphasised in writing by the FSA when it is executing each component of the request to all third parties.

295. No issues regarding the confidentiality of information have been raised by Saint Vincent and the Grenadines' peers.

Determination and factors underlying recommendations

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

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

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

298. All of Saint Vincent and the Grenadines' TIEAs and DTCs ensure that the contracting parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret, information which is subject to legal professional privilege, or information the disclosure of which is contrary to public policy. The scope of legal professional privilege, as defined under the IC Act, is consistent with the international standard.

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

300. In practice, the attorney client privilege was not invoked during the three-year period under review. More broadly, no issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of the exchange of information partners of Saint Vincent and the Grenadines.

Notification of taxpayers

301. The agreements signed by Saint Vincent and the Grenadines do not require a notification of the taxpayer, except for the agreement with Liechtenstein.

302. The Protocol in Saint Vincent and the Grenadines agreement with Liechtenstein contains a provision stating that: "it is understood that the taxpayer, unless subject to criminal investigations, is to be informed about the intention to make a request for information. If the information of the taxpayer would jeopardise the purpose of the investigation, information is not necessary."

303. This obliges the requesting jurisdiction to inform the taxpayer of its intention to make a request whenever the investigation does not relate to a criminal case. However, the agreement provides an exception under which if there is a possibility of jeopardising the purpose of the investigation

in non-criminal cases, the notification of the taxpayer should be lifted. Accordingly, it appears that the agreement between Liechtenstein and Saint Vincent and the Grenadines is in line with the standard on the exception to prior notification. In addition, Saint Vincent and the Grenadines does not have any notification rules, and would therefore not apply this provision of the TIEA in practice.

Determination and factors underlying recommendations

| Phase 1 determination |
|---------------------------------|
| The element is in place. |
| Phase 2 determination |
| 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)

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

305. In the three-year period ending 30 June 2013, Saint Vincent and the Grenadines received a total of 2 requests for information from two partners. A request is regarded as a single request irrespective of the number of subjects involved for which information is requested. No supplementary request for information was received in connection with the original request (i.e. where the original request was not fully satisfied, or where other elements have arisen based on the information that was sent to the requesting jurisdiction). Should the competent authorities of Saint Vincent and the Grenadines receive an additional request, this is viewed as part of the original request.

306. In both cases, the requested information was provided within 90 days. The competent authority of Saint Vincent and the Grenadines calculates its response time to received requests from the date it receives the request to the date the requested information is transmitted to the Requesting Party. The time calculated is inclusive of the time taken by the Minister, both at the time when the request is received and to the point when the Minister sends off the

request. The date the minister sends the requested information to the requested party is deemed the end date. The two requests are the following:

- The first request was received on August 15th, 2011 by SVG's Competent Authority by post and a response was provided on October 10th 2011, 57 days after the request was received. The information provided concerned banking information.
- The second request was received on July 10th, 2013 via post. A preliminary response was provided on July 19th, 2013, nine (9) days after the receipt of the request. The remaining information was sent on July 25th, 2013. The information related mainly to ownership information and corporate documentation regarding an IBC and an LLC.

307. The peer which sent the second request stated that one aspect of the request was not fulfilled, but stressed this oversight may have been caused by the substantial amount of requested information. The peer confirmed that it was fully satisfied with the information received from Saint Vincent and the Grenadines. The authorities of Saint Vincent and the Grenadines confirmed that the oversight was caused by the substantial amount of information requested, and that the outstanding aspect was inadvertently not processed by the FSA. It also contacted the Requesting Party to ascertain whether the information was still required and confirmed that should the information still be required, the matter would be addressed as a priority within the shortest possible time. As a result, the additional information was submitted to the Requested Party.

308. During the 3-year peer review period, the competent authority did not have to send any status update to the requesting jurisdiction as it sent the complete information within 90 days. However, the authorities of Saint Vincent and the Grenadines confirmed that should that situation occur, the FSA will provide an update on the status of the request after 90 days, as provided for in their EOI Manual.

Organisational process and resources (ToR C.5.2)

309. Saint Vincent and the Grenadines' competent authority for its EOI agreements is the Minister with the responsibility for Finance or any other person designated by him. During the three-year review period, the designated competent authority was the Financial Services Authorities for all EOI requests under TIEAs, whereas the Inland Revenue Department was the designated competent authority under the CARICOM Multilateral DTC.

Organisational process by the FSA

310. The organisational process, templates and guidelines to be followed to obtain and provide information following a request from an information exchange partner is described in the EOI Manual developed by the FSA, and amended from time-to-time. The Manual provides for a checklist for processing incoming and outgoing requests.

311. Upon receipt of the request via post/courier, the Minister's Executive Secretary shall log and date and confidentiality stamp the request and assign a reference number to it. The request is passed to the Minister within 24 hours, who conducts a preliminary review of the request to check whether there are any matters of public interest or national security. An acknowledgment of the request is made in writing within two days of receipt and the request is passed on to the FSA. The original request is filed on the confidential EOI file and stored in a secure fireproof cabinet with limited access, in the Minister's private office.

312. Under the FSA's internal procedure for the handling of requests, the request is first received by the FSA's Administrative Assistant and stamped as received with the date, and logged and assigned a reference number. The request is then passed directly to the Executive Director on the date of receipt, who reviews the request with the Deputy Executive Director within 24 hours. Subsequently, the Executive Director assigns the request to the Legal Officer with instructions. The Legal Officer peruses the request to ensure that it meets the conditions required by the Tax Information Exchange Agreement (TIEA) existing between SVG and the Requesting Party. Should the request be found not to be in conformity with the relevant agreement, the FSA would notify the requesting competent authority, outlining the information the requesting competent authority could provide in order for the FSA to process their request.

313. As described in B.1.1, the FSA has the power to obtain information from any person. For each valid information exchange request handled by the FSA, the authorised officer first determines how to best gather the requested information. Depending on the situations, the FSA may already have the information in its Registers or databases; the FSA may seek the assistance of the Comptroller of the IRD in obtaining the requested information if the request deals with a resident taxpayer (individual or company); the FSA may seek the assistance of another governmental authority; or the FSA may request the information from any other person, for example an IBC, a bank or a registered agent.

314. One week before the deadline expires, a telephone call is made by the Legal Officer to the representatives of the financial entity, licensee, or governmental department to remind them of the approaching deadline. Upon

receipt of the information from the third party, the Legal Officer would peruse the information and verify that the request is satisfied.

315. The requested information together with a report outlining the steps taken to obtain the information and source of said information is prepared to be sent to the Minister. A draft cover letter addressed to the Requesting Party conveying the requested information is also prepared for the Minister's consideration. The Executive Director or the Deputy Executive Director would review the information and cover letter before they are sent to the Minister for onward transmission to the Requesting Party. The Minister sends the letter to the requesting jurisdiction within a period of maximum of 3 days. The competent authority engages as far as possible the use of secured electronic transmission or courier in order to expedite transmission.

316. Finally, the Manager, Administration and Finance logs the request and the response in the FSA's electronic database which includes the date of the request, the name of the Requesting Party, the name of the Assignee who handled the request, a description of the method used to retrieve the information and any delays or difficulties in fulfilling the request as well as the date the response was sent. This database is accessible only by the personnel within the FSA involved in EOI Requests. The request and a copy of the response thereto are filed on a confidential file, and stored in a fireproof cabinet in the Office of the Executive Director, with limited access by the Executive Director, Deputy Executive Director and Manager, Administration and Finance.

Organisational process by the Inland Revenue Service

317. Although the Inland Revenue Department has not received any request under the CARICOM Multilateral DTC, it has put in place a procedure to answer EOI requests under the DTC, but also in answering requests from the FSA.

318. The procedure has the following main steps:

- The Request, once received by the Secretariat, would be classified as confidential correspondence and would thereafter be passed on to the Comptroller.
- The Comptroller would call a meeting of the "Technical Issues Committee" comprised of the Comptroller, Senior Assistant Comptroller in charge of Audit, Research/Appeals Officer who is also an Assistant Comptroller and the Senior Assistant Comptroller in charge of Planning and legal officer, to review the request. Issues dealt with by this Committee are given confidential classification.

- The Research/Appeals Officer would be assigned the task to gather the information with the assistance of other relevant staff, within an average of one week, depending on the volume of the information requested. The requested information would be presented to the Committee.
- The Comptroller would have the relevant response letter prepared and annexed to the requested information and sent under confidential cover to the FSA/the competent authority of the requesting CARICOM jurisdiction, as the case may be.

319. Copies of the request and information gathered and the report of the Research/Appeals Officer would be kept in the office of the Comptroller, who has sole access to the cabinet in which it is stored. The entire process would be completed within fourteen (14) days.

Resources

320. The Finance Minister and the delegated competent authority, the FSA, are responsible for exchange of information on request, except for those under the CARICOM Multilateral DTC. The FSA, the Attorney General and the Inland Revenue Department are directly involved in the treaty negotiations undertaken by Saint Vincent and the Grenadines. Saint Vincent and the Grenadines have indicated that the current resource levels are at an appropriate level to deal with the information exchange requests received. Should the numbers of requests increase over time, it will increase its resources as appropriate.

321. The FSA's Executive Director, Deputy Executive Director, Manager IFS, the Manager, Administration and Finance, one Legal Officer and one Administrative Assistant – a total of 6 persons – are responsible for ensuring that EOI is carried out efficiently. The persons in these positions are trained and qualified in areas of Law, Finance, Accounting, Business, Economics and Management. They also followed regional trainings organised by the Global Forum. EOI knowledge and capacity is ensured by dividing responsibilities and involving multiple staff in the process. The FSA however, is seeking to enhance its capacity including its EOI capacity, by hiring another employee in the position of "Compliance Officer", who would also be involved in exchange of information for tax purposes.

322. The Inland Revenue Department which acts administratively on behalf of the Competent Authority for the purposes of EOI for tax purposes under the CARICOM Multilateral DTCs has allocated 4 persons to EOI for tax purposes: the Comptroller, one Legal Advisor, one Research/Appeals Officer and one Administrative Assistant.

323. The costs of servicing tax information requests have thus far been low. The personnel involved in ensuring that the requests are executed are employed with the Competent Authority, the FSA and other State agencies. Budgets are reviewed on an annual basis, therefore there will be an ongoing assessment of the financial resources required to execute requests and proposals made for increases in allocation, if required.

324. The premises of the FSA are properly equipped with the necessary tools to facilitate internet connectivity and the appropriate infrastructure to facilitate the use of technology on a day to day basis. The FSA also has its own full time IT Specialist and access to a part time IT Consultant.

Conclusion

325. The procedures established by the FSA, which are included in an EOI Manual, and the Inland Revenue Department appear to be sufficient to handle incoming requests in a timely manner. The resources currently allocated to the FSA appear sufficient to deal with the present workload. However, Saint Vincent and the Grenadines did process only two EOI requests during the three-year period under review. Consequently, the organisational processes have not been sufficiently tested in practice. Accordingly, it is recommended that Saint Vincent and the Grenadines keeps monitoring the practical implementation of the organisational processes of the competent authority. The monitoring should also cover the level of resources committed to EOI purposes, especially in the event of a significant increase in the number of incoming EOI requests.

326. In terms of timeliness, a final response was provided within 90 days in both cases received during the peer review period, such that there was no need to send status update. However, the authorities of Saint Vincent and the Grenadines confirmed that should that situation occur, the FSA will provide an update on the status of the request after 90 days, as provided for in their EOI Manual.

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

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

328. There are no aspects of Saint Vincent and the Grenadines' domestic laws that appear to impose additional restrictive conditions on exchange of information.

Determination and factors underlying recommendations

| Phase 1 determination | |
|---|---|
| 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 |
| Saint Vincent and the Grenadines has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. Saint Vincent and the Grenadines did process only two EOI requests during the three-year period under review. Consequently, the organisational processes have not been sufficiently tested in practice. | Saint Vincent and the Grenadines should keep monitoring the practical implementation of the organisational processes of the competent authority 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 Recommendations

| Overall Rating | | |
|--|--|---|
| LARGELY COMPLIANT | | |
| Determination | Factors underlying recommendations | Recommendations |
| Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i> | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: Largely Compliant | Bearer shares may be held by approved custodians operating outside of Saint Vincent and the Grenadines. In such cases direct ownership information on those bearer shares may not always be available in Saint Vincent and the Grenadines. Furthermore, enforcement of penalties for non-compliance with these obligations may not be possible for those custodians located outside of Saint Vincent and the Grenadines. | Saint Vincent and the Grenadines should ensure that information on the direct owners of bearer shares is made fully available within Saint Vincent and the Grenadines in all cases. |
| | Requirements on service providers to update ownership and identity information in all cases and to immediately obtain such information in case of introduced business have been introduced only recently. | Saint Vincent and the Grenadines should monitor the operations of the new provisions by service providers on keeping updated ownership and identity information and on obtaining such information immediately in case of introduced business. |

| Determination | Factors underlying recommendations | Recommendations |
|---|---|--|
| <p>Phase 2 rating: Largely Compliant <i>(continued)</i></p> | <p>Although the existence of a register of members in respect of IBCs and LLCs is monitored through the on-site inspections of their registered agents, the obligation to keep these documents only applies to IBCs and LLCs themselves, and no clear penalties apply for failure to comply with this requirement. It is therefore unclear how the Saint Vincent and the Grenadines authorities would enforce the availability of legal ownership information on IBCs and LLCs.</p> | <p>Saint Vincent and the Grenadines should clarify how the availability of legal ownership information on IBCs and LLCs would be enforced.</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>During the review period, Saint Vincent and the Grenadines' laws did not require the keeping of reliable accounting records by International Business Companies, Limited Liability Companies and Co-operatives. Saint Vincent and the Grenadines has recently enacted new laws to ensure the keeping of accounting information and underlying documentation by all these entities in line with the international standard. Since the amendments are very recent they have not been tested in practice.</p> | <p>Saint Vincent and the Grenadines should monitor the practical implementation of the new laws to ensure that all International Business Companies, Limited Liability Companies and Co-operatives keep accounting records and underlying documentation and that all types of information are available in line with the international standard.</p> |
| <p>Banking information should be available for all account-holders. <i>(ToR A.3)</i></p> | | |
| <p>Phase 1 determination: The element is in place.</p> | | |

| Determination | Factors underlying recommendations | Recommendations |
|--|--|--|
| Phase 2 rating: Largely Compliant | While enforcement provisions to ensure that information on bank account holders is available where the account holder is introduced by a foreign AML-regulated institution exist, those provisions have been introduced only recently. | Saint Vincent and the Grenadines should monitor the operations of the new provisions on introduced business and their enforcement. |
| 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: Compliant | | |
| The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i> | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: Compliant | | |
| Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1)</i> | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: Compliant | | |
| 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. | | Saint Vincent and the Grenadines should continue to develop its exchange of information network with all relevant partners. |
| Phase 2 rating: Compliant | | |

| Determination | Factors underlying recommendations | Recommendations |
|---|--|---|
| 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. | Saint Vincent and the Grenadines law allows information that is obtained pursuant to its EOI agreements to be disclosed to persons employed or authorised by the government of the requesting party to oversee data protection. This disclosure does not require the express written consent of the EOI partner providing the information. | Ensure that any future disclosure of information to the proposed data protection agency is in line with the international standard. |
| 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 | | |
| The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i> | | |
| Phase 1 determination: This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made. | | |

| Determination | Factors underlying recommendations | Recommendations |
|--|---|---|
| Phase rating: Largely Compliant | Saint Vincent and the Grenadines has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. Saint Vincent and the Grenadines did process only two EOI requests during the three-year period under review. Consequently, the organisational processes have not been sufficiently tested in practice. | Saint Vincent and the Grenadines should keep monitoring the practical implementation of the organisational processes of the competent authority 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. |

Annex 1: Jurisdiction’s response to the review report 115

Saint Vincent and the Grenadines extends its appreciation to the Global Forum Secretariat and its Assessors for the invaluable assistance given during this country’s Phase 2 Peer Review process. The professionalism and efficiency displayed by the Assessment team have been exemplary and indeed, this has prevailed throughout our Phase 1 and Phase 2 Reviews.

Saint Vincent and the Grenadines remains committed to the OECD Global Forum standards on tax transparency and has in fact demonstrated this commitment by introducing and implementing significant legislative and administrative changes to address recommendations made, both prior and subsequent to our Phase 1 Review.

Although Saint Vincent and the Grenadines has received only a limited number of requests from its TIEA partners, it is significant that the appropriate information exchange systems and framework are in place to facilitate an efficient Exchange of Information (EOI) regime. Equally important to note, is that the authorities in Saint Vincent and the Grenadines intend to utilize the experience obtained in executing the two (2) TIEA requests received, to enhance the processes to be followed in relation to future requests.

Saint Vincent and the Grenadines reiterates its commitment to implementing its legislative and regulatory EOI regime in order to ensure effective cooperation and transparency in the global efforts to eradicate tax offences.

Moving forward, Saint Vincent and the Grenadines wishes to indicate that it would continue to do all which is necessary to further strengthen its legislative and regulatory regime in relation to EOI mechanisms and would be guided by the recommendations made in this instant Report.

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

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

| | Jurisdiction | Type of EOI arrangement | Date signed | Date in force |
|----|------------------------|---|-------------|---------------|
| 1 | Antigua and Barbuda | DTC | 6-Jul-1994 | 30-Nov-1994 |
| 2 | Aruba | Tax Information Exchange Agreement (TIEA) | 01-Sep-09 | 21-Mar-11 |
| 3 | Australia | TIEA | 18-Mar-10 | 11-Jan-11 |
| 4 | Austria | TIEA | 14-Sep-09 | 1-Jan-12 |
| 5 | Barbados | DTC | 6-Jul-1994 | 30-Nov-1994 |
| 6 | Belgium | TIEA | 07-Dec-09 | |
| 7 | Belize | DTC | 6-Jul-1994 | 30-Nov-1994 |
| 8 | Canada | TIEA | 22-Jun-10 | 04-Oct-11 |
| 9 | Curacao ¹¹⁶ | TIEA | 28-Sep-09 | 21-Mar-11 |
| 10 | Denmark | TIEA | 01-Sep-09 | 01-Apr-11 |
| 11 | Dominica | DTC | 6-Jul-1994 | 30-Nov-1994 |
| 12 | Faroe Islands | TIEA | 24-Mar-10 | 07-Jul-10 |
| 13 | Finland | TIEA | 24-Mar-10 | 28-Apr-11 |
| 14 | France | TIEA | 16Apr-10 | 21-Mar-11 |
| 15 | Germany | TIEA | 29-Mar-10 | 7-Jul-11 |
| 16 | Greenland | TIEA | 24-Mar-10 | 29-Jun-10 |

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

| | Jurisdiction | Type of EOI arrangement | Date signed | Date in force |
|----|-----------------------------|--------------------------------|--------------------|----------------------|
| 17 | Grenada | DTC | 6-Jul-1994 | 30-Nov-1994 |
| 18 | Guyana | DTC | 6-Jul-1994 | 30-Nov-1994 |
| 19 | Iceland | TIEA | 24-Mar-10 | 15-Jun-10 |
| 20 | Ireland | TIEA | 15-Dec-09 | 21-Mar-11 |
| 21 | Jamaica | DTC | 6-Jul-1994 | 30-Nov-1994 |
| 22 | Liechtenstein | TIEA | 02-Oct-09 | 16-May-12 |
| 23 | Netherlands | TIEA | 01-Sep-09 | 21-Mar-11 |
| 24 | New Zealand | TIEA | 16-Mar-10 | 07-Jul-10 |
| 25 | Norway | TIEA | 24-Mar-10 | 21-Mar-11 |
| 26 | Saint Kitts and Nevis | DTC | 6-Jul-1994 | 30-Nov-1994 |
| 27 | Saint Lucia | DTC | 6-Jul-1994 | 30-Nov-1994 |
| 28 | Sint Maarten ¹¹⁷ | TIEA | 28-Sep-09 | 21-Mar-11 |
| 29 | Sweden | TIEA | 24-Mar-10 | 21-Mar-11 |
| 30 | Trinidad and Tobago | DTC | 6-Jul-1994 | 18-May-2011 |
| 31 | UK | TIEA | 18-Jan-10 | 19-May-11 |

117. See previous footnote.

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

Commercial Laws

Building Societies Act
Companies Act
Co-operative Societies 2012 Act
Commerce and Intellectual Property Office Act
Exchange of Information Act
Financial Services Authority Act
International Business Companies Act
Insurance Act
International Cooperation (Tax Information Exchange Agreements) Act
International Insurance Act
International Trusts Act
International Banks Act
Limited Liability Companies Act
Money Services Business Act
Mutual Funds Act
Partnership Act
Public Trustees Act
Registered Agent and Trustee Licensing Act
Securities Act
Trustees Act
Written Laws (Miscellaneous Amendments) 2014 Act

Taxation Laws

Customs Act
Income Tax Act
Value Added Tax Act

Banking Laws

Banking Act
Eastern Caribbean Central Bank Act

Anti-Money Laundering Laws

Proceeds of Crime and Money Laundering Act
Proceeds of Crime 2013 Act (which replaces the Proceeds of Crime and Money Laundering Act)
Financial Intelligence Unit Act
Anti-Money Laundering and Terrorist Financing Regulations, 2014
Money Laundering Prevention Guidance Notes

Others

Saint Vincent and the Grenadines Constitution Order

Annex 4: Persons interviewed during on-site visit

Officials from the Financial Services Authority

Officials from the Inland Revenue Department

Minister of Finance and officials from the Ministry of Finance

Officials from the Commerce and Intellectual Property Office (CIPO)

The Attorney General of Saint Vincent and the Grenadines

Various service providers, registered agents, lawyers and representatives of an international bank

Banking Supervision Department of the Eastern Caribbean Central Bank (ECCB)

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: SAINT VINCENT AND THE GRENADINES

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.

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