GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

COOK ISLANDS

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Cook Islands 2015

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

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About the Global Forum

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

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information (EOI) in the Cook Islands as well as the practical implementation of that framework. The assessment of effectiveness in practice has been performed in relation to a three-year period (1 July 2010 to 30 June 2013). The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged with its exchange of information partners.

2. The Cook Islands' economy is mainly driven by tourism, with international financial services making a contribution corresponding to approximately 3.2% of Gross Domestic Product. Until 1965, the Cook Islands was a dependent territory of New Zealand, with whom they retain strong legal and commercial links. Other important trading partners are Australia and Fiji. The Cook Islands is self-governing in free association with New Zealand, with full law-making powers and full capacity to enter into international agreements.

3. Relevant legal entities and arrangements for the purposes of this report comprise companies, partnerships and trusts, which are divided into domestic and international entities or arrangements, as well as foundations. There are sufficient commercial and tax obligations in place to ensure the availability of ownership information concerning domestic and foreign entities and arrangements. Anti-money laundering obligations and the governing legislation of all international entities and foundations ensure the availability of ownership information with regard to these entities. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance and comprehensive systems for monitoring compliance with all relevant obligations.

4. The Cook Islands' commercial and tax laws contain obligations to keep reliable accounting records, including underlying documentation, for at least five years in respect of domestic and foreign companies, partnerships

and trusts. Obligations were introduced in December 2013 such that international entities and arrangements must maintain accounting records in the Cook Islands for at least six years. However, it is not clear that the new obligations require that all underlying source documents be maintained for all of these entities and arrangements, and accordingly a recommendation is included to clarify this. The same applies in respect of foundations, which were introduced in 2012. Financial institutions in the Cook Islands are required to keep all records pertaining to the accounts held by them, as well as related financial and transactional information.

5. As to access to information, the competent authority of the Cook Islands is invested with broad and effective powers to gather relevant information. These powers are exercised predominately by issuing notices to require the production of relevant information and are complemented by powers to search premises and seize information as well as to compel oral testimony. Secrecy provisions in domestic laws are overridden where information is required for exchange of information purposes, and a domestic tax interest requirement is excluded. Moreover, these access powers are not restricted by prior notification requirements. In practice, the competent authority has exercised its powers to access information in a timely and efficient manner.

6. Since 2009, the Cook Islands has an emerging network of tax information exchange agreements (TIEAs), comprising 18 TIEAs signed to date, of which fourteen have since entered into force. Negotiations are currently in progress with an additional seven jurisdictions. The agreements generally follow the OECD Model TIEA, and meet the international standard in all respects.

7. The Cook Islands' practical experience with exchanging information is positive. During the review period the Cook Islands received five requests from two partners. The Competent Authority named in the Cook Islands TIEAs is the Collector of the Revenue Management Division (RMD), which is a division of the Ministry of Finance and Economic Management. The Cook Islands EOI unit is well organised and sufficiently resourced, and the Competent Authority and professional staff working on EOI have appropriate expertise and clear responsibilities. A clear procedure exists and is followed, which covers all relevant steps in the EOI process. The policies and practices with respect to confidentiality are also sound. The peer inputs received from the Cook Islands' treaty partners are very positive, with peers reporting that all requests have been answered appropriately and in a timely manner.

8. The Cook Islands 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 recommendations made in respect of

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

9. A follow up report on the steps undertaken by the Cook Islands to answer the recommendations made in this report should be provided to the PRG within twelve months of the adoption of this report.

Introduction

Information and methodology used for the peer review of Cook Islands

10. The assessment of the legal and regulatory framework of the Cook Islands and the practical implementation and effectiveness of this framework was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*.

11. The assessment has been conducted in two stages: Phase 1, carried out in 2012, and Phase 2, carried out in 2014. The Phase 1 Report, which was adopted and published by the Global Forum in June 2012, was based on the laws, regulations, and exchange of information mechanisms in force or effect as at April 2012, other materials supplied by the Cook Islands, and information supplied by partner jurisdictions.

12. The Phase 2 assessment looked at the practical implementation of the Cook Islands' legal framework during the three year review period of 1 July 2010-30 June 2013, as well as amendments made to the legal and regulatory framework since the Phase 1 review. The assessment was based on the laws, regulations, and EOI mechanisms in force or effect as at 16 December 2014. It also reflects the Cook Islands' responses to the Phase 1 and Phase 2 questionnaires, other information, explanations and materials supplied by the Cook Islands during and after the Phase 2 on-site visit that took place in Avarua, Rarotonga from 12-14 May 2014 and information supplied by partner jurisdictions. During the on-site visit, the assessment team met with officials and representatives of the Cook Islands Revenue Management Division, Financial Supervisory Commission, Financial Services Development Authority, Financial Intelligence Unit, Ministry of Justice, Business Trade and Investment Board and Crown Law Office. A list of all those interviewed during the on-site visit is attached to this report at Annex 4.

13. The Terms of Reference break down the standards of transparency and exchange of information into ten essential elements and 31 enumerated

aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses the Cook Islands' legal and regulatory framework as well as the practical implementation of the 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. Where relevant, these determinations are accompanied by recommendations on how certain aspects of the system could be strengthened. To reflect the Phase 2 component, an assessment is made concerning the Cook Islands' practical application of each of the essential elements and a rating of either *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. An overall rating is also assigned to reflect the Cook Islands' overall level of compliance with the standards.

14. The Phase 1 assessment was conducted by a team which consisted of three assessors: Mr. Oscar Echenique Quintana, Director 1 for International Tax Legal Affairs, Tax Administration Service, Mexico; and Mr. Bevon Sinclair, Technical Specialist, Tax Administration, Jamaica; and one representative of the Global Forum Secretariat: Mrs. Renata Fontana. The Phase 2 assessment was conducted by a team comprised of Mr. Diego Marvan Mas, Tax Administration Service, Mexico; Mr. Jon Swerdlow, HM Revenue and Customs, United Kingdom; and Mr. Mikkel Thunnissen and Ms. Melissa Dejong from the Global Forum Secretariat.

Overview of Cook Islands

Governance, economic context and legal system

15. The Cook Islands consists of 15 islands with a total land area of 240 square kilometres scattered over 2.2 million square kilometres of the Pacific Ocean, approximately 3 200 kilometres Northeast of New Zealand. It lies in the centre of the Polynesian Triangle, flanked to the west by the Kingdom of Tonga and by Samoa, and to the east by Tahiti and the islands of French Polynesia. Its capital is Avarua.

16. The total population of the Cook Islands, as at December 2013, was 18 600.[1] About 65% of the population lives on the main island of Rarotonga. It is estimated that an additional 50 000 Cook Islanders live in New Zealand

1. Cook Islands Vital Statistics and Population Estimate, June quarter 2014, www.mfem.gov.ck/population-and-social-statistics/vital-stats-pop-est.

(2008 figures) and 5 030 in Australia (2006 census).[2] English and Cook Islands Maori are official languages of the Cook Islands. The currency is the New Zealand dollar (NZD), and its exchange rate as of 30 March 2012 was EUR 1 = NZD 1.6 or NZD 1 = EUR 0.6.[3]

17. In the early 2000s, the Cook Islands had a good track of economic growth, but in 2008 and 2010, it showed negative growth because of the worldwide economic crisis. However, the trend reversed and in 2012 the Gross Domestic Product (GDP) growth rate was 4.4%. The Cook Islands' GDP is derived principally from tourism, with international financial services making a contribution amounting to approximately 3.2% of GDP. The Cook Islands' main trading partners are New Zealand, Australia and Fiji.[4] Among international organisations, the Cook Islands is a member of the Asian Development Bank (ADB) and the Pacific Islands Forum.

18. The Cook Islands became self-governing in free association with New Zealand on 4 August 1965. Since then, the Cook Islands has been fully responsible for internal affairs, while New Zealand retains responsibility for defence and external affairs, in consultation with the Cook Islands. In the conduct of its foreign affairs, the Cook Islands interacts with the international community as a sovereign and independent state. The Cook Islands possesses the capacity to enter into treaties and other international agreements in its own right with governments and regional and international organisations (Joint Centenary Declaration, 11 June 2001).

19. The form of Government in the Cook Islands can be described as both a Constitutional Monarchy and a Parliamentary Democracy. The Head of State is the Queen in Right of New Zealand, Her Majesty Queen Elizabeth II. The Queen's personal representative in the Cook Islands is the Queen's Representative. The system of Government is based on the Westminster model (similar to that of England and New Zealand) which provides for a separation of powers between the Legislature, the Executive and the Judiciary.

20. The Legislature (the Parliament of the Cook Islands) makes laws by examining, debating and enacting Bills. The Parliament is unicameral and consists of 24 Members who are elected by secret ballot under a system of universal suffrage. General elections are held every four years. The Executive initiates and administers the law by deciding policy, drafting Bills and administering Acts. Executive authority is exercised on behalf of the Queen

2. See respectively http://mfat.govt.nz/Countries/Pacific/Cook-Islands.php and www.immi.gov.au/media/publications/statistics/comm-summ/textversion/cookislands.htm.
3. www.xe.com.
4. Cook Islands Statistics Office: www.stats.gov.ck/.

by the Queen's Representative who, in turn, appoints a Cabinet comprising the Prime Minister and no more than six other Ministers.

21. The Judiciary applies the law by hearing and deciding cases. The judiciary consists of the High Court and a Court of Appeal. Appeals from the Court of Appeal may be made to the Judicial Committee of the (British) Privy Council. The High Court has Civil, Criminal and Land Divisions with the Ministry of Justice being responsible for administration of the Courts. Prosecutions for tax offences are heard at first instance by the High Court.

22. The House of Ariki is a constitutionally recognised customary entity of traditional leaders of the Cook Islands. It is composed of 24 tribal Paramount Chiefs (Ui-Ariki) who inherited their titles in accordance with their respective tribal traditions and customs. Upon confirmation of compliances to customary practices of investiture by the Court, each Ariki is sworn before His Excellency the Queen's Representative and officially warranted to serve in the House of Ariki for life. Over the last 20 years, Government has relaxed much of the provision where the "House of Ariki may only discuss matters put to it by Parliament" and allowed the House much desired flexibilities to address cultural, customary and traditional issues in tandem with relevant Ministers of the Crown and Government agencies. The House of Ariki Act 1966 is currently under review."

23. Prior to 1965 (when the Cook Islands was a dependent territory of New Zealand), a legal system was established by means of a New Zealand enactment, the Cook Islands Act 1915. The Act provided, amongst other things, that the English system of common law was to apply. The Act also listed a select number of New Zealand statutes that, suitably modified, were to apply in the Cook Islands.

24. On independence in 1965 the Constitution conferred full law-making powers on the Cook Islands, but also provided that existing law was to continue to apply. Hence, the New Zealand enactment, the Cook Islands Act 1915, remained in effect, as did common law and those New Zealand enactments specified in the Cook Islands Act, such as the Partnership Act 1908 and the Trustee Act 1956. Since 1965, many of the provisions of the Cook Islands Act have been progressively repealed as the Cook Islands has developed its own statute law.

25. In the early post-1965 period, insufficient legal resources resulted in some cases where the Cook Islands merely adopted New Zealand legislation. An example is the Companies Act 1970-71, which provides that, with suitable modifications, the New Zealand companies legislation (the Companies Act 1955) is to apply in the Cook Islands. In New Zealand, the Companies Act 1955 was repealed and replaced by a new Act in 1993. This results in the slightly odd situation of a repealed New Zealand Act still remaining in effect in the Cook Islands.

26. The Cook Islands Constitution, as contained in the Cook Islands Constitution Act 1964, is the supreme law of the Cook Islands. The hierarchy of the laws is, in decreasing order of rank: *(i)* the Constitution, *(ii)* legislation enacted by Parliament, *(iii)* subsidiary legislation, *(iv)* common law in accordance with section 615 of the Cook Islands Act 1915 and as declared by the Courts from time to time, and *(v)* Cook Islands custom in relation to customary land, titles and succession in accordance with sections 422 of the Cook Islands Act 1915. Once an EOI agreement has entered into force, its provisions have effect "according to their tenor", and prevail over any enactments.

Taxation system

27. Under section 68 of the Cook Islands Constitution, taxation may only be imposed by law (that is, by or under an Act of Parliament). Taxes in the Cook Islands are all levied at a national level. Cook Islands taxes consist of an income tax, a value added tax, customs duties, import levies and departure tax, all of which are administered by the Revenue Management Division of the Ministry of Finance and Economic Management.

28. All income tax is imposed under the Income Tax Act 1997. The rules for determining taxable income are generally the same for both individuals and companies. Residents are taxed on their worldwide income, but non-residents are taxable only on their Cook Islands sourced income (Income Tax Act, s. 80). The Cook Islands generally does not tax capital gains. However, some capital gains may be taxed under ordinary income tax rules (such as income from property purchased for the purpose of resale). There are no export incentives or investment holidays in the Cook Islands tax system. Tax credits are allowed for foreign taxes paid (Income Tax Act, s. 85) and charitable donations (Income Tax Act, s. 70).

29. An individual is resident in the Cook Islands for tax purposes if the individual's home is in the Cook Islands and the person is personally present in the Cook Islands for 183 days in a 12 month period (Income Tax Act, s. 82). A company is resident in the Cook Islands for tax purposes if it is incorporated or has its head office (i.e. the centre of the company's administrative management) in the Cook Islands (Income Tax Act, s. 82). Progressive tax rates are applied for individuals: 0% to 30% for residents and 0% to 30% for non-residents (Income Tax Act, First Schedule). The company tax rate is 20% for resident companies and 28% for non-resident companies. Partnerships are treated as transparent for tax purposes (Income Tax Act, s. 11). Trustees are taxed on trust income at 30% (Income Tax Act, First Schedule).

30. Final withholding tax at 15% rate is generally imposed on withholding income (dividends, interest and royalties) derived from the Cook Islands by a non-resident (Income Tax Act, s. 100). Otherwise, the requirements for

non-residents to file tax returns are the same as for residents. For administrative purposes, all taxpayers (whether individual or non-individual) are allocated a unique taxpayer identification number, known as a Revenue Management Division (RMD) number (Income Tax Act, s. 218). The number applies for value-added tax (VAT) as well as income tax purposes.

31. VAT is imposed under the Value Added Tax Act 1997. VAT is a value added tax based on the standard European model, but with a single rate of tax and few exemptions. The tax rate is 15%.

Overview of commercial laws and other relevant factors for exchange of information

32. The principal operational law enforcement agency in the Cook Islands is the Cook Islands Police, with Immigration and Revenue Management Division having minor investigative roles. The Solicitor-General's office and the Cook Islands Police generally undertake prosecutions. However, the Revenue Management Division of the Ministry of Finance and Economic Management prosecutes most tax and Customs offences.

33. Memoranda of Understanding to formalise the sharing of information and intelligence have been signed between the Financial Intelligence Unit (FIU) and the Financial Supervisory Commission, Police, Customs, and the Ministry of Justice (MoJ). The Combined Law Agency Group (CLAG) co-ordinates multi-agency co-operation in matters such as investigations, undercover monitoring or surveillance. The CLAG is led by the Commissioner of Police and has representatives from Customs, Immigration and the FIU.

34. The Financial Supervisory Commission (FSC), governed by the Financial Supervisory Commission Act 2003, acts as a registrar for international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations. The FSC is also the sole prudential regulator and supervisor of licensed financial institutions, and acts under delegated authority from the FIU to carry out annual inspections on all banks and trustee companies for compliance with Part 2 of the Financial Transactions Reporting Act 2004 (FTRA). In addition to the information that must be provided to the FSC on registration, the FSC has full information access powers for the purpose of carrying out its functions.

35. The Cook Islands anti-money laundering regime is principally contained in the FTRA and supervised by the FIU. The obligations imposed by the FTRA apply to "reporting institutions", which are broadly defined and include: *(i)* financial institutions, *(ii)* trustee companies or other company service providers that act in the formation or management of legal persons or that act as a trustee of an express trust; and *(iii)* lawyers, accountants,

notaries or other independent legal professionals that act in relation to the creation, operation or management of legal persons or arrangements (including partnerships and trusts).

36. FTRA obligations, such as customer due diligence obligations, effectively apply in the case of all international entities and arrangements (companies, partnerships and trusts) as well as foundations, since they must be established through and registered by a Cook Islands trustee company. Furthermore, for virtually every international entity formed in the Cook Islands a banking relationship is established. The establishment of domestic companies, partnerships and trusts will generally require the services of a legal practitioner who, in turn, is also subject to the FTRA obligations.

37. In addition, foreign enterprises (companies, partnerships, individuals, etc.) that have more than one third foreign ownership, are governed by the Development Investment Act 1995-96. Pursuant to section 17 of this Act, a foreign enterprise cannot invest in or carry on business in the Cook Islands unless it is approved by and registered with the Business Trade and Investment Board (BTIB). The BTIB's main functions include approval of foreign investment, sourcing markets for locally produced goods, stimulating local trade as well as developing the business plan for the Cook Islands. The BTIB also administers the Investment Code of the Cook Islands[5] which is designed to encourage and guide development investment in particular areas of the economy as identified by the Government.

Overview of the financial sector and relevant professions

38. The Cook Islands has no Central Bank, and it uses New Zealand currency. The 2009 Mutual Evaluation Report on the Cook Islands by the Asia/Pacific Group (APG) on Money Laundering notes that, due to the small size of the Cook Islands, not all types of financial activity covered by the FATF Recommendations operate there. There is no securities sector in the Cook Islands, no stock exchange and no casino.

39. The Cook Islands financial sector is divided into two parts: domestic and international. All banks are licensed and supervised by the FSC under the provisions of the Banking Act 2011. The domestic banking sector comprises four banks, two of which are branches of Australian banks that account for more than 58% of the banking sector. The other two banks are a 100% Government-owned local bank and a Cook Islands private bank. The total assets of these banks at the date of the on-site was NZD 577 321 000 (EUR 359 436 944). The estimated combined assets under administration

5. www.mfai.gov.ck/index.php/foreign-affairs/trade/73-cook-islands-investment-code-2003.html.

and management by Cook Islands trustee companies is NZD 20.2 billion (EUR 12.6 billion).

40. Following changes to the Banking Act in 2009 and 2010, it is now no longer possible to hold an international banking licence for conducting business with a person who is not resident in the Cook Islands, without also holding a domestic banking licence. This means that all licenced banks must have a physical presence in the Cook Islands. Currently, three banks hold an international banking licence (i.e. all but the 100% Government-owned local bank).

41. The insurance industry is also very small and it is supervised by the FSC. There is one domestic general insurance company and three offshore insurers. The Insurance Act 2008 introduced a complete licensing and supervisory regime from 1 January 2009. The regime applies to domestic and offshore insurers, insurance intermediaries (agents and brokers) and insurance managers, who act as managers of offshore insurers. Life insurance is sold by visiting agents for two New Zealand life insurance companies as no life insurance company is established in the Cook Islands. In 2013, the Captive Insurance Act was passed which provides for the licensing and supervision of captive insurers. As at the date of this report, no such captive insurers have been licensed. Captive insurers may only be formed as Cook Islands international companies or Cook Islands domestic companies, and therefore would be subject to the legal obligations applicable to international companies or domestic companies as discussed below.

42. Pursuant to the Trustee Companies Act 2014, trustee companies are authorised by the FSC to provide services such as the incorporation of international companies, the registration of international trusts, international partnerships, limited liability companies and foundations, to act as a trustee or fiduciary, and other related services. There are currently six trustee companies operating in the Cook Islands. Asset protection trusts remain a major area of business for this sector.

43. There are 54 lawyers registered and admitted to practice law in the Cook Islands. A majority are employed in the offshore sector and there are only seven law firms operating as businesses. Cook Islands practising lawyers are administered by the Cook Islands Law Society pursuant to the Law Practitioners Act 1993/94. The Chief Justice hears complaints and deals with applications for admission to the Cook Islands Bar. The Law Practitioners Act provides for the audit of solicitors' trust accounts. In addition, 16 accountancy businesses operate in the Cook Islands. Most of the international businesses maintain in-house accounting staff and use only chartered accountants for their accounting services.

Recent developments

44. The Cook Islands has an emerging network of tax information exchange agreements (TIEAs), comprising 18 TIEAs signed to date, all of which are based on and closely follow the OECD Model TIEA. Fourteen of these TIEAs have entered into force. Negotiations are currently in progress with an additional seven jurisdictions.

45. The regulatory framework for the financial sector has undergone reform since the Phase 1 Report. In addition to changes made to address the Phase 1 recommendations, this includes the drafting of a new Financial Transactions Reporting Act and of Financial Transactions Reporting Regulations to address issues identified in the 2009 APG Mutual Evaluation Report, the passing of the Foundations Act 2012, the Captive Insurance Act 2013 and the Trustee Companies Act 2014.

Compliance with the Standards

A. Availability of Information

Overview

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

47. In respect of ownership and identity information, there are comprehensive obligations consistently imposed on domestic, international and foreign entities and arrangements (companies, partnerships, trusts and foundations) that ensure that updated information is available either in the hands of public authorities (i.e. the Public Registrar, Financial Supervisory Commission, Business Trade and Investment Board, etc.) or the entity itself (memorandum of association or shareholder register). These obligations are complemented by tax law requirements imposed on domestic and foreign entities to file annual returns containing ownership information. Anti-money laundering obligations apply with regard to all international entities and arrangements (companies, partnerships and trusts) as well as foundations,

since they must be established through and registered by a Cook Islands trustee company. Amendments to the Cook Islands' anti-money laundering legislation made in December 2013 ensure that with respect to international trusts, the identity of all beneficiaries of the trust needs to be obtained by the trustee in the Cook Islands.

48. Bearer shares are expressly permitted for international companies and sufficient mechanisms are available under the anti-money laundering framework to ensure availability of information concerning the identity of the beneficial owner. Domestic companies and limited liability companies cannot issue bearer shares. Enforcement provisions are in place to ensure the availability of ownership and identity information. Compliance with the obligations imposed in connection with bearer shares is high and closely monitored, and the enforcement provisions are effective.

49. In practice, the Cook Islands authorities have good systems in place for ensuring the availability of information, both through initial registration of legal persons and arrangements as well as comprehensive regimes for monitoring the compliance with tax and anti-money laundering obligations. These systems are overseen by the Ministry of Justice (in respect of domestic companies), the Business Trade and Investment Board (in respect of foreign enterprises), the Revenue Management Division (in respect of domestic and foreign companies, domestic and foreign partnerships, domestic and foreign trusts), and the Financial Supervisory Commission (in respect of international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations). These government agencies share information with one another, and maintain good relationships with the relevant taxpayers and the trustee companies which act as registered agent for the entities under the purview of the Financial Supervisory Commission. These systems and monitoring programs ensure a very good level of compliance with the relevant record keeping obligations.

50. All five EOI requests received by Cooks Islands included a request for ownership information, relating to five domestic taxpayers and 15 international companies. All responses were provided in a timely manner.

51. As far as accounting information is concerned, the Cook Islands commercial and tax law generally impose sufficient record keeping requirements on domestic and foreign entities and arrangements (companies, partnerships and trusts). Obligations have recently been introduced to require that accounting records be kept for at least six years in respect of international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations. The amendments in respect of international companies, international partnerships, limited partnerships also refer to the obligation to maintain underlying documentation for at least six years. However, shortcomings are identified with respect

to the obligation to maintain all underlying source documentation in respect of limited liability companies, international trusts and foundations.

52. In practice, compliance with accounting record requirements is monitored and enforced by the Revenue Management Division in respect of domestic and foreign companies, domestic and foreign partnerships, domestic and foreign trusts, by checking all tax filings and conducting tax compliance actions, including full scale audits. The Financial Supervisory Commission monitors and enforces the availability of accounting records in respect of international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations, through its annual on-site inspections of all financial institutions and the trustee companies which act as the registered agent for the relevant entities. However, as the legislative requirements to maintain accounting documentation are relatively recent in respect of international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations, a recommendation is made that the Cook Islands monitor the effectiveness of these enactments. The Cook Islands received, and timely responded to, one request for accounting records during the review period in respect of 12 persons.

53. As to bank information, banks and other financial institutions have to comply with detailed customer due diligence obligations and must keep all records pertaining to their customers' identity, as well as the nature and amount of financial transactions of account holders, for at least six years. Element A.3 was therefore found to be in place. In practice, the Financial Supervisory Commission and the Financial Intelligence Unit conduct comprehensive reviews of compliance with customer due diligence obligations, by way of annual on-site inspection of every relevant bank. Compliance with these obligations has been found to be of a high standard. The Cook Islands received, and timely responded to, two requests for banking information during the review period in respect of three persons.

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.

54. The relevant entities and arrangements of the Cook Islands are companies (*ToR* A.1.1), some of which may issue bearer shares (*ToR* A.1.2), partnerships (*ToR* A.1.3), trusts (*ToR* A.1.4), and foundations (*ToR* A.1.5). This section also deals with enforcement provisions to ensure compliance with the laws on the ownership of relevant entities (*ToR* A.1.6).

Companies *(ToR A.1.1)*

55. As further detailed in this section, the following types of companies may be formed in the Cook Islands: *(i)* domestic companies; *(ii)* international companies; and *(iii)* limited liability companies. In addition, this section also analyses foreign companies and nominees.

Domestic companies

56. Domestic companies are essentially companies which trade locally or that have local shareholders. Such domestic companies may be incorporated under the Companies Act 1970-71 (CA), which adopts, with suitable modifications, the New Zealand Companies Act 1955.[6] Section 13 of this Act provides for the incorporation of the following types of company:

- company limited by shares: the liability of members is limited to the amount, if any, unpaid on the shares respectively held by them;
- company limited by guarantee: the liability of members is limited to the amount the members have respectively undertaken to contribute in the event of the company being wound up; or
- company with unlimited liability: the liability of members is unlimited.

57. Persons wishing to incorporate a domestic company must sign and deliver a memorandum of association to the Registrar of Companies, which is part of the Ministry of Justice (MoJ). This memorandum sets out the full names and addresses of the members of the company, as well as the number of shares held (CA, ss. 25 and 26).

58. Domestic companies are required to submit annual returns following the form prescribed under the Companies Act or approved by the Registrar (CA, s. 130(4)). As at the date of the on-site visit, there were 1 052 active companies registered with the MoJ. The annual return form requires identification of any change in shareholding, directors or secretaries. In addition, any change in directors and company secretaries must be notified to the MoJ by a separate within 14 days of the change taking place (CA, s. 200(4),(5)).

59. In addition, domestic companies are required to keep a register that records the name and address of all members and, in the case of a company limited by shares, details of the shares held by each member and the date on which any person ceased to be a member (CA, s. 118). This register must be kept in the Cook Islands, generally at the registered office of the company

6. In New Zealand, the Companies Act 1955 was repealed and replaced by a new Act in 1993.

(CA, s. 118(2)). However, there are no express rules for maintaining records in the case of liquidations.

60. All domestic companies are Cook Islands taxpayers and are therefore required to furnish an annual return of income, without exceptions (Income Tax Act, ss. 2 and 8). The full names and addresses of shareholders or beneficial owners of shares (if held by a nominee, trustee or otherwise) must be disclosed in the company tax return.[7]

61. There is no legal requirement for the establishment of a domestic company through a service provider or a legal practitioner. If a service provider or a legal practitioner is involved, however, general customer due diligence requirements under the Financial Transactions Reporting Act 2004 (FTRA) will be applicable (see section on *International companies* below). Nevertheless, commercial and tax laws ensure that sufficient ownership information is available.

62. In practice, new domestic companies are usually incorporated with the assistance of a legal practitioner. The MoJ has two full time staff working on company registrations (as well as having responsibility for registration of births, deaths and marriages and chattel transfers). The MoJ receives the following documents when a domestic company is registered: the memorandum and articles of association, particulars of directors and secretary, notice of registered office and a declaration of compliance (which states that all documents are in order, and which is usually signed by a legal practitioner). The MoJ currently keeps documents in paper copy, although a project for implementing electronic record keeping is planned. The MoJ registered an average of 79 new domestic companies each year over the years 2011, 2012 and 2013.

63. The MoJ checks the annual returns for completeness before processing them, as well as comparing each return against that received for the previous year. The MoJ staff maintains a spreadsheet of all domestic companies, which contains fields denoting whether the annual return is filed and whether the annual fee is paid. Annually (in March each year), a notice is published in the local newspaper to remind domestic companies of their obligation to pay the annual fee and file their annual return. In April, a specific reminder is sent to those companies that are late in paying their fee. Where fees are still outstanding, additional reminders are sent in May and again in June. If the annual fee has not been paid by July, those domestic companies are struck off the register. Companies that are struck off are dissolved, and no longer entitled to carry on business in the Cook Islands. Additional fees and fines apply to subsequently reinstate the entity. A summary of the filings that occurred after reminder notices and the number of companies struck off is as follows:

7. Available at www.mfem.gov.ck/docs/RMD/Forms/company-tax-return.pdf.

	Returns filed after follow up action				
	April	May	June	Struck Off	Reinstated
2011	517	397	292	99	10
2012	725	459	292	94	9
2013	634	506	263	87	5

64. When domestic companies initially register with the MoJ and have received a certificate of incorporation, they would then apply for a unique taxpayer identification number from the Revenue Management Division (RMD). The taxpayer identification number is required for companies that are trading, which includes those earning passive income. In addition, where domestic companies have more than one third foreign ownership, they are required to obtain approval from the BTIB. The RMD receives a monthly gazette from the BTIB listing all such new approvals. The RMD checks this gazette to ensure that each new enterprise (including domestic companies with more than one third foreign ownership) has applied for its RMD number. Furthermore, the RMD has recently hired an outreach officer whose role is to contact new businesses to ensure they adhere to their tax requirements.

65. The RMD has additional visibility of newly incorporated companies as they also administer registration for VAT (which has a relatively low annual turnover threshold at which registration is required, being NZD 40 000 (EUR 25 000) and customs import levies. Furthermore, given the small size of the islands, staff within the RMD offices in the two islands of Rarotonga and Aitutaki (in which the vast majority of the population resides) have physical visibility of businesses operating locally, and visits are routinely made to the other islands.

66. The RMD maintains an electronic database of its domestic company taxpayers, which includes details of date of registration, prior income tax assessments, income tax payments and other correspondence. As at May 2014, 831 company taxpayers are registered with the RMD (the difference between the number of entities registered with the RMD and MoJ being that companies are only required to obtain their RMD number when they begin trading). Filed tax returns are maintained in paper copy in the RMD head office in Rarotonga and are never destroyed. Historical company tax returns are filed in batches, with each batch of 50 returns having its own batch number, making it very fast to locate if needed.

International companies

67. Under the International Companies Act 1981-82 (ICA), international companies may be incorporated for any lawful purpose (ICA, s. 13). Resident Cook Islanders are prohibited from holding a beneficial interest in

an international company. Section 13(3) of the ICA provides for the incorporation of the following types of international company:

- company limited by shares;
- no-liability company;
- company limited by guarantee;
- company limited by both shares and by guarantee;
- unlimited company; or
- mutual company.

68. International companies are incorporated by and registered with the Registrar of International and Foreign Companies, which is part of the Financial Supervisory Commission (FSC).

69. Neither the registration requirements nor the ongoing requirement for the company to furnish an annual return will necessarily identify its shareholders or beneficial owners (ICA, s. 14(10)). Nevertheless, international companies are required to keep a register of all current members and persons who ceased to be a member during the last seven years (except in relation to bearer shares, the arrangements for which are described below in section A.1.2), including names, addresses and details of the shares held by each member (ICA, s. 105). The register must be kept in the Cook Islands, and in practice this is always at the registered office of the company (being the office of the designated trustee company) (ICA, s. 106).

70. All registrations of international companies must be conducted through a trustee company (s. 9(1), ICA). There is no general requirement for a resident director but, if one is appointed, that resident director must be a trustee company (ICA, s. 83). An international company must have a resident secretary, which must be a trustee company (ICA, s. 90). The FTRA provides for general customer due diligence requirements which are applicable to such a trustee company (FTRA, ss. 3 to 7).

71. A comprehensive range of documentation for identification and verification is stipulated in sections 3 and 4 of the FTRA, including information concerning natural persons (name, address and occupation) and legal entities (name, legal form, registration number, registered address, principal owners and beneficiaries, directors and control structure). Records held by a trustee company pursuant to these obligations must be retained for at least six years "in a manner and form that will enable the reporting institution to comply immediately with requests for information from the FIU or a law enforcement agency" (FTRA, s. 6). In addition, clauses 2 and 3 of the International Companies (Evidence of Identity) Regulations 2004 require a

trustee company to identify and verify the person for whom a share is held on trust or in respect of the bearer of a bearer instrument (see further details on the section *Bearer shares* below). See section A.1.6 below for details of the monitoring of compliance with customer due diligence obligations.

72. International companies are generally not subject to Cook Islands taxation, and are therefore under no general requirement to furnish returns of income (ICA, s. 249(2)). However, the exemption does not apply in the case of an international company that "transacts onshore business", other than by way of an isolated transaction that is completed within 31 days, or in respect of any income of the international company that is derived by way of dividend, interest, royalty or any other means of distribution from a domestic company or natural person resident in the Cook Islands. The conduct of onshore business by an international company is governed by the Development Investment Act and must be registered with the Business Trade and Investment Board (BTIB) (see section on *Foreign companies* below).

73. Over 2011, 2012 and 2013, an average of 124 new international companies were registered in the Cook Islands each year. As at 31 December 2013, there were 1 053 international companies registered with the FSC. Since December 2011, all registrations have been carried out online. The FSC records relating to international companies are thus now maintained electronically, with paper copies of documents that were filed before the introduction of the online system also being maintained. Only the six trustee companies in the Cook Islands have the access to file documents through this online system, and prior to its introduction the FSC provided them with training on using the system. The online registration system is also used to notify the FSC of a change in director, registered address or resident secretary (which must be notified within 1 month of the change (ICA, s. 91(5)), as well as for providing the annual return. The FSC's electronic system automatically rejects documents that are incomplete.

Limited liability company

74. An additional form of limited liability company may be incorporated for any lawful purpose under the Limited Liability Companies Act 2008 (LLCA, s. 6). This form of corporate vehicle offers simpler provisions for determining rights between members. Members of a limited liability company are allocated a share of company profits, losses or distributions on the basis of the value of the contributions made by each member. The limited liability company legislation also contains a number of asset protection features.

75. Limited liability companies are incorporated by and registered with the Registrar of Limited Liability Companies (LLCA, s. 3), which is part of the FSC. No identification of members or owners is required as part of the

registration process, or when the company annual report is filed (LLCA, ss. 11(1) and 20). Nonetheless, limited liability companies are required to keep at its registered office (which is the office of the trustee company acting as registered agent, LLCA, ss. 2 and 18) a current list of the full name and business, residence or mailing address of each member and manager (LLCA, s. 32(1)). These records are to be maintained for six years following the dissolution of a limited liability company (LLCA, s. 32(2)).

76. All limited liability companies must be registered through a trustee company, acting on behalf of persons who do not reside in the Cook Islands (LLCA, ss. 5(1) and 11(1)). Limited liability companies are not required to have directors or a company secretary (LLCA, s. 26), but they are required to maintain a registered agent (which must be a trustee company) in the Cook Islands (LLCA, s. 18). The FTRA provides for general customer due diligence requirements which are applicable to such a trustee company, as described above under *International companies* (FTRA, ss. 3 to 7).

77. Limited liability companies are generally not subject to Cook Islands taxation, and are therefore under no general requirement to furnish returns of income (LLCA, s. 76(1)). The conduct of onshore business by a limited liability company is governed by the Development Investment Act and must be registered with the BTIB (see section on *Foreign companies* below).

78. Over 2011, 2012 and 2013, an average of 107 new limited liability companies were registered in the Cook Islands each year. As at 31 December 2013, there were 362 limited liability companies registered with the FSC. Since December 2011, all registrations are carried out online. Only the six trustee companies in the Cook Islands have the access to file documents through this online registry, and prior to its introduction the FSC provided them with training on using the system. The FSC's electronic system automatically rejects documents that are incomplete.

Foreign companies

79. If a foreign company is resident in the Cook Islands for tax purposes by virtue of its centre of management and control, it is subject to the general return filing requirement for resident companies. Furthermore, foreign companies deriving income from the Cook Islands (whether resident there or elsewhere) are assessable for income tax in the Cook Islands (Income Tax Act 1997, ss. 80(2), and 83). Such foreign companies will be required to furnish an annual return of income including the full names and addresses of the shareholders or beneficial owners of shares (Income Tax Act, ss. 2 and 8).

80. In addition, foreign companies carrying on business in the Cook Islands (referred to as "overseas companies") are required, within one month from the establishment of the place of business, to provide the Registrar of

Companies with a certified copy of the instrument constituting or defining the constitution of the company (CA, s. 397(1)(a)). There is no legal requirement for the registration of an overseas company through a service provider or a legal practitioner. Therefore, in such instances, the availability of ownership information will generally depend on the law of the jurisdiction in which the company is incorporated.

81. Nevertheless, upon registration, they must disclose the full name and address of each director, as well as of one or more persons in the Cook Islands authorised to accept service of documents on behalf of the company (CA, s. 397(1)(b)/(c) and (2)). The Registrar of Companies is to be notified of any change and sanctions apply for non-compliance (CA, ss. 401 and 406).

82. Under section 14 of the Development Investment Act, any foreign enterprise (whether or not a company) with more than one third foreign ownership and wishing to invest in or carry on a business in the Cook Islands must register with the BTIB. There are 390 foreign enterprises registered with the BTIB, including:

- overseas companies registered in the Cook Islands;
- Cook Islands companies with more than one third shareholding, control or beneficial ownership held by non-Cook Islanders;
- partnerships in which more than one third of the partners are not Cook Islanders; and
- individuals.

83. The information to be filed on registration, and annually thereafter, includes detailed ownership information, such as the names, addresses and passport numbers of all legal and beneficial owners of the shares (Development Investment Act, s. 34 and Regulation 3(d) of the Development Investment Regulations 1996). According to a letter of 12 March 2012 issued by the Business Trade and Investment Board, the term "beneficial owner" is interpreted as meaning a person who is not registered as shareholder but who derives a benefit or control over the shares. If incorporated bodies hold shares, the beneficial owners are persons who benefit or control those shares. This process can continue if there is a chain of companies holding shares to reveal the natural persons deriving benefit and control of the shares. The term is used to trace and identify natural persons who benefit or control shares in foreign enterprises that do business in the Cook Islands under the Act.

84. On average during the review period, there were 6-10 foreign companies that had long term approvals to do business in the Cook Islands, including the two Australian bank branches. In addition, there were on average 6-15 foreign companies that have current short term approvals to do business in the Cook Islands. In practice, these foreign companies are

usually engaged in short term projects including those funded by foreign aid and their approvals expire after the completion of the project. In general, foreign companies would engage a local agent for the purpose of managing regulatory requirements. The BTIB receives approximately three to four applications per month, and currently has 11 staff members. In considering applications, the BTIB will review the ownership structure of the foreign company, including the incorporation documents of the foreign company. If a foreign company proposes to incorporate a local subsidiary, documents and ownership information are obtained with regard to both the foreign company and the local subsidiary. Failure to register could result in business transactions being invalidated in the Cook Islands. Litigation on this point occurred in 1991, where a non-resident person purported to undertake business activities in the Cook Islands without having registered. The Court of Appeal held that the relevant contracts were illegal and unenforceable (*Preston v Tierney* [1992] CKNZCA 2).

85. The BTIB maintains an electronic database of all approved foreign enterprises (which includes foreign companies as well as other types of entities and arrangements), including details of the name, shareholders and approved business activity. Notification of approval decisions made by the BTIB are provided in a monthly gazette to the RMD, MoJ and the Cook Islands Ministry of Foreign Affairs and Immigration. The BTIB also receives information from the MoJ on new company registrations, real property leases and court judgments to monitor compliance with BTIB requirements. The RMD checks this gazette to ensure that each new enterprise has applied for its RMD number. In the event that it had not done so, the RMD would contact the enterprise.

86. Any transfer of the legal or equitable interest in shares or proprietary interest, or increase in capital or proprietary interest in a foreign company must be approved by the BTIB. A purported transfer or increase without the BTIB's approval is null and void and of no effect in the Cook Islands (Development Investment Act 1995-96 s. 24, as amended by the Development Investment Amendment Act 2008)). The BTIB receives a request for approval of change in ownership approximately three to four times per year, and in each case the beneficial ownership is verified again. Failure to obtain such approval will invalidate the share transfer under Cook Islands law. The consequence of this for a foreign company would be, for example, exposure to risk that commercial contracts could be challenged for lack of legal authority.

87. Annual returns are provided to the BTIB. Since 2013, annual returns have been entered into the BTIB's electronic database. Pre-2013 annual returns are retained by the BTIB in paper copy. Annual returns include details of ownership over the past three years, allowing the BTIB to verify consistency of reporting. The due date for annual returns is publicised

in the newspaper each year. If annual returns are not received, the BTIB commences follow up actions within a month. On one occasion, a foreign enterprise was prosecuted for failure to provide an annual return.

88. The BTIB has a process for revocation and deregistration of foreign companies, whereby foreign companies are removed from the register. Revocation is the cancellation of an approval to conduct business, and could arise as a result of a successful prosecution of the company for breaching the law, failing to comply with the conditions of the BTIB approval, going into liquidation or bankruptcy or ceasing to do business. Deregistration occurs where the foreign enterprise is no longer a foreign enterprise because the foreign investors have become a Cook Islander (granted Permanent Residence status), or Cook Islanders have beneficially owned or controlled more than two thirds of the enterprise. Revocation and deregistration occur pursuant to sections 22 and 26 of the Development Investment Act and the procedure is governed by the Development Investment Regulations. A review of the register is undertaken on a continuing basis to determine whether additional deregistrations are required.

Nominees

89. There is no requirement in the Companies Act, ICA or LLCA for a person acting as a nominee to know the ultimate beneficial owner. Nevertheless, domestic companies and foreign companies which are resident for tax purposes in the Cook Islands are required to furnish an annual return of income, including the full names and addresses of shareholders or, if held by a nominee, trustee or otherwise, of the beneficial owners of the shares (Income Tax Act, s. 8).

90. International companies and limited liability companies must be incorporated by a trustee company (LLCA, s. 9(1), ICA and ss. 5(1) and 11(1)). The FTRA provides for general customer due diligence requirements, as described above (FTRA, ss. 3 to 7). In particular, if the trustee company has reasonable grounds to believe that a person is undertaking the transaction (other than a one-off transaction) on behalf of another person, then it must also verify the identity of the other person for whom, or for whose ultimate benefit, the transaction is being conducted (FTRA, s. 4(5)). In addition, sections 2 and 3 of the International Companies (Evidence of Identity) Regulations require a trustee company to identify and verify the person for whom a share is held on trust or in respect of the bearer of a bearer instrument.

91. In practice, nominee arrangements are very rare for domestic companies, many of which are small and owned by a husband and wife. The practical arrangements for monitoring of compliance by trustee companies with their obligations under the FTRA are discussed below under *Enforcement provisions*.

Conclusions

92. Domestic companies are required to keep an updated shareholder register in the Cook Islands and to disclose updated ownership information to the Registrar of Companies upon registration and then on an annual basis. Domestic companies and foreign companies that are resident in the Cook Islands for tax purposes by virtue of their centre of management and control are annually required to disclose to the tax authorities identity information concerning their shareholders or, if held by a nominee, trustee or otherwise, of the beneficial owners of shares.

93. International companies and limited liability companies must keep at their registered office a list containing current ownership information concerning all their members, except in relation to bearer shares. In addition, these entities must be established through and registered by a Cook Islands trustee company, which is subject to comprehensive FTRA obligations, including customer due diligence requirements. Trustee companies are required to identify the person for whom, or for whose ultimate benefit, a transaction (other than a one-off transaction) is being conducted and the person for whom a share is held on trust or in respect of the bearer of a bearer instrument.

94. In practice, the arrangements for ensuring the availability of ownership information in respect of all domestic, foreign, international and limited liability companies are robust and are managed by the MoJ, RMD, FSC and BTIB. These organisations have good systems in place for the receipt of information, and co-ordinate together where possible. Within the review period, ownership information on companies has only been requested in respect of international companies, and in all cases answered to the satisfaction of the treaty partner.

Bearer shares *(ToR A.1.2)*

Domestic companies

95. There is no express reference to bearer shares in the Companies Act 1970-71 (CA). However, the ability to issue bearer shares under this Act is (indirectly) precluded by the requirements relating to the issue and transfer of shares. In particular, sections 84 and 87 of the Companies Act provide that shares in a company must be transferred by entry of the name of the transferee on the share register. Entry of the name of a person in the share register as holder of a share is *prima facie* evidence that legal title to the share vests in that person (CA, s. 126).

96. In any event, domestic companies are required to maintain a share register containing the names of all shareholders (CA, s. 118). In addition, they must furnish an annual return of income, including the full names and

addresses of shareholders or beneficial owners of shares, if held by a nominee, trustee or otherwise (Income Tax Act, s. 8).

International companies

97. Bearer shares are expressly permitted for international companies (ICA, ss. 35 and 36). However, an international company is not allowed to deliver bearer instruments to any person other than a custodian, defined as any person which is, from time to time, a licensed financial institution (ICA, ss. 2(1) and 35A(1)(a)). A "licensed financial institution" has the same meaning given in section 2(1) of the Financial Supervisory Commission Act 2003, i.e. the holder of an international or restricted licence granted under the Banking Act 2011; an insurance company licensed pursuant to the Insurance Act 2008; a company licensed pursuant to the Trustee Companies Act 2014 to carry on trustee company business; or a captive insurance company licensed pursuant to the Captive Insurance Act 2013 (definition amended by the Trustee Companies Act 2014). Custodians are, therefore, subject to the general customer due diligence requirements and other obligations imposed by the FTRA.

98. Before holding any bearer instrument or transferring its ownership, a custodian must receive "satisfactory evidence on the identity of the bearer of the bearer instrument" (ICA, s. 35A(1)(a)). Even though the concept of "bearer of the bearer instrument" is not defined in the ICA or the Regulations, it is clear from the context in which this term is used that it refers to the beneficial owner of the bearer instruments, and not to the person who physically holds the instrument (that is, because the person physically holding the instrument is referred to as the "Custodian" not the "bearer"). The custodian is only allowed to transfer the bearer instruments to another custodian or to the international company which issued the bearer instrument for the purpose of surrendering that instrument (ICA, s. 35A(1)(b)).

99. The custodian must "hold any bearer instrument for and subject to the directions of the bearer thereof" (ICA, s. 35A(1)(c)). Where the bearer of a bearer instrument requests that a bearer instrument be redeemed, converted to any other type of bearer instrument, converted to a registered share or the ownership or beneficial ownership of the bearer instrument be transferred, the custodian holding the instrument must first receive satisfactory evidence as to the identity of every person who, as a result of the request, will be paid the redemption proceeds by the international company, or become a registered shareholder, or become the bearer or otherwise a holder of an interest in the bearer instrument or another bearer instrument, where the original bearer instrument is converted (ICA, s. 35A(2)).

100. Where a bearer instrument is transferred to a custodian that is not the trustee company providing the registered office for the international company that issued the bearer instrument, then that custodian must provide written notice to the international company at its registered office identifying the bearer instrument in respect of which it is acting as a custodian (ICA, s. 35A(3)). In addition to the FTRA general customer due diligence requirements (FTRA, ss. 3 to 7), the International Companies (Evidence of Identity) Regulations require a trustee company or the custodian to identify and verify the person for whom a share is held on trust or in respect of the bearer of a bearer instrument (ICA, s. 35A(4)). A comprehensive range of documentation for identification and verification is stipulated in sections 2 and 3 of the Regulations.

101. The Cook Islands' authorities have indicated that bearer shares are no longer in use. From information provided by the six trustee companies of the Cook Islands, there are only 4 international companies that have issued bearer shares (a decrease from 15 as at March 2012), which correspond to 0.4% of international companies in the Cook Islands. Most of the international companies with bearer shares are long-standing entities dating back to pre-2000, which confirms that bearer shares are not part of modern Cook Islands' entities. The Cook Islands is planning to eliminate bearer shares as part of the current legislative drafting project for revamping the ICA.

102. In practice, the custodian has in every case been the Cook Islands trustee company and registered agent for the international company. All trustee companies are reviewed by the FSC each year, including an annual inspection as described below under section A.1.6.

Limited liability companies

103. Limited liability companies established under the LLCA do not have their capital divided into shares. Therefore, they cannot issue bearer shares.

Conclusions

104. Under the CA, domestic companies are always required to keep updated information concerning their shareholders in the share register and when shares are issued or transferred. Under the Income Tax Act, they must disclose the identity of all shareholders and beneficial owners of the shares in the annual tax return. International companies must be established through and registered by a Cook Islands trustee company, which is subject to comprehensive FTRA obligations. Trustee companies are required to identify the person for whom a share is held on trust or in respect of the bearer of a bearer instrument. Limited liability companies cannot issue bearer shares. In practice, there are now very few bearer shares in existence. Bearer shares must

be physically held by an authorised custodian, which is in practice always the trustee company providing the registered office in the Cook Islands. The custodian must have identity information on the beneficial owner of the bearer share. The custodian must also identify the beneficial owner when a bearer share is redeemed, converted or transferred. No requests for information from treaty partners have been made during the review period with respect to bearer shares. The monitoring regime in place in respect of bearer shares is described below under section A.1.6.

Partnerships *(ToR A.1.3)*

105. As further described in this section, the following types of partnerships may be established under the Cook Islands' laws: *(i)* domestic partnerships; *(ii)* international partnerships; and *(iii)* limited partnerships. In addition, this section also covers foreign partnerships.

Domestic partnerships

106. Partnership law in the Cook Islands is governed primarily by a New Zealand enactment, the Partnership Act 1908 (PA). That Act defines a partnership as "the relation which subsists between persons carrying on a business in common with a view to profit" (PA, s. 4(1)). A partnership is a distinct commercial entity for accounting purposes, with each partner jointly and severally liable for the liabilities of the partnership.

107. A partnership is not a legal entity separate from the individual partners that comprise the partnership. The partnership relationship is typically formalised by a partnership agreement, but a written agreement is not essential and the existence of a partnership can be determined based on facts and a consideration of all of the surrounding circumstances. The mere fact of co-ownership (i.e. holding property under joint tenancy and other profit-sharing arrangements) does not itself create a partnership.

108. There are no registration requirements for domestic partnerships other than the need to apply to the Revenue Management Division for an RMD number. Under section 2 of the Income Tax Act, a partnership falls within the definition of a "person". Every person chargeable with income tax under this Act must furnish a return of income (Income Tax Act, ss. 2 and 8). Each partner is separately assessed and liable for the tax payable on the share of the partnership income (Income Tax Act, s. 11).

109. Therefore, each partner must make an individual return of income which includes the income derived by the partner as a member of the partnership, and the partner's deductions. In addition, even though there is no joint assessment, each partnership must submit a joint return stating each partner's

name and share of the income. In practice, the tax office reported that only around a dozen tax returns for partnerships are received annually, and this number has been steady over the review period. The RMD monitors the filing obligations of partnerships by cross-referencing to the filing of income tax returns of the partners and with the registration of partnerships for VAT and PAYE purposes (pay-as-you-earn withholding tax on salary payment to employees of the partnership). The monitoring of tax obligations by the RMD is described below under section A.1.6.

110. There is no legal requirement for the establishment of a partnership through a service provider or a legal practitioner. If a service provider or a legal practitioner is involved, however, the general customer due diligence requirements under the FTRA will apply (FTRA, ss. 3 to 7). The effectiveness and monitoring of these obligations under the FTRA are discussed below under section A.1.6. Nevertheless, Cook Islands' tax law ensures that sufficient ownership information is available.

International partnerships and limited partnerships

111. The International Partnership Act 1984 (IPA) provides for the creation of two types of partnerships:

- International partnership: every partner is jointly and severally liable for the liabilities of the partnership (IPA, s. 22).
- Limited partnership: every general partner is jointly and severally liable for the liabilities of the partnership, but a limited partner is generally only liable to contribute in money or money's worth to the common stock, as capital (IPA, s. 62).

112. Neither form of partnership is a legal entity separate from the individual partners that comprise the partnership. International partnerships and limited partnerships must register with the Registrar of Partnerships, which is part of the FSC. In addition, the conduct of onshore business by an international partnership or limited partnership is governed by the Development Investment Act and must be registered with the BTIB (see section on *Foreign partnerships* below).

113. A partnership agreement is required as the means by which an international partnership or limited partnership is evidenced (IPA, s. 2). There is no prescribed form for a partnership agreement, but such agreement would as a matter of course contain details of the partners. The partnership agreement must be provided to the Registrar as part of those registration requirements (IPA, ss. 12 and 57). International partnerships and limited partnerships are generally not subject to Cook Islands taxation, and are therefore under no general requirement to furnish returns of income (IPA, s. 72(1)).

114. The registration of an international partnership or limited partnership must be arranged through a trustee company (IPA, ss. 10 and 55). In practice, all registrations are carried out online. Only the six trustee companies in the Cook Islands have the access to file documents through this online registry, and prior to its introduction the FSC provided them with training on using the system. The FSC's electronic system automatically rejects documents that are incomplete. As at 31 December 2013, only four international partnerships are registered with the FSC and there were no new registrations during the review period. Limited partnerships can only be established under the IPA, but as at 31 December 2013 none have been registered. The monitoring of trustee companies' obligations is described below under section A.1.6.

115. The FTRA provides for general customer due diligence requirements which are applicable to such a trustee company (FTRA, ss. 3 to 7). A comprehensive range of documentation for identification and verification is stipulated in sections 3 and 4 of the FTRA, including information concerning each partner when natural persons (name, address and occupation) or legal entities (name, legal form, registration number, registered address, principal owners and beneficiaries, directors and control structure). Such records must be retained for at least six years "in a manner and form that will enable the reporting institution to comply immediately with requests for information from the FIU or a law enforcement agency" (FTRA, s. 6). The monitoring of these obligations is described below under section A.1.6.

Foreign partnerships

116. Foreign partnerships which derive income from the Cook Islands are required to file annual tax returns, where the partners' identities and their income must be disclosed. The individual partners will also be required to file annual tax returns, as the partners are taxed individually on their share of the partnership's income (Income Tax Act, s. 8).

117. Under section 14 of the Development Investment Act, any foreign enterprise (including partnerships) with more than one third foreign ownership and wishing to invest in or carry on a business in the Cook Islands must register with the BTIB. The same requirements apply to an international partnership or limited partnership that wishes to *(i)* invest in a domestic company; *(ii)* acquire assets from a person ordinarily resident in the Cook Islands or a domestic company; or *(iii)* carry on business in the Cook Islands (IPA, s. 72(3)).

118. The information to be filed on registration, and annually thereafter, includes detailed ownership information, such as the names, addresses and passport numbers of all legal and beneficial owners (Development Investment Act, s. 34 and Regulation 3(d) of the Development Investment Regulations).

119. In practice, the BTIB's process for reviewing registration applications, maintaining ownership information, approving ownership changes, receiving annual returns and striking off foreign enterprises as described above under "foreign companies" applies equally to foreign partnerships. To date, 538 foreign partnerships have been registered since the Act came into force in 1996. 238 have since been deregistered or converted into local enterprises. Of the 300 foreign partnerships on the BTIB register, only about half are presently carrying on business.

Conclusions

120. Domestic partnerships are required to disclose updated ownership information to the tax authorities on an annual basis. International partnerships and limited partnerships must be established through and registered by a Cook Islands trustee company, which is subject to comprehensive FTRA obligations, including customer due diligence requirements. Any foreign enterprise (including partnerships) deriving income in the Cook Islands must file annual tax returns containing ownership information. In addition, foreign enterprises (including partnerships) with more than one third foreign ownership and wishing to invest in or carry on a business in the Cook Islands must register with the BTIB and annually disclose current ownership information concerning the partners. In practice, good systems are in place to manage the availability of information in respect of domestic, international, limited and foreign partnerships. No requests for ownership information involving partnerships were received by the Cook Islands during the review period.

Trusts *(ToR A.1.4)*

121. As further explained in this section, the following types of trusts may be created under the Cook Islands' laws: *(i)* domestic trusts; and *(ii)* international trusts. In addition, this section also deals with foreign trusts.

Domestic trusts

122. The Cook Islands, as a common law jurisdiction, inherited the common law concept of trusts. This includes express, discretionary, implied, and many other forms of trusts. A trust is not a separate legal entity. Rather, it is a (fiduciary) relationship between the trustee and beneficiary. Trust law is primarily contained in case law. However, a New Zealand enactment, the Trustee Act 1956 (as extended to the Cook Islands by section 639 of the Cook Islands Act 1915), establishes a number of statutory rules applicable to trustees. Even though the Trustee Act does not require a written instrument in order to establish an express trust, this is normal practice according to the Cook Islands' authorities.

123. Under the Trustee Act, there are no requirements concerning registration, verification or retention of information pertaining to the identity of settlors, beneficiaries and other trustees. There is, therefore, limited information on the number of domestic trusts that have been formed or are administered in the Cook Islands. This number of domestic trusts is estimated to be around a dozen and this number has been steady over the review period. The number of domestic trusts filing tax returns was nine in 2011, 12 in 2012 and 10 in 2013 (the slight reduction in 2013 being attributable to late filing of returns for those two trusts).

124. Under the common law, there is a general duty on trustees to maintain proper records of the trust property and to have knowledge of all documents pertaining to the formation and management of a trust. These documents typically include the identity of settlors, beneficiaries and other trustees. The recognition of this "irreducible" duty arises from the judgement of Millett LJ in *Armitage v Nurse* [1998], Ch 241,[8] which declared that "the duty of the trustees to perform the trusts honestly and in good faith for the benefit of the beneficiaries is the *minimum necessary to give substance to the trusts*" (*emphasis added*).

125. The Cook Islands authorities are of the view that such general duties imposed on trustees by common law are enough to ensure that reliable ownership and identity information is available in the Cook Islands. As a matter of course, a trustee cannot perform its fiduciary duties if the identities of the settlor, beneficiaries and other trustees are unknown. This would appear to apply in the Cook Islands, given the use of domestic trusts in practice (discussed below).

126. Under the Income Tax Act, trustees are under a general tax requirement to maintain information which is "necessary, relevant, or likely to provide information, for the purposes of collecting any tax or duty which the Collector is authorised to collect" (Income Tax Act, s. 219(1)). This includes the identity of settlors, beneficiaries and other trustees, as well as the assets, income and allowable deductions pertaining to the trust.

127. Trustees are required to file an annual tax return and to disclose, in the trust return, identity information concerning settlors, beneficiaries or

8. As acknowledged by the Law Commission in the fourth Issues Paper in the Review of the Law of Trusts, "The Duties, Office and Powers of a Trustee" (NZLC IP26, 2011), under Chapters 1 and 2 (see in particular, paragraphs 1.22, 1.46, 2.1, 2.10 and 2.13). The Law Commission is a publicly funded law reform organisation established under the Law Commission Act 1985 to undertake the systematic review, reform and development of the law of New Zealand, including the Trustee Act. The full range of trust issues papers can be found on the Law Commission's website (www.lawcom.govt.nz).

other trustees (Income Tax Act, ss. 2 and 8). In addition, section 83(1)(i) of the Income Tax Act deems income derived by a beneficiary under *any trust* deriving income sourced in the Cook Islands to be income derived from the Cook Islands. Such beneficiaries are, therefore, required to file an annual tax return in the Cook Islands (Income Tax Act, ss. 2, 8, 80 and 83).

128. There is no legal requirement for the establishment of a domestic trust through a service provider or a legal practitioner. Nevertheless, the Cook Islands' authorities have indicated that express trusts are in all cases established through a person who qualifies as a "reporting institution", as broadly defined under section 2 of the FTRA.[9] In the case of trusts, the FTRA customer due diligence obligations include identity information relating to each trustee and settlor, as well as "the nature of the trust and its beneficiaries" (see more details on section *International trusts* below).

129. In practice, domestic trusts are typically used by a family to manage real property located in the Cook Islands and investment income. They are not generally used for trading. Domestic trusts remain uncommon in the Cook Islands, a trend which is expected to continue given that from 2014 trusts are taxed in respect of trust income at the highest marginal rate (30%), with beneficiaries receiving a credit for the tax paid. The combination of common law, income tax obligations and customer due diligence obligations ensures that all relevant ownership information is maintained in respect of domestic trusts.

International trusts

130. The Trustees Act (as extended to the Cook Islands by section 639 of the Cook Islands Act 1915) and common law are applicable to both domestic trusts and international trusts, except insofar as they are inconsistent with or modified by the provisions of the International Trusts Act 1984 (ITA).[10] A trust (whether settled in the Cook Islands or elsewhere) may register under the ITA and, on so doing, becomes subject to the provisions of that Act (ITA,

9. The FTRA customer due diligence obligations apply to "reporting institutions", which are broadly defined and include: *(i)* financial institutions, *(ii)* trustee companies or other company service providers that act in the formation or management of legal persons or that act as a trustee of an express trust; and *(iii)* lawyers, accountants, notaries or other independent legal professionals that act in relation to the creation, operation or management of legal persons or arrangements (including partnerships and trusts).

10. The ITA has modified many areas of trust law, significantly in the area of fraudulent conveyance. It also abrogates from many other common law principles, for example, the law of perpetuities and the rule against double possibilities (ITA, ss. 6 and 8). There is no restriction on accumulations.

s. 15). However, the provisions of this Act do not apply to a trust whose beneficiary is domiciled or ordinarily resident in the Cook Islands (ITA, ss. 2 and 22).

131. The trust deed will generally determine the governing law of an international trust (ITA, s. 13G). If the deed specifies that Cook Islands law is the governing law of the trust, then the above rules for domestic trusts will apply, except to the extent that they are inconsistent with the provisions of the ITA (ITA, s. 3).

132. In practice, all international trusts are governed by Cook Islands law. Even if this were not the case, ownership and identity information will be available with respect to all Cook Islands international trusts regardless of the governing law by reason of the fact that the registration must be performed by a Cook Islands trustee company, and in practice, in all cases one of the trustees is a Cook Islands trustee company. The trustee companies are subject to detailed obligations concerning the maintenance of ownership and identity information, as follows.

133. International trusts must register with the Registrar of Trusts, which is part of the FSC. The Cook Islands' authorities have indicated that nearly all international trusts – 99-100% as reported by most of the six trustee companies – are discretionary trusts. The trust deed establishes the trust arrangement, and therefore will record details of the settlor and (except in the case of a discretionary trust[11]) the beneficiaries.

134. According to section 17 of the ITA, a copy of the trust deed or any amendment thereto *may* be provided to the Registrar as part of the registration requirements. The wording of this provision appears to suggest that the submission of the trust deed to the Registrar is left to the trustee's discretion. Nevertheless, the FSC interprets this provision to mean that, if the Registrar requests a copy of the trust deed, it must be provided by the trustee. In practice, a copy of the trust deed is requested as part of the online registration of an international trust and the online registration system automatically rejects an application omitting this document. Therefore, the trustee must keep a copy of the trust deed containing ownership and identity information concerning the settlor and (except in the case of a discretionary trust) beneficiaries.

135. Under section 27C(1C) of the ITA, the Registrar may destroy any records or registers in his possession after six years from the date of deregistration or expiration of the last certificate of registration.

11. It is settled law in common law jurisdictions that discretionary beneficiaries have only a hope or an expectation and no right in trust property unless and until an appointment is made to them by the trustee (see *Gartside v. IRC* [1968] AC 553).

136. The registration of an international trust must be arranged through a trustee company and at least one trustee must be in the Cook Islands (ITA, ss. 2 and 15(1)(a)). In every case, the trustee company will act as sole trustee or co-trustee of the trust, and the FSC advises that it is quite uncommon for an international trust to have a foreign co-trustee. In addition, the FTRA imposes customer due diligence obligations on "reporting institutions," which expressly cover all trustee companies acting as a trustee of an express trust (FTRA, s. 2).

137. Prior to December 2013, section 4(2)(d) of the FTRA required reporting institutions to, in the case of trusts, obtain information relating to: *(i)* the trust's name and registered office or address for service; *(ii)* the nature of the trust and its beneficiaries; and *(iii)* the name, address, occupation, national identity card or passport or other applicable official identifying document of each settlor and trustee. Section 4(2)(d) was amended in December 2013 to explicitly require that identity information on all beneficiaries of the trust needs to be obtained (rather than only the nature of the beneficiaries), and in the case of a class of discretionary beneficiaries, this would occur at the time a distribution is to be made. Such records must be retained for at least six years "in a manner and form that will enable the reporting institution to comply immediately with requests for information from the FIU or a law enforcement agency" (FTRA, s. 6). Trustee companies were required to re-examine their customer records to ensure that all required information was kept in accordance with the updated due diligence requirements.

138. In practice, all on-site visits to trustee companies carried out under the FTRA before December 2013 included a review of a sample of international trusts. A list of all known beneficiaries of international trusts was selected for inspection and the FSC was always provided with details of distributions made and to whom. The FSC checked to ensure that customer due diligence was always carried out on beneficiaries before distribution was made and follow-up action would be taken if such records were not provided or were insufficient at the time of the visit. The practice of trustee companies in respect of identifying and verifying the beneficiaries was not altered by the Financial Transactions Reporting Amendment Act 2013. As such, the legislative amendment made explicit what was already implicit and being practiced.

139. Cook Islands international trusts can also include the appointment of a protector. Although the identity of the protector (if any) is not explicitly mentioned in the FTRA amendment, the ITA requires that any protector must be named in the trust instrument (which the trustee maintains and provides to the FSC). In addition, the trustee must always know of the identity of a protector as a practical matter. For example, a trustee would often be required to obtain the approval of a protector before engaging in transactions on behalf of the trust or making distributions to beneficiaries. The trustee could therefore

not perform its functions unless it knew of the existence and identity of a protector.

140. The FTRA requires trustees to conduct on-going due diligence on the business relationship with its customer (section 4(4)). The monitoring of these obligations is described below in section A.1.6.

141. International trusts are generally not subject to Cook Islands taxation, and are therefore under no general requirement to furnish returns of income (ITA, s. 21(1)). Furthermore, international trusts are generally not subject to registration obligations under the Development Investment Act (ITA, s. 21(2)).

142. Over 2011, 2012 and 2013, an average of 317 new international trusts were registered in the Cook Islands each year. As at 31 December 2013, 2 575 international trusts were registered with the FSC. In practice, registration of an international trust is performed by the trustee company acting for the international trust. As part of the registration process, the trustee company is required to upload a copy of the trust deed into the FSC online registration system. All registrations are carried out online. Only the six trustee companies in the Cook Islands have access to file documents through this online registry, and prior to its introduction the FSC provided them with training on using the system. The FSC's electronic system automatically rejects documents that are incomplete. The monitoring of trustee companies' obligations is described below under section A.1.6.

Foreign trusts

143. Under Cook Islands' laws, there are no obstacles that prevent a Cook Islands resident from acting as a trustee or administrator of a foreign trust. However, the Cook Islands' authorities have indicated that they have no experience with foreign trusts which are administered in the Cook Islands or in respect of which a trustee is resident therein.

144. Under section 14 of the Development Investment Act, any foreign enterprise (including domestic and foreign trusts) with more than one third foreign ownership and wishing to invest in or carry on a business in the Cook Islands must register with the BTIB. The information to be filed on registration, and annually thereafter, includes detailed ownership information, such as the names, addresses and passport numbers of all legal and beneficial owners (Development Investment Act, s. 34 and Regulation 3(d) of the Development Investment Regulations). However, foreign trusts with less than one third foreign ownership or foreign trusts investing exclusively abroad would not be subject to such registration requirements.

145. In practice, no foreign trust is currently registered with BTIB. If a foreign trust applied for registration with the BTIB, the BTIB would review the ownership structure including the trust deed. In the past when a trust has applied for approval, this has generally been a family from New Zealand or Australia that has created the trust for the purpose of owning a hotel in the Cook Islands. The practical arrangements undertaken by the BTIB as described above for foreign companies would apply to foreign trusts.

146. Foreign trusts will be typically governed by foreign law, so it is unclear whether and which common law duties would apply with respect to these arrangements. Resident trustees of foreign trusts and beneficiaries of foreign trusts deriving income sourced in the Cook Islands are subject to the same general tax requirements applicable to domestic trusts (Income Tax Act, s. 219(1)). In addition, they are also required to file an annual return in the Cook Islands (Income Tax Act, ss. 2, 8, 80 and 83). Furthermore, resident trustees who qualify as "reporting institutions" under section 2 of the FTRA (e.g. service provider or legal practitioners acting as a trustee of an express trust) will also be subject to the FTRA customer due diligence obligations (see more details on section *International trusts* above).

147. In practice, no foreign trust has filed a tax return during the review period. If a foreign trust were to be administered in the Cook Islands, or the trustee was to reside in the Cook Islands, it would be subject to tax in the Cook Islands at the highest marginal rate, and obligated to file an annual tax return disclosing identity information with respect to the settlor, trustees and beneficiaries. Further, if the trustee was a professional trustee, the customer due diligence obligations under the FTRA would apply, and these would be monitored by the FSC as described below in section A.1.6. These tax and customer due diligence obligations apply regardless of the amount of foreign ownership.

148. It is possible that a person resident in the Cook Islands could act as trustee of a trust governed by foreign law, in a private rather than professional capacity, and have no taxable income in respect of the trust. In such case, it is possible that an annual tax return disclosing ownership and identity information would not be required to be filed and therefore such information might not be available in the Cook Islands, depending also on the terms of the foreign law governing the trust. However, given the duties imposed on a trustee, a trustee acting in a private capacity should know the identity of the settlor and beneficiaries of the trust that the trustee is administering. As such, this is considered to be a very narrow gap and has not affected EOI to date. Nevertheless, its effect on EOI in practice should be monitored by the Cook Islands on an ongoing basis.

Conclusions

149. Trust law governing domestic trusts is primarily contained in case law. Under the common law, there is a general duty to maintain proper accounts of the trust property and to have knowledge of all documents pertaining to the formation and management of a trust. These documents typically include the identity of settlors, beneficiaries and other trustees. General tax requirements and anti-money laundering obligations applicable to domestic trusts as well as BTIB procedures under the Development Investment Act applicable to certain foreign trusts doing business in the Cook Islands also ensure the availability of ownership and identity information in a number of cases. In practice, very few domestic trusts and no foreign trusts are operating in the Cook Islands.

150. It is also conceivable that a trust could be created which has no connection with the Cook Islands other than that the settlor chooses that the trust will be governed by the laws of the Cook Islands. In that event, there may be no information about the trust available in the Cook Islands. Any potential gaps are likely to be narrow and not considered to be material in view of the small number of domestic and foreign trusts administered in the Cook Islands. This issue has not caused any impediment to effective exchange of information in practice.

151. International trusts are systematically subject to FTRA requirements, since their registration must be arranged through a trustee company and at least one trustee must be in the Cook Islands. The FTRA contains an explicit legal requirement to collect identity information on all trustees and settlors, and since December 2013, this has been clarified to explicitly include all beneficiaries. In practice, the processes in place within the FSC for receiving information on international trusts assist in ensuring the availability of identity information. In the review period, no requests for information were received with respect to trusts.

Foundations *(ToR A.1.5)*

152. Jurisdictions that allow for the establishment of foundations should ensure that information is available to their competent authorities for foundations formed under those laws to identify the founders, members of the foundation council, and beneficiaries (where applicable), as well any other persons with the authority to represent the foundation.

153. The Cook Islands introduced foundations in 2012 pursuant to the Foundations Act 2012. A foundation receives its initial capital from one or more founders, and, at any time after the creation of the foundation, any other person (known as a dedicator) may transfer assets to the foundation (Foundations Act s. 14). The objects of a foundation may be charitable, non-charitable or both. A foundation's object may be to benefit a person or class

of persons, to carry out a specified purpose, or both (Foundations Act s. 7). A foundation may only directly engage in commercial trading if it is incidental to the attainment of the foundation's objects (Foundations Act s. 35(3)). A foundation will have a council to administer the foundation's assets and carry out its objects (Foundations Act s. 22). A foundation must have a trustee company residing in the Cook Islands as its registered agent, and which will provide the foundation's registered office in the Cook Islands (Foundations Act s. 27). A foundation may also have an enforcer for the purpose of taking reasonable steps to ensure the council of the foundation carries out its functions (Foundations Act s. 13).

154. Foundations are not subject to tax in the Cook Islands, and therefore not required to submit a tax return. However, sufficient ownership information is available from the trustee company which acts as registered agent for the foundation.

155. An application for the creation and registration of a foundation is submitted by a trustee company resident in the Cook Islands (Foundations Act s. 4). The application is submitted to the Registrar of Foundations, located in the FSC. The application must be accompanied by the foundation instrument, which sets out the name and objects of the foundation, the beneficiaries to benefit from the foundation (if any), and the name and address of the registered agent (Foundations Act ss. 7 and 8). The trustee company must also submit a declaration that it is in possession of the foundation rules, which includes the rules governing the appointment and functioning of the council, registered agent, enforcer, dedicators and may set out further details as to the method of determining beneficiaries (Foundations Act ss. 9-13). Furthermore, the following documents must be retained at the registered office (which is the office of the trustee company, s. 3): a copy of the foundation instrument and foundation rules as they are for the time being in force, a register of the names and addresses of council members, council meeting minutes and resolutions, a record of the appointment of an enforcer and the enforcer's name and address, and a register of the names and addresses of all dedicators to the foundation (Foundations Act s. 42). From these documents, the trustee company should be able to identity all relevant persons in connection with a foundation.

156. The Registrar of Foundations must maintain a register of Cook Islands foundations (Foundations Act s. 48). The register contains the name and address of the foundation, objects, name of the registered agent, and the foundation instrument (as amended). The register is available for public inspection on payment of a fee. Where the foundation instrument is amended, the foundation must notify the Registrar of Foundations within one month of the change, and provide a copy of the amended instrument (Foundations Act s. 45). The registered agent would be alerted to such change in any case by

virtue of the requirement that the resolutions and minutes of the foundation council must be kept at the registered agent's office. As a change of details in respect of the registered agent would require a change to the foundation instrument, this would also require that the Registrar be notified. In addition, where a registered agent resigns, it must notify the foundation and the Registrar of Foundations 30 days before the resignation takes effect (Foundations Act s. 12).

157. In addition, the FTRA provides additional means for ensuring that the registered agent obtains all necessary ownership information in connection with the foundation. The registered agent, being a Cook Islands resident trustee company, is a reporting institution under the FTRA and is subject to obligations to obtain customer identity information. Upon the initial creation of the foundation, the founder would likely be the relevant customer from whom identity information must be obtained. As the trustee company also acts as the registered agent of the foundation once it is created, the foundation would thereafter be the customer. The FTRA was amended in December 2013 to specify the information required to be obtained where the customer is a foundation, or the customer is a member of the foundation council acting in that capacity. In this case, the trustee company must identify and verify the foundation's existence and structure, including by obtaining information relating to the name of the foundation, the registered agent, the founder(s), all members of the council of the foundation, and the beneficiaries (FTRA s. 4(2)(da)). In respect of a class of discretionary beneficiaries, the obligation to identify such beneficiaries arises each time a transaction is to be performed for the purpose of making a distribution to that beneficiary. The trustee company would have knowledge of the determination of beneficiaries by the Council in accordance with the foundation rules and the decision of the Council to distribute to discretionary beneficiaries, because of the requirement that records sufficient to show and explain the transactions of the foundation, including minutes of meetings and resolutions of the Council, must be kept at the registered office (Foundation Act s. 42(2)(c)).

158. As at December 2014, six foundations had been registered with the Registrar of Foundations. No EOI requests were received during the review period in respect of foundations.

Conclusions

159. The legal framework governing foundations ensures the availability of ownership and identity information through the Foundations Act and through the obligations imposed on trustee companies by the FTRA. Information is also updated where a change as to ownership or governance of the foundation occurs, and as beneficiaries become entitled to distributions.

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

160. Jurisdictions should have in place effective enforcement provisions to ensure the availability of ownership and identity information, including sufficiently strong compulsory powers to access the information. This sub-section of the report assesses whether the provisions requiring the availability of information with the public authorities or within the relevant entities and arrangements reviewed in section A.1 are enforceable and failures are punishable. The practical arrangements for monitoring compliance with obligations to ensure availability of information are discussed thereafter. Questions linked to the Cook Islands authorities powers to access information are dealt with in Part B of this report.

161. Domestic companies are required to keep a register that records the name and address of all members and, in the case of a company limited by shares, details of the shares held by each member (CA, s. 118). In addition, they must submit annual returns following the form prescribed under the Companies Act or approved by the Registrar, which record, amongst other things, membership changes during the year (CA, s. 130(4)). Failure to comply with these requirements is punished with a fine not exceeding NZD 10 000 (EUR 6 200) for the company itself and for every officer of the company who is in default (CA, ss. 118(4) and 130(6)).

162. International companies are required to keep at its registered office a share register that records the name and address of all members and, except in relation to bearer shares, details of the shares held by each member (ICA, ss. 105 and 106). Failure to maintain the share register in accordance with the legislative requirements is an offence and, on conviction, a fine of NZD 500 (EUR 311) will apply (ICA, ss. 105(3) and 219). A USD 20 (EUR 16) penalty per month applies for a late filing of the annual renewal of an international company's registration, and a USD 20 (EUR 16) penalty per month applies for a late notification to the Registrar of a change of registered agent or registered office, both calculated according to each month or part thereof that the filing is outstanding (International Companies (Prescribed Fees) (Amendment) Regulations 2014).

163. Bearer shares are expressly permitted for international companies, but the bearer instruments must be held by a licensed custodian who, in turn, must hold identity information on the bearer (ICA, ss. 2, 35 and 36). There is no specific sanction for the violation of these provisions, but a general fine of NZD 500 (EUR 311) is imposed on conviction on any person who does anything which is prohibited under the ICA, or omits to do anything required under the Act (ICA, s. 219(1)). A penalty of up to NZD 10 000 (EUR 6 200) applies for failure by an individual to obtain the required identity information on the bearer of a bearer share, or up to NZD 50 000 (EUR 31 150) in the case of a failure by a body corporate (ICA Regulations s. 5).

164. All registrations of international companies must be conducted through a trustee company, which is required to identify and verify the person for whom a share is held on trust or in respect of the bearer of a bearer instrument (ICA, s. 9(1), FTRA, ss. 3 to 7, and International Companies (Evidence of Identity) Regulations, ss. 2 and 3). Failure to comply with the FTRA obligations is punished with a fine of up to NZD 10 000 (EUR 6 200) and/or up to 12 months imprisonment for an individual or a fine of up to NZD 50 000 (EUR 31 150) for a body corporate (FTRA, s. 4(8) and International Companies (Evidence of Identity) Regulations, s. 5).

165. Limited liability companies are also required to keep at its registered office a current list of the full name and business, residence or mailing address of each member (LLCA, ss. 32(1)). Failure to comply with any legal requirement imposed by the LLCA is an offence and, on conviction, punishable with a fine not exceeding NZD 10 000 (EUR 6 200) or imprisonment for a term not exceeding one year, or to both (LLCA, s. 78. A USD 25 (EUR 20) penalty per month applies for a late filing of the annual renewal of a LLC's registration, calculated according to each month or part thereof that the filing is outstanding.

166. International partnerships and limited liability partnerships must provide the partnership agreement to the Registrar as part of those registration requirements (IPA, ss. 12 and 57). This registration must be arranged through a trustee company who, in turn, is subject to FTRA obligations (IPA, ss. 10 and 55). Failure to comply with any legal obligations imposed by the IPA is an offence and, on conviction, punishable with a fine not exceeding NZD 10 000 (EUR 6 200) and/or to imprisonment for a term not exceeding one year (IPA, s. 79).

167. International trusts must register with the Registrar of Trusts and a copy of the trust deed is provided to the Registrar as part of the registration requirements (ITA, s. 17). A USD 50 penalty per month applies for a late filing of the annual renewal of an international trust's registration, calculated according to each month or part thereof that the filing is outstanding (International Trusts (Prescribed Fees) (Amendment) Regulations 2014). The registration and its annual renewal must be arranged through a trustee company who is subject to FTRA obligations and at least one trustee must be in the Cook Islands (ITA, ss. 2 and 15(1)(a)). Failure to comply with any legal obligations imposed by the ITA is an offence and, on conviction, punishable with a fine not exceeding NZD 10 000 (EUR 6 200) or to imprisonment for a term not exceeding one year, or to both (ITA, s. 28).

168. In the case of foundations, it is an offence to knowingly or recklessly make a false statement to the Register of Foundations. The maximum penalty is NZD 10 000 (EUR 6 200). This would apply to the information provided in the application for the establishment of a foundation (which includes

provision of the foundation instrument, and a declaration by the registered agent that it will provide the registered office, that the address is correct, and that it possesses the foundation rules) (Foundations Act s. 4); the notification to the Registrar of the name and address of the registered agent and any changes thereto (section 8); and the notification to the Registrar of a change to the foundation instrument (Foundations Act s. 45).

169. Specific offences against the Foundations Act include: failure of the foundation to notify the Registrar of amendments to the foundation instrument within one month of the amendment taking effect, failure of the foundation to provide the registered agent with a copy of the same, and failure of the registered agent to keep the copy of the notification (section 45). A USD 50 (EUR 40) penalty per month applies for a late filing of the annual renewal, calculated according to each month or part thereof that the filing is outstanding (Foundations Act, Schedule). Where there is persistent default by the foundation in complying with the requirements of the Foundation Act, the Registrar may apply to the High Court for the dissolution of the foundation (Foundations Act, s. 71(h)).

170. Domestic companies and foreign companies which derive income in the Cook Islands are required to furnish an annual return of income, including the full names and addresses of shareholders or beneficial owners of shares, if held by a nominee, trustee or otherwise (Income Tax Act, s. 8). In addition to the annual tax returns individually submitted by each partner, domestic partnerships must submit a joint return stating each partner's name and share of the income (Income Tax Act, s. 11). Trustees of domestic and foreign trusts are required to file an annual tax return, which includes details of the settlors, beneficiaries or other trustees in the individual taxpayer form (Income Tax Act, ss. 2 and 8). Beneficiaries under any trust deriving income sourced in the Cook Islands are also required to file an annual tax return in the Cook Islands (Income Tax Act, ss. 2, 8, 80, 83). Failure to submit an annual tax return is considered an offence, punishable by fines ranging from NZD 1 000 (EUR 620) to NZD 10 000 (EUR 6 200) (Income Tax Act, s. 206).

171. FTRA obligations, such as customer due diligence obligations, apply in the case of all international entities and arrangements (companies, partnerships and trusts), since they must be established through and registered by a Cook Islands trustee company. These obligations cover nominee arrangements and, in such circumstances, the identity of the other person for whom, or for whose ultimate benefit, the transaction is being conducted must also be disclosed and verified (FTRA, s. 4(5)). The sanction for non-compliance with the FTRA obligations is a fine of up to NZD 10 000 (EUR 6 200) and/or up to 12 months imprisonment for an individual or a fine of up to NZD 50 000 (EUR 31 150) for a body corporate (FTRA, s. 4(8) and International Companies (Evidence of Identity) Regulations, s. 5).

172. In the case of a foreign enterprise (company, partnership, trust or individual) which does not register with the BTIB and invests in or carries on business in the Cook Islands, the maximum penalty is a fine of NZD 25 000 (EUR 15 600) and NZD 1 000 (EUR 620) for each day the offence continues (Development Investment Act, s. 17(2)). In the case of failing to file annual information, the penalty is a maximum fine of NZD 5 000 (EUR 3 115) and a minimum of NZD 200 (EUR 125) for each applicable year (Development Investment Act, s. 34(2)). Registration can also be revoked wholly or partially (Development Investment Act, s. 22).

In practice – Tax laws

173. In practice, oversight of tax obligations is relevant is considering the availability of information with respect to domestic and foreign companies, domestic and foreign partnerships and domestic and foreign trusts. The RMD has two full time debt and return collection officers dedicated to taking follow up actions in respect of non-compliant taxpayers. Computer reports are generated by the RMD to identify taxpayers that have not filed their return. In addition, where staff are working on a taxpayer's file and see that a tax return has not been filed, they would generally inform the debt and return collection officers or follow up with the taxpayer directly.

174. The debt and return collection officers commence their follow up action by sending a reminder notice to the taxpayer. If no response is received, the officers would again follow up with a phone call and up to two further notices. In general, the time between the reminder notice and the third notice would be two to three months. If three notices have been sent and no satisfactory response received, the officers would commence prosecution proceedings. Prosecutions have been initiated in seven cases in the review period. Where a taxpayer has failed to pay taxes on time, penalties are automatically generated by the RMD computer system and added to the taxpayer's account. In the 12 months to 31 March 2014, the debt and return collection officers took compliance action in respect of 492 cases, collected 352 additional returns and NZD 1 122 335 (EUR 699 150) in outstanding debt.

175. Audits are undertaken by senior tax auditors in the RMD. There are currently 3 people employed as senior tax auditors, supported by a team of four tax examiners and six tax officers. All company tax returns are risk assessed for audit by a senior tax auditor, and the risk factors include missing information. Some form of follow up action is taken in respect of approximately 20-30% of returns, such as asking further questions to substantiate claims, and full audits are undertaken in approximately 5% of cases.

176. The RMD has increased its focus on monitoring and enforcement actions, and has allocated additional staff to these functions. In addition, the RMD holds quarterly meetings with the tax agents in the Cook Islands to provide education on completing tax returns, including with regard to completing details concerning ownership of companies and trusts. Overall compliance rates have been improving over recent years and compliance with tax obligations amongst foreign businesses is particularly high. For example, overall outstanding tax debt reduced from NZD 21.4 million (EUR 12.8 million) to NZD 16.6 million (EUR 10 million) in the period 30 June 2010-30 June 2013. Furthermore, the Cook Islands is preparing to introduce an electronic filing and payment system, which would automatically reject returns that are incomplete.

In practice – Anti-Money Laundering Laws and monitoring by FSC

177. In practice, the compliance obligations in respect of international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations are undertaken through the trustee companies. These act as the registered agent/trustee and perform the registration (and renewals) of these entities. The FSC and FIU monitor the obligations of these trustee companies as follows.

178. All registration and renewal documents are now received online (other than in respect of foundations) and can only be filed by the six trustee companies. The FSC monitors the receipt of online documents through an automatic report that is sent to the Registrar on a daily basis notifying her of all documents received, as well as through a fortnightly review conducted by the Registrar targeting follow-up inquiries where required documents have not been filed on time or where anything unusual is received. The FSC's electronic system will automatically impose a fine against the account of the relevant trustee company in the event of a late filing or payment, calculated for each month or part thereof that the obligations remain unfulfilled. Payment of these fines occurs by deduction from an escrow account that each trustee company maintains with the FSC for this purpose. Reminder letters are generated in the event of a failure to file annual renewal documents and fees. The system will automatically strike off an entity or arrangement if the obligations are not met within the following time periods after the expiration of the previous certificate of registration: international companies: 2 months (s. 197(1) ICA); limited liability companies: 30 days (s. 22(1) LLCA); international and limited partnerships: 0 days (s. 11(3) IPA); international trusts: 90 days (s. 16(3) ITA).

179. In practice, here have been no prosecutions for the failure to provide information under the FTRA, ICA, IPA, LLCA, ITA or Foundations Act, as the FSC has never had a case of significant non-compliance that would

warrant court action. Instead, problems with information keeping and procedures have been dealt with through supervisory means. Fines have been issued for the late filing of documents and late renewals. A summary of the fines imposed is as follows:

		Year 2011 *(31-Dec-11)*	Year 2012 *(31-Dec-12)*	Year 2013 *(31-Dec-13)*
Type of entity	**Registry documents**	**Total in NZD**	**Total in NZD**	**Total in NZD**
International & Foreign Company	Renewal of company registration	NZD 14 358	NZD 12 622	NZD 14 589
	Changes to particulars of directors and secretaries	NZD 1 854	NZD 325	–
International Trust	Renewal of trust registration	NZD 22 315	NZD 21 936	NZD 22 109
Limited Liability Company	Renewal of company registration	NZD 2 078	NZD 1 904	NZD 2 479
Foundation	Renewal of foundation registration	–	–	–
TOTAL (NZD)		**NZD 40 785**	**NZD 46 787**	**NZD 39 177**
TOTAL (EUR)		**EUR 24 471**	**EUR 28 072**	**EUR 23 506**

180. The trustee companies themselves are subject to comprehensive licensing processes undertaken by the FSC and the Financial Services Development Authority. The licensing of a trustee company includes a thorough background check and examination of the shareholding structure to ensure that all persons exercising control and management are fit and proper persons. All changes in shareholding of the trustee companies must be approved by the FSC (and the BTIB if the trustee company has foreign ownership, as described above in connection with foreign companies). The Trustee Companies Act 2014 introduced enhanced powers to supervise the conduct of trustee companies, including the power to apply to the court for a sale, supervision or winding up of the trustee company, the power to give directions to require or prohibit actions, the power to publish information about a breach of the Act or directions given, and the power to require information and launch an investigation as to the fitness or compliance of a trustee company. The Trustee Companies Act also imposes criminal penalties for breach of the obligations therein, including failure to provide information, providing false information, or becoming a person with control or management of a trustee company without prior FSC approval. Penalties applicable to an individual are a fine of up to NZD 50 000 (EUR 31 150) or imprisonment for up to two years, or in any other case, a fine of up to NZD 150 000 (EUR 93 440).

181. The FSC, in conjunction with the FIU, conducts an on-site inspection of all six trustee companies each year. The number of on-site examinations

(including follow-up visits) conducted for the period 2011-13 for trustee companies is illustrated in the following table:

2011		2012		2013	
Number of licensees	Number of examinations	Number of licensees	Number of examinations	Number of licensees	Number of examinations
6	5	6	7	6	6

182. The reviews commence with a pre-inspection document request, which includes a request for a list of all active and closed customers. A sample of the trustee company's customers from the list are chosen for review of record keeping. This selection is made on the basis of information already in the hands of the FSC and to target any previously identified problems with a particular trustee company, a cross-section of old, new and closed customer accounts, and a random selection. The on-site portion of these inspections is scheduled for five days. The inspection would include meeting with the CEO or General Manager and a director to discuss the business plans for the year.

183. The review includes assessment of whether the trustee company has maintained all required ownership and identity information as required by the International Companies Act, Limited Liability Companies Act, International Partnerships Act, International Trusts Act and Foundations Act. For example, this would include determining whether the copy of the share register or trust deed (and any amendments thereto) is available at the trustee company's office in the case of international companies or international trusts respectively, and checking that the identity of the current officers and other relevant persons is up to date and accurate as compared with the records filed with the FSC.

184. A review of customer due diligence record keeping is also undertaken, using with the planned selection of customer files as a sample. After the review, a report is prepared by the FSC and FIU. The trustee company has 45 days in which it must provide a response, outlining the plans to remedy any identified issues. The most commonly identified problems identified have been minor, such as that a customer file includes an outdated address, a copy of the customer's passport is not notarised, or the passport used for identifying the customer has expired. In the event that a problem was more serious, such as that mobile phone invoices were being accepted as proof of identity, an action plan will be required from the trustee company, outlining the steps that will be taken. Action on these issues should be taken within three months and a follow-up inspection is then undertaken within the same year. The FSC estimates that this occurs 1-2 times per year.

185. The custodial arrangement in place for any bearer shares is always reviewed by the FSC in undertaking the annual inspections. The complete

coverage of all custodial arrangements is manageable due to the small number of bearer shares in existence. Results of these inspections are that the bearer shares issued by the four international companies have always been kept in a safe in the custodian's office. In every case the bearer shares, and the record of ownership, has been properly maintained by the trustee company.

186. In general, compliance with record-keeping obligations by trustee companies has been of a high standard. In no case has it been necessary for the FSC to issue an enforcement directive to any of the trustee companies. The FSC and FIU maintain positive working relationships with the six trustee companies, and they report that the trustee companies are highly competent, co-operative and respond quickly to rectify any errors.

187. When new entities are introduced in the Cook Islands (such as foundations which were introduced in 2012), the FSC engages with the six trustee companies in order to provide guidance on the relevant customer due diligence and filing obligations. The FSC and FIU are swift to commence inspections and resolve any uncertainties. For example, within a short time after the registration of the first foundations, the FSC and FIU had already conducted on-site inspections of the trustee companies responsible for the foundations, as follows.

Date foundation was registered	Date of audit by FSC
11 March 2013	Scheduled for review in 2015
28 May 2013	3-8 July 2013 (5 weeks)
6 September 2013	29-31 October 2013 (7 weeks)
25 March 2014	26-28 May 2014 (8 weeks)
26 June 2014	5-7 August (6 weeks)
18 July 2014	5-7 August 2014 (3 weeks)

Conclusions

188. The Cook Islands has a sufficient penalty regime in place for enforcing the obligations to maintain ownership and identity information. Monitoring of obligations with regard to Cook Islands taxpayers (domestic and foreign companies, domestic and foreign partnerships, domestic and foreign trusts) are monitored by the RMD, which has in place the necessary staff and processes for undertaking this task. A comprehensive regime for monitoring the obligations of trustee companies in respect of international companies, limited liability companies, international partnerships, limited partnerships and foundations is in place and carried out by the FSC and FIU. Compliance with these obligations has been of a high standard and there

have been no occasions in which information was found to be unavailable or inadequate. Peer input indicates that the Cook Islands is able to respond appropriately to all requests for ownership and identity information, which supports the conclusion that enforcement provisions ensure ownership and identity information is available in the Cook Islands as a legal and practical matter.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place

Phase 2 Rating
Compliant

A.2. Accounting records

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

189. A condition for exchange of information for tax purposes to be effective is that reliable information, foreseeably relevant to the tax requirements of a requesting jurisdiction is available, or can be made available, in a timely manner. This requires clear rules regarding the maintenance of accounting records.

190. The Terms of Reference set out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. It provides that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should *(i)* correctly explain all transactions, *(ii)* enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time and *(iii)* allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, etc. and they must be kept for a minimum period of five years.

***General requirements** (ToR A.2.1), **Underlying documentation** (ToR A.2.2) **and Document retention** (ToR A.2.3)*

Domestic companies

191. Section 151 of the Companies Act (CA) requires every company to keep "proper books of account in which shall be kept full, true, and complete accounts of the affairs and transactions of the company." Proper books of account are defined as "such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the company, including books containing entries from day to day in sufficient detail of all cash received and cash paid", and, where appropriate, "all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified" (CA, s. 319(2)).

192. These accounting records must be kept at the registered office of the company or "at such other place as the directors think fit" (CA, s. 151(2)). However, if the records are kept outside the Cook Islands, there must be accounting records in the Cook Islands which disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months and which enable financial statements to be prepared. If an officer of a company fails to take all reasonable steps to secure compliance with the record keeping requirements of section 151 of the Companies Act, or has by his own wilful act been the cause of any default by the company thereunder, he will be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding NZD 400 (EUR 250) (CA, s. 151(3)).

193. Where a company is wound up, it must keep proper books of account throughout the period of two years immediately preceding the commencement of the winding up or the period between the incorporation of the company and the commencement of the winding up, whichever is the shorter (CA, s. 319(1)). It is noted that the CA does not contain an express obligation for wound up domestic companies to maintain underlying documentation, although it may be expected that where there is an obligation to have the accounts audited, sufficient underlying documentation is kept (CA, ss. 160, 163 and 165).

194. According to section 166(3) of the CA, "every auditor of a company shall have a right of access at all times to the books and *papers* of the company, and shall be entitled to require from the officers of the company *such information and explanation* as he thinks necessary for the performance of the duties of the auditors" (*emphasis added*). Every officer of the company who is in default will, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on the

default was excusable, be liable on conviction to imprisonment for a term not exceeding one year, or on summary conviction to imprisonment for a term not exceeding six months (CA, s. 319(1)).

195. In addition, all domestic companies are required to keep accounting records under the Income Tax Act. As further detailed below (see section on *Tax law*), domestic companies are required to keep reliable accounting records, including underlying documents, for at least five years (Income Tax Act, s. 217(1)). Section 217(2)(b) of the Income Tax Act was amended in December 2013 to obligate wound up and finally dissolved companies to maintain accounting records for a period of at least five years after the completion of the transactions, acts, or operations to which they relate. Furthermore, certain domestic companies that fall within the scope of the FTRA are also subject to the record keeping obligations imposed by that Act, as explained below (see section on *Anti-money laundering law and monitoring by the FSC*).

196. Therefore, a combination of obligations established under the Cook Islands' commercial and tax laws is sufficient to ensure the availability of reliable accounting information concerning domestic companies.

International companies

197. Section 113 of the ICA requires the keeping of accounts and records relating to:

- all sums of money received and expended by the company;
- all sales and purchases of goods by the company;
- all assignments of rights or assumption of liabilities by the company;
- all transactions of the company affecting the assets or liabilities of the company; and
- the assets and liabilities of the company.

198. Section 113 was amended by the International Companies Amendment Act 2013, to clarify that the keeping of accounts and records must be "sufficient to show and explain the international company's transactions, which gives a true and accurate record" of the above details, and that "will at any time enable the financial position of an international company to be determined with reasonable accuracy." As amended, section 113(2) of the ICA requires that the "accounts and records" must be retained within the Cook Islands by the trustee company which is the registered agent and provides the registered office. Section 113(4) of the ICA requires that "the accounts and records must be retained within the Cook Islands, for a period

of note less than six years following the completion of the transaction to which the records and underlying documentation relate". Thus the amendment explicitly refers to the requirement to maintain both accounting records and underlying documentation.

199. The Cook Islands confirms that the accounting record keeping requirements must be, and are in practice, interpreted broadly, and that the obligations to maintain accurate records of all sums of money expended and received, all sales and purchases, all assumptions of liabilities and assignment of rights and all transactions affecting assets or liabilities is all-encompassing. See *Anti-Money Laundering Law and monitoring by the FSC* below for further detail.

200. A director of an international company who fails to take all reasonable steps to secure compliance by the company with the requirements of section 113 commits an offence against the ICA and is liable on conviction to a fine of NZD 1 000 (EUR 620) and to imprisonment for six months (ICA, s. 113(3) and 219(2)).

Limited liability companies

201. In 2013, the Limited Liability Companies Amendment Act 2013 introduced an express requirement in the LLCA to keep accounting records. A limited liability company must now keep accounting records that are sufficient to show and explain the company's transactions, which gives a true and accurate record of

- all sums of money received and expended by the company;
- all sales and purchases of goods by the company;
- all assignments of rights or assumption of liabilities by the company;
- all transactions of the company affecting the assets or liabilities of the company; and
- the assets and liabilities of the company

and that will at any time enable the financial position of a limited liability company to be determined with reasonable accuracy (section 31A).

202. The accounts must be retained by the resident agent within the Cook Islands for a period of six years after dissolution of the company. Failure to comply with any legal obligations imposed by the LLCA is an offence and, on conviction, punishable with a fine not exceeding NZD 10 000 (EUR 6 200) or to imprisonment for a term not exceeding one year, or to both (LLCA, s. 78).

203. Although the LLCA requires accurate records of expenditures, sales and purchases and all transactions affecting assets and liabilities, unlike the ICA amendment discussed above, there is no explicit reference to the requirement to maintain all underlying source documentation evidencing these transactions. Thus it is possible to read the LLCA as requiring that only an accurate summary of transactions be maintained, and not all supporting documentation such as invoices and contracts. Limited liability companies are generally not subject to Cook Islands taxation, and as a result, are under no general requirement to keep accounting records for tax purposes (LLCA, s. 7(1)). It is therefore recommended that the Cook Islands amend the appropriate legislation to ensure that limited liability companies are required to keep. See *Anti-Money Laundering Law and monitoring by the FSC* below for further detail of practical implementation of these requirements.

Foreign companies

204. If a foreign company is resident in the Cook Islands for tax purposes by virtue of its centre of management and control, it is subject to the general return filing requirement for resident companies. Furthermore, foreign companies deriving income from the Cook Islands (whether resident there or elsewhere) are assessable for income tax in the Cook Islands (Income Tax Act, ss. 80(2), and 83). Like domestic companies, such foreign companies are subject to the same general return filing requirement (Income Tax Act, ss. 2, 8, and 80(2)). Such foreign companies are, therefore, required to keep reliable accounting records, including underlying documents, for at least five years, as further described below (see section on *Tax law*). In practice, the BTIB will also inspect accounting records when considering a new application, in particular to assess the sufficiency of assets and level of borrowing, and financial statements are received by the BTIB each year thereafter. In no case has the BTIB encountered any difficulty in obtaining the financial statements.

Domestic partnerships

205. There are no specific accounting record requirements in the Partnership Act (PA), but a partner is bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives (PA, s. 31). In addition to the annual tax returns individually submitted by each partner, domestic partnerships must submit a joint return stating each partner's name and share of the income (Income Tax Act, s. 11). Domestic partnerships are, therefore, required to keep reliable accounting records, including underlying documents, for at least five years, as further detailed below (see section on *Tax law*).

International partnerships and limited partnerships

206. The IPA was amended by the International Partnership Amendment Act 2013 to introduce an obligation to maintain accounting records. International partnerships and limited partnerships must now keep accounting records that are sufficient to show and explain the partnership's transactions, which gives a true and accurate record of

- all sums of money received and expended by the partnership;
- all sales and purchases of goods by the partnership;
- all assignments of rights or assumption of liabilities by the partnership;
- all transactions of the company affecting the assets or liabilities of the partnership; and
- the assets and liabilities of the partnership

and that will at any time enable the financial position of the partnership to be determined with reasonable accuracy (section 7A).[12]

207. As amended, the IPA requires that the accounts and records must be retained within the Cook Islands by the trustee company which is the partner or provides the registered office for a partner. Section 7A(4) requires that "the accounts and records must be retained within the Cook Islands, for a period of not less than six years following the completion of the transaction to which the records and underlying documentation relate." Thus, similar to the ICA amendment, this amendment to the IPA explicitly refers to the requirement to maintain both accounting records and underlying documentation. Any partner of an international partnership, or any general partner of a limited partnership, that fails to take all reasonable steps to secure compliance with this obligation, commits an offence against the IPA. Failure to comply with any legal obligation imposed by the IPA is an offence and, on conviction, punishable by a fine not exceeding USD 10 000 or imprisonment for a term not exceeding one year, or both (IPA, s. 79). See *Anti-Money Laundering Law and monitoring by the FSC* below for further detail of practical implementation of these requirements.

12. In some places, the reference in the amendment legislation refers to "international company" rather than partnership. This is a typing error only and will be amended by the Cook Islands in due course.

Domestic trusts

208. The Trustee Act does not explicitly require the keeping of accounting records. Under the common law, however, there is a general duty on trustees to maintain proper accounts and records which is linked to the duty to inform beneficiaries. This duty arises from the judgement in *Schmidt v Rosewood Trust Ltd* [2003] 3 All ER 76, followed by Potter J in *Foreman v Kingstone* [2004] 1 NZLR 841 (HC) and by Asher J in *Re McGuire (deceased)* [2010] 2 NZLR 845 (HC).

209. In addition, trustees of domestic trusts and beneficiaries of any trusts deriving income sourced in the Cook Islands are required to furnish annual tax returns (Income Tax Act, ss. 2, 8, 80 and 83). Such trustees and beneficiaries are, therefore, required to keep reliable accounting records, including underlying documents, for at least five years, as further explained below (see section on *Tax law*).

International trusts

210. The International Trusts Amendment Act 2013 introduced an obligation on trustees of an international trust to maintain accounting records. The trustee must ensure that there is, at the registered office of the international trust, a true, accurate and current record of

- income of the trust, whether in cash or kind
- assets held by the trust
- assets made available for use by any beneficiary of the trust
- advances made by the trust
- distributions made
- all transactions of the trust affecting its assets or liabilities

and which will at any time enable the financial position of the international trust to be determined with reasonable accuracy (section 27C).

211. The amendment further provides that when an international trust is terminated, or the Cook Islands trustee is removed or has resigned, each trustee must ensure the records that it possesses are retained for six years from the date of termination, removal or resignation. Failure to comply with any legal obligation imposed by the ITA is an offence and, on conviction, punishable by a fine not exceeding USD 10 000 or imprisonment for a term not exceeding one year, or both (ITA, s. 28).

212. Although the ITA as amended requires accurate records of income, distributions and all transactions affecting assets and liabilities, there is no

explicit reference to a requirement to maintain all underlying source documentation evidencing these transactions (unlike the ICA and IPA amendments discussed above). Thus it is possible to read the ITA as requiring that only an accurate summary of transactions be maintained, and not all supporting documentation such as invoices and contracts. It is therefore recommended that the Cook Islands amend the appropriate legislation to ensure that a trustee of an international trust is explicitly required to keep all underlying documentation. See *Anti-Money Laundering Law and monitoring by the FSC* below for further detail of practical implementation of these requirements.

Foreign trusts

213. Resident trustees of foreign trusts and beneficiaries of foreign trusts deriving income from the Cook Islands are required to furnish annual tax returns (Income Tax Act, ss. 2, 8, 80 and 83). Such trustees and beneficiaries are, therefore, required to keep reliable accounting records, including underlying documents, for at least five years, as further explained below (see section on *Tax law*).

Foundations

214. The Foundations Act 2012 imposes obligations on foundations to keep accounting records. Specifically, foundations are required to keep, at the registered office in the Cook Islands, records sufficient to show and explain its transactions, records that disclose its financial position with reasonable accuracy and its financial statements (Foundations Act s. 42). This should be considered to be broad enough to require records of all sums of money received and expended and the matters in respect of which the receipt and expenditure takes place, all sales and purchases and other transactions, and the assets and liabilities of the foundation. These records must be maintained at the registered office of the foundation or other place as the foundation council thinks fit, for at least six years (Foundations Act s. 43(4)). If the records are maintained outside of the Cook Islands, the registered agent must be notified of the physical address at which the records are kept, and be notified of any change to the location within 14 days (Foundations Act, ss. 43(5), (6)).

215. However, there is no general requirement to maintain underlying documentation evidencing the transactions of the foundation, such as invoices and contracts, and that these be retained for at least five years. It is, therefore, recommended that the Cook Islands amend the appropriate legislation to ensure that foundations are explicitly required to keep all underlying documentation.

216. The Foundations Act does not impose a penalty for failure to keep the accounting records as required in sections 42 and 43. It is recommended

that the Cook Islands amend the appropriate legislation to ensure that failure to maintain all accounting records and underlying documentation for at least five years is subject to effective enforcement measures.

217. See *Anti-Money Laundering Law and monitoring by the FSC* below for further detail of practical implementation of these requirements.

Tax law

218. The Income Tax Act record keeping requirements apply to "every person carrying on business or receiving income other than salary or wages" (Income Tax Act, s. 217(1)). This includes domestic and foreign companies. It also applies to domestic partnerships, given that they are, by definition, "the relation which subsists between persons carrying on a business in common with a view to profit" (PA, s. 4(1)). These general tax obligations equally apply to resident trustees with respect to income and allowable deductions pertaining to the trust, as well as to beneficiaries of any trusts deriving income sourced in the Cook Islands, who are required to furnish annual tax returns (Income Tax Act, ss. 2 and 8).

219. The records to be kept must be sufficient "to enable that person's assessable income and allowable deductions to be readily ascertained by the Collector" (Income Tax Act, s. 217(1)). In particular, such records include underlying documents such as the asset schedule and "books of account, recording receipts documents or income or expenditure or purchases or sales, and also includes vouchers, invoices, receipts, and such other documents as are necessary to verify the entries in any such books of account and, in the case of an agent, records of all transactions carried out on behalf of that agent's principal" (Income Tax Act, ss. 60(2) and 217(3)). The ledgers and journals must be able to adequately explain each transaction.

220. The Income Tax Act requires the keeping of accounting records for at least five years after the completion of the transactions, acts, or operations to which they relate (Income Tax Act, s. 217(1)). However, the Collector may notify a company that retention of records is not required (Income Tax Act, s. 217(2), although in practice this discretion has never been exercised. As noted above, these obligations now apply in respect of companies that have been wound up and fully dissolved, by virtue of the Income tax Amendment Act 2013 (s. 217(2)). Finally, there is no requirement in the Income Tax Act to maintain records in the Cook Islands, but records have to be kept so that income and deductions can be "readily ascertained by the Collector" (Income Tax Act, s. 217(1)). Failure to comply with any obligation established by the Income Tax Act is considered an offence, punished by fines ranging from NZD 1 000 (EUR 620) to NZD 10 000 (EUR 6 200) (Income Tax Act, s. 206).

221. In practice, approximately 70-80% of taxpayers use accountants to prepare their accounting records and larger companies would generally use accounting software to maintain their invoices. Full scale audits are undertaken by the RMD in respect of approximately 5% of taxpayers, which would generally include reviewing accounting records including invoices, ledgers and contracts. There has not been any instance in which accounting records or underlying documents have been found to be unavailable. The RMD also has access to accounting information as maintained for the purposes of compliance with VAT obligations.

Anti-money laundering law and monitoring by the FSC

222. Under the FTRA, a reporting institution (financial institution, trustee company, legal practitioner, etc.) must maintain records of all transactions carried out by it and correspondence relating to the transactions (FTRA, s. 6(1)). The records must enable the transaction to be readily reconstructed at any time by the FIU or by a law enforcement agency (FTRA, s. 6(2)). As this obligation is limited to transactions in which the reporting institution is involved, it is not sufficient to address the concern as to underlying documentation for limited liability companies, international trusts and foundations described above.

223. The FTRA requires the keeping of records for at least six years from the date of any transaction or correspondence (FTRA, s. 6(5)). These records must be kept in the Cook Islands or, if kept outside elsewhere, they must be kept in a manner and form that allows the FIU to reproduce them, within three working days, in a usable form in the Cook Islands. Failure to comply with these record keeping obligations is considered an offence punishable by: *(i)* in the case of an individual, to a fine of up to NZD 5 000 (EUR 3 115); *(ii)* in the case of a body corporate, to a fine of up to NZD 20 000 (EUR 12 500) (FTRA, s. 6(8)).

224. In addition, the FSC monitors the availability of accounting records in its role as the regulatory authority in respect of international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations. The obligation of these entities and arrangements to maintain accounting records is complied with through the trustee companies which act as the registered agent/trustee. The FSC indicates that it has long been normal practice that the trustee companies maintain all accounting records including records in respect of transactions that the trustee company has not participated in. Since December 2013, this obligation has been explicitly included in the relevant legislation as described above.

225. The availability of accounting records are therefore reviewed in the course of the annual inspections conducted by the FSC and FIU of all trustee companies. The FSC reports that it has been able to access and review accounting records in every case in which it has been relevant to their inspection or otherwise necessary. This has included requesting copies of invoices and contracts, and in one case this involved reviewing four folders of invoices which were readily available at the trustee company's premises. In no case has a trustee company challenged the authority of the FSC to obtain such documents. In the event that a document is not retained in the Cook Islands, the trustee company is given three days to produce it, although in practice the trustee companies have rarely needed to use such a process. The requested accounting information has been made available in all cases.

226. However, since the legal obligations to maintain accounting information in respect of international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations has only been recently introduced, it is recommended that the Cook Islands monitor the practical implementation of these obligations.

Conclusion

227. In regard to the legal and regulatory framework, all relevant entities and arrangements are required to maintain accounting records for a period of at least five years. Underlying documentation is also required to be maintained for a period of at least five years with respect to domestic companies, foreign companies, international companies, domestic partnerships, international partnerships, limited partnerships and domestic trusts. However, underlying documentation is not explicitly required to be maintained by limited liability companies, international trusts and foundations, and a Phase 1 recommendation is made in this regard.

228. In regard to the practical implementation, sound mechanisms are in place for monitoring the compliance with these obligations. However, as the relevant legislation for international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations is relatively new, a recommendation is made that the Cook Islands should continue to monitor compliance with these obligations, and on this basis the rating for Element A.2 is Largely Compliant. In practice, the Cook Islands has received one EOI request relating to accounting information, in respect of 12 persons. Peer input indicates that all requests were responded to in a complete and timely manner.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place but certain aspects of the legal implementation of the element need improvement	
Factors underlying recommendations	**Recommendations**
Limited liability companies, international trusts and foundations are not explicitly required to keep all underlying documentation.	The Cook Islands should require all relevant entities and arrangements to keep all underlying documentation in respect of all transactions.
No penalty exists for failure of a foundation to maintain reliable accounting records for at least five years.	The Cook Islands should ensure that the failure of a foundation to maintain all accounting records and underlying documentation for at least five years is subject to effective penalties.

Phase 2 Rating	
Largely Compliant	
Factors underlying recommendations	**Recommendations**
Requirements to maintain accounting information for at least five years for international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations have been introduced only recently.	The Cook Islands should monitor the operations of the new provisions for international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations.

A.3. Banking information

Banking information should be available for all account-holders.

229. Access to banking information is of interest to the tax administration only if the bank has useful and reliable information about its customers' identity and the nature and amount of financial transactions.

230. The Cook Islands has four banks, which are licensed and supervised by the FSC under the provisions of the Banking Act 2011. All four banks must have a physical presence in the Cook Islands in order to be licensed. In addition to their licensing requirements, the banks have obligations under the anti-money laundering law to conduct due diligence on their customers.

The FSC and FIU conduct join inspections to monitor compliance with all relevant obligations.

Record-keeping requirements (ToR A.3.1)

231. The Cook Islands anti-money laundering regime is principally contained in the FTRA and supervised by the FIU. The obligations imposed by the FTRA apply to "reporting institutions", which are broadly defined under section 2 and include: *(i)* financial institutions, *(ii)* trustee companies or other company service providers that act in the formation or management of legal persons or that acts as a trustee of an express trust; and *(iii)* lawyers, accountants, notaries or other independent legal professionals that act in relation to the creation, operation or management of legal persons or arrangements (including partnerships and trusts).

232. When conducting any transaction or entering into a continuing business relationship, the reporting institution must identify the customer on the basis of any official or other identifying document and verify the identity of the customer on the basis of reliable and independent source documents, data or information or other evidence as is reasonably capable of verifying the identity of the customer (FTRA, s. 4(1)). In addition, if the reporting institution has reasonable grounds to believe that a person is undertaking the transaction (other than a one-off transaction) on behalf of another person, then it must also verify the identity of the other person for whom, or for whose ultimate benefit, the transaction is being conducted (FTRA, s. 4(5)).

233. Section 6(1) of the FTRA imposes on reporting institutions the obligation to establish and maintain: *(i)* records of all transactions carried out by it and correspondence relating to the transactions; and *(ii)* records of their customers' identification and verification. The term "customer" is defined under section 2 and includes:

- a person engaged in a business relationship;
- the person in whose name a transaction or account is arranged, opened, or undertaken;
- a signatory to a transaction or account;
- any person to whom a transaction has been assigned or transferred;
- any person who is authorised to conduct a transaction;
- any person on whose behalf the account or transaction is being conducted; and
- any other person that may be prescribed.

234. The definition of "transaction" under section 2 includes, but is not limited to:

- any deposit, withdrawal, exchange, or transfer of funds (in whatever currency denominated), whether: *(i)* in cash; or *(ii)* by cheque, payment order or other instrument; or *(iii)* by electronic or other non-physical means;
- the use of a safety deposit box or any other form of safe deposit;
- any payment made in satisfaction, in whole or in part, of any contractual or other legal obligation; and
- any other transactions that may be prescribed.

235. Records concerning customers must contain particulars sufficient to identify the name, address and occupation (or, where appropriate, business or principal activity) of each person *(i)* conducting the transaction; and *(ii)* if applicable, on whose behalf the transaction is being conducted (FTRA, s. 6(3)). In addition, the documents used by the reporting institution to identity and verify each person must have sufficient particulars to identify:

- the nature and date of the transaction;
- the type and amount of any currency involved;
- the type and identifying number of any account with the reporting institution involved in the transaction;
- if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee (if any), the amount and date of the instrument, the number (if any) of the instrument and details of any endorsements appearing on the instrument; and
- the name and address of the reporting institution, and of the officer, employee or agent of the reporting institution who prepared the record.

236. Records held by the reporting institution pursuant to these obligations must be retained for at least six years from the date of any transaction or correspondence or from the date the account is closed or the business relationship ceases, whichever is the later (FTRA, s. 6(5)/(6)). These records must be kept "in a manner and form that will enable the reporting institution to comply immediately with requests for information from the FIU or a law enforcement agency" (FTRA, s. 6(7)).

237. Failure to comply with the obligation to identify and verify a customer's identity is considered an offence punishable by: *(i)* in the case of an individual, to a fine of up to NZD 10 000 (EUR 6 200) or to a term of imprisonment of up to 12 months, or both; or *(ii)* (b) in the case of a body corporate, to a fine of up to NZD 50 000 (EUR 31 150) (FTRA, s. 4(8)). Failure to comply with record keeping obligations is considered an offence punishable by: *(i)* in the case of an individual, to a fine of up to NZD 5 000 (EUR 3 115); *(ii)* in the case of a body corporate, to a fine of up to NZD 20 000 (EUR 12 500) (FTRA, s. 6(8)).

238. Reporting institutions are strictly forbidden to open, operate or maintain any anonymous account or any account which the reporting institution ought reasonably to have known is in a fictitious or false name (FTRA, s. 7(1)/(2)/(3)). If a reporting institution contravenes this provision, it commits an offence punishable by: *(i)* in the case of an individual, to a fine of up to NZD 10 000 (EUR 6 200); *(ii)* in the case of a body corporate, to a fine of up to NZD 50 000 (EUR 31 150) (FTRA, s. 7(4)).

239. In practice, the FIU and FSC jointly conduct annual on-site inspections for all banks and insurance companies. The review team would ordinarily comprise of three FSC staff and two FIU staff. (The FIU also conducts annual on-site inspections of other reporting institutions designated under the FTRA such as car dealerships that are not discussed hereafter.) The Cook Islands is a small jurisdiction, and as such it is possible to achieve total coverage of all banks each year.

240. The number of on-site examinations (including follow-up visits) conducted for the period 2011 to 2013 for the four banks are illustrated in the following table:

2011		2012		2013	
Number of licensees	Number of examinations	Number of licensees	Number of examinations	Number of licensees	Number of examinations
4	4	4	5	4	5

241. The reviews commence with a pre-inspection document request, which includes a request for a list of all active and closed customers. A sample of customers from the list are chosen for review of customer due diligence record keeping. This selection is made on the basis of information already in the hands of the FSC/FIU to target previously identified problems with a particular bank, a cross-section of old, new and closed customer accounts, and a random selection. The on-site portion of these inspections is scheduled for five days. The inspection would include meeting with the CEO or General Manager and a director to discuss the business plans for the year.

242. A review of customer due diligence record keeping is also undertaken, using with the planned selection of customer files as a sample. After the review, a report is prepared by the FSC and FIU. The bank has 45 days in which it must provide a response, outlining the plans to remedy any identified issues. The most commonly identified problems identified have been minor, such as that a customer file includes an outdated address, a copy of the customer's passport is not notarised, or the passport used for identifying the customer has expired. In the event that a problem was more serious, such as that mobile phone invoices were being accepted as proof of identity, an action plan will be required from the bank, outlining the steps that will be taken. Action on these issues should be taken within three months and a follow-up inspection is then undertaken within the same year.

243. In most cases the identified issues have been minor oversights rather than being systemic problems, and have been remedied without a penalty being imposed. The FSC and FIU consider that the banks are very responsive, and in particular that their management is very sensitive to the need to meet all regulatory requirements.

Conclusion

244. The obligations under the FTRA applying to banks require that they conduct customer due diligence. This ensures the availability of all relevant banking information. A comprehensive review of compliance with these obligations is undertaken each year by the FSC and FIU, and results indicate a high level of compliance. The Cook Islands has received two EOI requests relating to banking information, in respect of three persons, and peer input indicates that these requests were responded to in a complete and timely manner.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant

B. Access to Information

Overview

245. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether the Cook Islands' legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information (EOI). It also assesses the effectiveness of this framework in practice.

246. The Cook Islands' Revenue Management Division has broad powers to obtain bank, ownership, identity, and accounting information and has measures to compel the production of such information. The ability of the Revenue Management Division to obtain information for exchange of information purposes is derived from its general access powers under sections 86, 219-222 of the Income Tax Act coupled with the authority provided by the relevant exchange of information agreements.

247. These powers are consistent regardless from whom the information is sought (e.g. from a government authority, bank, company, trustee, or individual) and whether or not the information is required to be kept pursuant to a law. This information can be accessed by various means: in writing, visits to business premises, during tax examinations or by testimonies. There are no statutory bank or professional secrecy provisions in place that restrict the tax authorities' access powers or prevent effective exchange of information. For the reasons above, element B.1 was found to be in place.

248. In practice, the Cook Islands has been able to obtain information from taxpayers or third parties to respond to EOI requests, without having to use the compulsory powers available to it. The Cook Islands has used its

compulsory powers and enforcement measures in the domestic context and indicated its willingness to do so to meet an EOI request if necessary.

249. In practice, the powers of the competent authority do not apply to items subject to legal privilege, and the information covered by legal privilege in the Cook Islands is in accordance with the standard. There are no other secrecy provisions that would prevent information from being obtained. No notification rights or similar procedures exist in the Cook Islands that could unduly prevent or delay the exchange of information. The Cook Islands has a process in place for appeals by information holders, which, based on experience in the domestic context, would not appear to impede effective EOI.

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)

250. The competent authority designated under the Cook Islands' EOI agreements is the Collector of Inland Revenue or an authorised representative of the Collector. The Income Tax Act provides the Collector with comprehensive information gathering powers. The Income Tax Amendment Act 2011, with effect from 1 September 2011, expressly provided the Collector with access powers for the purpose of giving effect to double tax agreements and tax information exchange agreements (TIEAs) (Income Tax Act, ss. 86, 219 and 220). Section 219(1) provides that:

> "Notwithstanding anything to the contrary *in any other Act*, including without limitation Sections 227 and 249 of the International Companies Act 1981-82, Section 23 of the International Trusts Act 1984, the Foundations Act 2012, the Captive Insurance Act 2013 and Section 72 of the Limited Liability Companies Act 2008, the Collector or any officer of the Department authorised in that behalf shall at all times have full and free access to all *books and documents* for the purpose of inspecting such books or documents, whether *in the custody or under the control of a public officer or a body corporate or any other person*, for the purposes of inspecting any books and documents which the Collector or the officer of the Department considers necessary, relevant, or likely to provide information,

> for the purposes of (a) collecting any tax or duty which the Collector is authorised to collect; (b) *giving effect to agreements described in section 86*."[13] (*emphasis added*)

251. The Collector's information gathering powers are very wide and not limited to persons who are required to maintain this information. Having due regard to the facts and circumstances of the case, the Collector issues requests to the persons most likely to have this information under its possession or control. Nevertheless, information can be sought from any third parties, such as accounting firms. This is expressly provided under section 220(1), as follows:

> "*Every person* (including any officer employed in or in connection with any department of the Government or by any public authority, and any other public officer) shall, if required by the Collector or by any officer of the Department authorised in that behalf, furnish in writing any information and produce any *books and documents* which the Collector or officer considers necessary or relevant for any purpose relating to the enforcement of this Act *(including giving effect to agreements described in section 86)* or any other Act administered by the Collector, and which may be *in the knowledge, possession, or control of that person*." (*emphasis added*)

252. The reference to "books and documents" has, by definition, a very wide meaning. This includes all books, accounts, rolls, records, registers, electronic information storage media, papers and other documents (Income Tax Act, s. 2). Section 220(2) further provides that "information in writing which may be required under this section shall include lists of shareholders of companies, with the amount of capital contributed by and dividends paid to each shareholder, copies of balance sheets and of profit and loss accounts, and other accounts and statements of assets and liabilities of any person". The Collector may, without fee or reward, make extracts from or copies of any books or documents to which they have full and free access (Income Tax Act, s. 219(1A)).

253. The Collector has two staff authorised to perform EOI tasks, each with significant qualifications and experience. Given the small number of requests received, this is an appropriate resourcing of the EOI function.

254. In practice, the Collector has been able to use the access powers effectively to obtain information required to respond to a request. This has included accessing ownership, accounting and banking information, as well

13. Section 86 authorises the entry into international agreements for relief from double taxation and the exchange of information.

as asset ownership, business activities and beneficial ownership information. One of the requests received in the review period asked for information on three persons, one requested information on thirteen persons, one requested information on four persons, one requested information on two persons, and one requested information on 41 persons. The Collector was able to access the requested information in all cases (although in the latter case, the breadth of the request was questioned by the trustee company. The Cook Islands discussed this with the relevant treaty partner, who then advised that the request would be deferred for the time being pending further domestic action, but the group request may be reinstated at a future time). Thus, the Cook Islands has successfully and timely accessed information in respect of 22 persons.

255. After receiving a valid EOI request, the process for accessing information is as follows. The designated EOI staff member would determine whether the information is already in the possession or control of the RMD by accessing RMD records. If the information is not already within the possession or control of the RMD, an official request for information under s. 220 of the Income Tax Act is issued. The RMD has a template it uses for this purpose, which states that the information request is pursuant to section 220 of the Income Tax Act.

256. All requests to date have related to international entities and arrangements. In such a case, the RMD first makes an information request to the FSC. The RMD and FSC have a close and co-operative working relationship and the FSC is located within a very short distance from the RMD office. The request would be hand delivered to the FSC, usually on the same day or the day after the EOI request is received. A diary note and reminder would be scheduled when the date for response expired, and follow up would begin if the response had not been received. This has not been necessary to date as in all cases the FSC has responded within two days.

257. Depending on the nature of the request, the information may be held by the FSC or by the trustee company acting for the international entity/arrangement. In the latter case, the FSC would provide the RMD with the identity of the relevant trustee company.[14] Given that the trustee companies generally hold the relevant information in the Cook Islands (as discussed in section A above), and that the international entities and arrangements themselves generally have no physical presence in the Cook Islands, this procedure is appropriate.

14. Although not yet required for answering an EOI request, the RMD has also used this access powers to obtain information from the MoJ with respect to domestic companies for domestic income tax purposes. As the MoJ is also located a short walk from the RMD, and the relevant staff are well known to one another, this is actioned by way of instant on-site request.

258. Within the FSC, these requests are processed by the Commissioner and Deputy Commissioner. When a request is received, the authority under which the request is made is checked by both the Commissioner and Deputy, so that the FSC can properly answer any queries from the trustee companies as to the reason the information was provided. In no case has the FSC had cause to refuse a request from the RMD. The FSC does not inform the relevant trustee company as to the existence of the request.

259. When the name of the relevant trustee company has been provided by the FSC, a new official request for information under s. 220 is issued by the RMD to the relevant trustee company. The request would state that information is being requested pursuant to s. 220 of the Income Tax Act and that the underlying EOI request complies with the provisions of a valid TIEA. The request would not usually state the identity of the TIEA partner (and certainly not so where the TIEA partner had requested this to be omitted). All six trustee companies are located within walking distance of the RMD office, and information requests would generally be hand delivered.

260. A response is due within 14 days (being the allotted time for the requested party to challenge the request in the High Court) and a reminder would set for the due date for the response. The RMD would make a telephone call or send an email if a response had not been received by the due date. The RMD staff member would remind the requested party that the information is overdue, ask whether there is a reason for the delay and invite them to reply immediately. If a requested party refused, or the information was still not furnished within the following three days, the staff member would advise the trustee company that they were in breach of section 220 of the Income Tax Act and that failure to comply could result in court action being taken against them. In one case the RMD staff reminded the trustee company that it had search and seizure powers that the RMD was willing to use. A formal warning letter, although not legally required, would be sent by the RMD as a matter of good practice and to demonstrate to the High Court that all appropriate remedies have been exhausted before initiating proceedings. The Collector is aware of the importance of EOI requests being responded to quickly, and indicated his willingness to use compulsory powers if necessary.

261. The Collector and his staff maintain good working relationships with each of the trustee companies. Given the close proximity of the trustee companies to the RMD office, responses are often hand delivered. In no case has it been necessary for the RMD to initiate court action against a requested party. The RMD would generally meet with the trustee company on the occasion of the first EOI request to explain the context and legal basis for the request. Other than in the case of the request for information on 41 entities, the trustee companies have provided all requested information within

the prescribed time of 14 days. In that exceptional case, the trustee company requested additional time in order to obtain legal advice as to its client's confidentiality. Even in this case, the requesting jurisdiction was kept informed well within 90 days from the receipt of the request.

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

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. The Cook Islands has no domestic tax interest with respect to its information gathering powers. The broad access powers provided to the Collector under the Income Tax Amendment Act 2011 can be used to obtain and provide information for the express purpose of giving effect to Cook Islands' EOI agreements (Income Tax Act, ss. 86, 219 and 220).

263. The Cook Islands' EOI experience is consistent with this analysis and in no case has a domestic tax interest prevented effective access to information. All EOI requests in the review period were in respect of international entities and arrangements which do not pay tax in the Cook Islands, demonstrating the willingness and ability of the Cook Islands to obtain the requested information despite the absence of any domestic tax interest.

Compulsory powers (ToR B.1.4)

264. Jurisdictions should have in place effective enforcement provisions to compel the production of information. The Collector's compulsory powers include the authority to enter premises, other than private premises (Income Tax Act, s. 219(1B)). Private premises may only be entered with the consent of the occupier or pursuant to a warrant. A Judge of the High Court is authorised to provide the Collector with an access warrant, on written application made under oath, if the judge is satisfied that the Collector's request is valid (Income Tax Act, s. 219(3)).

265. Under section 206 of the Income Tax Act, penalties ranging between NZD 1 000 (EUR 620) and NZD 10 000 (EUR 6 200) are imposed on every person who commits one of the following offences against this Act:

- refuses or fails to furnish any return or information as and when required by this Act, or any regulation made under this Act, or by the Collector;
- wilfully or negligently makes any false return, or gives false information, or misleads or attempts to mislead the Collector or any other

officer in relation to any matter or thing affecting any person's liability to taxation;

- refuses or fails without lawful jurisdiction to duly attend and give evidence to the person, or to produce any book or paper required;
- obstructs any officer acting in the discharge of the officer's duties or in the exercise of the officer's powers under this Act;
- commits any other breach of this Act for which no other penalty is expressly provided; or
- aids, abets, or incites any other person to commit any offence against this Act or against any regulation made under this Act.

266. In addition, every person who commits an offence in relation to sections 219 to 222 of the Income Tax Act, for which no other penalty is prescribed, is liable on conviction to a fine not exceeding NZD 1 000 (EUR 620) (Income Tax Act, s. 223). The Cook Islands authorities have indicated that, to the extent there is any overlap, section 206 (above) takes precedence over section 223, which covers:

- acts in contravention of or, without lawful justification or excuse, fails to comply in any respect with any provision of any of those sections or any requirement imposed thereunder;
- wilfully deceives or attempts to deceive the Collector or any officer of the Department in the exercise of any powers or functions under any of those sections;
- with intent to deceive, makes any false or misleading statement or any material omission in any information given to the Collector or any officer of the Department for the purposes of any of those sections; or
- resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under any of those sections.

267. A certificate in writing signed by the Collector certifying that a person refused or failed to furnish any return or information as and when required by this Act or by the Collector will, in the absence of proof to the contrary, be accepted as sufficient evidence in any proceedings against this person (Income Tax Act, s. 206(3)). All proceedings for offences against the Income Tax Act will be taken by way of prosecution in the High Court (Income Tax Act, s. 207).

268. In practice, the Collector has not been required to use compulsory powers or to impose penalties for failure to produce information for the purpose of meeting an EOI request. Search and seizure powers have been used for domestic tax purposes and the process for obtaining a warrant to do so

is very efficient, usually being issued on the same day. In addition, penalties have been imposed and enforcement actions have been taken in domestic tax cases. During the review period, 3 prosecutions were undertaken and 165 other enforcement actions were taken, including warning letters and flight bans. The Collector has stated that he would be willing and able to use these powers if needed to meet an EOI request.

Secrecy provisions (ToR B.1.5)

269. There are no secrecy provisions under Cook Islands legislation that would prohibit or restrict the disclosure of information to the Collector. Various secrecy provisions may be found in Cook Islands legislation, but these are overridden by the Income Tax Act (ss. 86, 219 and 220). The Income Tax Amendment Act 2011 specifically overrides any obligation to secrecy that may be imposed by *any other Act* (Income Tax Act, s. 86(5)). Sections 219 and 220 were also amended to made explicit reference to the International Companies Act (CA, ss. 227 and 249), the International Trusts Act (ITA, s. 23), the Limited Liability Companies Act (LLCA, s. 72) and the Foundations Act.

270. Section 227 of the International Companies Act and section 74 of the International Partnership Act have also been amended in 2004 to permit disclosure to the extent required under any other Act (ICA, s. 227(2)(b) and IPA, 74(2)(b)). Likewise, under section 72 of the Limited Liability Companies Act, disclosure is permitted to the extent that it is required under any other Act (LLCA, s. 72(5)(b)).

271. The Banking Act 2011 generally prohibits disclosure of information relating to the banking business of a licensee or of a depositor or other customer of the licensee (Banking Act, s. 54). However, a number of exceptions apply. In particular, disclosure is permitted for the purpose of discharging any duty, performing any function or exercising any power under the Banking Act or any other Act (Banking Act, s. 54(2)(b)).

272. Other examples of secrecy provisions found in Cook Islands legislation that are overridden by the Income Tax Act are section 23 of the International Trusts Act and section 33 of the FTRA, section 31 of the Financial Supervisory Commission Act 2003 and section 24 of the Financial Services Development Authority Act 2009.

273. Section 86 of the Income Tax Act provides that EOI agreements do not require ratification in the Cook Islands. Once the Cook Islands has signed an EOI agreement, it only has to notify the other party that the entry into force requirements have been met. Once an EOI agreement has been ratified by the other party and entered into force, its provisions have effect "according to their tenor" notwithstanding anything to the contrary in any enactment (Income Tax Act, s. 86(1)).

274. The Code of Ethics set out in the Schedule to the Law Practitioners Act 1993-94 provides for domestic rules concerning the attorney-client privilege. Section 6 provides that "*any* oral or written communication between practitioners shall be accorded confidentiality, unless agreed otherwise by a client, or *as may be required by law*". Furthermore, section 18 establishes that "a practitioner should never disclose, unless lawfully ordered to do so by the Court or *as required by law*, what has been communicated to him in his capacity as a practitioner, even after he has ceased to be the client's counsel. This duty extends to his partners, to practitioners assisting him and to his employees" (*emphasis added*).

275. Although the Code of Ethics does not establish any limitation as to the communication protected under the legal privilege exception, domestic law provisions concerning legal professional privilege are expressly overridden by the Income Tax Act and by the Cook Islands' TIEAs (Income Tax Act, s. 86(1)). The limits on information which must be exchanged under the Cook Islands' TIEAs mirror those provided for in the OECD Model TIEA. Accordingly, 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. Therefore, the attorney-client privilege in the Cook Islands meets the international standard. In practice, no challenge to an EOI request on the basis of legal privilege has been made. However, a challenge to the use of other domestic information gathering powers has been raised on the basis of legal privilege, and in this case the concept of attorney-client privilege as found in the OECD Model TIEA was followed. The Crown Law Office, which represents the government on legal matters, confirmed that it would do likewise in respect of challenges to an EOI Request, and would not consider a claim of privilege broader than that contained in the TIEAs to be valid.

276. In practice, secrecy provisions have not impeded effective exchange of information. No request for information has been declined by the Cook Islands on the basis of secrecy and no peers have expressed any concern as to the existence of secrecy rules in the Cook Islands.

Conclusion

277. The Collector's information gathering powers are very wide and enable the access to all information necessary to meet an EOI Request. These access powers have been used effectively in practice, without the need for recourse to compulsory or enforcement powers. The practical procedures in place for accessing information are clear and effective. As a legal and practical matter, there are no domestic tax interest or secrecy provisions that could impede access to information for EOI purposes.

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)*

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

279. The Cook Islands' Revenue Management Division is not obliged to inform the person concerned of the existence of an exchange of information request. Likewise, the Revenue Management Division is not obliged to inform the taxpayer concerned prior to contacting third parties to obtain information. In practice, where information is held by another government authority (such as the FSC), the taxpayer would not be notified. In the EOI requests received to date, the trustee company acting for the subject of the request has held the requested information. Thus, in order to obtain the information, the trustee company is contacted. No other notification is sent by the RMD to the subject of the request. The request made to the information holder would state that it was made pursuant to a valid TIEA, but would not generally disclose the name of the requesting jurisdiction (and certainly not so where the TIEA partner had requested this to be omitted).

280. Nevertheless, if a person or a public authority who receives a request from the Collector believes that the request is improper, he may apply to the High Court to have the request discharged or varied within 14 days from the date of receipt (Income Tax Act, s. 220(4)). A request may be considered to be improper where the Collector does not have a legal basis for obtaining the information, for example, because the request for information is not in conformity with the terms of the relevant TIEA.

281. On hearing such application, the Court may discharge the request or make such variation to it as it thinks fit. If the Court decides that the request is proper, the person or public authority may not appeal from this decision. This provision remains untested in practice since no applications to the High Court to vary or discharge a request have been made to date. However, the Cook Islands authorities anticipate that the procedure would not take more than two months, based on the experience in the domestic context. High Court judges are judges from New Zealand that visit approximately every two months for two weeks at a time. However, the judges regularly hold conference calls with the Cook Islands court registry staff, and receive documents electronically as required to ensure the efficient administration of justice. High Court judges can issue orders remotely from New Zealand on the basis of these conference calls and documents without a physical sitting of court, and this would likely be the procedure followed in the case of a request to discharge or vary an EOI request under s. 220(4). Accordingly, it is likely that the process would take less than two months and in practice should not materially affect the ability of the Cook Islands to timely respond to EOI requests.

282. The Collector may, by notice in writing, require any person to give evidence and to produce all books and documents in the custody or under the control of that person which are likely to contain information sought by the Collector (Income Tax Act, s. 222(1)). A person who fails to provide information to the Revenue Management as required by a written notice is liable on conviction to a fine not exceeding NZD 500 (EUR 311). In practice, it has not been necessary for the Collector to impose this sanction as all requests by the Collector for information have been answered.

283. The Collector may also apply in writing to a Judge of the High Court to hold an inquiry if deemed necessary for the purposes of the administration or enforcement of the Income Tax Act or any other Act administered by the Collector, including giving effect to EOI agreements described in section 86 (Income Tax Act, s. 221(1)). The Judge may summon, and examine on oath touching any matter relevant to the subject matter of the inquiry, all persons whom the Collector or any other interested person requires to be so called and examined (Income Tax Act, s. 221(2)). In practice, it has not been necessary for this procedure to be used to meet an EOI request.

Conclusion

284. There are no notification requirements in the Cook Islands which would impede effective EOI and no issues have arisen in practice. If a challenge to a request for information were made, an efficient process is in place to ensure this can be resolved in a timely manner.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant

C. Exchanging Information

Overview

285. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. A jurisdiction's practical capacity to effectively exchange information relies both on having adequate mechanisms in place as well as an adequate institutional framework. This section of the report examines whether the Cook Islands has a network of information exchange agreements that meet the standard and whether its institutional framework is adequate to achieve effective exchange of information (EOI) in practice.

286. The Cook Islands has been and still is active in negotiating EOI agreements, having concluded 18 TIEAs since July 2009. Currently, 14 of these TIEAs are in force and the Cook Islands advises that it has taken all steps necessary for the remaining four TIEAs to enter into force. A list of these signed agreements can be found in Annex 2. These TIEAs mirror the OECD Model TIEA and contain all provisions which allow the Cook Islands to exchange all foreseeably relevant information. For this reason, element C.1 was found to be in place.

287. The Cook Islands' treaty network allows for EOI for tax purposes with all relevant partners. The Cook Islands is currently negotiating or has initialled an additional seven TIEAs. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and the Cook Islands has not refused to negotiate or conclude an EOI agreement with any other jurisdiction. Element C.2 was therefore found to be in place.

288. The confidentiality of information exchanged with the Cook Islands is protected by obligations implemented in the agreements, supplemented by domestic legislation which provides for an oath of secrecy taken and observed by all public officers and specific provisions to protect confidentiality of information contained in a request for information received by the Cook Islands. This domestic legislation is supported by penalties for

non-compliance. Consequently, element C.3 was found to be in place. No concerns as to confidentiality have arisen in practice.

289. Under all of the Cook Islands' TIEAs, rights and safeguards are protected in accordance with the standard, by ensuring that the contracting parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*). Hence, element C.4 was found to be in place. No concerns as to rights and safeguards have arisen in practice.

290. There are no legal restrictions on the ability of the Cook Islands' 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. In practice, all five requests were responded to within 90 days. All peers have expressed satisfaction with the timeliness and completeness of the responses.

291. During the review period the Cook Islands received five requests from two partners. The requested information was provided for four of these (which related to 22 persons). The requested information was not provided in respect of one request (which related to 41 persons) as the request was deferred by the treaty partner. The Cook Islands Competent Authority is able to effectively respond to requests for information and has adequate resources to exchange information effectively, commensurate with the number of requests made to date. The Cook Islands has sufficient professional staff with clear responsibility for processing requests. The staff members possess the requisite expertise and have undergone training specific to EOI, and appropriate processes cover all relevant steps of the exchange of information process. As the Cook Islands received relatively few requests during the review period, it is recommended that the Cook Islands continue to monitor the organisational processes of the competent authority in responding to EOI requests.

C.1. Exchange of information mechanisms

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

292. In 2002, the Cook Islands made a commitment to the internationally agreed standard for effective tax information exchange. The Cook Islands signed its first agreement with New Zealand on 9 July 2009. Since then, the Cook Islands has actively negotiated and concluded a total of 18 TIEAs mainly with OECD members and its major trading partners (see Annex 2).

293. The Income Tax Act authorises the entering into and giving of effect to double tax agreements (DTAs) and tax information exchange agreements (TIEAs) (Income Tax Act, s. 86). The Cook Islands as yet has no DTAs, but has signed 18 TIEAs (with a number of other TIEAs under negotiation). The competent authority nominated under the Cook Islands TIEAs is the Collector of Inland Revenue or an authorised representative of the Collector. In practice, the Collector manages all TIEA requests and negotiations. As a matter of policy and practice, the Cook Islands closely follows the OECD Model TIEA. Where deviations from the Model have been proposed by partners, the Cook Islands has generally accommodated these requests, as discussed below.

Foreseeably relevant standard *(ToR C.1.1)*

294. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow "fishing expeditions", i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 1 of the OECD Model TIEA, set out below:[15]

> The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

295. All TIEAs concluded by the Cook Islands meet the "foreseeably relevant" standard as described in Article 1 of the OECD Model TIEA, and its accompanying commentary.

296. In practice, there has been one instance of information requested not being provided to the treaty partner, on account of an objection raised by the requested trustee company that the request was too broad in scope. In this instance, the Cook Islands reverted to the treaty partner to advise them of the objection. The treaty partner acknowledged the objection and subsequently deferred the request. This treaty partner gave peer input stating that it was satisfied that the Cook Islands responded appropriately to the issue, and gave positive feedback on its EOI relationship with the Cook Islands.

15. Article 26(1) of the Model Tax Convention contains a similar provision.

In respect of all persons (ToR C.1.2)

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

298. All TIEAs signed by the Cook Islands contain a provision concerning jurisdictional scope which is equivalent to Article 2 of the OECD Model TIEA and which conforms to the international standard. No concerns as to this issue have arisen in practice.

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

299. 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 Convention and the OECD Model TIEA, which are primary 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.

300. All TIEAs concluded by the Cook Islands contain a provision similar to Article 5(4) of the OECD Model TIEA, which ensures that the requested jurisdiction shall not decline to supply the information requested solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

301. However, the TIEAs with Australia and New Zealand include a provision in Article 5(4) that:

> "Each Contracting Party *where it is satisfied there is cause for enquiry* shall ensure that its competent authority for the purposes specified in Article 1 of this Agreement, has the authority to obtain and provide upon request:
>
> (a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

> (b) information regarding the ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including…" [*emphasis added*]

302. The Cook Islands considers that the effect of the emphasised words just reinforces the need to ensure that such a request for information meets the foreseeable relevant criteria noting that all requests require there be a cause for enquiry before it can be satisfied.

303. This language was originally included in the TIEA at the request of the other party and the Cook Islands accommodated that request. In practice, the existence of this language has not prevented effective exchange of information with Australia or New Zealand, and both peers have noted that all requests have been responded to appropriately. In no case has the Cook Islands refused to provide information on the basis of not being "satisfied that there is cause for enquiry" and the Cook Islands confirms that it would not handle requests from Australia or New Zealand any differently as a consequence of the above language. When responding to a request, the Collector and his team focus on what the request is and the period it relates to, and ensuring that the request meets the requirements of the TIEA particularly as set out in Article 5(5).[16]

Absence of domestic tax interest (ToR C.1.4)

304. 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.

305. All TIEAs concluded by the Cook Islands contain a provision similar to Article 5(2) of the OECD Model TIEA, which allows information to be obtained and exchanged notwithstanding it is not required for a domestic tax purpose. No concerns as to domestic tax interest have arisen in practice.

16. Article 5(5) of the OECD Model TIEA requires that a requesting party provide certain information with the request in order to demonstrate the foreseeable relevance of the information to the request.

Absence of dual criminality principles (ToR C.1.5)

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

307. None of the EOI arrangements concluded by the Cook Islands apply the dual criminality principle to restrict the exchange of information. No concerns as to dual criminality have arisen in practice.

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

308. 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").

309. All TIEAs signed by the Cook Islands (usually under Article 1(1)) mention that the information exchange will occur for the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims (i.e. civil matters), or the investigation and prosecution of tax matters (i.e. criminal matters). The processes involved where an EOI request relates to criminal investigation is in no way different to any other EOI request. As such, no difficulties in providing effective EOI assistance should arise where an EOI request related to a criminal investigation.

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

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

311. All of the TIEAs concluded by the Cook Islands expressly allow for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction's domestic laws (Article 5(3)). The

Collector has not been requested to provide information in a particular form during the review period, but does not foresee difficulties in providing information in a requested form, for example as a sworn affidavit.

In force (ToR C.1.8)

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

313. The Cook Islands concluded TIEAs with 18 jurisdictions. Fourteen of these TIEAs with Australia, Denmark, Finland, France, Germany, Greenland, Iceland, Ireland, Korea, Mexico, the Netherlands, New Zealand, Norway and Sweden have entered into force to date, and the TIEA with South Africa will enter into force on 8 January 2015. Three TIEAs signed between February 2009 and October 2013 are still pending ratification, i.e. Faroe Islands, Greece and Italy. The Cook Islands advised that it has taken all steps necessary for these remaining three TIEAs to enter into force.

314. The Cook Islands' TIEAs enter into force in accordance with the "entry into force" provision of each individual TIEA. The Cook Islands has notified the above three of its TIEA partners that it has fulfilled its legal obligations. The TIEA with the Faroe Islands will enter into force 30 days after the Cook Islands receives notification from these partners. The TIEAs with Greece and Italy will enter into force on receipt of notification from these partners. TIEAs do not need to be gazetted by the Cook Islands.

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

315. For information exchange to be effective, the parties to an exchange of information arrangement need to enact any legislation necessary to comply with the terms of the arrangement. The Income Tax Amendment Act 2011, with effect from 1 September 2011, introduced implementation legislation for giving effect to these TIEAs. Fourteen of the TIEAs have since entered into force.

316. Under this legislation, TIEAs do not require ratification in the Cook Islands. Once the Cook Islands has signed a TIEA, it only has to notify the other party that the entry into force requirements have been met. Once a TIEA has been ratified by the other party and entered into force, its provisions have effect "according to their tenor" notwithstanding anything to the contrary in any enactment (Income Tax Act, s. 86(1)). The new legislation also specifically overrides any obligation to secrecy that may be imposed by any Act (Income Tax Act, s. 86(5)). This legislation applies to TIEAs as well as DTAs.

317. In practice, the Cook Islands process for bringing a TIEA into domestic effect is quite straightforward and efficient. After negotiations have been completed and the TIEA is initialled, the Cook Islands would wait for the other party to complete its internal protocols. When the other party is ready to sign, the Competent Authority is informed by email. The Competent Authority makes a written submission to the Cook Islands Cabinet, which in turn authorises the Minister of Finance (or other available Minister) to sign the TIEA. This process takes between one and two weeks. Once the authority is obtained, practical arrangements are made for signing, which would generally occur in either New Zealand or Australia. In the Cook Islands, once a TIEA is signed, notification is sent to the other partner and at that point the Cook Islands has done all that is required from its perspective to bring the agreement into force. The agreement is the made public on the Cook Islands Revenue Management Division website, and made available to the Global Forum.

318. One peer has queried how the Cook Islands interprets its TIEAs with respect to exchanging information on criminal tax matters that relate to a taxable period before the entry into force of the TIEA, stating that such information should be exchanged on the basis that there is a distinction in the TIEA between the effective dates for civil and criminal tax matters. The Cook Islands' position is that such an interpretation of the entry into force provision is not clearly provided for in the relevant TIEA(s). The Cook Islands has not received a request for information relating to a criminal tax matter during the review period, and thus this issue has not affected EOI in practice in the review period.

319. The international standard provides for exchange of past information which relates to a taxable period following the effective date, but the Terms of Reference do not require that information must be provided that relates to a taxable period before the entry into force of an information exchange agreement. Accordingly, what applies in a particular case depends on the wording of the relevant provisions of the agreement. The Cook Islands is encouraged to resolve any divergence of interpretation bilaterally with its treaty partners. In any event, the Cook Islands confirmed that any information predating the entry into force of the TIEA, but relating to a taxable period after that date, would be exchanged in all cases.

Conclusion

320. The Cook Islands has a network of EOI agreements that allow for EOI on request in accordance with the international standard. The Cook Islands has taken all practical steps available to it to bring new agreement into force. The Cook Islands legal framework and practice does not present any issue that would compromise the effective exchange of information or otherwise frustrate the application of these EOI mechanisms, and peer input is positive in this respect.

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.

321. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties with 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.

322. The policy of the Cook Islands with respect to expanding its EOI network has been to focus on jurisdictions that have sought a TIEA with the Cook Islands (mostly, OECD members), as well as those jurisdictions with which it has a significant economic relationship. Cook Islands' first TIEA was signed in July 2009 (in force in 2011) with its most important trading partner, New Zealand. Other relevant trading partners of the Cook Islands are Australia (TIEA in force in 2011) and Fiji. The Cook Islands has approached Fiji to enter into a TIEA and was advised that the request was forwarded to their Revenue Authority's legal department for further consideration. To date, the Cook Islands has not received a response from Fiji.

323. The Cook Islands concluded TIEAs with 18 jurisdictions, including 16 with Global Forum members, of which seven are also G20 economies. TIEA negotiations are currently in progress with an additional seven jurisdictions, including six Global Forum members.

324. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report. One jurisdiction advised the assessment team that the Cook Islands had not responded to a request for negotiating an EOI agreement with it, however documents produced by the Cook Islands demonstrate that this was based on a miscommunication between that other jurisdiction and its regional consulate which

had been liaising with the Cook Islands. After being alerted of this issue, the Cook Islands has been in direct contact with the jurisdiction and provided it with a draft TIEA, and is awaiting a response.

Determination and factors underlying recommendations

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

Phase 2 Rating
Compliant

C.3. Confidentiality

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

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

325. 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.

326. All of the TIEAs concluded by the Cook Islands contain a provision ensuring the confidentiality of information exchanged and limiting the disclosure and use of information received, which has to be respected by the Cook Islands as a party to these agreements. In addition, section 86(1) of the Income Tax Act, as amended, provides that TIEA provisions have effect "according to their tenor" notwithstanding anything to the contrary in any enactment. This means that the TIEA provisions pertaining to confidentiality of information form part of the body of Cook Islands domestic law.

327. The confidentiality provisions of the Cook Islands' TIEAs are backed up by the general secrecy provisions in the Cook Islands domestic tax legislation. Section 7 of the Income Tax Act, as amended, provides that the Collector and every other officer of the Revenue Management Division (RMD) of the Ministry of Finance and Economic Management must maintain and aid in maintaining secrecy of all matters relating to the Act which comes to the knowledge of the officer, and shall not communicate any such matters to any person except for the purpose of giving effect to the Act or any other Act that imposes taxes. A person convicted of acting in contravention of the above secrecy provisions is liable for imprisonment not exceeding six months or a fine not exceeding NZD 500 (EUR 311) (Income Tax Act, s. 7(3)).

328. The Cook Islands has an Official Information Act 2008 that applies to the disclosure of communications between jurisdictions. The disclosure of such information is not required if, for example, it would prejudice the entrusting of information to the Government of Cook Islands on a basis of confidence by the government of any other country or an agency of such a government or by any international organisation (Official Information Act, s. 6). The Income Tax Act expressly provides that the above secrecy provisions shall not prevent the Collector from disclosing such information "as is required to be disclosed" under a TIEA or DTC (Income Tax Act, s. 86(5)). In practice, other freedom of information requests received in the domestic tax context have been refused where appropriate, including where a request was not made in good faith.

Ensuring confidentiality in practice

329. The offices of the RMD are housed in their own building. The Collector of the RMD has a separate office, as do the two staff members responsible for EOI. All offices can be locked separately and are locked when the person is out of the office, and each night.

330. Incoming requests in physical form are delivered directly to the RMD. As treaty partners mark the mail item "confidential" and address it to the Collector, only the Collector will open the request. EOI requests received by the Collector are stored securely in his office.

331. An electronic register of EOI requests is maintained in a spreadsheet, which is accessible only by the Collector and the two authorised staff responsible for EOI. One of the two EOI staff members would update the spreadsheet when a new request is received. The EOI register does not contain any taxpayer specific data.

332. The Collector and EOI staff members keep their own records on their personal computers, to which only they have access. Paper files are either kept in the offices of the EOI staff (when they are working on them) or locked

in a secure office when not being worked on. A paper copy of EOI related files are maintained in the Collector's office.

333. A template letter is used for requesting a person to provide information for EOI purposes. The Collector indicated that the letter does not contain more than the information sought and the time limit within which it should be provided, and that it is sought pursuant to section 220 of the Income Tax Act.

334. Correspondence between the RMD and the information holder is hand delivered, and always addressed personally to the responsible person, which means that he/she will be the person that opens the mail.

335. When requested information is provided to EOI partners, all information produced and an accompanying letter are sent via courier to the requesting competent authority. Any interim correspondence is sent by registered mail.

336. In no case has the confidentiality of information received from a treaty partner been compromised, or information disclosed or used contrary to the relevant TIEA.

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

337. 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 and any other documents or communications reflecting such information.

338. The confidentiality provisions in the agreements and in the Cook Islands' domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction. In one case, a treaty partner requested permission for the information provided by the Cook Islands to be disclosed in that peer's legal proceedings and the Cook Islands gave this permission in a timely manner. In practice, no trustee company has requested a copy of the EOI request received from the foreign government, and the Collector has confirmed that any such request would be refused.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant

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

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

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

339. 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 listed secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many jurisdictions. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative.

340. Where attorney-client privilege is more broadly defined, it does not provide valid grounds on which to decline a request for exchange of information. 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, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

341. As noted above under Part B (see the section on *Secrecy provisions*), the Income Tax Act provides that TIEA provisions have effect "according to their tenor", and the Collector may disclose such information "as is required to be disclosed" under a TIEA. Therefore, information may only be disclosed to the extent permitted under the TIEA provisions. The limits on information which must be exchanged under the Cook Islands' TIEAs generally mirror those provided for in the OECD Model TIEA. That is, information which is subject to legal privilege; which would disclose any trade, business, industrial, commercial or professional secret or trade process; or would be contrary to public policy (*ordre public*) is not required to be exchanged.

342. In respect of rights and safeguards of persons, the OECD Model TIEA provides that they remain applicable "to the extent that they do not unduly prevent or delay effective exchange of information". In contrast, the TIEAs with Australia, New Zealand and South Africa provide that a requested party

"shall use its best endeavours" to ensure that they do not so unduly prevent or delay effective EOI (Article 1). The TIEA with Germany states only that "the rights and safeguards secured to persons by the laws or administrative practice of the requested Contracting State remain applicable" and therefore does not circumscribe rights and safeguards found in domestic law.

343. In practice, the inclusion of the "best endeavours" language has not caused any delay in the effective exchange of information, as demonstrated by several successful exchanges with Australia and New Zealand. No exchanges have occurred with Germany within the review period to test this issue. In each case, this variation in language was inserted at the request of the other party and the Cook Islands accommodated this request. The Cook Islands further advises that there are no domestic rights and safeguards (other than legal privilege) in the Cook Islands that could interfere with exchange of information. The Cook Islands does not consider their obligations to be substantively affected by this language as compared with their obligations under other TIEAs.

344. Legal 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 Cook Islands exchange of information partners.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

Phase 2 Rating
Compliant

C.5. Timeliness of responses to requests for information

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

Responses within 90 days (ToR C.5.1)

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

346. The Cook Islands' TIEAs require the provision of request confirmations, status updates and the provision of the requested information, within the timeframes foreshadowed in Article 5(6)(b) of the OECD Model TIEA:

> "6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall: […]
>
> b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal."

347. As such there appear to be no legal restrictions on the ability of the Cook Islands' 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.

348. In practice, during the review period the Cook Islands received five requests from two partners. The requested information was provided for four of these (which related to 22 persons). The requested information was not provided in respect of one group request (which related to 41 persons) as the request was deferred by the treaty partner. The peer input and records of the Cook Islands indicate that all requests have been responded to in a timely manner. The Cook Islands is highly aware of the importance of providing a timely response to its treaty partners and staff prioritise EOI requests to ensure responses can be provided quickly. The average response time over the review period was 32 days. The longest of these was 63 days, and the relative delay in this case arose in connection with the requested trustee company seeking legal advice as to its duty of confidentiality, which it did so in good faith.

349. Input from one peer indicated that in one instance, an interim response was provided within 90 days and a complete response provided within 180 days. However, the Cook Islands views these as two separate requests on account of the fact that different information was requested and provided in the two transmissions, albeit relating to the same taxpayer enquiry. On that basis, during the review period, the Competent Authority did not have to send any status updates to the requesting jurisdiction as it sent the complete information within 90 days.

350. The Cook Islands has created a document outlining the procedure for responding to an EOI request. This document instructs that as "time is

crucial, prioritise these actions ahead of other work, as unexpected delays may occur on the requested entity's end." Although the document does not include a reference to providing an update within 90 days (as the Cook Islands intends to continue to respond to all requests within 90 days), the Cook Islands does refer to the Global Forum manual where its own procedural document does not address an issue. The Global Forum manual does include an instruction to provide a status update within 90 days, and the Collector confirmed that this practice would be followed in the event that a full response was not able to be provided within 90 days.

Organisational process and resources (ToR C.5.2)

351. The Competent Authority for EOI purposes is the Collector of the RMD which is a division of the Ministry of Finance and Economic Management. The RMD is the tax and customs collection authority for the Cook Islands. Two additional personnel are allocated the responsibility for EOI matters, each being Senior Tax Auditors that report directly to the Collector. The Collector has been engaged in tax treaty negotiations for ten years and attends Global Forum meetings as well as EOI training sessions. The two staff members have completed university studies in tax and accounting, and have significant on the job training, both in the RMD and in previous jobs with a revenue administration and a large business respectively.

352. Given the limited number of requests made to date (five over the 3 year review period), the resources dedicated to EOI are appropriate. In the event that there was a sudden increase in requests, there are two other senior staff within the RMD that would be available to be trained in EOI. In the event that one of the current staff left the employ of the RMD, a replacement would be trained in EOI to ensure that at all times the Collector had two staff members available to work on EOI requests.

353. Procedures for handling EOI requests are set out in a step-by-step guide developed by the Collector. Where relevant, the Global Forum manual on EOI has also been consulted.

354. All EOI requests are sent to, or by, the Collector. The details of the Competent Authority are identifiable on the tax section of the Ministry of Finance and Economic Management website, and with the Global Forum. Updates as to contact details of the EOI unit are provided to EOI partners, usually by telephone conferences.

355. Requests are generally received by post, and in one case supported by an electronic copy sent by email to the Collector. The Collector would open the mail, date stamp it and read the request. He then analyses the request to determine whether it complies with the relevant TIEA. If so, he would assign the request to one of the two authorised staff. The responsible staff member

would enter the request in the EOI register, which is a secure spreadsheet containing the relevant details of the EOI requests. The register includes information on the sender, date received, reference number, number of taxpayers involved, status of request (i.e. whether work is in progress or complete) but does not include the taxpayer identity.

356. The staff member will then consult the relevant TIEA and confirm that the request is valid. This includes verifying the entry into force date, and that sufficient details of an ongoing investigation and purpose for requesting information have been provided, with an explanation as to why the treaty partner believes the information is in the Cook Islands. Any doubts as to validity are resolved by conferral with the Collector.

357. The staff member will then photocopy the request as a working copy and identify the categories of information being sought (for example, identity and ownership information, accounting records, bank information or other). The staff member will determine whether the requested information is already in the possession or control of the RMD. If the information is possessed by a third party, an official request for information is sent pursuant to section 220 of the Income Tax Act, as described above in section B1. The request will always include a statement of compliance, indicating that the information request complies with the provisions of the relevant TIEA. The information is required to be provided within 14 days, and the staff member sets a reminder note for that due date. If a response is not provided on time, the staff member will follow up via telephone or email, and if necessary explaining that penalties apply for failure to respond.

358. In all cases during the review period, the information has been sought from trustee companies. The FSC has usually provided, within two days, the details of the relevant trustee company from whom further information will be required. This is followed by a request sent to the relevant trustee company, which has generally provided the requested information within 14 days.

359. The Collector requests regular updates from staff working on EOI requests, and at least once per week while a request is outstanding. As it is a small team of staff responsible for EOI, these discussions occur regularly without any difficulty. Once the requested information has been obtained, the Collector will review the file to ensure all terms of the TIEA have been adhered to, and that the response is complete and of high quality. A cover letter is prepared, signed by the Collector, and the complete response is placed into a sealed envelope. It is then handed to the Collector's personal assistant for sending. The Collector's personal assistant is also subject to secrecy obligations and is responsible for handling other highly sensitive information, such as personnel files). The response is sent by courier on the same day or the next. Any interim correspondence is sent by registered mail.

360. The Cook Island reports that information requests received during the review period have been generally clear and complete. The two partner jurisdictions from which requests were received in the review period generally follow a standard format for making requests. In the event that a request was unclear or incomplete, the Collector would seek clarification from the partner jurisdiction by way of phone call.

361. As the Cook Islands has received relatively few requests over the review period, it should continue to monitor the organisational processes of the EOI unit to ensure that they are effective for the exchange of information in all cases.

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

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

363. There are no specific legal and regulatory requirements in place which impose restrictive conditions on the Cook Islands exchange of information practice. No restrictive conditions have arisen in practice.

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**
The Cook Islands has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. The Cook Islands received relatively few requests during the review period.	The Cook Islands should continue to monitor the practical implementation of the organisational processes of the EOI unit, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient 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 *(ToR A.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
Phase 1 determination: The element is in place but aspects of the legal implementation require improvement.	Limited liability companies, international trusts and foundations are not explicitly required to keep all underlying documentation.	The Cook Islands should require all relevant entities and arrangements to keep underlying documentation in respect of all transactions.
	No penalty exists for failure of a foundation to maintain reliable accounting records for at least five years.	The Cook Islands should ensure that the failure of a foundation to maintain all accounting records and underlying documentation for at least five years is subject to effective penalties.

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Largely compliant	The requirements to maintain accounting information for at least five years for international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations have been introduced only recently.	The Cook Islands should monitor the operations of the new provisions for international companies, limited liability companies, international partnerships, limited partnerships, international trusts and foundations.
Banking information should be available for all account-holders *(ToR A.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
Phase 1 determination: The element is in place.		The Cook Islands should continue to develop its EOI network with all relevant partners.
Phase 2 rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*		
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 2 rating: Largely Compliant	The Cook Islands has committed resources and has in place organisational processes for exchange of information that appear to be adequate for dealing with incoming EOI requests. The Cook Islands received relatively few requests during the review period.	The Cook Islands should continue to monitor the practical implementation of the organisational processes of the EOI unit, in particular taking account of any significant changes to the volume of incoming EOI requests, to ensure that they are sufficient for effective EOI in practice.

Annex 1: Jurisdiction's response to the review report[17]

The Cook Islands has welcomed the Global Forum's Phase 2 Peer Review as we have long recognised the importance of transparency and information exchange to tax compliance, and we have been fully committed since 2002 to implementing international regulatory mandates and ensuring international best practices. We pride ourselves on our regulatory standing and will continue to ensure that the regulatory standards of the Cook Islands place us well among our peers. The process has meant a considerable amount of work for a very small jurisdiction but we would like to applaud the efforts and professionalism of our assessment team.

Overall, we consider the report to be a fair and balanced reflection of the Cook Islands position. The report is positive, but does indicate a couple of minor shortcomings with regards to the maintenance of accounting records (Element A.2), as well as the need for us to continue to monitor the practical implementation of the organisational processes of the EOI unit (Element C.5). We are pleased that our effective implementation of Exchange of Information in practise has been recognised.

While not in absolute agreement with the assessment, we accept the recommendations that have been made in the report on these issues. We will deal with these constructively in the near future. The Cook Islands is in a continuing cycle of reviewing and improving legislation in the tax and financial services purview. We are currently drafting amendments to the Financial Transactions Reporting Act 2004 which should address the maintenance of accounting records concerns highlighted in this report. To date in 2015, we have signed a further Tax Information Exchange Agreement with the Czech Republic (increasing our network to 19 TIEAs) and our TIEA with Italy has entered into force.

With globalisation and rapid technological change comes an increased number of international business and investment transactions, and with it the need for tax authorities to seek assistance from one another through closer co-operation. The Cook Islands prides itself on its tax compliance regime and endorses the international standards for transparency and exchange of information. We are committed to working closely with our partners to ensure increased transparency and ease in the exchange of information process.

17. 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

List of Tax Information Exchange Agreements (TIEAs) signed by the Cook Islands as at December 2014.

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force
1	Australia	TIEA	27-Oct-09	02-Sep-11
2	Denmark	TIEA	16-Dec-09	02-Oct-11
3	Faroe Islands	TIEA	16-Dec-09	Not yet in force
4	Finland	TIEA	16-Dec-09	02-Oct-11
5	France	TIEA	15-Sep-10	16-Oct-11
6	Germany	TIEA	03-Apr-12	11-Dec-13
7	Greece	TIEA	12-Feb-13	Not yet in force
8	Greenland	TIEA	16-Dec-09	10-Jan-13
9	Iceland	TIEA	16-Dec-09	25-Jun-12
10	Ireland	TIEA	08-Dec-09	02-Sep-11
11	Italy	TIEA	17-May-11	Not yet in force
12	Korea	TIEA	31-May-11	5-Mar-12
13	Mexico	TIEA	22-Nov-10	02-Mar-12
14	Netherlands	TIEA	23-Oct-09	07-Sep-11
15	New Zealand	TIEA	09-Jul-09	13-Dec-11
16	Norway	TIEA	16-Dec-09	06-Oct-11
17	South Africa	TIEA	25-Oct-13	08-Jan-15
18	Sweden	TIEA	16-Dec-09	06-Oct-11

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

Constitution

Civil and commercial laws

Cook Islands Act 1915 (New Zealand enactment)

Acts Interpretation Act 1924 (New Zealand enactment)

New Zealand Laws Act 1966

New Zealand Representative Act 1980

Public Records Act 1984

Companies Act 1955 (New Zealand enactment)

Companies Act 1970-71

International Companies Act 1981-82 (ICA)

International Companies (Evidence of Identity) Regulations 2004

International Companies Amendment Act 2013

Limited Liability Companies Act 2008 (LLCA)

Limited Liability Companies Amendment Act 2013

Partnership Act 1908 (New Zealand enactment)

International Partnership Act 1984 (IPA)

International Partnership Amendment Act 2013

Trustee Act 1956 (New Zealand enactment)

Trustee Companies Act 2014

International Trusts Act 1984 (ITA)

International Trusts Amendment Act 2013

Foundations Act 2012

Foundations Amendment Act 2013

Captive Insurance Act 2013

Regulated activities and AML/CFT laws

Financial Supervisory Commission Act 2003

Financial Services Development Authority Act 2009

Financial Transactions Reporting Act 2004 (FTRA)

Financial Transactions Reporting Amendment Act 2013

Mutual Assistance in Criminal Matters Act 2003

Bank of the Cook Islands Act 2003

Banking Act 2011

Insurance Act 2008

Life Insurance Act 1970-71

Development Investment Act 1995-96

Development Investment Regulations 1996

Law Practitioners Act 1993/94

Official Information Act 2008

Tax laws

Income Tax Act 1997

Income Tax Amendment Act 2011

Income Tax Amendment Act 2013

Value Added Tax Act 1997

Annex 4: List of authorities interviewed

Business Trade and Investment Board (BTIB)

Crown Law Office

Financial Intelligence Unit

Financial Services Development Authority

Financial Supervisory Commission (FSC)

Ministry of Justice (MoJ)

Revenue Management Division (RMD)

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: COOK ISLANDS

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

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

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

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

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

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

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

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