GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report Phase 2 Implementation of the Standard in Practice

CURAÇAO

OECD

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

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

March 2015
(reflecting the legal and regulatory framework
as at December 2014)

Please cite this publication as:
OECD (2015), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Curaçao 2015: Phase 2: Implementation of the Standard in Practice*, OECD Publishing.
http://dx.doi.org/10.1787/9789264231474-en

ISBN 978-92-64-23146-7 (print)
ISBN 978-92-64-23147-4 (PDF)

Series: Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews
ISSN 2219-4681 (print)
ISSN 2219-469X (online)

Corrigenda to OECD publications may be found on line at: *www.oecd.org/publishing/corrigenda*.

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About the Global Forum

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

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

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

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

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

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

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Curaçao 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 January 2011 through 31 December 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 whether that information can be effectively exchanged with its exchange of information (EOI) partners. Since its Phase 1 review in 2011, Curaçao had undertaken action to improve its legal infrastructure based on the recommendations in the Phase 1 report to implement the international standard more effectively. The report evaluates the implementation of recent changes in the legal framework and includes recommendations to address shortcomings.

2. Curaçao is the largest and most populous of the Lesser Antilles and it is located at the southern part of the Caribbean Sea, forming part of the Kingdom of the Netherlands, along with the Netherlands, Aruba and Sint Maarten.[1] Curaçao has one of the highest standards of living in the Caribbean and a considerably diverse economy which mainly includes oil refining, tourism and financial services. In 2001, the Netherlands Antilles (now succeeded by Curaçao) committed to co-operate with the OECD's initiative on transparency and effective EOI and to comply with the 1999 Report of the EU's Code of Conduct Group. As a result of a comprehensive tax reform in 1999, the offshore tax regime was abolished, subject to extensive grandfathering rules.

3. In terms of assessing the framework to ensure the availability of relevant information, Curaçao's legislation reflects a three-pronged approach.

1. Following the dissolution of the Netherlands Antilles on 10 October 2010, two separate jurisdictions were formed (Curaçao and Sint Maarten) with the remaining three "BES islands" (Bonaire, Sint Eustatius and Saba) joining the Netherlands as special municipalities.

First, there are obligations imposed directly on companies, partnerships (or partners), trusts and foundations to retain all ownership, identity, accounting and banking information and, in some instances, to provide that information to government authorities. This is complemented by obligations imposed through the licensing regime applicable to certain regulated financial activities in Curaçao, including credit institutions, insurance companies, money transfer companies, and trust company service providers. Finally, the anti-money laundering regulations, which apply to all service providers acting in a professional or business capacity, create a third layer of requirements to capture relevant information.

4. Public and private limited liability companies may issue bearer shares, provided this is permitted under the articles of association of the company. However, under the current business license policy of Curaçao, only international (offshore) companies (as opposed to locally owned and operated companies) may issue bearer shares. There are some mechanisms in place to effectively immobilise such bearer shares and anti-money laundering laws also apply to ensure the availability of ownership information in these cases. However, the mechanisms in Curaçao and their implementation in practice do not ensure that information on holders of bearer shares is available in respect of all companies, and a recommendation has been made in this respect. Obligations to ensure the availability of identity and ownership information for relevant entities and arrangements are generally in place, and these obligations were enhanced with new tax laws to require that all entities also have to keep information on their ultimate beneficial owners.

5. Curaçao's record-keeping requirements are generally satisfactory. Under Curaçaoan tax law, companies, partnerships, foundations and trust company service providers are required to keep accounting records and underlying documentation for at least ten years. Under the AML/CFT framework, service providers, such as credit institutions, insurance companies and certain relevant professionals, are required to establish and verify the customer's identity and the person on whose behalf a customer is acting. They are obliged to keep records in respect of all transactions for five years from the date of the termination of the agreement under which service was provided or execution of the service.

6. While there appears to be some oversight, there is no rigorous system in practice of monitoring entities' obligations to keep ownership and accounting information in all cases. There was also minimum enforcement or penalties applied. This has posed practical difficulties for Curaçao as highlighted in one case raised by an EOI partner. There also remains a gap as far as keeping ownership and accounting information is concerned since it is possible for entities to exist but not conduct any activities in Curaçao and

therefore not require a local director or local representative to apply for an operating license. Recommendations have been made on these issues.

7. During the period under review, Curaçao received 85 requests for ownership information, of which 40 requests were for ownership information in respect of companies, 2 requests on partnerships and 43 requests for foundations. There were 83 requests for accounting information, of which 40 requests were for companies and 43 requests were for foundations. On banking information, there were 67 requests. The requested information was provided in response to almost all EOI requests where information was available at the entities. Accounting information was not available with regard to one request as the local representative did not have the information and was not of the opinion that he had the obligation to keep the information.

8. In respect of access to information, Curaçao's competent authorities – the Minister of Finance, the Director of Fiscal Affairs and the Tax Inspector – are vested with broad powers to gather relevant information for civil tax purposes, complemented by powers to search premises, seize information and compel oral testimony. Some impediments exist until 2019 to accessing information of international (offshore) entities covered under the grandfathering rules and this has had a practical impact on four requests where information has not been obtained. On criminal tax matters, the Minister of Justice must be consulted before the Minister of Finance can provide the requested information. Enforcement of these provisions is secured by the existence of significant penalties for non-compliance. Secrecy provisions in Curaçaoan law are overridden where information is required for EOI purposes, and there is no domestic tax interest requirement. The appeal rights currently available under Curaçaoan law do not delay the effective exchange of information.

9. Curaçao has expanded its network for the exchange of information to cover a total of 87 jurisdictions. The majority of these agreements are in force and to the standard. The multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention) was extended to Curaçao with entry into force on 1 September 2013. Curaçao should continue to expand its EOI network and conclude EOI agreements with all relevant partners. All EOI arrangements appear to meet the "foreseeably relevant" standard. However, in practice, there were three requests where information obtained was not exchanged due to Curaçao's interpretation of "foreseeably relevant" which was not in line with the standard. It is recommended that Curaçao corrects its interpretation of the "foreseeably relevant" standard, as it should not impede the effective exchange of information.

10. Curaçao has substantial experience in EOI. Curaçao received 89 requests during the period under review from 1 January 2011 to 31 December 2013. The requested information was provided within 90 days in 11% of the cases, within a period of between 91 and 180 days in 14% of the

cases, within a period of between 181 days and one year in 24% of the cases and after a year in 25% of the cases. Requested information was not provided in 5% of the cases. The response has not yet been provided in 21% of requests received mostly in the latter part of the period under review. Curaçao's response time might limit effectiveness of exchange of information. The lack of timeliness was attributed to the lack of dedicated resources to EOI and monitoring of internal deadlines.

11. In view of several changes in the organisation and the Curaçaoan government in general, Curaçao is still in the process of building up and improving its organisational processes to ensure effective exchange of information. Curaçao's competent authority for EOI purposes is the Director of Fiscal Affairs designated by the Minister of Finance. The Director of Fiscal Affairs and the directorate are responsible for receiving, managing and responding to EOI requests. In most cases the requested information has to be sought directly from the entities through on-site inspections. There remain several areas where improvements are required to ensure that information or status updates are provided in a timely manner in all cases.

12. Curaçao has been assigned a rating[2] for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Curaçao's legal and regulatory framework and the effectiveness of its exchange of information in practice. On this basis, Curaçao has been assigned the following ratings: Compliant for A.3, B.2, C.2, C.3 and C.4; and Partially Compliant for A.1, A.2, B.1, C.1 and C.5. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Curaçao is Partially Compliant.

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

2. This report reflects the legal and regulatory framework as at 16 December 2014. Any material changes to the circumstances affecting the ratings may be included in Annex 1 to this report.

Introduction

Information and methodology used for the peer review of Curaçao

14. The assessment of the legal and regulatory framework of Curaçao 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*. The assessment has been conducted in two stages: the Phase 1 review assessed Curaçao's legal and regulatory framework for the exchange of information as at May 2011, while Phase 2 review assessed the practical implementation of this framework during a three year period from 1 January 2011 to 31 December 2013 as well as amendments made to this framework since the Phase 1 review up to 16 December 2014. The following analysis reflects the integrated Phase 1 and Phase 2 assessments.

15. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 16 December 2014, Curaçao's responses to the Phase 1 and Phase 2 questionnaire, information supplied by exchange of information partners and explanations provided by Curaçao during the on-site visit that took place from 25-27 August 2014 in Willemstad, Curaçao. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Finance, Ministry of Justice, Ministry of Foreign Affairs, Central Bank of Curaçao and Sint Maarten, Directorate of Fiscal Affairs, Inspectorate of Taxes, Stichting Belasting Accountants Bureau (SBAB), Financial Intelligence and Fraud Unit, Department of Economic Affairs, Chamber of Commerce and Industry, Public Prosecutors Office and Reporting Centre for Unusual Transactions.

16. 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 Curaçao's legal and regulatory framework and its application in practice against these elements and each of the enumerated aspects. In

respect of each essential element, a determination is made that either *(i)* the element is in place, *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement, or *(iii)* the element is not in place. These determinations are accompanied by recommendations on how certain aspects of the system could be strengthened. In addition, to reflect the Phase 2 component, recommendations are made concerning Curaçao's practical application of each of the essential elements and a rating of either: *(i)* compliant, *(ii)* largely compliant, *(iii)* partially compliant, or *(iv)* non-compliant is assigned to each element. As outlined in the Note on Assessment Criteria, an overall "rating" is applied to reflect the jurisdiction's level of compliance with the standards. A summary of the findings against those elements is set out at the end of this report.

17. The Phase 1 and Phase 2 assessments were conducted by assessment teams comprising expert assessors and representatives of the Global Forum secretariat. The 2011 Phase 1 assessment was conducted by a team which consisted of two assessors: Major Fabio Seragusa, Head of 2nd Squad of the Guardia di Finanza, International Cooperation and Public Finance Office of Italy and Mr. Marvin Gaerty, Deputy Head of the Tax Compliance Unit, Ministry of Finance, the Economy and Investment of Malta; and one representative of the Global Forum Secretariat: Mrs. Renata Fontana. The 2014 Phase 2 assessment was conducted by an assessment team, which consisted of two assessors and two representatives from the Global Forum Secretariat: Lt. Col. Fabio Seragusa, Head of EoI Service on Public Finance, International Cooperation Office of Guardia di Finanza Italy, Mr Aldo Farrugia, Director General (Legal and International), Office of the Commissioner for Revenue of Malta, Mr Andrew Auerbach from the Global Forum Secretariat and Ms Audrey Chua from the Global Forum Secretariat.

Overview of Curaçao

Governance, economic context and legal system

18. Curaçao forms part of the Kingdom of the Netherlands, along with the Netherlands, Aruba and Sint Maarten. The Netherlands Antilles (of which Curaçao was part) was dissolved on 10 October 2010, resulting in two new constituent jurisdictions (Curaçao and Saint Maarten), with the other islands (Bonaire, Saint Eustatius and Saba) joining the Netherlands as special municipalities. After obtaining its autonomous status within the Kingdom of the Netherlands, Curaçao had to undergo major restructuring and is in the process of building up its government administration, including making the necessary legal amendments and implementing the changes. As part of the ongoing restructuring process, there were also budgetary constraints and hiring freezes implemented across government.

19. Curaçao is the largest and most populous of the three ABC islands (for Aruba, Bonaire, and Curaçao) of the Lesser Antilles. It lies in the southern part of the Caribbean Sea, approximately 56 kilometres off the northwestern coast of Venezuela. The capital is Willemstad. It has a land area of 444 square kilometres and, as of 1 January 2014, it had a population of 154 843 inhabitants. Dutch is the official language while English and Spanish are both widely spoken by the entire population. Papiamento (the common language of the Leeward Islands) is based mostly on a combination of Dutch, French, Spanish, and Portuguese.

20. Curaçao has one of the highest standards of living in the Caribbean, with a GDP per capita of USD 20 500 (2009 estimate) and a well-developed infrastructure. For its size, the island has a considerably diverse economy which mainly includes oil refining, tourism and financial services, as well as shipping, international trade and other activities related to the port of Willemstad (like the free zone).[3] Between 2011 and 2013, the contribution of the financial intermediation sector to Curaçao's GDP was approximately 18%. This figure is decreasing due to the abolishment of the old offshore tax regime (preferential tax rates from 2.4% to 3%).[4] Although grandfathering rules apply until 2019, many of the offshore entities have started to move their business from Curaçao to other jurisdictions.

21. Curaçao's main trading partners are the United States of America, Venezuela, Italy, Panama and Mexico. The monetary unit of Curaçao is the Netherlands Antillean Guilder (ANG), which has been pegged to the US dollar since 1946. Since 1971, the exchange rate of USD 1.00 = ANG 1.79 has not changed. A new currency, the Caribbean guilder will be introduced in the near future and will be pegged to the US dollar at USD 1.00 = CMg 1.79.

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3. A free zone is a special designated area on Curaçao for activities abroad (export), where a company can store, process, adapt, assemble, pack, display and spread out its goods, or it can render services from it. These services include amongst others maintaining or repairing goods in Curaçao of non-residents or providing these services abroad, as well as advice and research on behalf of non-residents. The following services cannot be performed in the free zone: *(i)* financial services, royalty payments, insurance and re-insurance activities, *(ii)* services related to acting as managing director for companies whose statutory seat or actual management is located in Curaçao, *(iii)* other services related to trust activities, and *(iv)* services provided by civil law notaries, lawyers, public accountants, tax advisors and related services.
4. Curaçao has clarified that all companies covered under the offshore tax regime (previously known as "offshore companies") are currently termed as "international companies".

22. The relation between Curaçao and the other parts of the Kingdom of the Netherlands is governed by the Statute for the Kingdom of the Netherlands, pursuant to which Curaçao is self-governing to a large degree and accordingly has legislative autonomy on various subjects, including taxes. Defence, foreign relations, nationality and extradition are handled by the Netherlands. For historical and practical reasons, Curaçao also co-operated with Aruba on various issues (including justice and certain legislation) and the legal basis for this co-operation is set forth in the Cooperation Agreement for the Netherlands Antilles and Aruba.

23. The King of the Kingdom of the Netherlands is the head of State and the Governor is appointed by the King for a term of six years to act as the sovereign's representative on the island. The government consists of the Governor and a cabinet of ministers, headed by a prime minister. The ministers are appointed and dismissed by the Governor but are solely accountable to the parliament (*Staten*). Actual executive power therefore lies with the ministers.

24. Curaçao has a parliamentary system with a unicameral parliament called *Staten*, which consists of 21 members who are elected by popular vote for a four-year term of office after which they can be re-elected. The authority to legislate is in the mutual hands of the government and the Staten and is exercised via National Ordinances or Acts. The authority to further regulate a subject can be delegated to the Government and is exercised through State decrees and Ministerial regulations.

25. The judiciary is made up of independent judges who are appointed by the King upon recommendation of the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba (Joint Court). Cases (excluding tax cases) are heard in first instance by the Court in First Instance (*Gerecht in eerste aanleg*) and can be appealed to the Council of Appeal (*Raad van Beroep*) as court of second instance. However, in tax matters, the court of first instance is the Council of Appeal in tax matters (*Raad van Beroep in belastingzaken*), pursuant to article 31 of the National Ordinance on General National Taxes. Further appeal is possible at the Supreme Court of the Netherlands, however only for civil and penal cases (and not, for example, for administrative or tax cases).

26. The legal system of Curaçao is based on the Dutch legal system (which follows civil law principles) with some modifications due to local and/or regional circumstances and the substantially smaller scale of Curaçao compared to the Netherlands. The basic rights of citizens, the institution and separation of the judiciary, legislative and executive branches, the organisation of government and its tasks and obligations, along with related subjects are regulated in the Constitution of Curaçao.

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

27. There are several types of legal persons in Curaçao, characterised by their nature, functions and legal status. Commercial laws governing legal persons are:

- Civil Code, Book 2;
- Trade Register Ordinance, of 9 September 2009, introduced in connecting with the implementation of Book 2 of the Civil Code; and
- Trade Register Decree, of 22 December 2009, introduced in connecting with the implementation of the Trade Register Ordinance (article 20 thereof).

28. Curaçao has a comprehensive anti-money laundering framework (AML/CFT framework). In Curaçao, the Financial Intelligence Unit (FIU) is called *Meldpunt Ongebruikelijke Transacties* (MOT). The FIU (MOT) is a recognised member of the Egmont Group and it is authorised to exchange information with all other FIUs, which are members of this international association (a total of 139 FIUs) without the need of a Memorandum of Understanding (MOU). With regard to non-Egmont FIUs, an MOU is necessary for the purpose of exchanging information.

29. The FIU (MOT) receives an average of 50 international requests per year for information with regard to the fight against money laundering and terrorism financing, while it sends out an average of 45 requests per year to other FIUs. The FIU (MOT) can also exchange information with local Law Enforcement Agencies, the Public Prosecutors Office, the Tax Department, the Central Bank of Curaçao and Sint Maarten (Central Bank) and the Customs Office.

30. In 2001, the former Netherlands Antilles (now Curaçao and Sint Maarten) made a political commitment to co-operate with the OECD's initiative on transparency and effective EOI. Curaçao continues to endorse this commitment. As a result of a comprehensive tax reform in 1999 called the New Fiscal Framework, the offshore tax regime (tax rates from 2.4% to 3%) was abolished, subject to extensive grandfathering rules until 2019 for qualifying offshore companies (or "international companies") incorporated before 1 January 2000, provided certain conditions were met.

General information on the taxation system

31. In matters of taxation, the responsible minister is the Minister of Finance. All taxation matters are handled by the Tax Department, which consists of the Directorate of Fiscal Affairs, the Inspectorate of Taxes and Customs, Curaçao. Together with the auditing department ("Stichting Belasting

Accountants Bureau" or SBAB) and the collection department (Receivers office), they form the Directorate General of Fiscal Affairs.

32. Curaçao's tax system is based on two different systems regulated under the National Ordinance on General National Taxes and the National Ordinance on Income Tax, each with their own conditions for filing and payment of the taxes due, as follows:

- assessment taxes, such as corporate and individual income taxes, where the taxpayer has to file an annual return based on which the tax authorities will issue an assessment; and
- filed return taxes, such as wage tax, turnover tax and social security premiums, where the taxpayer has to file a return and pay taxes on monthly basis or upon dividend distribution.

33. All individuals residing in Curaçao are subject to income tax at progressive rates up to 49.4% (including island surtax and lowered to 33.8% or 19.5% for certain nonrecurring items of income) on their worldwide income. Non-residents are subject to the individual income tax for income derived from some specific sources in Curaçao, such as real estate situated or employment performed therein. Wage tax is an advance levy to the income tax, withheld by the employer in Curaçao or foreign employer with a permanent establishment therein. The Tax Department may however appoint a foreign employer as a withholding agent (even if there is no permanent establishment).

34. Resident legal entities (i.e. incorporated under domestic law or effectively managed in Curaçao) are subject to corporate income tax on their worldwide income. Non-resident legal entities that carry on business through a permanent establishment in Curaçao are subject to limited taxation on income sourced therein. Under the Profit Tax Ordinance, the following legal entities are subject to profit taxation at a standard effective rate of 34.5% (including island surtax): *(i)* public and private limited liability companies (NVs and BVs); *(ii)* limited partnerships (CVs) and other companies or partnerships of which the capital is divided into shares; *(iii)* co-operative societies and mutual insurance companies; *(iv)* associations and foundations, provided they are conducting a business; and *(v)* foreign entities which derive income from Curaçao through a permanent establishment.

35. Conversely, other legal entities benefiting from special tax regimes are subject to no or reduced corporate income tax in Curaçao, such as companies qualifying for tax holidays, e-zone companies,[5] offshore companies or

5. The e-zone legislation, which entered into force in March 2001, is aimed at expanding and strengthening the economic position of Curaçao by providing potential investors a variety of tax saving opportunities. It is also a continuation of the former free zone legislation.

tax exempt private limited liability companies. Profits derived by an e-zone enterprise from its activities within the e-zone or from export of goods or services are subject to a reduced profit tax at a rate of 2% (including island surcharges) until 1 January 2026.

36. Although a Dividend Withholding Tax Ordinance, which provides for a 10% withholding tax on certain dividend distributions, has been introduced in 2000, the ordinance does not yet apply and is not expected to enter into force in the foreseeable future. Therefore, no withholding taxes are imposed on remittances of profits by branches or subsidiaries to their foreign head offices or parent companies.

37. A turnover tax (5%) is levied on the provision of services and deliveries by entrepreneurs and companies, which must file a declaration with the Tax Inspectorate on a monthly basis. However, a limited number of services and deliveries are exempt and the definition of "services" does not include advisory and management services provided to or by offshore companies and offshore banks.

Overview of the financial sector and relevant professions

38. Curaçao has a well-developed banking system, various non-banking financial intermediaries and a postal checking system supervised by the Central Bank of Curaçao and Sint Maarten (Central Bank). The Central Bank was established in 1828 and is the oldest Central Bank in the Americas. The following type of institutions are currently subject to the supervision of the Central Bank: commercial banks, specialised banks exclusively for offshore businesses, savings banks, savings and credit funds, credit unions, pension funds, life insurance and general insurance companies. There are currently a total of 42 banks in Curaçao, of which 11 are local banks and 31 are international banks. The total assets of local banks and international banks is approximately USD 8 850 000 and USD 30 880 000 respectively.

Recent developments

39. Curaçao made the following key amendments to the National Ordinance on General National Taxes, which entered into effect on 1 May 2013:

- imposed the obligation on all entities to keep ownership and identity information, including on its ultimate beneficial owners, which must be provided to the Tax Inspectorate when requested;
- reduced the minimum waiting period from two months to 15 days to which information can be exchanged after notification;

- introduced explicit exceptions for the Minister of Finance to exchange information without prior notification and/or without any suspension in the event there is an appeal;
- added the possibility for the information holder to file an appeal, instead of the person concerned.

40. In addition to the immobilisation measures for bearer shares that were introduced in 2010, Curaçao is also in the process of drafting amendments to the Second Book of the Civil Code that will have the effect of abolishing bearer shares. The draft amendments provide that the notaries will no longer be allowed to include issuance of bearer shares certificates in the articles of association of the international (offshore) companies. The Central Bank will also request all trust service providers it supervises to submit information, within a reasonable timeframe as prescribed in the final legislation, regarding the conversion of immobilised bearer shares certificates to registered shares. In addition, during on-site examinations, the Central Bank will also request all trust service providers to submit a list to all the international (offshore) companies which they provide management services to and which have converted immobilised bearer shares to registered shares. The Central Bank will then review these international (offshore) companies for compliance with the applicable rules and regulations. At the time this report is prepared, Curaçaoan authorities indicate that the legislation in respect to the abolishment of bearer shares is in preparation and will be sent to the advisory bodies of the Curaçaoan government before it is considered in parliament. In the meantime, trust service providers have been advised over the years by the Central Bank that bearer shares are not allowed to be issued without being in proper custody, and that the Central Bank will consider taking disciplinary actions if service providers continue to try to issue bearer shares. On the other hand, the reluctance of notaries to incorporate international companies with the possibility to issue bearer shares and the additional requirements to have bearer shares at all times immobilised and properly registered makes issuing these shares quite difficult. As such, administering bearer shares is time consuming and costly for both the service provider and international company, which is counterproductive to the demand for bearer shares.

Compliance with the Standards

A. Availability of Information

Overview

41. 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 Curaçao's legal and regulatory framework on the availability of information, and its implementation in practice.

42. Domestic companies, which may be onshore or offshore,[6] are required to keep an updated shareholder register at the company's office containing the identity information on all legal owners of registered shares, as well as a note on whether a bearer certificate has been issued. In addition, most legal persons can only be established through a notarial deed which must contain the articles of incorporation. Domestic companies, general and limited partnerships, foundations and private foundations, associations with

6. Curaçao has clarified that all "offshore companies" are companies covered under the offshore tax regime and the current term used for such companies is "international companies".

legal personality, co-operative societies and mutual insurance companies must always be entered in the Trade Register (a public register kept by the Chamber of Commerce and Industry). Ownership and identity information is required to be maintained by the local director or local representative of the company. However, in practice, it is possible for entities to exist but not conduct any activities in Curaçao and therefore not have a local director or local representative who would be required to apply for an operating license. It is thus unclear whether ownership and identity information is available in all cases. For tax purposes, all taxpayers (i.e. resident individuals, including partners of a partnership, resident legal persons, including tax exempt companies, and non-resident persons with certain Curaçaoan sourced income) are required to file annual tax returns. Legal amendments to the National Ordinance on General National Taxes were also introduced in May 2013 to require taxpayers which are legal entities to disclose in the tax returns all identity information concerning their legal owners, including the ultimate beneficial owners.

43. Foreign companies established or having a branch in Curaçao are also required to be entered in the Trade Register. Companies that are formed under the laws of another jurisdiction, but which are residents of Curaçao for tax purposes by virtue of their place of effective management, are required to register and file tax returns with the tax authorities. Following the legal amendments to the National Ordinance on General National Taxes in May 2013, foreign companies that are tax resident in Curaçao are now required to disclose ownership information in the tax returns, and during the registration process. Foreign companies also have to keep a shareholder register under Curaçaoan law. In certain cases, ownership information concerning their controlling shareholders will be maintained under anti-money laundering laws. Where the anti-money laundering laws do not apply, the availability of information that identifies the owners of such companies will generally depend on the law of the jurisdiction in which the company is incorporated. With the changes to the laws, information on the owners of foreign companies that are resident for tax purposes in Curaçao is required to always be available.

44. The same obligation under the new tax laws is imposed on all entities, including partnerships, limited partnerships, foundations and private foundations. However, since the new tax obligations only came into effect on 1 May 2013, they could not be sufficiently tested in practice. Curaçao should monitor the implementation and operation of the new laws requiring all entities to have available information on all ownership information, including information on all ultimate beneficial owners.

45. Public and private limited liability companies may issue bearer shares, provided this is permitted under the articles of association of the

company. However, under the current business license policy of Curaçao, only international (offshore) companies (as opposed to locally owned and operated companies) may issue bearer shares. A trust service provider must have, with regards to every international (offshore) company to which it provides trust services,[7] updated data regarding the identity of the ultimate beneficial owner of international (offshore) companies. The *National Decree on the obligation to retain securities to bearer* (N.G. 2010, no. 36) was introduced on 15 June 2010 which required bearer shares to be kept in custody in order to enable corporate trust service providers to know the identity of the ultimate beneficial owner of international (offshore) companies. However, the mechanisms in Curaçao and their implementation in practice do not ensure that information on holders of bearer shares is available in respect of all companies, and a recommendation has been made in this respect.

46. With regard to trusts, obligations exist under the trust law, tax law and the legislation governing trust service providers that ensure the availability of information on Curaçaoan and foreign trusts.

47. The combination of civil, commercial and tax laws ensure the availability of full accounting records, including underlying documents, for all relevant entities that are established in Curaçao, for a minimum of ten years, in such a manner that rights and obligations can be ascertained from those records, at any time. There is a range of sanctions available under the tax laws ensuring that accounting information required to be maintained or disclosed to the administrative authorities is in fact maintained. However, there remains a gap in oversight of entities that may, in practice, exist but not have a local director or local representative who will be charged with the responsibility to keep the accounting information. It is thus unclear if accounting information is available in all cases and a recommendation has been made.

48. While there appears to be some oversight, there is no rigorous system in practice of monitoring entities' obligations to keep ownership and accounting information in all cases. There was also minimum enforcement or penalties applied. This has posed practical difficulties for Curaçao to respond to an EOI request.

49. Under the anti-money laundering framework, bank information is kept in respect of all clients and records are kept in respect of all transactions for five years from the date of the termination of the agreement under which service was provided.

7. A number of corporate service activities come under the definition of "trust services" under the National Ordinance on the Supervision of Trust Service Providers, of 23 December 2003.

50. During the period under review, Curaçao received 85 requests for ownership information, of which 40 requests were for ownership information in respect of companies, 2 requests on partnerships and 43 requests for foundations. There were 83 requests for accounting information, of which 40 requests were for companies and 43 requests were for foundations. On banking information, there were 67 requests. The requested information was provided in response to almost all EOI requests where information was available at the entities. Accounting information was not available with regard to one request as mentioned above, as the local representative did not have the information and was not of the opinion that he had the obligation to keep the information.

51. Overall, ownership, accounting and banking information is in practice generally available in Curaçao but there are exceptions with regard to entities that may exist without any local director or local representatives, and bearer shares. The general lack of any rigorous monitoring is also a concern. Recommendations have been made in this regard.

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.

52. The relevant entities and arrangements of Curaçao 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).

Companies (ToR A.1.1)

53. In Curaçao, it is possible to establish two types of companies under the Book 2 of the Civil Code (articles 100-144), in conjunction with the Commercial Code (articles 33-155), as follows:

- public limited liability companies (*naamloze vennootschap*, NVs); and
- private limited liability companies (*besloten vennootschap*, BVs).

54. NVs and BVs must have at least one shareholder (natural or legal person) and one director (natural or legal person), who exercises wide powers. At least one director must be resident in Curaçao and a registered office must always be maintained in Curaçao. This is a requirement for any NV or BV to obtain a business license and conduct any business in Curaçao. NVs must have a minimum authorised capital of ANG 50 000 (approximately USD 28 000), of which 20% must be paid up on incorporation. There are no minimum capital requirements for BVs. All NVs or BVs which are owned by

non-residents and which operate offshore (i.e. international (offshore) companies) may be granted a general foreign exchange exemption (articles 10-16 and 24(2), Foreign Exchange Regulation of Curaçao and Sint Maarten).[8] An international (offshore) company is defined in the National Ordinance on the Supervision on Trust Service Providers (N.G. 2003, no. 114), as a legal person which has its registered office or its actual place of business in Curaçao and has been granted a "dispensation"[9] from the provisions of articles 10-16 of the Regulations for Foreign Exchange Transactions Curaçao and Sint Maarten (O.B. 2010, no. 112). Additionally, pursuant to the Foreign Exchange Transactions Act and the Foreign Exchange License issued by the Central Bank, an international (offshore) company must have a local representative to obtain the aforementioned license. The local representative must be a trust service provider that is licensed with the Central Bank. In practice, a foreign exchange licence cannot and will not be issued to a prospective international (offshore) company without a licensed local representative (trust service provider). Furthermore, the application for the foreign exchange license on behalf of the prospective international (offshore) company should be submitted by the local representative (trust service provider). Before issuing the foreign exchange license to the prospective international (offshore) company, the foreign exchange department will consult the trust service providers' register and/or the Trust Supervision department to verify whether the local representative has a license to act as such.

Ownership and identity information required to be provided to government authorities

Commercial laws

55. Companies formed under Curaçaoan laws must be established through a notarial deed signed by a civil law notary, which must include, among other things, the number and classes of shares subscribed on incorporation and the names and addresses of the persons who subscribed for such shares (i.e. legal owners) as well as the names and places of residence of the initial managing directors (articles 2, 4(2)(b), 100(2) and 101(1)(a), Civil Code, Book 2).

8. According to this ordinance, current transactions are free in principle, while capital transactions require a license.
9. When new entities apply to the Central Bank they will receive either a license or a dispensation or they will be registered. For international companies, they require a dispensation from the Regulations for Foreign Exchange Transactions in order to conduct activities.

56. All companies and businesses established in Curaçao must be entered in the Trade Register kept by the Chamber of Commerce and Industry within one week from the commencement of their activities (articles 3, 4 and 8(1), Trade Registry Ordinance and article 6, Trade Register Decree). As of 15 March 2011, there were 15 280 NVs (7 142 onshore and 8 138 offshore) and 5 135 BVs (4 172 onshore and 963 offshore) registered in Curaçao. These also include the international (offshore) companies. The figures on the number of entities are generally on the downward trend due to the abolishment of the old offshore tax regime. Although grandfathering rules apply until 2019, many of the offshore entities have started to move their business from Curaçao to other jurisdictions.

57. Upon registration at the Trade Register, NVs and BVs are required to file an original copy of the deed of incorporation and to disclose personal data[10] concerning the managing directors and supervisory board directors (article 18, Trade Register Decree). If the company is owned by a natural person, his/her personal data must be entered at the Trade Register, as well as the amount of funds contributed and value of the property brought into the company (article 15, Trade Register Decree). Should a company have one or more agents or attorneys, their personal data and extension of their representation powers must be entered at the registry (article 23, Trade Register Decree).

58. In the event of changes, information required to be filed at the Trade Register must be updated within one week from the occurrence of the fact giving rise to this change (article 8(2), Trade Register Ordinance and article 6, Trade Register Decree). The Trade Register and documents filed therein are publicly accessible against the payment of a fee (article 11, Trade Register Ordinance).

In practice

59. For a company to be incorporated, a notary is required to prepare the deed of incorporation. There are only ten notaries in Curaçao at any time appointed to the "Antilliaanse Arubaanse Notariels Vereniging". Their role is to provide legal form and public faith to private acts and contracts. The notary verifies that the information provided for the incorporation of the company is in accordance with the law. The company becomes incorporated at the moment the notarial deed is executed by the notary who is also responsible for registering the legal entity in the Trade Register kept at the Chamber of Commerce and Industry. This same process applies if there are any amendments to the deed of incorporation. However, when there is a change

10. Under the Trade Register Decree, personal data means name, gender, residential address, date, place, and country of birth, nationality, and signature (article 1).

of directors or administrators in a company, the Chamber of Commerce and Industry must be notified by the director or the person charged with the day-to-day management of the company but the deed of incorporation is not required to be amended by a notary.

60. The Chamber of Commerce and Industry is a public law entity and is a legal entity that has legal status but is not a government entity. It is comprised of nine members and, based on an annual rotation schedule, three of which are up for election every year through a democratic election procedure. The electorate is comprised of (Dutch, resident) entrepreneurs whom are registered for more than one year with the Trade Register. All registered information is kept on the Trade Register which is a physical register with paper filings dated from May 1945. All registration must be done through legally prescribed forms and all information is then uploaded to an electronic database. The information on this database is then made available to any member of the public via the public website of the Chamber of Commerce. Legal entities are obliged to inform the Registry within one week of any changes to the registered information. Upon receipt of company information to be kept on the Trade Register, the Chamber of Commerce and Industry is given the authority under Articles 3-5 of the Trade Register Decree to verify the validity of the information provided, and the person who provides the information.

61. There is no specific party that is expressly charged with the responsibility of monitoring the compliance of companies' registration obligations. This is due to the public nature of the Trade Register where it is assumed that any entity that wishes to carry out its daily business affairs would maintain updated information of its entity on the Register. All stakeholders are the beneficiaries of duly registered and updated information on the Trade Register. Engagement in any legal activity requires a positive identification of the stakeholders involved with a registered entity. The Trade Register database is made readily available to government authorities and companies are required to verify and comply with identification regulations in the course of their work. Government authorities can peruse the entire database or make specific requests to the Chamber of Commerce and Industry for information. Other entities requiring identification have access to the website anytime and usually update their files through purchase of excerpts of registrations and copies of articles of association of the entities they are interested in. Examples of government authorities and entities that use the database are the Central Bureau of Statistics, the Office in charge of the execution of the Nuisance Act and private insurance and branding companies. During the period under review, the Trade Register had a relatively high usage rate with filings and updates by registered entities – 76% of all registered entities submitted registration filings and updates in 2013, 68% in 2012 and 76% in 2011. Excerpts

of registrations were also frequently purchased for 69% of registered entities 2013, 59% in 2012 and 62% in 2011.

62. The frequent use of the Trade Register in the course of business helps ensure that information is kept updated. Any person who has an interest in the registration, and is of the opinion that incorrect information has been registered, may request the Court of First Instance of the Netherlands Antilles to order the registration of a company or amendments to be made in the Trade Register. Any information that is declared by judicial decision to be partly wrongful would need to be noted in the Trade Register by the Chamber of Commerce.

63. Non-compliance may result in potential civil law liability of the company's officials if a third party who consults the public register finds incorrect registered information and decides to hold it against the company and/or its officials in a court case. Non-compliance may also have implications in terms of criminal matters if the company does not register or incorrect information is registered, and may lead to a fine between ANG 20 000 to ANG 50 000 (Article 21, Trade Register Ordinance).

64. As part of its affairs in serving the business community, the Chamber of Commerce and Industry indicates that it conducts supervisory measures to monitor changes in the name and/or address of the entity for purposes of the collection of the mandatory yearly contributions by all registered entities to the Chamber. This is done through physical visits to the business addresses of the registered entities. During the period under review, 10 visits were made to the business addresses to deliver mail intended for the collection of the yearly contributions, being either the first bill or any reminder thereafter. The visits were also conducted to deliver monthly or bi-monthly publications by the Chamber and/or research done by the Chamber. Deliveries are generally done by hand for the Chamber to verify if the business was still in existence and if/or the business has been moved and/or suspended. Entities that were not at their registered addresses were contacted to obtain information on its new location of business and an update of the status of the entity. In case of a change in address or change in the status (became inactive/sold/new director) the stakeholders are required to register as such on the Trade Register. If entities were not found at their registered addresses and could not be contacted, the Chamber of Commerce and Industry would strike them off the Trade Register (more details in A.1.6).

65. During the period under review, there were no specific indicators used in Curaçao to monitor compliance with registration obligation. However, Curaçaoan authorities have indicated that a review of processes and the necessary indicators to track compliance are being developed.

66. While there are no measures to monitor the compliance of the registration obligation, the regular use of the Trade Register for day-to-day business activities provides incentive for all entities to ensure that the registered information remains updated. This information includes relevant ownership information such as the legal owners (shareholders), managing directors and supervisory board directors. The relatively high usage rate of the Trade Register indicates its effectiveness in maintaining updated information to some extent. Notwithstanding that the Trade Register may contain ownership information of all entities, the Curaçaoan Competent Authority has indicated that when seeking ownership information in response to EOI requests, information is not sought from the Trade Register but from the tax filing database or directly from the entities. This is discussed further in B.1. Given that it is an ongoing process for all entities to ensure they have updated information on their owners for the purposes of updating the Trade Register, there is sufficient assurance on the availability of updated ownership information of registered companies. However, there are no measures applied by authorities to ensure that all companies register, submit the required information, and regularly ensure the information is updated.

Regulated activities

67. Credit institutions are governed by the Government Ordinance on the Supervision of Banking Institutions, of 2 February 1994. Legal entities (as well as partnerships) engaged in such regulated activities are supervised by and required to obtain a licence from the Central Bank. As part of the registration process, they must disclose information on the identity of directors, members of supervisory board and any person who exercises authority in the institution by means of voting rights derived from their number of shares in the general shareholder meeting or in a comparable manner (article 3(2)). The Central Bank can revoke the licence or apply administrative sanctions in the event of non-compliance with the disclosure obligations mentioned above (articles 11 and 38). As of December 2013, there were 5 local banks, 3 foreign banks (2 subsidiaries and 1 branch), 32 international banks (10 consolidated and 22 non-consolidated), 1 savings bank, 3 savings and credit funds, 10 credit unions, 4 specialised credit institutions and 2 money transfer companies.

68. Investment companies (body corporate), investment funds (non-incorporated capital) and administrators (legal person) thereof are also subject to a licence requirement and the supervision of the Central Bank, falling under the scope of the National Ordinance on the Supervision of Investment Institutions and Administrators, of 18 December 2002. They are also required to register and to disclose information on the identity of directors, members of supervisory board and any person who ultimately

exercises authority in the institution to the Central Bank (articles 4 and 15, in conjunction with articles 9 and 13 and Annex A, III, 3.4 of the Directives on the Supervision of Investment Institutions and Administrators). A change of directors or members of supervisory board requires prior authorisation by the Central Bank (articles 9 and 18). The Central Bank can revoke the licence or apply administrative sanctions in the event of non-compliance with this obligation (articles 9 and 50). As of 31 December 2013, there were 22 investment institutions (11 local and 11 foreign) and 12 administrators registered in Curaçao and supervised by the Central Bank.

In practice

69. Only licensed entities may act as investment institutions or administrators in or from Curaçao. Credit institutions, investment institutions and administrators without a license that appear to be engaged in regulated activities are urgently requested in writing (warning letter) to either cease their activities or submit a license application. Failure to comply with the Bank's demand will compel the Bank to file a complaint with the Public Prosecutor's Office based on the provision of Article 38 of the National Ordinance on the Supervision of Investment Institutions and Administrators.

70. The Central Bank is entrusted with the supervision of credit institutions, investment institutions and administrators. In practice, for credit institutions and investment entities, information on the identity of directors, members of supervisory board and any person who ultimately exercises authority in the institution, is disclosed to the Central Bank. This information must be kept updated. The sale or transfer of shares in a supervised credit institution is subject to the prior written approval of the Central Bank. To verify that the information on file is complete and correct and that no share transfer took place without the Central Bank's prior written approval, licensed credit institutions file, on a yearly basis, their completed Shareholders' Information Form. This form is reviewed by the external auditor of the reporting institution. Information of any change of the directors or members of the supervisory board in credit institutions and investment entities is submitted to the Central Bank for prior authorisation. The Central Bank can revoke the license or apply administrative sanctions in the event of non-compliance with the obligations.

71. The Central Bank applies a systematic approach and regularly engages all licensed entities under its supervision. The approach is determined based on the Central Bank's internal risk assessment. The engagement intensifies when an institution is categorised as a high risk institution (or tends to become a high risk institution). Examiners of the Central Bank conduct off-site supervision with regard to licensed entities. Furthermore, management meetings, verification checks, on-site examinations, and written

correspondences are conducted by the Central Bank to ensure compliance with regulatory rules, regulations and legislations. The results of the Central Bank's compliance monitoring are continually fed into its risk management systems for the proper monitoring and oversight of the sector.

72. During the period under review, there were no cases of non-compliance related to the registration obligation. Additionally, the Bank issued reminder notices to all financial service providers in 2011 on the prohibition to offer participating interests of investment institutions without a license from the Central Bank. If there were cases of non-compliance by licensed investment institutions and administrators, the Central Bank would first notify the investment institution/administrator through a warning letter of its intention to impose a fine if no corrective measures are taken within a certain timeframe, typically between two to four weeks. If the issue remains unresolved at the end of the timeframe, the Bank may impose a fine or revoke the license.

73. The level of compliance of registration obligation is close to 100% and ensures that ownership information of licensed entities conducting regulated activities could be made available to Curaçaoan authorities in most cases. There are rigorous processes in place to ensure that all institutions comply with their reporting requirements and record keeping obligations. Accordingly, the Curaçaoan Competent Authority has indicated that when seeking ownership information of such institutions in response to EOI requests, information is not sought from the Central Bank but from the tax filings database or directly from the institutions. In this regard, the high compliance of licensed entities in maintaining updated ownership information would ensure that the information can be sought for exchange of information purposes.

Tax laws

74. Companies must file a provisional tax return within three months and a final tax return within six months after the end of each financial year. Companies with a tax exempt status have to submit a nil tax return annually. Before the amendments took effect in May 2013, companies were not required to disclose in the tax returns any identity information concerning their legal owners. The Curaçaoan authorities had indicated, however, that this information must be available when necessary during an audit or for purposes of information exchange. In any event, there is an obligation imposed on the company's managing directors to maintain a shareholder register (see more details below under *Ownership and identity information kept by the companies and service providers*).

75. Curaçao introduced amendments to the National Ordinance on General National Taxes which took effect on 1 May 2013. The new provisions (Article 45(6)) requires all "persons liable to keep an administration" to keep a record of the "ultimate beneficial owners" of the entity with effect from 1 May 2013. The "persons liable to keep an administration" are individuals operating a business or practicing a profession, individuals who are responsible for withholding of taxes and contributions at source, and legal entities. All individuals who on the basis of the Articles of Association or contractually or otherwise are entitled to receive distributions from its equity are considered to be the entity's "ultimate beneficial owners" (Article 45(6)). In practice, Curaçaoan authorities interpret this as including all shareholders of the company, not only just the majority shareholders of the company. This information must also be filed annually with the tax administration and be readily produced upon request by the Tax Inspector (Article 45a). Curaçaoan authorities also indicate that information on the ultimate beneficial owner prior to 1 May 2013 may also be produced upon request by the Tax Inspector provided that the information is already in the files of the entity. With the increased obligation for companies under the new tax laws, there is greater assurance of the availability of ownership information.

In practice

76. Curaçaoan tax authorities indicated that administrative processes are being re-evaluated in view of the recent legislative amendments to the National Ordinance on General National Taxes in 2013. In general, the Inspectorate of Taxes facilitates the process of filing the tax returns by sending forms to all companies with a taxable presence in Curaçao. This includes companies which are exempted from tax. International (offshore) companies are not tax exempted and will also receive the forms to file taxes. Such companies can have a special ruling where the taxable base or the applicable rate is determined based on the actual business of the company in question. The Inspectorate of Taxes is primarily charged with monitoring the compliance of tax filing, with the assistance of the Tax Accountants Bureau ("Stichting Belasting Accountants Bureau" or SBAB).

77. In practice, identity information of companies is collected upon registration of a company with the Inspectorate of Taxes. During registration, the company has to submit an extract of the Chamber of Commerce registration containing all the information of the company, directors, shareholders, board members etc., a copy of personal identification of the directors etc., notarial deed and articles of association, address and information pertaining to the building where the company is located (including whether it is owned or rental property). If the information is out-dated or incomplete, the Inspectorate would request the information from the company. If the

company refuses to provide the information, the Inspector can request an audit of the company by the SBAB, to get the required information. In such cases, the company may face imprisonment of up to six months or a fine (Article 49 of the National Ordinance on General National Taxation). This audit can become a criminal investigation if the company does not co-operate with the investigation. If it is found that the company did not maintain a shareholder register, imprisonment or financial penalties can be applied (article 109 book 2 of the civil code and article 45 (6) and (7) of the National Ordinance on General National Taxation). The above sanctions and penalties would be applied to the "person liable to keep an administration", which in practice, would be the local director or local representative who would be the persons charged with such obligations. No penalties were applied during the period under review relating to inadequate registrations with the Tax Inspectorate, because the necessary information was provided during the registration or subsequent audits. Curaçaoan authorities have indicated that administrative processes are being revised to factor in the new obligations for companies to disclose all identity information annually when filing tax returns. In addition, an electronic tax filing system is being developed to enable companies to submit tax filings over the internet. This would ensure that authorities have the latest ownership and identity information of companies, as well as increase the efficiency for companies to comply with their tax filing obligations.

78. Companies are required to file tax returns annually. Companies that do not file a tax return would automatically receive within a year of having to file the tax return forms an estimated assessment with a penalty. However, before this occurs there is the possibility to have the taxpayer submit the tax returns forms by requesting him in writing to comply with his tax obligation. This is done by the SBAB. If this fails, the case is handed over to the SBAB's Financial Intelligence and Fraud Unit ("TIO") to conduct a criminal investigation. In most of the cases that the SBAB or TIO intervenes (75%), the taxpayer files its tax return forms. With respect to the remaining 25% of cases where a taxpayer does not file his tax return forms even after the SBAB or TIO intervenes, the cases are handed over to the public prosecutor. For such cases, information for EOI purposes will become available when the audit or investigation is conducted where possible seizures of the companies' administration takes places. In the case where the Inspector of Taxes assess that not all the required information is filed, the Inspectorate will request the information from the company to ensure that the company is compliant. Alternatively, the Inspector can request an audit by the SBAB to get the information it needs, including the most up-to-date information. During such instances, the Inspectorate can also block the system so that an automatically estimated assessment is not levied. In the case that an estimated assessment is levied and collection of the outstanding tax amount commences, the taxpayer

can indicate its disagreement with the estimated amount through an appeal to submit his tax return and the (missing) requested information. The Inspector can ex officio accept this appeal and the provided information.

79. During the period under review, the compliance rate of corporate tax filings was 60% and penalties were applied for the 40% of non-complaint companies. While the compliance rate for corporate tax filings is not high, the follow-up audits by the SBAB and the TIO help to ensure that the ownership and identity information is made available to the Inspectorate of Taxes for the purposes of exchange of information. The ongoing revision of administrative process in light of recent legislative amendments in 2013 and the development of an electronic tax filing system will also help to ensure that all ownership and identify information is made available in all cases. However, the processes and the electronic system are new and untested in practice.

Foreign companies

80. Foreign entities established in Curaçao must be entered in the Trade Register (article 3(4), Trade Register Ordinance). There are currently a total of 504 foreign entities in Curaçao. With regard to a foreign company established or having a branch located in Curaçao, the following information must be entered at the Trade Register (article 22, Trade Register Decree):

- name and legal form of the legal entity to which the company or branch belong and register in which that legal entity is registered;
- address of the head office of the company, if located outside of Curaçao;
- personal data and powers concerning each of the company's directors and commissioners;
- personal data and powers concerning each of the administrators or any other attorneys employed by the company or its branch;
- an authentic or certified copy of the memorandum of incorporation of the company and its by-laws translated to Dutch or English; and
- anything that must be filed at the trade register or otherwise made public under the law governing the foreign legal entity.

81. Therefore, foreign companies established in Curaçao are not systematically required to provide identity information concerning their shareholders as a part of registration requirements, even where they are effectively managed in Curaçao. Instead, based on new provisions in the National Ordinance on General National Taxes which took effect on 1 May 2013 for tax years beginning 1 January 2013 (article 45, paragraph 6), the availability of all ownership information will depend on the company's

obligation to maintain information on all of its legal owners including the ultimate beneficial owners. Ultimate beneficial owners are considered to be all persons who, on basis of the charter or based on an agreement or for any other reason are entitled to the distribution of the capital of the entity. In practice, Curaçaoan authorities interpret this as including all shareholders of the company, not only just the majority shareholders of the company. Most of the foreign companies established or having a branch located in Curaçao will also either have a bank account or a local representative in Curaçao or will be regulated (e.g. foreign banks or insurance companies), and thus ownership information concerning their controlling shareholders will be maintained under anti-money laundering laws, as further described below.

82. Companies that are formed under the laws of another jurisdiction, but which are residents of Curaçao for tax purposes by virtue of their place of effective management, are required to register and file tax returns with the tax authorities. As mentioned above, before the amendments in May 2013, these foreign companies were not required to disclose in the tax returns any identity information concerning their legal owners. The Curaçaoan authorities had indicated, however, that this information must be available when necessary during an audit or for purposes of information exchange (see section B.1, below). Nonetheless, unlike domestic companies, the directors or administrators of foreign companies were under no obligation to maintain shareholder information under Curaçaoan laws, which could give rise to difficulties should the Curaçaoan authorities seek identity information concerning their shareholders for exchange of information purposes. In accordance with the new laws which took effect on 1 May 2013, foreign companies are likewise required to disclose in the tax returns information on all their legal owners, including their ultimate beneficial owners.

In practice

83. Foreign companies must be registered on the Trade Register in order to conduct business. Registration of foreign companies on the Trade Register and the Inspectorate of Taxes is carried out in the same way as domestic companies.

84. In view of the new requirements under the tax laws, Curaçaoan authorities have indicated that processes are being revised to improve monitoring of the obligation to maintain ownership information, including information on the ultimate beneficial owners. Similar to domestic companies, all shareholder information of foreign companies must be submitted as part of the annual tax returns. In cases of non-compliance following an audit by the Tax Inspectorate, a criminal investigation may be launched and penalties may be applied. The compliance rate of 60% for tax filings during the review period also includes foreign companies. The revision of processes

will start in the second half of 2015. A "chain manager" was hired from the Dutch tax authorities in 2014 to review existing processes. This "chain manager" will also guide an "expert team" that will carry out the adoption of the revised processes. This team will consist of a combination of existing staff and personnel with specific expertise from the Dutch tax authorities. The process to select the personnel for the "expert team" is currently underway.

Ownership and identity information kept by the companies and service providers

Commercial laws

85. The managing directors of NVs and BVs must keep a shareholder register containing, among other things, the names and addresses of all (legal) shareholders of registered shares, the class of share and voting rights attached thereto, the amount paid up, the date of acquisition, and whether or not a bearer certificate has been issued (see section A.1.2 below). Moreover, a note shall also be made of the establishment or assignment of a usufruct on the shares and the creation of a pledge on the shares, as well as any transfers of voting rights connected therewith (article 109, Civil Code, Book 2).

86. The shareholder register must be kept at the company's office and must be updated on a regular basis, including the dates in which any changes have occurred (article 109, Civil Code, Book 2 and article 54, Commercial Code). The managing directors of NVs and BVs may be held severally liable for not fulfilling their obligations, unless they can prove that they did not act with negligence (article 14(4), Civil Code, Book 2). Curaçao references Article 12 of the Book 2 Civil Code which provides that the articles of incorporation of an entity shall "contain rules as regards the manner in which a temporary arrangement shall be made for the management of the legal entity in the event of the impediment or default of all the managing directors". Given that an entity must have a local managing director in order to conduct business, Curaçao interprets the "temporary arrangement" to mean that all entities must appoint a local representative to continue the entity's activities if the managing directors are no longer in Curaçao. The local representative would be subjected to the same legal obligations as the managing director as it would have to "act for and exercise the powers of the managing director" (article 12(2), Book 2 Civil Code). For international (offshore) companies, where a licensed local representative must be appointed (i.e. trust service provider), the local representative will have the same legal obligations as a managing director (article 10, Book 2 Civil Code, and article 60-71, Book 3 Civil Code).

In practice

87. The availability of ownership and identity information is generally ensured through tax obligations. There is no monitoring system that checks if companies maintain an updated shareholder register at all times but companies are required to have the information available during an audit and readily produced at the request of the Inspector of Taxes. A further analysis of the tax laws is presented in the next section.

88. During the period under review, one peer indicated that it had placed one request to Curaçao for ownership information, financial statements and a list of bank accounts held by a particular company in Curaçao. A partial reply was received from Curaçao containing only ownership information. In the final reply, Curaçao said that the local representative (trust service provider) did not have any financial statements and did not have the power to obtain the information. The local representative (trust service provider) also indicated that the information was to be sought directly from the individual residing in the requesting jurisdiction. Curaçao clarified that the local representative (trust service provider) had no powers to obtain the information because it was only a local representative. The obligations to maintain the required information lies with the Director of the entity who was no longer in Curaçao. This matter is undergoing further investigation in Curaçao.

89. While ownership information was supplied to the EOI partner, the concern arising from this instance is that the local representative (trust service provider) was of the opinion that it had neither the power to obtain the information nor the obligation to keep the information. As discussed earlier in this section, for entities that conduct business in Curaçao, there must be a local director or local representative in order for the company to obtain a business license which is necessary for daily transactions. If there is no longer a local director or a local representative, the entity cannot operate any business but may continue to *exist* in law. If an entity only has local directors and all the local directors de-register, the Chamber of Commerce will remove the entity from the current Trade Register. If an entity's local director leaves and has no local representative (in the case of international companies that require a trust service provider), then the entity would in practice not be able to conduct any activities. The Chamber of Commerce will indicate the status of such entities on the Trade Register as "not-active". If any entity's local director leaves, and a local representative is appointed (in cases of international companies that require a trust service provider) then the local representative is obliged to keep the administration, including keeping all ownership and identity and accounting information.

90. This state of affairs raises two concerns. First, arising from the case that was raised by an EOI partner, there is currently no mechanism that monitors whether all local directors and local representatives observe their

obligations to maintain the availability of ownership and identity information in accordance to Curaçaoan laws. Curaçao has clarified that in this particular case, the local representative had the ownership information regarding the sole non-local director and the information was provided to the requesting jurisdiction. However, accounting information was not provided because the local representative did not keep the information and said it had no power to obtain the information. Curaçao has indicated that the local representative has since resigned as of 14 February 2014. In view of this situation and the gap it highlights, Curaçao is recommended to put in place a rigorous monitoring mechanism to ensure that all obligations to keep ownership and identity information are observed by all local directors and local representatives.

91. Second, there remains an oversight gap for entities that exist but are not conducting any activities in Curaçao. As such entities do not conduct any business (i.e. do not apply for a business license from the Economic Affairs Department) or open a bank account (i.e. do not apply for a foreign exchange exemption from the Central Bank), there would not be any need for a local director or local representative (including trust service provider) who will thus be charged with the obligation to maintain ownership and identity information. It may be noted that the Chamber of Commerce is authorised by law to commence legal proceedings to dissolve the entity in certain circumstances, for example, when the entity fails to pay its Chamber of Commerce membership fee, or when the registered managing directors cannot be contacted for six months at the registered addresses (article 25, Book 2 Civil Code). In practice, detection of such occurrences when there is no local managing director would appear to only arise during such passive monitoring processes when the Chamber of Commerce is unable to collect the membership fees of the entity, or when alerted by a third party (discussed covered under the previous section "Ownership and identity information required to be provided to government authorities"). Curaçao is recommended to put in place a rigorous monitoring mechanism to ensure that all entities have local directors or local representatives who are charged with the obligation to maintain ownership and identity information of companies in all cases.

Tax laws

92. All companies are required to have all ownership information available during an audit and readily produced at the request of the Inspector of Taxes. Under the amendments to the National Ordinance for General National Taxes that took effect on 1 May 2013 for fiscal year beginning from 1 January 2013, companies are required to keep records on all ownership and identity information, i.e. information on legal owners and ultimate beneficial owners, and submit these records in the tax returns. Legal entities opting for a special tax regime are subject to additional disclosure requirements. Such

legal entities include companies qualifying for tax holidays, e-zone companies, international (offshore) companies[11] or tax exempt private limited liability companies. Under the Profit Tax Ordinance, as amended in 2009, a BV may obtain a tax exempt status and, as a consequence, become exempt from corporate income tax, provided the following criteria are met:

(i) the BV must file a request for the tax exempt status with the Tax Inspector;

(ii) the board of managing directors must maintain a register with the names and addresses of all ultimate beneficiaries holding an interest of more than 10% in the capital of the BV;

(iii) the board of managing directors may only consist of individuals residing in Curaçao or licensed trust service providers residing in Curaçao, or their directors and employees;

(iv) the board of managing directors must annually prepare financial statements which are audited and approved by an independent expert within 12 months after the end of the financial year;

(v) the purpose of the BV and its actual activities consist exclusively or nearly exclusively of providing credit and/or investment in securities and deposits; and

(vi) the BV may not be a bank or other financial institution subjected to the supervision of the Central Bank.

93. The exempt status will be revoked if the BV's profit consists of more than 5% of dividends received from other companies that are not subject themselves to a profit tax at a rate of at least 15%.

In practice

94. During the period under review, ownership information of companies was requested in 40 requests. Ownership information for all but four requests was available at the companies when requested or audited by the Inspector of Taxes, and could be provided in response to the requests. Of the pending four requests, ownership information has not been sought as the requests concern companies covered under grandfathering provisions of the abolished offshore regime. An analysis of the access to information concerning such companies is in B.1.

11. The offshore regime was abolished in 2001 with a transitional period that applies until 2019. The old regime will be applicable (grandfathered provisions) for companies that qualified as an offshore company (or "international company") before 1 January 2002.

Corporate service providers

95. The activities performed by trust service providers, in the framework of their business or profession, are regulated under the National Ordinance on the Supervision of Trust Service Providers, of 23 December 2003. Trust services[12] are subject to the Central Bank's supervision and license, which cover:

- establishing an international (offshore) company (i.e. a NV or BV which is owned by non-residents and which operates offshore, but which has its corporate or factual seat in Curaçao and which has been granted a general foreign exchange exemption) or causing it to be established when such is performed by a resident of Curaçao;
- acting as the local representative or the managing director, residing or established in Curaçao, of an international (offshore) company;
- making natural persons or legal persons, residing or established in Curaçao, available as the local representative or managing director of an international (offshore) company; and
- winding up an international (offshore) company or causing it to be wound up, when such is performed by a resident of Curaçao.

96. Trust services may only be provided by licensed trust offices (and authorised natural and legal persons acting under the licensee's responsibility) which have their registered office and principal place of business in Curaçao, or persons who have been granted dispensation, provided they satisfy the certain requirements imposed by the Central Bank (articles 1, 2, 3, 6 and 7). Pursuant to the National Ordinance on the Supervision of Trust Service Providers (N.G. 2003, no. 114) a "license" is granted to a trust service provider that is a legal person, partnership, or natural person providing trust services in the exercise of its, his or her profession or business. A "dispensation" may be granted to either a legal person or natural person providing trust services for other considerations than as part of the exercise of its, his or her profession or business. Consequently, a dispensation has limitations attached to it relative to the number of international companies (maximum of 10) for which the trust service provider renders services and the amount of annual income as a result of the services provided. According to the Policy Guidelines on Dispensation for Trust Service Providers, trust service providers with a license or dispensation have to comply with the same regulatory requirements. Thus, a dispensation does not exempt the trust service provider from any on-going regulatory requirement and compliance. Under article 12, a trust service provider must have with regards to every

12. A number of corporate service activities come under the definition of "trust services" under the National Ordinance on the Supervision of Trust Service Providers, of 23 December 2003.

international (offshore) company to which it provides trust services updated data demonstrating:

- the direct and indirect source or sources of the capital entered into the company at the time of incorporation and afterwards; and
- the person or persons who can directly or indirectly make claims to the distribution, capital and the surplus after dissolution.

97. On an annual basis, the trust service provider has to submit a statement to the Central Bank declaring that it has availability of the information referred to in article 12 (article 16). It is noted, however, that the National Ordinance on the Supervision of Trust Service Providers does not provide for a period during which this data must be stored. Nevertheless, trust service providers are covered by the AML/CFT framework, which sets out a minimum retention period of five years (see details below). As of December 31, 2013, there were 209 trust service providers registered with the Central Bank. Of the total of 209 registered trust service providers, 95 (94 legal persons and 1 natural person) were in possession of a license and 114 (8 legal persons and 106 natural persons) were in possession of a dispensation.

In practice

98. In practice, trust service providers serve as the local representative of international (offshore) companies and would be liable to all information keeping obligations under civil, commercial and tax laws as described in the earlier paragraphs of section A.1.1. Trust service providers are required to adhere to the stipulations in the Central Bank's Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Company Service Providers. The provisions and guidelines provide detailed requirements for all trust service providers on their obligation to keep ownership information and carry out customer due diligence processes. In addition to these requirements, the Central Bank has also issued a Minimum Content Client Files document, which describes the minimum documentation that a service provider should have available in its files. On an annual basis, all trust service providers must also submit a Trust Service Providers' Supervisory Questionnaire (pursuant to Article 16 of the National Ordinance on the Supervision of Trust Service Providers), which must be duly certified by an external auditor. This questionnaire assesses the trust service providers' compliance with relevant rules and regulations, including the obligation to maintain the information as required according to Article 12 of the National Ordinance on the Supervision of Trust Service Providers.

99. Further to its structural off-site monitoring, oversight, and supervision, the Central Bank has a structural on-site supervisory framework, which entails conducting on-site examinations to duly verify whether the trust

service providers are in compliance with all their obligations, including the obligation to maintain on file all relevant and mandatory information, of the international companies for which they provide trust services. On-site examinations and management meetings are conducted with a shortlist of trust service providers identified based on the risk assessments generated by comprehensive risk management systems that the Central Bank has in place. The Central Bank can revoke a trust service provider's license or apply administrative sanctions in the event of non-compliance with its obligations. During the period under review, the Central Bank conducted 32 on-site examinations and 21 management meetings at supervised trust service providers. There were no cases detected of non-compliance with regards to the availability of clients' information thus no penalties were applied.

Anti-money laundering laws

100. In Curaçao, the Financial Intelligence Unit (FIU) is called *Meldpunt Ongebruikelijke Transacties* (MOT). Curaçao has a comprehensive AML/CFT framework, including the National Ordinance on the Identification when rendering Services and the National Ordinance on the Reporting of Unusual Transactions, both dating back to 1996 and amended in July 2010. Under the National Ordinance on the Reporting of Unusual Transactions, all criminal acts can result in the proceeds thereof being qualified as money laundering crimes, including tax fraud, as decided by the Dutch Supreme Court in October 2008.[13]

101. The National Ordinance on the Identification when rendering Services and the National Ordinance on the Reporting of Unusual Transactions have very similar scope as both cover a person who renders, as a profession or as a trade, one of the following services performed in Curaçao:

- financial services, amongst other: *(i)* opening an account on which a balance in funds, securities, precious metals or other values can be held; and *(ii)* crediting or debiting an account, or having an account credited or debited on which a balance in funds, securities, precious metals or other values can be held;
- fiduciary services, i.e. providing management services whether or not against payment in or from Curaçao for international (offshore) companies, including at any rate: *(i)* making natural or legal persons available as a manager, representative, administrator or other official for international (offshore) companies; *(ii)* providing domicile and office facilities for international (offshore) companies; and *(iii)* establishing international (offshore) companies or having such established,

13. LJN BD2774, Hoge Raad, 03511/06 (www.rechtspraak.nl).

or liquidating such or having such liquidated by order of, but at the expense of third parties;[14] and

- legal services, i.e. giving advice or assistance as a legal profession or trade, acting as a lawyer, civil-law notary, accountant, tax advisor or expert in the juristic, tax or administrative field, or practicing a similar legal profession or trade, when: *(i)* purchasing or selling real estate; *(ii)* managing funds, securities, coins, government notes, precious metals, precious stones or other values; *(iii)* establishing and managing corporations, legal persons or similar bodies; *(iv)* buying or selling or taking over enterprises.

102. It is worth noting, however, that article 1(3) of the National Ordinance on the Identification when rendering Services and article 1(3) the National Ordinance on the Reporting of Unusual Transactions contain an exception to the AML/CFT framework concerning legal privilege. These provisions refer to legal services "which are related to the provision of the legal position of a client, its representation at law, giving advice before, during and after a legal action, or giving advice on instituting or avoiding a legal action, insofar as performed by a lawyer, civil-law notary or junior civil-law notary or an accountant, acting as an independent legal adviser". Curaçaoan authorities have clarified that all service providers who perform any of the three categories of services listed above would be bound by obligations to ensure all ownership information is made available. There were no cases encountered in practice where information held by service providers was not available for reasons of legal privilege. There were also no cases where a lawyer, civil-law notary or junior civil-law notary or an accountant, acting as an independent legal adviser was asked to provide any information.

103. Under articles 2 and 8 of the National Ordinance on the Identification when rendering Services, the service provider is obliged to establish the identity of a client and the ultimate interested party, if such exists, before rendering such a client a service. The ultimate interested party is defined as the natural person who has or holds a qualified participation or qualified interest in a legal person or who is entitled to the assets or the proceeds of a trust or private fund foundation (article 1(1)(j)). In turn, qualified participation or qualified interest means a direct or indirect interest of 25% or more of the nominal capital, or a comparable interest, or being able to exercise 25% or more of the voting rights directly or indirectly, or being able to exercise directly or indirectly a comparable control (article 1(1)(k)).

104. This affects the scope of the ownership and identity information required to be maintained under the AML/CFT laws. For domestic

14. Pursuant to article 1(3), the provisions regarding offshore companies are fully applicable to enterprises that are not established under the laws of Curaçao.

companies, however, this is not an issue since there is an obligation imposed on the company's managing directors to maintain a shareholder register containing identity information on all (legal) shareholders, as mentioned above. This provision may, however, affect the obligations to maintain information as they relate to nominees and trustees. In those cases, general tax obligations (as described below) will also apply to fill the gap.

105. Article 3 of the National Ordinance on the Identification when rendering Services lists the valid documents through which the identity of a client and the ultimate interested party must be established and imposes on the service provider the obligation to verify their identities using reliable and independent sources. The service provider must record the identity information, in an accessible manner, for five years from the termination of the agreement or execution of the service (articles 6 and 7, see more details under section A.3 below).

106. The reporting system of Curaçao is based on the National Ordinance on the Reporting of Unusual Transactions. Under this act, anyone who renders a service as a profession or as a trade is obliged to report an unusual transaction performed or an intended transaction immediately to the Reporting Office (article 11). This report must contain, insofar as possible, the following data: *(i)* the identity of the client; *(ii)* the nature and the number of the identification paper of the client; *(iii)* the nature, the date and the place of the transaction; *(iv)* the amount, destination and origin of the funds, securities, precious metals or other values involved in the transaction; and *(v)* the circumstances on the basis of which the transaction is considered unusual.

107. Even though the National Ordinance on the Reporting of Unusual Transactions does not establish an express obligation concerning the availability of the client's identity information, this can be inferred from the reporting requirement. Furthermore, it is noted that, unlike the National Ordinance on the Identification when rendering Services, the National Ordinance on the Reporting of Unusual Transactions is restricted to the identity of the client and does not cover the ultimate interested party, if any exists.

In practice

108. The monitoring of the entities' compliance with AML laws is under the charge of the FIU and the Central Bank.

109. The Central Bank supervises and monitors the compliance with the AML laws of financial institutions, trust service providers, and administrators of investment institutions. These entities are required to obtain a license from the Central Bank to operate and therefore are subjected to its supervision. The Central Bank schedules on-site examinations with identified entities following an internal risk-based assessment. During its on-site

examinations the Central Bank devotes a significant amount of time to review the client files in order to verify whether the financial institutions, trust service providers, and administrators of investment institutions are complying with the requirements concerning the application of CDD measures including identification of the client's ultimate interested party. During this review, the CDD documents available on file are reviewed through sample testing. Any deficiencies identified are communicated to the supervised institutions with a request to take corrective actions. The requirements with respect to CDD measures are contained in the sector specific Provisions and Guidelines on AML and CFT issued by the Central Bank.

110. The supervisory measures adopted by the Central Bank are:

(i) Issuance of an order/direction/instruction

(ii) The appointment of a trustee/administrator to oversee all decision-making in the institution

(iii) Penalising of violation in which an administrative fine is imposed if an institution fails to satisfy its obligations resulting from the relevant supervisory legislations

(iv) Penalties and administrative fines that are imposed administratively by the Central Bank based on an assessment of the violation committed by the parties involved and which need not adhere to the requirements as set out in the AML/CFT Provisions & Guidelines. A penalty may amount to ANG 500 000 and an administrative fine may amount to ANG 1 000.

(v) Revocation of the license or a dispensation and cancellation of the registration

(vi) Issuance of a public notice about the identity of the entity that violated its obligations and the amount of penalty or administrative fine imposed

(vii) Referral of the entity to the Public Prosecutor for criminal investigation or prosecution

111. During the period under review, the Central Bank performed 31 on-site inspections following its internal risk-based assessments. 6 on-site inspections were conducted in 2011, 17 in 2012 and 8 in 2013. The findings resulting from the on-site inspections were communicated to the credit institutions by means of examination reports/letters containing corrective measures to be taken by the credit institutions within a stipulated time frame. The Provisions and Guidelines on AML and CFT issued by the Central Bank also prescribes that credit institutions should conduct independent testing of the adequacy of the functioning of the credit institution's policies and

procedures at least annually by an adequately resourced internal audit department or by an outside independent party, such as the institution's external auditors. These tests must include at least:

- an evaluation of the institution's anti money-laundering and counter terrorist financing manual(s);
- customers' file review;
- interviews with employees who handle transactions and with their supervisors;
- a sampling of unusual transactions on and beyond the threshold(s) followed by a review of compliance with the internal and external policies and reporting requirements; and
- an assessment of the adequacy of the record retention system.

112. Based on the 31 on-site inspections conducted during the period under review, there were 13 entities found to be non-compliant with the requirement to perform an annual independent testing of the adequacy of the functioning of the AML/CFT policies and procedures. These 13 entities were issued reports containing corrective measures to be taken within a stipulated time frame. As no independent testing was performed on a yearly basis (consecutively) prior to the Central Bank's instructions, penalties and fines were imposed on 2 supervised credit institutions after the review period in 2014.

113. Another requirement of the Provisions and Guidelines on AML and CFT entails that credit institutions must develop training programmes and provide ongoing training to all personnel who handle transactions that may be qualified as unusual or suspicious based on the indicators outlined in the Ministerial Decree regarding the Indicators for Unusual Transactions (N.G. 2010, no. 27). Based on the 31 on-site inspections conducted during the period under review, there were 7 entities found to be non-compliant with the requirement to provide regular trainings.

114. In 2013, there was 1 credit institution (local general bank) for which the Central Bank has applied the following supervisory measures:

- Issuance of an order/direction/instruction (par. 25 (ii) sub 1)
- The appointment of a trustee/administrator (par. 25 (ii) sub 2)
- Revocation of the license or a dispensation and cancellation of the registration (par. 25 (ii) sub 5)

115. There were no instances where other supervisory measures by the Central Bank were applied during the period under review. Overall, the Central Bank indicates that a majority of credit institutions comply with their

requirements since a subset of them are selected for on-site inspection following an internal risk-based assessment. Of these 31 entities that underwent the on-site inspection, 58% were compliant with AML/CFT policies and procedures, and 77% were compliant with the requirement for providing trainings.

116. The FIU monitors the compliance of the services rendered by the Designated Non-Financial Businesses and Professions (DNFBPs) that include services associated with *(i)* purchasing or selling real estate; *(ii)* managing funds, securities, coins, government notes, precious metals, precious stones or other values; *(iii)* establishing and managing corporations, legal persons or similar bodies; *(iv)* buying or selling or taking over enterprises. However, it is noted that the existing legal framework does not stipulate that DNFBPs are obligated to register with the FIU and there may be some DNFBPs that are not registered. In efforts to increase participation rate, the FIU has launched campaigns since 2010 to encourage all DNFBPs to register while pending the necessary laws to be put in place. The National Ordinance on Identification when rendering Services and National Ordinance on the Reporting of Unusual Transactions are being amended to make registrations obligatory.

117. The FIU of Curaçao performs on-site and offsite audits to ensure that supervised entities comply with their obligations to conduct customer due diligence. The FIU regularly raises the awareness of these obligations through seminars, meetings, brochures, its website and also responses to questions by the entities by phone, mail and during audits. The supervisory measures adopted by the FIU are:

(a) Audits and on-site inspections

(ii) Compliance surveys to be completed by the supervised entities;

(iii) Information dissemination through the website of the FIU;

(iv) Annual reports;

(v) Follow up process for the purpose of verification checks;

(vi) Information dissemination through presentations to the entities.

118. A total of 44 on-site visits were performed by the FIU during the period under review and a compliance survey was sent to all DNFBP entities under the supervision of the FIU to evaluate their compliance. The follow-up process has also commenced to evaluate if the DNFBP entities that had undergone on-site inspections during the past four years, have complied with the recommendations issued to them at the end of the on-site visit. Based on Article 22h(3) of the National Ordinance on the Reporting of Unusual Transactions and Article 11(3) of the National Ordinance on Identification when rendering Services, the Supervisors of FIU Curaçao have the possibility to impose a (administrative) penalty, injunction and bring to public

knowledge the reason for imposing the penalty. All these rules are regulated in Articles 22a to 22e of the National Ordinance on the Reporting of Unusual Transactions and Articles 9a to 9e of the National Ordinance on Identification when rendering Services. The maximum penalties are a maximum of four years imprisonment, a maximum of ANG 500 000 fine, or both.

119. During the 44 on-site visits, no serious deficiencies were identified. Most deficiencies were about identification that was not made completely in accordance with the requirements stipulated by the FIU or the internal procedures were not put in writing. Whenever the FIU encountered an unusual transaction that had not yet been reported the person/entity was instructed to report the unusual transaction within 24 hours. The FIU has a follow up procedure. All the reports provided to the person/entity contain deadlines. The 44 persons/entities have all received a written request to report on their progress relating to addressing the identified deficiencies. This was also done by all the entities in accordance with the FIU's request.

Nominees

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

Anti-money laundering laws

121. Although the concept of nominee shareholding is not recognised in Curaçao, the National Ordinance on the Identification when rendering Services establishes a broad obligation regarding the identification of clients by service providers (article 5). The definition of services includes express reference to "fiduciary services" (article 1(1)(b), item 14), which may cover nominee directors, as persons acting in such a capacity would normally perform a fiduciary type of activity.

122. In addition, service providers who are dealing with a nominee shareholder are required to ascertain whether a natural person who appears before him on behalf of a client (or a representative thereof) is acting for himself or a third party (e.g. acting as a nominee). If it is the latter case, the service provider is required to establish the identity of that third party with the help of the documents to be submitted by the natural person and, if the third party acts for another third party, to establish the identity of that other third party

in the same manner. The supervision of service providers or individuals who deal with nominee shareholders is carried out by the FIU and Central Bank as described in the earlier sections.

123. In practice, pursuant to the Centrale Bank van Curaçao en Sint Maarten ("the Bank") Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Company (Trust) Service Providers, all service providers that provide nominee shareholder services and/or provide custody of bearer shares must know the true identity of the person/persons (resident or non-resident) for whom assets are held or are to be held, including the ultimate beneficial owners. The identity of these clients must be established by conducting proper customer due diligence. Furthermore, according to the Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing for Administrators of Investment Institutions and Self-Administered Investment Institutions for significant shareholders (25% or more) that appear to be a nominee or "front" company, information must be sought from the company regarding the ultimate beneficial ownership of that particular company. As the ultimate beneficial owner may be an individual or group of individuals, identification documents pertaining to individual investors must be obtained. While it is noted that there is a threshold for significant shareholders of 25% or more under AML laws, all entities are obligated to have the information under tax laws as earlier mentioned which would be filed together with the annual tax return and must be available at all times to be produced if requested by the Inspector of Taxes.

124. According to the Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing and Article 7 of the National Ordinance on Identification when rendering Services, supervised service providers, investment institutions and administrators should ensure compliance with the record-keeping requirements contained in the relevant money laundering and terrorist financing legislation. The document retention policy should include all necessary records on transactions, internal and external reports relative to unusual transactions of clients, business correspondence and records on customer identification. The supervised service providers, investment institutions and administrators should retain certain records such as account files and business correspondence for an extended time as required under the relevant money laundering and terrorist financing legislation, rules and regulations.

125. The Central Bank conducts on-site examinations at the supervised service providers, investment institutions and administrators. During the on-site examinations all service providers, investment institutions and administrators must provide the Bank with information and documentation on their Anti-Money Laundering and Combating of Financing Terrorism (CFT) and

deterrence and detection procedures and also on their clients that have been selected for review. Furthermore, during the on-site examinations the examiners will determine compliance with the requirements for record-keeping retention as stipulated in the Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing and other applicable rules and regulations.

126. The on-site inspections and supervisory measures applied to all supervised entities under AML laws were analysed in the earlier section.

127. In practice, Curaçaoan authorities have confirmed that there are no categories of nominees that are excluded from the requirement as mentioned in the Bank's Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing. No exceptions are made for service providers, investment institutions or administrators that also perform activities related to the "provision of legal position of a client, its representation at law, giving advice before, during and after a legal action, or giving advice on instituting or avoiding a legal action, insofar as performed by a lawyer, civil-law notary or junior or an accountant, acting as independent legal adviser".

Tax laws

128. While the Curaçaoan tax laws are silent about the tax treatment of nominees, a Curaçaoan resident acting as a nominee, whether a natural person conducting a business or profession or a legal entity, would be covered by the general record-keeping obligations imposed by the National Ordinance on General National Taxes (article 43(1)). Such persons acting as nominees would be, therefore, required to keep records of any information that is relevant for the enforcement of tax laws in respect of their own business, assets, liabilities, e.g. identifying the beneficial owner when receiving payments for fiduciary services rendered (article 43(2)). In addition, persons acting as nominees would be subject to record-keeping obligation with regard to the taxation of third parties, e.g. dividend income received by the nominee is actually attributable and taxable to the beneficial owner (article 45(1)). Under the new provisions of the National Ordinance on General National Taxes (article 45(6)), this would entail maintaining information of all owners, including the ultimate beneficial owner. Furthermore, the Curaçaoan tax authorities have powers to request information from a Curaçaoan resident acting as a nominee, whether this relates to Curaçaoan taxes or foreign taxes, to respond to an EOI request (as further described under Part B below).

Conclusion

129. Domestic companies, which may be onshore or offshore, are required to keep an updated shareholder register at the company's registered office in Curaçao, containing the identity information on all legal owners of registered shares, as well as a note on whether a bearer certificate has been issued. Various mechanisms are currently in place to effectively immobilise such bearer shares and anti-money laundering laws apply to ensure the availability of ownership information in these cases.

130. Companies incorporated outside of Curaçao but having their place of effective management therein are considered resident in Curaçao for tax purposes. Such foreign companies are generally not required to provide information identifying their owners as a part of registration requirements but with the introduction of new tax obligations, they now have the obligation to maintain all ownership and identity information, including information on all its ultimate beneficial owners. It is recommended that Curaçao continues to monitor the application of the new tax laws and ensure that identity information concerning their shareholders is available in such cases.

131. Nominee shareholders resident in Curaçao are not subject to specific obligations to keep identity information concerning the beneficial ownership of shares. Nevertheless, the AML/CFT obligations, together with the obligation to maintain information that is relevant for the enforcement of tax laws both in respect of the taxpayer and of third parties, permit the availability of such information with respect to the beneficial owner of shares held by a nominee. Therefore, there would only be limited circumstances under which ownership information would not be available to the Curaçaoan competent authorities in respect of nominee shareholders. During the period under review, Curaçao did not receive any requests regarding ownership information of nominee shareholders.

132. During the period under review, Curaçao received 40 requests on ownership information in respect of companies. Curaçao provided information in response to all requests except in seven requests. Four of the requests related to international (offshore) companies that were covered under grandfathering provisions and information could not be obtained (this issue is addressed in B.1). For three other requests, information was available and obtained, but not provided because of Curaçao's interpretation of the "foreseeably relevant" standard (this issue is addressed in C.1).

133. In practice, there is a lack of oversight mechanisms to ensure that all companies in existence in Curaçao maintain the availability of all ownership and identity information. This was also highlighted in the case raised by one EOI partner. Furthermore, there is a lack of monitoring to ensure that all companies have a local director or local representative who will be charged

with the responsibility to hold all ownership and identity information. This is because it is possible for companies to exist but not conduct any activities in Curaçao. Curaçao has indicated that the Directorate of Fiscal Affairs and the Chamber of Commerce and Industry are in discussions to address these issues. It is recommended that Curaçao puts in place a rigorous monitoring mechanism to ensure that all obligations to keep ownership and identity information are observed by all local directors and local representatives. In addition, Curaçao should also have effective monitoring mechanisms to ensure that all companies have, at all times, local directors or local representatives who will be charged with the record-keeping obligations.

Bearer shares *(ToR A.1.2)*

134. Under Book 2 of the Civil Code, NVs and BVs may only issue registered shares and are forbidden to issue bearer shares as such (article 104). However, registered shares can be converted into bearer shares at the shareholders' request, by issuing a bearer certificate, provided this is permitted under the articles of association of the company. As mentioned under section A.1.1 above, the managing directors of NVs and BVs must keep a shareholder register containing, among other things, details on the identity of the legal shareholders and whether or not a share certificate has been issued.

135. The Curaçaoan authorities have indicated that, under the current business license policy of the Department of Economic Affairs of the Island Territory of Curaçao, well established for over 30 years, only international (offshore) companies (as opposed to locally owned and operated companies) may issue bearer certificates. Local companies will not be granted a license to establish a business in Curaçao if their articles of association provide for the possibility of converting registered shares into bearer shares. International (offshore) companies are required to have at least a local representative (i.e. a trust service provider) in order to obtain a foreign exchange license from the Central Bank. If an international (offshore) company ceases to have a local representative, its foreign exchange license is repealed. Under article 12 of the National Ordinance on the Supervision of Trust Service Providers, a trust service provider must have with regards to every international (offshore) company to which it provides trust services updated data regarding the person or persons who can directly or indirectly make claims to the distribution, capital and the surplus after dissolution, which includes the bearer certificate holders.

136. On 15 June 2010, the National Decree on the Custody of Bearer Certificates was enacted to enable the implementation of article 12 of the National Ordinance on the Supervision of Trust Service Providers. According to the Curaçaoan authorities, this decree is a codification of the already long existing practices in Curaçao (formerly, the Netherlands Antilles), requiring

that bearer certificates are kept in custody in order to enable corporate trust service providers to know the identity of the ultimate beneficial owner of international (offshore) companies. The decree does not apply to shares or certificates in the capital of an international (offshore) company listed on the stock exchange in Curaçao or abroad.[15]

137. Pursuant to the National Decree on the Custody of Bearer Certificates, corporate trust service providers which render management services to international (offshore) companies, with regard to which bearer certificates were or will be issued, are under the obligation to take such bearer securities in safe custody without delay, against the issue of a depositary receipt to the party entitled to the bearer shares (article 2(1)). Under article 2(3), corporate trust service providers may hire out the obligation to maintain records, provided that the external depositary issues a depositary receipt including:

- the identity and address of the natural or legal person in whose behalf the bearer shares are kept in safe custody;
- statements to the effect that *(i)* the trust service provider will be given notice of any change in the data mentioned above without delay, including the updated information on the identity of the natural or legal person in whose behalf the bearer shares are kept in safe custody; *(ii)* the bearer shares will not be transferred from the deposit to any new depositary before the trust service provider is informed thereof; and *(iii)* as soon as the bearer securities are held for any party other than the original party entitled to the bearer certificate, the trust service provider will be informed thereof by the depositary.

138. According to article 2(4), the following entities may act as external depositaries, whether established in Curaçao or in a country that meets at least ten of the core recommendations made by the Financial Action Task Force: *(i)* foreign establishments of or foreign companies affiliated with the corporate trust service provider; or *(ii)* other corporate trust service providers, civil law notaries, banks and other financial institutions which, in their countries of establishment, are subject to a similar AML/CFT as in Curaçao with regards to the identification of clients and reporting unusual or suspicious transactions.

15. The standard does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties (Article 5(4), 2002 OECD Model Agreement on Exchange of Information on Tax Matters).

In practice

139. In practice, if the articles of incorporation of a NV do not allow the issuance of bearer shares, an amendment of the articles of association is necessary in order to enable the company to issue bearer shares. Such amendment is done through a notarial deed. A BV cannot issue bearer shares (art. 200 Second Book of the Civil Code).

140. Bearer shares in Curaçao have been in the process of immobilisation since 2010 when the Central Bank introduced measures. In addition, Curaçaoan authorities have indicated that draft amendments to the Second Book of the Civil Code were in the process of being developed which prohibits NV from issuing bearer shares. All bearer shares will be abolished when the amendment enters into force. However, at the time this report is prepared, Curaçaoan authorities indicate that the legislation in respect to the abolishment of bearer shares is in preparation and will be sent to the advisory bodies of the Curaçaoan government before it is considered in parliament.

141. Currently, in practice, when an entity registers on the Trade Register or applies for a business license with the Ministry of Economic Development, there is no verification as to whether the entity is eligible to issue bearer shares. While it is the business license policy of the Ministry of Economic Development that local companies will not be granted a license to establish a business in Curaçao if their articles of association provide for the possibility of converting registered shares into bearer shares, this is not yet expressly prohibited in Curaçaoan laws. In practice, the Ministry of Economic Development does not have the express obligation and does not verify the companies' articles of association during the processing of an application for a license to ensure that the company cannot issue bearer shares.

142. For trust service providers that provide management services to international (offshore) companies with regard to bearer shares, these entities come under the supervision of the Central Bank. There are currently 209 trust service providers registered with the Central Bank. Pursuant to the National Decree on the obligation to retain securities to bearer (N.G. 2010, no. 36), such trust service providers are under the obligation to take such bearer securities into safe custody without delay against the issuance of a depositary receipt to the party entitled to the bearer securities. The identity and address of the natural person or legal person on whose behalf the bearer shares involved are kept in safe custody, including a statement that the trust service provider will be given notice of any change in the aforementioned data without delay (including the new data of identity and address), should be known to the trust service provider.

143. Trust service providers that hire out the obligation to external depositaries to maintain records on bearer shares are also required to adhere to the

policies and regulations. During the Central Bank's on-site examinations at the identified subset of trust service providers (following an internal risk-based assessment), the trust service providers are to submit to the Central Bank a list of all international companies with (immobilised) bearer shares certificates held at an external depositary. These international companies will subsequently be reviewed by the Central Bank to ensure compliance with all applicable rules and regulations, including auditing all depositary agreements and requesting for any additional information necessary for verification. Curaçaoan authorities have indicated that they have not encountered any difficulties to obtain information from foreign companies affiliated with the local trust service provider. The Central Bank has in all instances been able to obtain this information during the conducted on-site examinations at the local trust service provider where they are to provide the Central Bank with all information related to the external depositary, including the due diligence conducted by the local service provider to ensure that the external depositary complies with all the prescribed requirements.

144. The Central Bank can issue formal notifications, apply administrative sanctions and impose fines in the event of non-compliance with the obligation of the issuance of a depository receipt. If it was detected during an on-site examination that no depositary receipt was issued, the Central Bank would oblige the trust service provider to do so in a predetermined timeframe (formal notification). If the trust service provider fails to issue the depositary receipt in the predetermined timeframe set by the Central Bank, the Central Bank can apply administrative sanctions or impose fines in the event of non-compliance with the obligation to issue depository receipts for bearer shares. During the period under review, there were no cases detected of non-compliance with the obligation to issue depository receipts for bearer shares.

145. In 2010, the Central Bank started taking measures for the immediate immobilisation of outstanding bearer shares. Trust service providers are required to ensure compliance with the National Decree on the obligation to retain securities to bearer (N.G. 2010, no. 36) and inform the Central Bank within a reasonable timeframe of the actions and outcome of this immediate immobilisation process. During the period under review, the Central Bank conducted a total of 32 on-site examinations and 21 management meetings at trust service providers. These sessions included checks on the compliance of trust service providers to immobilise bearer shares in accordance to their obligation under the National Decree on the obligation to retain securities to bearer (N.G. 2010, no. 36). From these sessions, 12 trust service providers were found to be non-compliant with the immobilisation of bearer shares. These 12 trust service providers are a subset of a total of 209 trust service providers. In total, the 12 trust service providers, which were found non-compliant, provide management services to 412 international (offshore) companies that had issued bearer shares. During the on-site examination, the

Central Bank found that none of the 12 trust service providers complied with the National Decree on the obligation to retain securities to bearer (N.G. 2010, no. 36) and were still in the process of immobilising the bearer shares. The Central Bank sent letters to all 12 trust service providers to request immediate immobilisation of the outstanding bearer shares. In addition, the Central Bank has also included a request in its standard letters to all future on-site examinations of trust service providers, to provide the Central Bank an overview of all the immobilised bearer shares for verification during the on-site examination. This measure is to ensure that all trust service providers fully comply with the National Decree on the obligation to retain securities to bearer (N.G. 2010, no. 36). In 2014, after the review period, it was found that of the 12 service providers which were previously found non-compliant, 9 service providers have effectively immobilised all bearer shares and are fully compliant with the National Decree on the obligation to retain securities to bearer (N.G. 2010, no. 36). Two service providers have been liquidated and their international companies transferred to another jurisdiction, while one service provider has not fully complied with the National Decree on the obligation to retain securities to bearer (N.G. 2010, no. 36), since not all bearer shares were properly immobilised. The remaining service provider which is not fully compliant with the National Decree on the obligation to retain securities to bearer (N.G. 2010, no. 36) has been granted a timeframe to either cease to provide services to the international companies of which bearer shares have not been immobilised, or effectively immobilise the issued bearer shares. Failure to be in compliance with the National Decree on the obligation to retain securities to bearer (N.G. 2010, no. 36) within the provided timeframe will compel the Central Bank take further disciplinary actions or regulatory measures.

146. In view of this state of affairs, the issues arising are three-fold. First, while it is the current business license policy of the Economic Affairs department that only international (offshore) companies can issue bearer shares, it is not clear whether local companies can and may have issued bearer shares. As indicated in the earlier paragraphs, local companies will not be granted a license to establish a business in Curaçao if their articles of association provide for the possibility of converting registered shares into bearer shares. However, in practice, there is no sufficient verification performed to ensure that no companies which issued bearer shares can obtain a business license.

147. Second, given that the Central Bank performed on-site examinations and had management meetings at only 53 trust service providers which is a subset of all 209 trust service providers registered in Curaçao, it is unknown how many of the remaining trust service providers also provide management services to international offshore companies which have issued bearer shares. While the 53 trust service providers were identified for an on-site examination or management meeting based on a risk-based assessment, it is unclear whether the remaining 156 trust service providers not examined were

also not compliant with their immobilisation obligations. Therefore, it can be concluded that the level of compliance with the obligation to immobilise bearer shares might not ensure the availability of ownership information on all companies which have issued bearer shares.

148. Third, not all companies that can issue bearer shares need to conduct any activities in Curaçao and therefore would not need to engage a trust service provider or apply for a business license. Therefore, there is no mechanism to ensure the availability of information on holders of bearer shares issued by these companies.

Conclusion

149. The obligations imposed on corporate trust service providers by the National Decree on the Custody of Bearer Certificates have the effect of immobilizing bearer shares, as well as providing for adequate mechanisms to identify owners of bearer shares.

150. The trust service providers' compliance with the immobilisation of bearer shares does not ensure that the information on all holders of bearer shares is available in all cases. Further, there may be bearer shares in circulation issued by entities which do not engage trust service providers or apply for a business license. In practice, there also appears to be a gap in the monitoring and verification during companies' registration for a business license on its eligibility to issue bearer shares. It is recommended that Curaçao puts in place the necessary mechanisms and takes measures to ensure that information on holders of bearer shares is available in all cases.

Partnerships *(ToR A.1.3)*

151. The following types of partnerships exist in Curaçao:

- open partnerships (*maatschap*) (articles 1630-1663, Book 7A, Civil Code);
- general partnerships (*vennootschap onder firma*, VOF) (articles 1630-1663, Book 7A, Civil Code in conjunction with articles 10-31, Commercial Code); and
- limited partnerships (*commanditaire vennootschap*, CVs) (articles 1630-1663, Book 7A, Civil Code in conjunction with articles 10-31, Commercial Code).

152. Partnerships are not legal entities and are not incorporated. They are considered agreements and they exist as from the moment that the agreement is concluded. There is no requirement that the agreement be executed in writing. This is based on article 800 of the Seventh Book of the Civil Code.

153. An open partnership is characterised as a contract without legal personality and each of the partners (whether they are natural or legal persons) is, in principle, personally liable for the obligations incurred by an open partnership. Similarly, VOFs are general partnerships through which the individual partners conduct a business, being jointly and severally liable for the debts of the partnership.

154. CVs are limited partnerships through which the individual partners operate a business under a name made known to the public. In a CV, a distinction must be drawn between general (or managing) partners and limited (or silent) partners. The general partners are jointly and severally liable for the debts of the CV, as they manage the affairs and represent the CV in dealings with third parties. The limited partners' liability is limited to the amount of capital contributed to the CV. The limited partners are prohibited from directly managing the affairs of the CV, but they can represent the general partners as their attorneys-in-fact. If a limited partner is involved in the direct management of a CV, he/she must forfeit his/her right to the protection of limited liability and become jointly and severally liable for the debts of the partnership, together with the general partners.

Ownership and identity information required to be provided to government authorities

Commercial laws

155. Partnerships are formed either by a notarial deed signed by a civil law notary or by a private deed and they must be registered at the Trade Register no later than one week after their establishment (articles 19 and 20, Commercial Code and article 6, Trade Register Decree). As of 30 June 2014, there were 176 general partnerships (170 onshore and 6 offshore, i.e. held by non-resident partners), 34 limited partnerships (15 onshore and 19 offshore) and 20 open partnerships (all onshore).

156. At establishment, the following information must be entered in the Trade Register with respect to any partnership: *(i)* the name, date of establishment and term of duration; *(ii)* personal data[16] concerning the (general) partners and date in which new partners have been admitted into the partnership; *(iii)* relevant information to determine the rights of a third party, if applicable; and *(iv)* the amount of funds contributed and the value of property

16. Under the Trade Register Decree, personal data means name, gender, residential address, date, place, and country of birth, nationality, and signature (article 1).

brought into the partnership[17] (articles 16 and 17, Trade Register Decree). It is noted, however, that CVs are required to disclose only limited information concerning the limited partners, i.e. the number and respective countries of residence (article 17(e), Trade Register Decree).

157. In the event of changes, information required to be filed at the Trade Register must be updated within one week from the occurrence of the fact giving rise to this change (article 6, Trade Register Decree). The Trade Register and documents filed therein are publicly accessible against the payment of a fee (article 11, Trade Register Ordinance).

In practice

158. The establishment processes for partnerships are the same as that for companies. All partnerships (open, general and limited) have to be registered at the Trade Register and any changes to its establishment must be updated on the Trade Register in a timely manner. Similar to the process for companies as described in A.1.1, the information provided to the Trade Register is verified when the Chamber of Commerce conducts physical visits to the business addresses of the registered partnerships. Any changes detected during these physical visits are subsequently updated on the Trade Register by the partnerships and any partnership not found in existence is struck off the register. During the period under review, there were 10 visits made to each registered entity on the Trade Register, which included partnerships. In view of the supervisory measures undertaken by the Chamber of Commerce and the need for the active use of the Trade Register for the regular conduct of business activities, there is sufficient assurance that partnerships have updated ownership information available.

Tax laws

159. Partnerships are generally considered transparent for tax purposes, except with respect to the collection of payroll taxes and business turnover tax (sales tax). Where a partnership is considered transparent, the individual partners are required to file an annual tax return for their share of income derived by the partnership. However, limited partnerships divided by shares (CVs *op aandelen*) are considered non-transparent and are required to register and to annually file tax returns with the tax authorities (article 1(1)(a)

17. With regard to CVs with bearer shares, this information under *(iv)* must be replaced by more general information on the amount of the capital of the CV, the number and amount of the shares they are divided into, and the amount of the subscribed capital. An annual report with updated information must be filed until the capital is fully subscribed.

National Ordinance on Profit Tax). Under the old laws, limited partnerships divided by shares were not required to disclose in the tax returns any identity information concerning their legal owners. The amendments in the National Ordinance on General National Taxes in 2013 now require limited partnerships to keep information on all ultimate beneficial owners and to produce it at the Tax Inspector's request.

Ownership and identity information held by the partners and service providers

160. Under the Civil Code and Commercial Code, there is no requirement for a partnership to have a legal representative in Curaçao or to maintain an updated register of partners. Under the National Ordinance on General National Taxes, partnerships must keep records of all information that is relevant for the enforcement of tax laws, both to the partnership itself and to third parties, which may include its partners (article 43(1)(c) and (2)). Furthermore, qualifying partners who exercise control over the partnership, or who hold at least 50% of the share capital, are required to have all information that is relevant for the enforcement of tax legislation and may be compelled to provide it to the Tax Inspector upon request (article 40(3)). Following the amendments in the National Ordinance on General National Taxes (article 45(6)), the general partner of a limited partnership must maintain information of the ultimate beneficial owners of the partnership's equity and the other limited partners. This information must be included in the annual tax returns submitted by the partnerships. This same obligation applies to foreign partnerships. Tax transparent partnerships are also subjected to have a person liable to keep an administration, and therefore maintain information on all partners. If the information on the other partners is not produced when requested by the Inspectorate of Taxes, penalties or imprisonment charges may be applied. In practice, there were two requests received during the period under review for ownership information in respect of partnerships and the information could be obtained from the partnerships and provided to the EOI partner.

Conclusion

161. Updated ownership information concerning open and general partnerships must be filed at the Trade Register. CVs are not required to disclose identity information concerning their limited partners to the Trade Register and it was unclear whether the general tax obligations to keep relevant information for the enforcement of tax laws was sufficient to ensure that CVs will keep updated identity information concerning their limited partners in all cases. The amendments to the National Ordinance for General National Taxes that took effect on 1 May 2013 provides the obligation for partnerships to submit in their annual tax returns from 2014 all information on the partners

in the partnership for fiscal years starting from 1 January 2013. While there have been no practical deficiencies identified as to the availability of information on the partners in a partnership for EOI purposes, it is recommended that Curaçao continues to monitor the implementation of the new tax obligation and the compliance by partnerships.

Trusts *(ToR A.1.4)*

162. On 15 December 2011, Curaçao introduced a National Ordinance concerning the addition of the legal stipulations regarding trusts to Book 3 of the Civil Code ("National Ordinance on Trust"). A trust is defined under Curaçaoan law as a legal relationship which results from a transaction of a living person or upon the death of a person, the settlor, whereby a trustee has or gets control of property on behalf of a beneficiary or for the achievement of a specific purpose. The trust is thus not considered a legal entity. The trust property is also kept separate from the property of the trust although the title to the property in the trust fund is in the name of the trustee. The assets brought into the trust are segregated from the assets of the trustee. The beneficiary of a Curaçao trust holds equitable title to the assets while the trustee holds legal title to the assets. The trustee has the power and duty to administer and manage all assets of the trust.

163. The establishment of the trust must be done by notarial deed executed by a notary in Curaçao. Curaçao has indicated that there is no possibility of creating oral trusts in Curaçao. Any amendments of the trust provisions or revocation of the trust must also be executed by a notary in a notarial deed. The trust deed has to include all stipulations concerning the trust, and must have at minimum,

- the identity of the settlor;
- the name of the beneficiary or of the achievement of a specific purpose;
- the appointment of at least one trustee living or domiciled in Curaçao and the acceptance of the appointment by the trustee;
- a provision to ensure that a trustee living or domiciled in Curaçao will always be in place;
- a description of the assets of the trust; and
- the name of the trust to include the word "trust".

164. All trust deeds must be registered on the Trade Register of the Chamber of Commerce and Industry in Curaçao. Any person who has an interest in the registration, and is of the opinion that incorrect information has

been registered, may request the Court of First Instance of the Netherlands Antilles to order the registration of a trust or amendments to be made in the Trade Register. Any information that is declared by judicial decision to be partly wrongful needs to be noted in the Trade Register by the Chamber of Commerce.

165. Both individuals and legal entities can be a trustee. A settlor may also be a trustee. The trustee can be one of the beneficiaries of the trust but not the sole beneficiary. The trustee can also be a protector but a protector for a trust is optional and must be indicated in the trust deed. If a protector accepts the role of a trustee, it has to stop being a protector.

166. As the trustee is the legal owner of the trust property and is in charge of the administration of the assets of the trust, the trustee is obligated to maintain a separate administration for each trust fund and to keep all records of each trust fund. Pursuant to the obligations under the National Ordinance on General National Taxes, this would include having all updated information on the ultimate beneficial owners, which for a trust, the trustee must keep information on the beneficiaries, settlors and protectors. In practice, there are currently no trusts registered on the Trade Register in Curaçao as the Trade Ordinance Decree containing the rules of registration of trusts is not yet in place.

167. The National Ordinance on Trust provides the possibility of creating separate capital or cells within one legal entity. This is known as a segregated trust company which can be a trustee of two or more Curaçao trusts within the segregated trust company. Given that assets brought into a trust are segregated from the assets of the trustee, an NV or BV can be incorporated and organised as a "segregated trust company" to be trustee of segregated trust cells. Based on the National Ordinance on Trust, the Central Bank also issued a Policy Memorandum on Specific Regulation for a Segregated Trust Company that describes the application procedures to obtain an exemption so that the segregated trust company can become the trustee of two or more Curaçao trusts within the entity. In this regard, segregated trust companies are required to request and obtain the approval from the Central Bank to act as a trustee. The segregated trust company and its trusts are established by a notarial deed. This regulation also enhances supervision on trust service providers, being the local representatives and/or managing directors of established segregated trust companies and their trusts registered in Curaçao.

168. Curaçao does not recognise foreign trusts and it has not ratified the Hague Convention on the Law Applicable to Trusts and their Recognition. Under Curaçaoan law, there are no restrictions for a resident of Curaçao to act as trustee, protector or administrator of a trust formed under foreign law.

Anti-money laundering laws

169. The AML/CFT legislation establishes broad obligations regarding the identification of clients by service providers. The definition of services under the National Ordinance on the Identification when rendering Services includes express reference to "fiduciary services" (article 1(1)(b), item 14), which may cover trustees, as persons acting in such a capacity would normally perform a fiduciary type of activity. Article 2 of the National Ordinance on the Identification when rendering Services imposes on service providers the obligation to establish the identity the client and the ultimate interested party, defined as "the natural person who is entitled to the assets or the proceeds of a trust", i.e. the beneficiaries thereof (article 1(1)(j)). Although the National Ordinance on the Identification when rendering Services does not specifically refer to settlors and trustees, the definition of client is broad and encompasses anyone to whom services are rendered (article 1(1)(c)).

170. As clarified above (under section A.1.1), there are no exceptions for service providers covered under the National Ordinance on the Identification when rendering Services to establish and verify the identity of a client (settlor or trustee) or a ultimate interested party (beneficiary).

171. According to the National Ordinance on the Supervision of Trust Service Providers and the National Ordinance on Trust, an exclusively licensed trust service provider can act as a trustee of a trust that is registered in Curaçao and has been granted a general foreign exchange exemption (articles 10-16 and 24(2), Foreign Exchange Regulation of Curaçao and Sint Maarten).

172. The Central Bank maintains a register of all trust service providers and trustees registered in Curaçao. All 209 trust service providers with a license or dispensation can act as trustees of a trust that is registered in Curaçao and has been granted a general foreign exchange exemption (articles 10-16 and 24(2), Foreign Exchange Regulation of Curaçao and Sint Maarten). There are currently only two segregated trust companies acting as trustees of trusts registered in Curaçao.

In practice

173. Trustees for trusts that are registered in Curaçao and have been granted a general foreign exchange exemption need to also have a license or dispensation from the Central Bank. This requirement also applies to segregated trust companies. The licensed trust service providers fall under the scope of the supervision of the Central Bank and are thus required to comply with the applicable rules and regulation in conformity with international standards. The trust service provider, the local representative and/or managing director of the trustee and/or the professional administrator of trusts must

provide all required information to the Central Bank when requested. During on-site examinations the Central Bank will assess whether the supervised entities comply with the applicable rules and regulations.

174. The Central Bank exerts full scope supervision, including but not limited to, conducting on-site examinations, verification checks performed during management meetings, and reporting requirements. For the period under review, 38 full scope on-site examinations were conducted. Since the issuance of the Policy Memorandum on Specific Regulation for a Segregated Trust Company (June 2014), the registration obligation for trustees of a Segregated Trust Company is in force. During the assessed period, the Central Bank did not encounter any case of non-compliance.

Tax laws

175. The Curaçaoan trust is considered to be a tax resident of Curaçao, but it is not subject to profit tax if the trust activities involve passive income and not business activities. The beneficiary will have to pay taxes on the distributions made by the trust. Curaçao has indicated that non-resident beneficiaries are not taxable in Curaçao.

176. The Curaçaoan authorities may attribute, for tax purposes, the assets and income of a non-recognised foreign trust according to its own legal and tax system. As a result, a trustee residing in Curaçao, who owns assets and/or earns income in his/her own name but on behalf of the trust, would be taxed for all the assets and/or income as being his/her own. Therefore, in order for a resident trustee to avoid being subject to a tax liability as a result of the assets being transferred by the settlor or in respect of the income derived by the trust, the resident trustee has to provide evidence of the existence of such a fiduciary relationship. Conversely, the Curaçaoan authorities would not attribute the assets and/or earned income of the trust to a resident of Curaçao who merely acts as an administrator or protector of a foreign trust.

177. Under the National Ordinance on General National Taxes, a trustee of a Curaçao Trust, Curaçaoan resident trustee or administrator of a foreign trust, whether a natural person conducting a business or profession or a legal entity, would be covered by the general record-keeping obligations imposed by the National Ordinance on General National Taxes (article 43(1)). Such persons acting as trustees or administrators would be, therefore, required to keep records of any information that is relevant for the enforcement of tax laws, in respect of their own business, assets, liabilities, e.g. identification of settlors who transferred assets to the trustee or identification of beneficiaries who are entitled to receive payments from the trustee (article 43(2)). In addition, persons acting as trustees would be subject to record-keeping obligation with regard to the taxation of third parties, e.g. payments and assets received

from or transferred to settlors and other trustees, or income attributed and distributed to the beneficiaries (article 45(1)). This may include information about settlors, trustees and beneficiaries. Under the new provisions (article 45(6)), any person liable to keep an administration is also required to record in his administration all ultimate beneficial owners which for a trust, the trustee must keep information on the beneficiaries, settlors and protectors. This obligation also applies to trusts that may be exempted or not subject to tax. Furthermore, the Curaçaoan tax authorities have powers to request information from a Curaçaoan resident acting as a trustee of a foreign trust, whether this relates to Curaçaoan taxes or foreign taxes, to respond to an EOI request (as further described under Part B below).

Conclusion

178. In summary, before the amendments in the National Ordinance on General National Taxes in May 2013, trustees resident in Curaçao were not subject to specific obligations to keep identity information regarding settlors, trustees and beneficiaries of foreign trusts. The new provisions in the National Ordinance on General National Taxes that took effect on 1 May 2013 requiring that the trustees maintain in their administration all information on the ultimate beneficial owners further enhances the assurance of the availability of the information for foreign trusts. The trustees of Curaçaoan trusts are also subjected to this same obligation to maintain information on the ultimate beneficial owners of the trusts. The AML/CFT obligations, together with the obligation to maintain information that is relevant for the enforcement of tax laws both in respect of the taxpayer and of third parties, permit the availability of such information with respect to foreign trusts professionally administered in Curaçao. It can, therefore, be concluded that Curaçao has taken reasonable measures to ensure that ownership information is available to its competent authorities in respect of Curaçao trusts and express foreign trusts administered in Curaçao or in respect of which a trustee is resident in Curaçao. This may include information about settlors, trustees and beneficiaries. In practice, there were no requests for information relating to trusts. Based on the outcomes of the on-site examinations of trust service providers conducted by the Central Bank, there were no cases of non-compliance thus indicating that all required information could be made available for purposes of EOI.

Foundations *(ToR A.1.5)*

179. Foundation (*stichting*) and private foundation (*stichting particulier fonds*, SPF) are regulated under articles 50-57 of the Civil Code, Book 2. They are considered legal persons which hold assets and liabilities in their own name, but which do not have members or shareholders. The founders

may contribute the initial assets at the time of establishment of the foundation or at any time thereafter. The private foundation is a relatively new instrument, introduced by Curaçao's legislature as a flexible variant of the foundation. A private foundation is not required to have beneficiaries if such appointment is not desired.

Ownership and identity information required to be provided to government authorities

Commercial laws

180. Both a foundation and a private foundation are established by notarial deed executed before a civil law notary in Curaçao (article 50(1)). The articles of incorporation of a foundation or a private foundation must include, among other things, its name, purpose, place where domiciled, the first managing board and the manner how board members are appointed and dismissed (article 51). All foundations must be registered in the Trade Register (article 4(1), Trade Register Ordinance). As of 30 June 2014, there were 3 487 foundations and 4 818 private foundations registered in Curaçao.

181. Registration must include the personal data[18] concerning the founder(s), the board members and the supervisory directors. In addition, a certified copy of the deed of incorporation must be registered (article 21, Trade Register Decree). In the event of changes, information required to be filed at the Trade Register must be updated within one week from the occurrence of the fact giving rise to this change (article 6, Trade Register Decree). The Trade Register and documents filed therein are publicly accessible against the payment of a fee (article 11, Trade Register Ordinance).

182. A foundation may not be established with the purpose of making of distributions (except distributions of an idealistic or social nature) to the founders or to others out of its income or out of its assets, while a private foundation is not subject to such a restriction (article 50(3)). A private foundation may not be established with the purpose of running a business or enterprise for profit, whereas a foundation is not subject to such a restriction (article 50(5)). Managing its assets and acting as a holding company does not, however, qualify as running a business (article 50(6)).

183. Foundations and private foundations are, therefore, commonly used to control shares in companies, which are transferred to the foundation against the issuance of certificates of participation entitling the former shareholders to the benefits from the shares. These certificates are in either

18. Under the Trade Register Decree, personal data means name, gender, residential address, date, place, and country of birth, nationality, and signature (article 1).

nominative or bearer form and are freely transferable. Notwithstanding, following amendments in the National Ordinance on General National Taxes, all foundations and private foundations are required to keep information on the ultimate beneficial owners and must have the information readily available if requested by the Tax Inspector.

Tax laws

184. Foundations are also registered with tax authorities, but are not required to file tax returns if they are not conducting a business. Under the National Ordinance on Profit Tax of 1940, the profits of a foundation created for purposes other than charity are treated in the same way as those of a NV. The private foundation is tax exempt if its articles of incorporation include a statement that it is a private foundation and provided it does not generate profits by running a business. In accordance to the National Ordinance on General National Taxes, a private foundation has the obligation to file a tax return if it is conducting a business or if it receives a tax return from the Tax Inspector.

Ownership and identity information required to be retained by the foundation, directors and founders

Anti-money laundering laws

185. Foundations and private foundations are managed by one or more directors (natural or legal persons), of which at least one must be a resident of Curaçao to operate in Curaçao. Article 2 of the National Ordinance on the Identification when rendering Services imposes on such service providers (i.e. directors) the obligation to establish the identity the ultimate interested party, defined as "the natural person who is entitled to the assets or the proceeds of a trust or private fund foundation" (article 1(1)(j)). However, this provision is limited to the identification of beneficiaries of private fund foundations and does not cover beneficiaries of a foundation or holders of certificates of participation. It is further noted that neither the foundation, the private foundation nor the founders are required to retain information on the identity of the beneficiaries or the holders of certificates of participation.

Tax laws

186. For tax purposes, foundations and private foundations are legal entities and are thus subject to the same disclosure obligations applicable to other persons under Curaçaoan tax laws, whether taxed or tax exempt (article 43, National Ordinance on General National Taxes). Foundations and private foundations are required to keep records, including information

that is relevant for the enforcement of tax legislation concerning third parties (article 43(1)(c) and (2)). This may include information about founders, beneficiaries, holders of certificates of participation and directors. Under the old laws, these record-keeping obligations would not apply where there is no information that is relevant for the enforcement of tax laws, e.g. where a foundation or a private foundation has no resident beneficiaries and no activities or income derived from sources in Curaçao. The amendments introduced in 2013 (article 45, National Ordinance on General National Taxes) now require that all foundations and private foundations, including those that are not liable to tax, are also obligated to keep identity information on all its ultimate beneficial owners – founders, beneficiaries, holder of certificates of participation and directors.

In practice

187. Foundations can control shares of foreign companies, unless this is not allowed in the foundation's articles of incorporation. As a legal entity, all foundations have to comply with all the requirements with regards to its administration and beneficiaries as stated in the amended National Ordinance on General National Taxes. These requirements are carried out by the trust service providers that all foundations are required to have.

188. Pursuant to the National Ordinance on the Supervision of Trust Service Providers, exclusively private foundations that have been granted a general foreign exchange exemption under articles 10-16 of the Regulation Foreign Exchange Transactions Curaçao and Sint Maarten (2010) fall under the scope of the supervision of the Central Bank. The Central Bank's Provisions and Guidelines require that company (trust) service providers duly identify their (prospective) clients for which they provide trust/company services, and to maintain the information updated and documented. The company (trust) service providers are also required to have updated information about shareholders/beneficiaries of their clients at all times. However, the private foundations which fall under the scope of the Central Bank's supervision do not in principle control shares in companies through bearer certificates. The Central Bank is not aware of any foundation that falls under the scope of its supervision that carries out such activities.

189. If there are bearer certificates in circulation, information on the identities of the beneficiaries or holders of these certificates would be available through the obligation of the service providers to collect all identity information of the beneficial ownership of the foundations for which they provide trust services. This is pursuant to the National Ordinance on the Supervision of Trust Service Providers, the National Decree on the obligation to retain securities to bearer and the National Ordinance on Identification when rendering Services. As a legal entity, service providers have to comply with all

the requirements with regards to its administration and beneficiaries as stated in the amended National Ordinance on General National Taxes. However, this does not ensure that the information on the beneficial ownership of the foundation is available in all cases as it is not clear if there are foundations in existence which may not have engaged any trust service providers. This is possible given that, in practice, a foundation could be established without needing any foreign exchange exemption from the Central Bank, and thus not requiring a trust service provider to apply for the exemption.

190. The availability of information on founders, beneficiaries, holders of certificates of participation and directors should be ensured under the new tax obligations as all foundations, including private foundations, are required to have the information available during an audit or produced at the request of the Inspector of Taxes. While private foundations do not have obligations to file tax returns, the Inspectorate of Taxes calls for these entities to file a return every three to five years to ensure that they are not conducting any taxable activities. Under the new provisions in the National Ordinance on General National Taxes, all foundations are also required to keep all updated ownership and identity information, including information on the ultimate beneficial owners, and submit these during the tax returns. However, these new tax obligations only came into force in May 2013, and could not be sufficiently tested in practice. Curaçao should monitor the implementation of this new law so that information on founders, beneficiaries, holders of certificates of participation and directors, is available in all cases.

191. During the period under review, ownership information of foundations was requested in 43 requests. Information was obtained directly from the foundations through audits or requests by the Inspector of Taxes. Information was provided in response to all EOI requests.

Conclusion

192. Foundations and private foundations are not required to disclose identity information concerning their beneficiaries or holders of certificates of participation to the Trade Register but under the new provisions in the National Ordinance on General National Taxes, all entities are obligated to keep updated information of all its beneficial owners which must be produced during on-site examinations by the Inspectorate of Taxes or whenever requested by the Inspectorate of Taxes. Trust service providers that provide management services to foundations that fall under the supervision of the Central Bank are also bound by AML laws to maintain all ownership information of the foundations, and are subjected to regular monitoring by the Central Bank. However, not all foundations need to engage trust service providers. During the period under review, Curaçao responded to all requests related to foundations. Nevertheless, as the new tax obligations ensuring the

availability of beneficial ownership information in respect of foundations only came into force recently, Curaçao should monitor their implementation.

Other Relevant Entities and Arrangements

193. In Curaçao, there are different forms in which entities legal with members may operate, which are governed by Book 2 of the Civil Code (articles 70-99). A co-operative society is established to meet certain material needs of its members, other than insurance, in the course of its business, pursuant to agreements effected with them and aimed at their benefit (article 90(1)). A mutual insurance company's object must be to enter into insurance agreements with its members and to conduct its insurance business for the benefit of its members (article 90(2)). An association with legal personality may have any specific purpose other than those described above (article 70(1)).

Ownership and identity information required to be provided to government authorities

194. All of these other relevant entities can only be established through a notarial deed which must contain the articles of incorporation. All those entities must be registered in the Trade Register (article 4(1), Trade Register Ordinance). As of 15 March 2011, there were 124 associations with legal personality, 21 associations with limited legal personality, 27 co-operative societies and 0 mutual insurance companies registered in Curaçao.

195. Registration must include the personal data[19] concerning each director and commissioner, including his/her date of admission (article 20(1), Trade Register Decree). The membership list of co-operative societies and of mutual insurance companies must be filed upon registration and updated annually (article 20(2), Trade Register Decree), but the law is silent with respect to associations with legal personality. In addition, a certified copy of the deed of incorporation must be registered (article 20(3), Trade Register Decree).

196. In the event of changes, information required to be filed at the Trade Register must be updated within one week from the occurrence of the fact giving rise to this change (article 6, Trade Register Decree). The Trade Register and documents filed therein are publicly accessible against the payment of a fee (article 11, Trade Register Ordinance).

19. Under the Trade Register Decree, personal data means name, gender, residential address, date, place, and country of birth, nationality, and signature (article 1).

197. The processes to establish these other relevant entities are the same as that for companies and the practical implementation of the registration obligations has been analysed in A.1.1. In addition, these entities are also subjected to the new provisions under the National Ordinance on General National Taxes and would be obligated to keep information on all its ultimate beneficial owners to be produced during on-site inspections by or at the request of the Inspectorate of Taxes. During the period under review, there were no EOI requests for ownership information relating to other relevant entities. While there appears to be sufficient obligations to ensure the availability of information, there may not be sufficient monitoring or measures applied to enforce these obligations. In practice, while there were no requests received for information relating to other relevant entities, Curaçaoan authorities have indicated that all entities are generally responsive to the Inspectorate of Taxes and the SBAB and would produce the required information when requested to do so.

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

Commercial laws

198. 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 subsection of the report assesses whether the provisions requiring the availability of information with the public authorities or within the corporate entities reviewed in section A.1 are enforceable and failures are punishable. Questions linked to access are dealt with in Part B of this report.

199. Upon establishment, domestic and foreign companies, general and limited partnerships, foundations and private foundations, associations with legal personality, co-operative societies and mutual insurance companies must be registered with the Trade Register. Non-compliance with the registration and disclosure requirements under the Trade Register Ordinance is considered a criminal offense, punishable by a financial penalty not exceeding ANG 50 000 (USD 27 933).

200. The shareholder register must be kept at the company's office and must be updated on a regular basis, including the dates in which any changes have occurred (article 109, Civil Code, Book 2 and article 54, Commercial Code). The managing directors of NVs and BVs may be held severally liable for not fulfilling their obligations and subject to sanctions to be determined by the court depending on the gravity of their conduct, unless they can prove that they did not act with negligence (article 14(4), Civil Code, Book 2).

201. As mentioned under sections A.1.1 and A.1.2 above, a trust service provider must have with regards to every international (offshore) company to which it provides trust services updated data regarding the person or persons who can directly or indirectly make claims to the distribution, capital and the surplus after dissolution, which includes the bearer certificate holders (article 12, National Ordinance on the Supervision of Trust Service Providers). Any intentional violation of this obligation is a criminal offense, punishable by up to four year imprisonment and/or a fine of up to ANG 500 000 (USD 279 330). Unintended non-compliance with this provision is considered a punishable offence and is subject to imprisonment no exceeding one year and/or a fine of up to ANG 250 000 (USD 139 665) (article 25).

202. The Central Bank and respective officials and employees have broad investigation powers relating to the supervision of credit institutions, to the extent reasonably necessary for the fulfilment of their duties. They are authorised to obtain all information, to request access to all business books, records and other information carriers. The sanctions for non-compliance with regard to credit institutions, investment companies, investment funds and administers are: *(i)* penalty charge order subject to imprisonment more exceeding one year and/or an administrative fine not exceeding ANG 250 000 (USD 139 665), if committed without intention, or *(ii)* criminal prosecution subject to imprisonment of up to four years, a fine not exceeding ANG 500 000 (USD 279 330) or both, if intentionally committed (articles 50, Government Ordinance on the Supervision of Banking Institutions, and article 38, National Ordinance on the Supervision of Investment Institutions and Administrators.

Anti-money laundering laws

203. Intentional violation of the relevant provisions of the National Ordinance on the Identification when rendering Services (mentioned under section A.1.1 above) is a criminal offense and will be punished with a prison sentence of at most four years and/or a financial penalty of at most ANG 500 000 (USD 279 330). Unintended violation thereof is also a criminal offense and is punishable with either imprisonment of at most one year, or with a financial penalty of at most ANG 250 000 (USD 139 665), or with both punishments (article 10). Non-compliance with the reporting obligations under the National Ordinance on the Reporting of Unusual Transactions is subject to identical penalties (article 23).

Tax laws

204. As far as taxation is concerned, article 49(1) of the National Ordinance on General National Taxes imposes a fine not exceeding ANG 25 000 (USD 13 966) (or the amount of the tax due and unpaid if higher) and/or detention for a maximum of six months, in case someone's action or omission cause the violation of an obligation under this ordinance, as follows:

- failure to file a tax return within the set period of time or filing it incorrectly or incompletely, except if the person files a correct and complete tax return before being challenged by the Tax Inspector (article 6);
- failure to provide information, data, or indications, or providing them incorrectly or incompletely, except if the person provides correct and complete information, data or indicators before being challenged by the Tax Inspector;
- failure to preserve data carriers or to allow the inspection of their contents, or making them available in a false, falsified or incomplete form;
- failure to keep administration and accounting records in accordance with the requirements laid down in a tax ordinance, or to lend co-operation to the Tax Inspector for the investigation of such records as provided under article 43(5); and
- failure to provide the following annual lists, or providing them incompletely, to the Tax Inspector: *(i)* a list of third parties that were employed by or for this person during the past year, including managing directors, supervisory directors, and any persons other than commissionaires (article 45(2)), and *(ii)* a list of third parties that performed any work or provided any services to or for this person during the past year without being employed (article 45(3)).

205. If proved that any of the violations listed above was wilfully committed, the punishment may be increased to a fine of no more than ANG 100 000 (USD 55 866) (or twice the amount of the tax due and unpaid if higher) and/or imprisonment for no more than four years (article 49(2). Furthermore, if the requested information is not provided, the burden of proof may be reversed (article 30(6)).

In practice

206. With its closely-knit business community, Curaçaoan authorities are generally lenient with their stakeholders and do not generally impose fines or sanctions without first issuing several reminder notices to the affected entities or engaging these entities informally to encourage higher compliance.

207. During the period under review, there were no fines applied for non-compliance with the registration and disclosure requirements under the Trade Register Ordinance. However, the Chamber of Commerce and Industry, through its on-site visits to the registered entities to collect membership fees, would update the Trade Register if entities were found to have ceased operations or changed its legal status. During the period under review, the Chamber of Commerce struck off a total of 10 895 entities that were liquidated, cancelled, had a statutory seat transfer, converted into other legal entities or bankrupted. It also re-instated 976 entities. A breakdown on the de-registrations and re-instatements is indicated in the following table:

Total de-registrations and re-instatements on the Trade Register

De-registrations	2013	2012	2011
Liquidations (total)	**850**	**874**	**877**
– International	735	740	747
– Local	115	134	130
Cancellations (total)	**2 383**	**2 832**	**2 904**
– International	675	720	926
– Local	1 708	2 112	1 978
Statutory seat transfer	**9**	**14**	**9**
Conversions (into other legal entity)	**39**	**37**	**30**
Bankruptcy (total)	**14**	**12**	**11**
– International	0	2	1
– Local	14	10	10
Re-instatements (Total)	**367**	**273**	**336**
– International	103	91	99
– Local	264	182	237

208. While there are sanctions for managing directors of NVs and BVs that do not fulfil obligations to maintain an updated shareholder register, none were applied during the period under review.

209. There were no cases of fines and/or imprisonment for intentional and unintentional violation of the obligation by trust service providers to maintain updated information on the beneficial ownership of their clients. The Central Bank conducts on-site examinations, during which the files of international companies are thoroughly reviewed. In cases where updated information was missing, the trust service provider was requested to update the file within a certain period of time and to provide the Central Bank with proof thereof. The following on-site examinations were carried out during the period under review – 17 in 2011, 8 in 2012, and 13 in 2013. Furthermore, the Central Bank performs follow-up reviews with trust (company) service providers during subsequent on-site examinations. During the follow-up reviews, the actions by the identified entities to correct the deficiencies detected during the previous on-site examination will be assessed to ensure that all the deficiencies have been adequately addressed and corrected. In the period under review, the Central Bank conducted follow-up reviews for 44 trust service providers to assess if their files were updated (16 in 2011, 12 in 2012 and 16 in 2013). All except 7 trust service providers were found to have satisfactorily updated their files. For these 7 trust service providers, their files were immediately updated upon the follow-up review of the Central Bank.

210. There were no cases of fines and/or imprisonment for institutions performing regulated activities as described in National Ordinance on the Supervision on Trust Service Providers and/or the National Ordinance on the Supervision of Investment Institutions and Administrators. In 2011, the Central Bank conducted a research on persons providing services to international companies without authorisation. There were two trust service providers found not compliant with the National Ordinance on the Supervision on Trust Service Providers (N.G. 2003, no. 114). The Central Bank filed formal complaints with the Public Prosecutor's Office in both cases and revoked their licenses. In one of the cases, a formal warning was posted on the Central Bank's website. The Central Bank has also conducted a research on possible violation of the National Ordinance on the Supervision of Investment Institutions and Administrators in 2011. No cases of regulated activities by unauthorised persons/institutions were detected. The Bank continuously performs checks to detect entities that perform unauthorised supervised activities. For the period under review there were no instances of fines for non-compliance with availability of information.

211. For the period under review, there were also no instances of financial penalties or imprisonment for intentional or unintentional violation under the National Ordinance on the Identification when rendering Services.

212. Under the National Ordinance on General National Taxes, fines were imposed for assessments where there was non-compliance with filing obligations – a failure to file a tax return within the set period of time or filing it

incorrectly or incompletely. In 2011, fines were imposed on 5.3% of assessments and in 2012, fines were imposed on 5.4% of assessments. Data is not yet available for 2013.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Partially Compliant.	
Factors underlying recommendations	**Recommendations**
New tax obligations were introduced in May 2013 requiring all entities to keep all ownership information, including information on all ultimate beneficial owners. Since the new laws only came into effect on 1 May 2013, they could not be sufficiently tested in practice.	Curaçao should monitor the implementation and operation of the new laws requiring all entities to have available information on all ownership information, including information on all ultimate beneficial owners.
While there is some oversight, there is no rigorous system in practice of monitoring entities' obligations in all cases and there is minimum enforcement and/or penalties applied generally to ensure the availability of ownership information.	Curaçao should ensure that authorities with oversight responsibilities develop mechanisms to monitor entities' obligations and exercise the enforcement powers as appropriate to ensure the availability of ownership information at all times.
In practice, it is possible for entities to exist but not conduct any activities in Curaçao and therefore not require a local director or local representative to apply for an operating license. It is thus unclear whether there is any oversight of such entities to ensure that there is a local director or local representative charged with the obligations to maintain the availability of ownership and identity information in all cases.	Curaçao should ensure that there is oversight of all Curaçaoan entities and that there are in practice, at all times, local directors or local representatives who will be charged with the obligation to maintain the availability of ownership and identity information.
The mechanisms in Curaçao and their implementation in practice do not ensure that information on holders of bearer shares is available in respect of all companies.	It is recommended that Curaçao puts in place the necessary mechanisms and takes measures to ensure that information on holders of bearer shares is available in all cases.

A.2. Accounting records

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

General requirements (ToR A.2.1)

213. The Commercial Code establishes general bookkeeping obligations. Anyone (individuals, partners of a partnership, companies, foundations, etc.) who carries on a business is obliged to keep for ten years such records of their financial position and of anything related to the business, in accordance with the requirements of such business, in such a manner that rights and obligations can be ascertained from those records, at any time (articles 2 and 4).

214. In addition, for tax purposes, individuals conducting any business or profession, individuals liable to withholding taxes and all resident companies, partnerships, and foundations, regardless of whether or not conducting a business, must keep for ten years sound accounting records of their financial condition and anything related to their business and must preserve the data carriers, in such a manner that their rights and obligations can be ascertained at all times (article 43(1), National Ordinance on General National Taxes). Such persons and bodies must also supply to the tax authorities each year a statement concerning third parties (not being employees) that rendered services to or for them (article 45(3), National Ordinance on General National Taxes).

215. Article 45(1) of the National Ordinance on General National Taxes extends the disclosure obligations under articles 40 to 43 to individuals and bodies (companies, partnerships and foundations) that are liable to keep accounting records, for the purposes of levying taxes from third parties and of levying taxes they are supposed to withhold. Such record-keeping obligations are equally applicable to any persons, such as trustees of Curaçao Trusts, residents of Curaçao acting as trustees, who administer a foreign trust with respect to their business.

216. It is noted, therefore, that individuals performing services gratuitously or in the course of a purely private non-business relationship (e.g. a resident trustee of a foreign trust) will not be subject to these record-keeping obligations under commercial and tax laws, provided they are not liable for withholding taxes. The Curaçaoan authorities have indicated they are not aware of any type of such services to be in existence and that it is impossible in practice to effect any transactions without proper identification, which in its turn would require some kind of official registration.

217. Under article 15 of Book 2 of the Civil Code, the management board of all legal entities (NVs, BVs, CVs, foundations, private foundations, associations, co-operative societies and mutual insurance companies) must keep during ten

years records of the financial position of the legal entity and of all such things which concern the activities of the legal entity, according to the requirements relating to such activities, as well as to preserve the books, records and other data carriers pertaining thereto, in such a manner which make it possible for the rights and obligations of the legal entity to be ascertained therefrom at all times. The management board must prepare the annual accounts of the legal entity, consisting of at least a balance sheet and a profit and loss account.

218. In addition, the managing directors of a NV or a BV are further required to submit within eight months after closing of the company's fiscal year a balance sheet and a profit and loss statement accompanied by an explanation to the general shareholders meeting for approval (article 73, Commercial Code). Similar obligations apply to the management board of foundations, private foundations, associations, co-operative societies and mutual insurance companies, under articles 89 and 94 of Book 2 of the Civil Code.

219. An expert (usually an auditor) can or, in case the articles of incorporation so require, must be appointed by the general shareholders meeting to examine the books of the company and to report on the balance sheet and profit and loss statement as presented by the management (article 74, Commercial Code). If the company has issued (or is allowed to do so under the deed of incorporation) an aggregate amount of more than ANG 50 000 (USD 27 933) of either bearer shares or bearer certificates, the board of managing directors must file complete copies of the financial statements at the Trade Register for public inspection, within eight days after their adoption (article 76, Commercial Code).

220. Every credit institution, as well as branch of a foreign credit institution established in Curaçao, is required to maintain and keep in Curaçao the accounts, records and other data that carries relation to its accounting system (article 13, Government Ordinance on the Supervision of Banking Institutions). In addition, credit institutions, investment Institutions and administrators must submit, on an annual basis, annual accounts including at least a balance sheet and a profit and loss account with explanatory notes on the past financial year in a form to be laid down by the Central Bank (article 15, Government Ordinance on the Supervision of Banking Institutions and article 8(1), National Ordinance on the Supervision of Investment Institutions and Administrators).

Underlying documentation *(ToR A.2.2)*

221. For tax purposes, individuals conducting any business or profession, companies, foundations and partnerships are required to keep accounting records comprising all relevant circumstances in order to determine the financial position of the taxpayer at all times (article 43(2), National Ordinance on General National Taxes). Furthermore, these accounting

records must be substantiated by all relevant documents such as contracts and detailed invoices (article 43(4), National Ordinance on General National Taxes). This is further confirmed by extensive Dutch case law, which is also applicable to Curaçao.[20] These accounting records constitute the basis for companies' and foundations' financial statements.

*Document retention (ToR **A.2.3 and** A.2.4)*

222. Under civil, commercial and tax laws, individuals conducting any business or profession, companies, foundations and partnerships are obliged to keep for ten years such records of their financial position and of anything related to the business, in accordance with the requirements of such business, in such a manner that rights and obligations can be ascertained from those records, at any time (article 15(3), Civil Code, Book 2, article 4, Commercial Code and article 43(6), National Ordinance on General National Taxes).

In practice

223. All relevant entities in Curaçao are subjected to legal obligations to keep all accounting information for ten years. While there are no specific sanctions under Curaçao's civil law for a breach against the accounting requirements, sanctions may be applied under the tax laws where the company (person liable to keep an administration) may receive a fine of up to ANG 10 000 or imprisonment of up to six months for failing to prepare financial statements which are required to be filed with their annual tax returns. The Inspectorate of Taxes monitors the compliance of entities' obligations. Curaçaoan authorities indicate that most entities and individuals comply with accounting information obligations unless they are new businesses and are not knowledgeable about their tax matters and obligations. After Curaçaoan authorities engage such entities and provide them with more information, such entities would immediately keep up with their obligations and are rarely found again to be non-compliant. Other entities that are confronted with penalties often revamp their internal procedures to ensure compliance with their obligations. For entities that refuse to comply, a criminal investigation is launched against them.

224. The SBAB conducts an audit on all entities at least once every five years. This is the general guideline but is also subjected to availability of personnel, the length of an audit, the company structure, adapting of existing procedures due to new legislation, etc. The SBAB also performs on-site observation, provides information sessions and publishes a manual in the five languages used in Curaçao (Papiamento, English, Spanish, Dutch and

20. For example, Hof's-Gravenhage, 27 June 2002, case no. 00/0997 and Hof Arnhem, 5 February 1986, case no. 2525/1982.

Mandarin) which provides the basic information and tax obligations entrepreneurs need to comply with. There is also a manual for tax audit procedures. During the period under review, SBAB conducted 524 audits and 150 on-site observations in 2011, 490 audits and 148 on-site observations in 2012, and 402 audits and 49 on-site observations in 2013. The SBAB is in the process of evaluating the existing procedures and methods when conducting an audit. For example, a study of past audits indicate that when shifting the emphasis of the audit to the work procedures of a company, there are beneficial results that lead to increased compliance levels. In the last five years an average of about 30% of entities did not comply completely with accounting requirements. This percentage is expected to decline due to better information and engagement by the Inspectorate of Taxes and SBAB on the requirements, the increase of controls and the heavier consequences when non-compliance is detected.

225. Under AML laws, the Central Bank monitors the compliance of the entities under its supervision during on-site examinations. These include licensed trust service providers, investment institutions and administrators. During the period under review, the Central Bank introduced a requirement for all entities under its supervision to submit on a yearly basis (before 30 April) audited or reviewed financial statements to the Bank. This is based on the National Ordinance for the Supervision of Trust (Company) Service Providers (article 17) and National Ordinance on the Supervision of Investment Institutions and Administrators (articles 8 and 17). The Central Bank also conducts on-site examinations and management meetings at a subset of supervised entities, selected based on an internal risk-based assessment. Licensed trust service providers must have completed files of their clients (international companies) for which they provide services, and these completed files should always be available for a review by the Central Bank.[21] The accounting files of the international (offshore) companies kept by the trust service providers should include, but not limited to the bank statements,

21. The Minimum Content Client Files contains the minimum documents that should be at all times available for the international companies (offshore companies), such as correspondences, articles of incorporation, extract from the Chamber of Commerce, copy of the shareholders' register, identification documents, bank references, tax ruling, power of attorney, management and board resolution, signature card, minutes of general shareholders' meeting, annual reports, agreements, and tax returns. The Compliance Check Client Files should be filled out by the Trust Service Provider and the documents available in the files of the international companies (offshore companies). Furthermore, the completed Compliance Check Client Files for Trust Service Providers should be reviewed yearly by the external auditor during the review of the Trust Service Providers' Supervisory Questionnaire and available to the Bank during its on-site examinations.

profit tax filings, annual accounts and tax rulings (if applicable). During on-site examinations, a review of randomly selected client files would be conducted to ensure that it contains all information as stipulated in the Minimum Content Client Files for Trust Service Providers and the Compliance Check Client Files for Trust Service Providers issued by the Bank.

226. In addition, pursuant to the Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing and article 7 of the National Ordinance on the Identification when rendering Services, supervised trust service providers, investment institutions and administrators should ensure compliance with the record-keeping requirements contained in the relevant money laundering and terrorist financing legislation. The provisions and guidelines require that all necessary records on transactions (both domestic and international) must be maintained for at least five years after the transaction takes place. In addition, records on customer identification (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence must be kept for at least five years after the business relationship has been discontinued. The supervised institutions should adhere to the latter, but are allowed to retain the records longer than what is legally prescribed.

227. As at 31 December 2013, there were 209 trust service providers in Curaçao. During the period under review, 36 licensed trust service providers, investment institutions and administrators failed to comply with the deadline to submit the audited or reviewed financial statements to the Central Bank before 30 April, and therefore received a warning letter. 4 of these licensed trust service providers remained non-complaint after receipt of the warning letter, and were therefore selected for an on-site examination. 38 on-site examinations were conducted where examiners assessed the entities' compliance with the respective AML laws. 6 entities were found not compliant with the accounting obligations and received instructions by the Central Bank to arrange for updated files within a period stipulated in the examination reports provided after the on-site examination. These non-compliant entities were also instructed to ensure that clients for which they provide services at all times adhere to the obligations as stipulated in the articles of association, the Minimum Content Client Files for Trust Service Providers and the Compliance Check Client Files for Trust Service Providers.

228. During the period under review, accounting information regarding companies was requested in 40 requests, and accounting information regarding foundations was requested in 43 requests. Curaçao indicated that all accounting information was provided in response to all except 5 requests. Information could not be accessed for the four pending requests as the accounting information was regarding international (offshore) companies that

were covered under grandfathering provisions (discussed in B.1). In one other request highlighted by an EOI partner, and also mentioned in A.1, accounting information was not available because the local representative in Curaçao was not of the opinion that he had the obligation to keep the financial statements or the power to obtain the information.

229. As discussed in A.1, the case raised by the EOI partner highlights two gaps. First, there is currently no mechanism that monitors whether all local directors and local representatives observe their obligations to maintain the availability of accounting information in accordance to Curaçaoan laws. Second, there remains an oversight gap for entities that exist but are not conducting any activities in Curaçao. As such in the case of entities that do not conduct any business (i.e. do not apply for a business license from the Economic Affairs Department) or that do not open a bank account (i.e. do not apply for a foreign exchange exemption from the Central Bank), there would not be any need for a local director or local representative who will thus be charged with the obligation to maintain accounting information. In practice, such occurrences when the entity has no local managing director or local representative may only be detected during the Chamber of Commerce's on-site visits to collect membership fees or when alerted by a third party. It is also noted that no penalties were ever applied if entities were found not to have submitted any updates on changes in its management, which may include the person charged with record-keeping obligation. With regard to the audits performed by the SBAB, this was done once in every five years and yet a significant proportion of entities audited, 30%, were not compliant with their accounting requirements and also did not receive any penalties. Therefore, it can be concluded that the level of compliance and enforcement on the obligation to maintain accounting information might not ensure the availability of accounting information on all entities.

Conclusion

230. With regard to the legal and regulatory framework, all relevant entities and arrangements are required to maintain accounting records and underlying documentation for a period of at least five years. In practice, there is a lack of oversight mechanisms to ensure that all companies in existence in Curaçao maintain the availability of all accounting information. This was highlighted in the case raised by one EOI partner. In addition, there is a lack of monitoring to ensure that all companies have a local director or local representative who will be charged with the obligation to maintain the availability of all accounting information since there could be companies that exist but not conduct any activities in Curaçao. Curaçao has indicated that the Directorate of Fiscal Affairs and the Chamber of Commerce and Industry are in discussions to address these issues. As it is unclear if there is any rigorous

system in law that could be applied to monitor this obligation, Curaçao is recommended to put in place a rigorous monitoring mechanism to ensure that all obligations to keep accounting information is observed by all local directors and local representatives for all entities. Curaçao should also have effective monitoring mechanisms to ensure that all entities have in practice, at all times, local directors or local representatives who will be charged with the record-keeping obligations. Curaçaoan authorities with the oversight responsibility should also exercise the enforcement powers as appropriate to ensure the availability of accounting information at all times.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Partially Compliant.	
Factors underlying recommendations	**Recommendations**
While there is some oversight, there is no rigorous system in law of monitoring entities' obligations to keep accounting information in all cases and there is minimum enforcement and/or penalties applied generally to ensure the availability of accounting information in all aspects. Curaçao was not able to provide the information in relation to one EOI request dealing with such a situation.	Curaçao should ensure that authorities with oversight responsibilities develop mechanisms to monitor entities' obligations and exercise the enforcement powers as appropriate to ensure the availability of accounting information at all times.
In practice, it is possible for entities to exist but not conduct any activities in Curaçao and therefore not require a local director or local representative to apply for an operating license. It is thus unclear whether there is any oversight of such entities to ensure that there is a local director or local representative charged with the obligations to maintain the availability of accounting information in all cases.	Curaçao should ensure that there is oversight of all Curaçaoan entities and that there are in practice, at all times, local directors or local representatives who will be charged with the obligation to maintain the availability of accounting information.

A.3. Banking information

Banking information should be available for all account-holders.

231. Curaçao's record-keeping requirements are generally satisfactory. Under the AML/CFT framework applicable to service providers performing a number of financial activities, they are required to establish and verify the identity of a client and the ultimate interested party,[22] if such exists, before rendering such a client a service (articles 2 and 3, National Ordinance on Identification when rendering Services). Under article 6 of the National Ordinance on Identification when rendering Services, the service providers are obliged to record the following information in such a way that it is accessible:

- name, address and residence or place of establishment of the client and the ultimate interested party, if there is any, and of the person in whose name the deposit is made or the account is held, of the person who will have access to the safe-deposit box or the person in whose name a payment or transaction is made, and also of their representatives (anonymous accounts are thus forbidden);
- nature, number and date and place of issue of the document with the help of which the identification has taken place;
- nature of the service; and
- specific details depending on the type of financial service, such as *(i)* a clear description of the type of account and the number allotted to that account in the event of opening an account; and *(ii)* the amount that is involved with the transaction and the account number in question in the event of crediting or debiting an account, amongst others; and
- specific details concerning fiduciary and legal services, including: *(i)* the nature and other unique features of the real estate and the amount involved with the transaction; *(ii)* the nature, origin, destination, volume and other unique features of the values and matters managed by the service provider; and *(iii)* the identity of the corporations and legal persons involved or similar bodies.

22. The ultimate interested party is defined as the natural person who has or holds a qualified participation or qualified interest in a legal person or who is entitled to the assets or the proceeds of a trust or private fund foundation (article 1(1), j). In turn, qualified participation or qualified interest means a direct or indirect interest of 25% or more of the nominal capital, or a comparable interest, or being able to exercise 25% or more of the voting rights directly or indirectly, or being able to exercise directly or indirectly a comparable control (article 1(1), k).

232. The service providers are required to keep the data described above for five years from the termination of the agreement or execution of the service. Article 8 of the National Ordinance on Identification when rendering Services expressly prohibits the service provider to render a service, if the identity of the client has not been established in the manner prescribed in this act, but it is silent with respect to the identity of the ultimate interested party, if there is any.

233. Under the National Ordinance on the Reporting of Unusual Transactions, anyone who renders a service as a profession or as a trade is obliged to report to the FIU (MOT) a transaction performed or an intended transaction immediately to the Reporting Office (article 11). This report must contain, insofar as possible, the following data: *(i)* the identity of the client; *(ii)* the nature and the number of the identification paper of the client; *(iii)* the nature, the date and the place of the transaction; *(iv)* the amount, destination and origin of the funds, securities, precious metals or other values involved in the transaction; and *(v)* the circumstances on the basis of which the transaction is considered unusual. To this end, financial institutions are implicitly required to monitor accounts and to have systems to detect these types of unusual transactions with suspicious patterns.

234. Credit institutions are required to preserve, during a period of at least ten years, all letters, documents and data carriers concerning their business, as well as transaction records (i.e. the movement and changes in the accounts) relating to all accounts maintained be the credit institutions in their own names or for third parties with letters, documents and other data carriers pertaining thereto (article 42, Government Ordinance on the Supervision of Banking Institutions).

235. As of December 2013, there were 5 local banks, 3 foreign banks (2 subsidiaries and 1 branch), 32 international banks (10 consolidated and 22 non-consolidated), 1 savings bank, 3 savings and credit funds, 10 credit unions, 4 specialised credit institutions and 2 money transfer companies.

In practice

Licensed Service Providers

236. In practice, the Central Bank conducts on-site examinations and management meetings. During the on-site examination, the Central Bank will verify the licensed service providers' adherence and compliance to the requirement as stipulated in the Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing, the National Ordinance on the Reporting of Unusual Transactions, and the National Ordinance on Identification when rendering Services relative to record-keeping, transactions and customer due diligence. The latter is also discussed with the management of the licensed institutions during management meetings.

237. The Central Bank is the authority responsible for the monitoring of compliance by the licensed company (trust) service providers, administrators and investment institutions with the Provisions and Guidelines on the Detection and Deterrence of Money Laundering and Terrorist Financing, the afore-mentioned National Ordinance on the Reporting of Unusual Transactions, and afore-mentioned National Ordinance on Identification when rendering Services and also other local rules and regulations. The Central Bank monitors compliance relative to the documentation on the identity of the beneficial owners, financial records and records of all the transactions.

238. Article 12 of the National Ordinance on the Supervision of Trust Service Providers (N.G. 2003, no. 114), and section II.4 of the Provision and Guidelines on AML and CTF indicate that each service provider must have availability of data demonstrating the direct and indirect source or sources of the capital entered into the company at the time of incorporation and afterwards, and the person or persons who can directly or indirectly make claims to the distribution, capital and the surplus after dissolution. In addition, each service provider must be prepared to provide information or documentation on their money laundering and terrorist financing policies and deterrence and detection procedures to the on-site examiners of the Bank before and during an on-site examination and upon the Bank's request during the year.

239. During the period under review, 32 on-site examinations and 21 management meetings were conducted. During these examinations and meetings, adherence to the section II.4, and the record retention policy as indicated in section II.3 of the Provision and Guidelines on AML and CTF, is verified. During the on-site examinations and management meetings, the licensed company (trust) service providers, administrators and investment institutions were instructed to rectify the shortcomings identified in the examination reports, within the Bank's stipulated deadlines. Some of the general deficiencies identified were: expired passports of the beneficial owners and the absence of the source of funds declaration form. No sanctions were issued to the licensed company (trust) service providers, administrators and investment institutions during the period under review.

Credit Institutions (Banks)

240. In practice, during its on-site inspections the Central Bank devotes a significant amount of time to review the client files in order to verify whether the banks are complying with the requirements concerning the application of Customer/Client Due Diligence (CDD) measures including identification of the client's ultimate beneficial owner and whether the records are maintained according to the requirements. In addition, during the on-site inspections the Central Bank performs transaction reviews and requests transaction histories

through sample testing, also to verify compliance with record keeping of transactions performed for their customers.

241. Compliance is verified during on-site inspections. Any deficiencies identified during the on-site inspections are communicated to the supervised banks with a request to take corrective actions. The Central Bank has a range of regulatory and supervisory measures, in case the supervised banks fail to comply with or properly implement their AML/CFT requirements. The ordinances also contain penal provisions. The supervisory measures were explained in A.1.1 and are *(i)* issuance of an order, *(ii)* appointment of a trustee, *(iii)* penalizing of violation, *(iv)* penalties and legal fines, *(v)* revocation of the license or a dispensation and cancellation of the registration, *(vi)* issuance of a public notice, and *(vii)* referral for criminal investigation or prosecution. As mentioned in A.1.1., supervisory measures were applied for 1 credit institution (local general bank) which included issuance of an order, appointment of a trustee and revocation of the license or dispensation and cancellation of the registration. The other supervisory measures were not applied during the period under review.

242. During the period under review, the Central Bank performed 31 on-site inspections that included AML/CFT component. During these on-site inspections, the Central Bank identified cases of non-compliance with regard to the identification records of the ultimate beneficial owners which implies that ultimate beneficial owner forms were not completely filled-out, identification documents were not certified, expired or not on file. Any deficiencies identified during the on-site inspections were communicated to the supervised banks with a request to take corrective actions within a stipulated timeframe. The requirements of the Provisions and Guidelines on AML/CFT for the independent testing and training and the results of the on-site inspections as indicated under the AML laws in A.1.1 are also applicable for record-keeping including banking information. Apart from those identified for the on-site inspections, supervised banks' level of compliance with the record-keeping requirements is considered generally satisfactory. For the banks that were subjected to on-site inspections, the Central Bank determined that the management and supervisory boards of the concerned institutions made several efforts to remediate the shortcomings as mentioned in the examination reports issued to them. It was noted that not all of the Central Bank's recommended actions were followed up promptly and the results were not always visible. In most cases, the Central Bank instructed the concerned institutions to set up new, complete, detailed and realistic plans to address these shortcomings and to provide the Central Bank with progress reports on a monthly basis. If insufficient corrective measures were taken during the indicated timeframe, the Central Bank will impose more severe regulatory measures pursuant to article 22, paragraph 1 of the "National Ordinance on the Supervision of Banking and Credit Institutions 1994"

(N.G. 1994, no. 4). For example, insufficient progress in compliance with the Central Bank's rules and regulations resulted in penalties and administrative fines for 2 supervised institutions that were applied in 2014, after the review period.

243. Over the period under review, Curaçao received 67 requests for banking information and could provide information in response to all the requests with the exception of 4 requests, which pertains to entities covered under the grandfathering provisions discussed in B.1. Notwithstanding, the legal requirements to ensure the availability of banking information appear to be adequately implemented.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating
Compliant.

B. Access to Information

Overview

244. 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 Curaçao's legal and regulatory framework and its implementation in practice gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective EOI.

245. Curaçao's Tax Inspector has powers to obtain relevant information on ownership, identity, accounting records and financial data from any person within its jurisdiction who has relevant information in his possession, custody or under his control. The Tax Inspector has powers to search premises and seize information for the purpose of exercising the investigation powers invested in him. The Minister of Finance is the competent authority to deal with EOI requests. On criminal tax matters, the Minister of Justice must be consulted before the Minister of Finance can provide the requested information. Some impediments exist to accessing information from other government agencies regarding entities covered under grandfathering rules in articles 8A, 8B, 14, 14A, 45A up to 45E of the 1940 National Ordinance on Profit Tax; the transitional rules regarding international (offshore) entities; Guarantee Ordinance on Profit Tax; and Ordination Code of Conduct information provision profit tax. This has caused practical difficulties for Curaçao to obtain information to respond to four pending EOI requests where ownership, accounting and banking information could not be obtained for companies covered under these grandfathering rules. The Directorate of Fiscal Affairs is currently discussing with the Central Bank on how the required information can be obtained.

246. Non-compliance can be sanctioned with significant administrative and criminal penalties. The information gathering powers of the competent authority are not subject to Curaçao requiring such information for its own tax purposes.

247. Any secrecy obligations to which a person would otherwise be subject in respect of the information sought are overridden where provision of the information is in relation to an EOI request or AML/CFT matters. While the competent authority does not have independent power to obtain information held for AML/CFT purposes, Curaçao's tax authorities have indicated that this information can be obtained through the FIU (MOT), if necessary.

248. If the Minister of Finance decides to comply with an EOI request, the person under investigation has to be notified by the Minister of Finance. The notification rules had provided for a two-month waiting period before the information could be exchanged and, while there were exceptions to the requirement to notify for "urgent reasons", this term was not defined and it was not clear whether this would cover all appropriate circumstances. These rules were amended in 2013. The two-month waiting period was reduced to 15 days and the term "urgent reasons" has now been defined to include the circumstances where notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction. The notification rights and the two-month waiting period under the old rules appeared to be compatible with effective EOI since exceptions to notification were allowed albeit not clearly defined. With the exceptions more clearly defined under the new rules applied from 2013 combined with the reduced waiting period of 15 days, Curaçaoan tax authorities now have a greater ability to promptly provide information for exchange purposes.

249. A person who is requested to supply information can appeal against the decision to provide information at the Council of Appeal in tax matters (*Raad van Beroep in belastingzaken*), which only meets twice a year. In practice, there was no case during the period under review where an appeal was made. Notwithstanding, the new laws explicitly state that any appeal will not suspend the exchange of information.

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).

Curaçao's competent authority

250. Curaçao's competent authority for exchange of information for tax purposes is the Minister of Finance who has delegated this authority to the Director of Fiscal Affairs. The Director of Fiscal Affairs designates the Inspectorate of Taxes and the SBAB to obtain the information for the exchange of information. More details on the organisational processes are in C.5.2.

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

251. Under Curaçaoan law, the powers to access information apply regardless of the type of information sought, i.e. whether the information is ownership, identity, banking or accounting information. The competent authorities[23] – the Minister of Finance, the Director of Fiscal Affairs and the Tax Inspector – have powers to obtain information held by any person acting in an agency or fiduciary capacity, including nominees and trustees. These powers include the right to make enquiries, inspect documents, as well as search and seizure. The competent authority has the power to obtain information directly from the person in possession or control. No special procedures are necessary to exercise the powers. However, the access powers may not be sufficient to obtain all the information which may be sought under Curaçao's EOI agreements, as outlined below.

252. The Curaçaoan competent authorities have information gathering powers for civil tax matters purposes, as set out in articles 40-48 and 61-67 of the National Ordinance on General National Taxes. The Minister of Finance may ask the Tax Inspector to make inquiries in order to obtain information

23. The Minister is the competent authority under EOI agreements and has the ultimate political responsibility over an EOI request. The Director of Fiscal Affairs is the authorised representative for the purposes of EOI in tax matters (article 1 of the Ministerial Order of February 13, 2007/RNA 6593). In order to reduce the bureaucratic process and avoid unnecessary delays, Tax Inspector was authorised by the Director of Fiscal Affairs to take decisions and actions concerning the execution of procedures related to EOI requests (article 2 of the Ministerial Order of February 13, 2007/RNA 6593).

from any person (natural or legal), in case an EOI request is made under the Tax Arrangement of the Kingdom of the Netherlands (*Belastingregeling voor het Koninkrijk*, BRK), a double tax treaty (DTC) or a tax information exchange agreement (TIEA) (articles 61 and 63).

253. When an EOI request is made in connection with an investigation of criminal offenses with regard to tax matters, the information can only be exchanged by the Minister of Finance after the Minister of Justice has been consulted (article 62, National Ordinance on General National Taxes). This consultation is to inform the Minister of Justice about matters that fall under his competence and to verify if he has objections, which could lead to one of the reasons for declining an EOI request under article 64 of the National Ordinance on General National Taxes or under Curaçao's EOI agreements (see below). The Curaçaoan authorities informed that this consultation is a necessary formality in light of the responsibility and authority of the respective Ministers, which does not, however, cause any delay or restriction to the response to an EOI request on criminal tax matters. In practice, requests for assistance by other jurisdictions would typically be acceded to especially if it is provided for in a treaty. When the Ministry of Finance receives a request which indicates that the request is in connection to a criminal case or tax fraud, the Minister of Justice is consulted on the request. In practice, the Minister of Justice has never encountered any cases where he had objected. Only when the information requested interferes with ongoing investigations the Minister of Justice may in effect delay the EOI process because the requested information may still be in the process of being sought but in doing so, during investigations, the Minister of Justice would be assisting in obtaining the information for the tax authorities. If the Minister of Justice is consulted on any request, the Curaçaoan public prosecutor will also be informed about the request as he takes the lead role in all criminal investigations and would have oversight of the particular case.

254. Under article 64 of the National Ordinance on General National Taxes, Curaçao is not required to exchange information concerning trade, business, industrial, commercial or professional secrets, trade processes, or information disclosures which would be contrary to public policy, as well as information which cannot be obtained under Curaçaoan laws or administrative practices (articles 64(1) and 64(2)). As noted under Part C below, these exceptions provided under Curaçao's domestic laws are also reflected in Curaçao's EOI agreements, which mirror those provided for in the Article 7 of the OECD Model TIEA and Article 26(3) of the OECD Model Tax Convention. They are, therefore, consistent with the standard. In addition, the Minister of Finance may refuse to respond to an EOI request if the domestic laws of the requesting jurisdiction do not impose secrecy obligations on the tax official of that State concerning any information received or discovered by them under an EOI request (new article 62(2)(f)) (see more details under section C.3.2 below).

255. If an investigative action is required, the EOI request is forwarded to the Public Prosecutor due to his supervisory powers (articles 183 and 556, Code of Criminal Procedures). Nevertheless, the criminal investigation is performed by the tax authorities, without delay (article 185, Code of Criminal Procedures, in conjunction with article 54, National Ordinance on General National Taxes). During the period under review there were no cases where information was obtained through investigative action.

256. Under article 40(1) of the National Ordinance on General National Taxes, which applies by analogy to cross-border EOI requests (article 63(5)), the Tax Inspector may compel any person within Curaçao's jurisdiction to provide any data and information "that can be of importance with regard to his own taxation" or data carriers or the contents thereof "which can be of importance for the establishment of the facts that can be of influence with regard to his own taxation". Even though the language used in this provision is not explicit about the possibility of exchanging information which is relevant for tax purposes to the requesting jurisdiction, the Curaçaoan authorities have indicated that article 40(1), in conjunction with article 63(5), is interpreted as also covering taxes of the requesting jurisdiction in the context of an international EOI request, in accordance with the extensive list of taxes in article 1 of the National Ordinance on General National Taxes.

257. The Curaçaoan law does not limit the type of information that may be requested, and therefore ownership, identity, accounting information and bank information can be accessed. The Curaçaoan authorities have also indicated that the reference to information "which can be of importance (for the establishment of the facts that can be of influence) with regard to his own taxation" in the above-mentioned provisions encompasses all the information with Curaçao has agreed to exchange pursuant to its EOI agreements. That is to say, it covers not only information that is relevant for the "assessment or collection" of taxes, but also for "the recovery and enforcement of tax claims" (article 48(2), National Ordinance on General National Taxes) and for "the investigation or prosecution of tax matters" (article 54, National Ordinance on General National Taxes).

258. Under the updated articles 40 and 40a, the access powers of the Tax Inspector also cover:

(i) third parties which hold in custody (e.g. a bookkeeper) data carriers belonging to the person under investigation;

(ii) controlling or majority shareholders holding, by virtue of a mutual co-operation agreement, at least half of the capital shares of a body (i.e. a company, foundation or partnership) which is liable to taxes in Curaçao. This includes foreign shareholders, and foreign bodies in which the shareholder has control; and

(iii) third parties whose affairs are regarded as affairs of the "presumed taxpayer" (e.g. the taxpayer's spouse and/or children) by virtue of any tax ordinance.[24]

259. Article 45(1) of the National Ordinance on General National Taxes (read in conjunction with article 43), which applies by analogy to cross-border EOI requests (article 63(5)), extends the disclosure obligations under articles 40 to 43 to individuals and bodies (companies, partnerships and foundations) that are liable to keep accounting records, for the purposes of levying taxes from third parties and of levying taxes they are supposed to withhold. Therefore, companies and partnerships may be required to disclose information about their shareholders and partners, as well as financial institutions about their clients.

260. In addition, persons liable to keep accounting records are required to annually provide the Tax Inspector with *(i)* a list of third parties that were employed by or for this person during the past year, including managing directors, supervisory directors, and any persons other than commissionaires (article 45(2)), and *(ii)* a list of third parties that performed any work or provided any services to or for this person during the past year without being employed (article 45(3)). An update was included in the amended National Ordinance on General National Taxes from 1 May 2013 that information on the ultimate beneficial owners of the entity must also be recorded and provided to the Tax Inspector (new article 45(6)).

261. The Tax Inspector can require information to be provided orally, in writing or otherwise, within a set time period. The tax authorities can make copies, printouts and extracts of the data carries, as well as confiscate the data carriers when copies or printouts cannot be made on spot (article 41). The Tax Inspector and experts are given the power to enter any premises, other than a dwelling, for the purpose of an inspection (article 42).

262. In criminal tax matters, article 54 of the National Ordinance on General National Taxes, in conjunction with articles 185 and 556 of the Code of Criminal Procedures, puts a request for information by a foreign tax authority on par with a domestic preliminary criminal investigation, when an investigative action is required. In a domestic criminal investigation, competent authorities have full powers to gather the information: the powers of the investigation judge to hear the suspect, witnesses, experts, to issue search warrants, to seize items of evidence, to tap telephone lines, etc.

24. In particular, under the Individual Income Tax Ordinance, income from one spouse is taxed as income of the other spouse, or children's income is treated as income of the parents. In this case, the spouse or child may be compelled by the Tax Inspected to provide information regarding their income to the extent this income is taxed in the hands of the other spouse or one of the parents under investigation.

263. The sources for information accessed by the Tax Inspector are,

(i) the compiled files of entities held by the Inspectorate of Taxes

(ii) the Trade Register of the Chamber of Commerce and Industry for information concerning the director of the entity.

(iii) direct from the Director of the entity from which the information is requested.

264. In practice, information requested by other countries in EOI requests is mainly obtained directly from the Director of the entity for which the information is requested. This includes the local director or local representative (including trust service providers with regard to offshore companies). The information is mostly always available with the director of the entity, and gathered through regular or ad-hoc on-site inspections by the SBAB. The Trade Register is also referenced at the initial stage upon receipt of the EOI request to ascertain the identity of the entity referred to in the EOI request. In most cases, the compiled files held by the Inspectorate of Taxes is not a main source of information as the required information is deemed to be most effectively and completely sourced directly from the entity. Curaçao has also indicated that there are plans for an integrated digital system where entities can electronically file tax returns. When established, this system will be the main source of readily available information for responding to EOI requests.

265. During the review period, all information for all EOI requests was sourced directly from the Director of the entity from which the information is requested. Upon receipt of the EOI request, the Competent Authority (delegated to the Director of Fiscal Affairs) verifies the completeness and validity of the EOI request, then checks the Trade Register to ascertain the identity of the entity for which the information is requested. The Tax Inspectorate or the SBAB will then be asked to obtain the information, either from the files held by the Tax Inspector or through on-site audits by the SBAB if the information is not in the files. In most cases, the requests are channelled to the SBAB which will obtain the information through audits. The SBAB operates under the charge of the Tax Inspectorate and is responsible for auditing the tax compliance of all entities in Curaçao. This involves regular audits of entities, ensuring the submission of tax return forms, on-site observations and wider industry audits. The SBAB comprises 72 staff that are organised into audit teams where numbers of staff in each team depend on the sector under audit. During the period under review, an average of 4 SBAB auditors were assigned to EOI matters. Instructions received by the SBAB from the Directorate of Fiscal Affairs to assist on EOI requests are given special attention to be prioritised ahead of other earlier scheduled audits.

Entities covered by grandfathering provisions under the offshore regime

266. There were four requests received from one EOI partner during the period under review that are still pending because the information requested is held by entities that are covered under the grandfathering provisions applicable to qualifying offshore companies ("international companies") under the offshore tax regime (tax rates from 2.4% to 3%) that was abolished. The four requests were for ownership, accounting and banking information.

267. As of 1 January 2000, there were 30 120 entities in total covered under the grandfathered provisions. The number of such entities has decreased since then and there are currently 9 736 entities that are covered under the grandfathering provisions of the offshore regime, out of a total of approximately 23 200 entities that are currently registered with the tax authorities. The 9 736 entities covered under grandfathering provisions include 209 private limited liability companies (BVs), 9 440 public limited liability companies (NVs), 19 limited partnerships (CVs), 45 foundations, 3 private foundations, 6 partnerships, 8 associations and 6 tax exempt limited liability companies. Curaçaoan authorities indicate that of these entities, there could be several that are inactive but have not formally been discontinued or de-registered. A gap in this lack of oversight had been assessed in A.1.

268. Curaçaoan authorities indicate that all entities covered under the grandfathering provisions are also subjected to ownership and accounting information obligations under the civil, commercial and tax laws as described in the assessment under elements A.1 and A.2. It is also noted that such offshore companies (international companies) would have to file their annual tax returns which would be accompanied with ownership information including information on all legal owners and the ultimate beneficial owner as required under the new tax obligations and annual accounting reports. In this respect, the Curaçaoan tax authorities have access to ownership and accounting information and to ensure this, improvements are also required given the general lack of oversight which was highlighted in the assessment under A.1 and A.2. In the event that more ownership and accounting information is required by the Curaçaoan tax authorities, the grandfathering provisions can be interpreted in a way that a third party inspection which is done by the Inspectorate of Taxes or the SBAB is not applicable to the "grandfathered offshore companies". The provisions concerning the offshore companies (international companies) are listed in articles 8A, 8B, 14, 14A, 45A up to 45E of the 1940 National Ordinance on Profit Tax; the transitional rules regarding offshore entities; Guarantee Ordinance on Profit Tax; and Ordination Code of Conduct information provision profit tax. In accordance with Article 45E(4) of the National Ordinance on Profit Tax, the administration officer who executes activities on behalf of an offshore company (international company) as referred to in the articles 8A, 8B, 14 14A of the 1940 National Ordinance

on Profit Tax, are not required to assist in third party inspections. In practice, this means that the administration officer for the offshore companies (international companies) may not be obligated to provide ownership and accounting information when requested by the Inspectorate of Taxes or the SBAB. With respect to banking information of these offshore companies (international companies) that are covered by these grandfathering provisions, the Curaçaoan authorities indicate that the information can be obtained by the Curaçaoan Tax Inspectorate from the banks for EOI purposes. During the period under review, Curaçao received fourteen requests that related to grandfathered entities. In 10 cases, the requested ownership, accounting and banking information was provided. The remaining four requests are pending for more than a year as the requested ownership, accounting and banking information has not been obtained. In these four cases, the grandfathering provisions have been interpreted to imply that the Curaçaoan authorities could not obtain the information. The grandfathered period ends on 31 December 2019. In order to overcome this ambiguity, the competent authority is in discussions with the Central Bank on how the requested information can be obtained in all cases.

269. The lack of clarity in implementing the grandfathering provisions has posed practical difficulties for Curaçao to obtain the requested information as evidenced by the four pending requests received during the period under review. Curaçaoan authorities have indicated that they are in internal discussions to address this issue in order to co-operate more effectively with its EOI partners. In view of the significant number of entities (9 736 entities) that are covered by the grandfathering provisions, it is recommended that Curaçao revises and/or clarifies the interpretation of their laws to ensure that information in respect of these entities can be obtained when requested by EOI partners.

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

270. The information gathering powers of the competent authority are not subject to Curaçao requiring such information for its own tax purposes. According to the Curaçaoan authorities, article 40(1) of the National Ordinance on General National Taxes, in conjunction with article 63(6), is interpreted as also covering taxes of the requesting jurisdiction in the context of an international EOI request. In practice, there are no cases where there were objections to the production of information based on the absence of domestic tax interest.

Compulsory powers (ToR B.1.4)

271. Jurisdictions should have in place effective enforcement provisions to compel the production of information. The National Ordinance on General National Taxes provides for compulsory measures. If the information is not furnished to the tax administration, the competent authority can start up an audit in which the same rules are applicable as if the information was required for national purposes (article 63(1)).

272. Non-compliance by a person under investigation or related third party (e.g. a bank) to provide information is a criminal offence and can be punished with a fine amounting to ANG 25 000 (USD 13 966) (or 100 000 (USD 55 866) in case of willful action/omission), imprisonment for a maximum period of six months (or four year in case of willful action/omission), or both (article 49, General National Ordinance on General National Taxes). Furthermore, the burden of proof may be reversed (article 30(6), National Ordinance on General National Taxes).

273. In practice, there were no penalties applied for failure to produce information as the Tax Inspector and SBAB were able to obtain the information through on-site inspections. However, in most cases, information could not be completely collected during the first on-site inspection and follow-up on-site inspections would have to be arranged or the entity is asked to submit the information within a given timeframe. It is also noted that Curaçaoan authorities generally refrain from applying penalties in the first instance. While most information was obtained in response to the EOI requests during the period under review, the feedback received from peers was that the responses were very late. Curaçao is recommended to improve the efficiency of obtaining information and applying any penalties necessary.

Secrecy provisions (ToR B.1.5)

Bank secrecy

274. Curaçao's authorities have indicated that there are no specific rules concerning bank secrecy under Curaçaoan laws. Other than the restrictions for fishing expeditions in EOI agreements, there are no other restrictions in the legislation to obtain information held by banks or other financial institutions. There are no separate procedures for obtaining bank information. There are no restrictions for the Tax Inspector to obtain the information from the banks. However, in practice, given that information for all EOI requests are sought through third party inspections, where there are EOI requests for banking information, the Tax Inspector similarly obtains the information directly from the account holders. If the information of the account holder is not available locally, the Tax Inspector would directly contact the bank where

the account is held. During the period under review, all banking information was provided in response to all requests. For four pending requests on entities covered under the grandfathering provisions, banking information is in the process of being obtained (as addressed in B.1.2.).

Anti-money laundering laws

275. A number of secrecy rules apply in the context of Curaçao's AML/CFT laws, however, these can be overridden for exchange of information purposes, as further explained below. Article 20 of the National Ordinance on the Reporting of Unusual Transactions contains a secrecy provision pursuant to which information supplied or received in accordance with this act is considered confidential. Anyone who supplies such information and anyone who submits a report is obliged to maintain confidentiality. This provision also prohibits anyone who performs any duties under this act to make use or give publicity thereof further or otherwise than for performing his/her duties or as required by this act. Non-compliance may result in imprisonment no exceeding one year and/or a fine not exceeding ANG 250 000 (USD 139 665), increased to up to four year imprisonment and/or a fine of up to ANG 500 000 (USD 279 330) if intentionally committed.

276. There are only limited exceptions to this secrecy provision in the National Ordinance on the Reporting of Unusual Transactions, none of which concerns the disclosure of information that is sought by the tax authorities in response to an EOI request. It is, therefore, unclear whether bank account details supplied by a bank or financial institution or included in a report under the National Ordinance on the Reporting of Unusual Transactions can be provided under an EOI request, due to these conflicting obligations on confidentiality and disclosure. Curaçaoan authorities clarified that there are no exceptions as to the information that can be accessed by the Inspectorate of Taxes during the on-site inspections at the entities. There were also no cases in practice where it was a reason given by entities not to provide the information.

277. Under article 12 of the National Ordinance on the Supervision of Trust Service Providers, a trust service provider must have with regards to every international (offshore) company to which it provides trust services updated data regarding the person or persons who can directly or indirectly make claims to the distribution, capital and the surplus after dissolution, which includes the bearer certificate holders. Article 14 of this ordinance contains a secrecy provision pursuant to which a trust service provider and natural or legal persons placed under the licensee's responsibility are required to keep secret the data referred to in article 12 in respect of everyone, with the exception of the Central Bank.

278. There are only two exceptions to this secrecy obligation, i.e. *(i)* to the extent that the non-disclosure would violate any reporting obligation or any other obligation pursuant to the National Ordinance on the Reporting of Unusual Transactions; and *(ii)* if the trust service provider is called on to act as a witness in the context of an investigation, a preliminary judicial investigation or a trial in court concerning a criminal offence.

279. Nevertheless, all the secrecy and confidentiality provisions under Curaçaoan law are lifted if domestic or foreign public authorities request information for tax purposes. Under article 46(1) of National Ordinance on General National Taxes, no one may invoke the circumstance that he/she is, for whatever reason, under the obligation to observe secrecy, not even if such obligation is imposed by means of a national ordinance. This rule exonerates a person from any liability to prosecution in respect of other secrecy provisions.

Professional secrecy and attorney-client privilege

280. As mentioned under section A.1.1 above, an expert (usually an auditor or accountant) can or, in case the articles of incorporation so require, must be appointed by the general shareholders meeting to examine the books of the company and to report on the balance sheet and profit and loss statement as presented by the management (article 74, Commercial Code). The expert is entitled to inspect all the books, records and other data carriers of the company, the examination of which will be necessary for the correct performance of his duty. Other than as required pursuant to the instructions given him/her, he/she shall not be permitted to disclose any information respecting the company's business as appearing or as communicated to him/her (articles 117(2) and 121(4), Commercial Code).

281. In addition, article 286 of the Penal Code adds a criminal dimension to professional secrecy. An employee who discloses data to third parties outside the scope of his or her duty can be accused of committing a criminal offence in breach of professional secrecy. However, as mentioned above, these restrictions do not apply where an employee has a duty to provide the information to the tax authorities for tax purposes (article 46(1), National Ordinance on General National Taxes).

282. Even though secrecy provisions are lifted for EOI purposes by article 46(1) of the National Ordinance on General National Taxes, an exception is established to protect professional secrecy (article 46(2)). This provision includes clerics, civil law notaries, lawyers, doctors and pharmacists, who "can invoke the confidentiality that they, by reason of their state, office or profession are obliged to maintain". Therefore, the scope of the exception is limited and only provides to protect personal information concerning clients

that these professionals would inevitably have collected during their activities. In the case of lawyers and notaries, this provision should apply only to the extent that they act in legal proceedings, in their capacity as attorneys or other legal representatives. Curaçaoan authorities clarified that the interpretation of this provision has been confirmed by the Supreme Court of the Netherlands in its decision of 27 April 2012 in the case of *Tradman Netherlands B.V. v. the State of the Netherlands*. In this judgement, the Supreme Court confirmed that professional secrecy only applies to information entrusted to such persons in their professional capacity, and excludes information obtained outside of their professional capacity. Paragraph 3.5.1. of this judgement states: "the right to refuse to give evidence (…) only relates to data (carriers) and such which the person bound by secrecy keeps in his capacity as confidant". Curaçaoan authorities have indicated that in practice, if a lawyer in its capacity as a service provider was asked by a company to keep the company's bookkeeping records, and if information of the company was requested, then the lawyers will not be covered under professional secrecy and will be obliged to produce the information. In practice, there has been no case where professional secrecy had any influence on an EOI request or formed a problem for the execution of the local tax legislation. Notwithstanding, Curaçaoan tax authorities have never needed to approach any legal representative to obtain the requested information since all requested information is obtained directly from the entity.

283. As noted under section A.1.2 above, article 1(3) of the National Ordinance on the Identification when rendering Services and article 1(3) the National Ordinance on the Reporting of Unusual Transactions contain an exception to the AML/CFT framework concerning legal privilege. Under these provisions, certain legal services are excluded from the scope of these acts, i.e. activities which are related to the provision of the legal position of a client, its representation at law, giving advice before, during and after a legal action, or giving advice on instituting or avoiding a legal action, insofar as performed by a lawyer, civil-law notary or junior civil-law notary or an accountant, acting as an independent legal adviser. This safeguard appears to be broader than the professional secrecy protected under the international standard, as it covers notaries and accountants. Information is obtained directly from the entities by the Curaçaoan tax authorities and there were no cases in practice where the Curaçaoan tax authorities had to obtain the information through AML/CFT regulatory agencies.

284. Curaçao is not required to exchange information concerning trade, business, industrial, commercial or professional secrets, trade processes, or information disclosures which would be contrary to public policy, pursuant to provisions in each of its EOI agreements (see section C.4 below), as well as corresponding provisions in the National Ordinance on General National Taxes (new articles 64(2)(a) and 64(2)(g)). In addition, the Minister of Finance

may refuse to respond to an EOI request if the information cannot be obtained under Curaçaoan laws or administrative practices (new article 64(2)(b)).

285. Curaçao has never had a case in practice where the professional secrecy had any influence on an EOI request or formed a problem for the execution of the provisions in the tax laws.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Partially Compliant.	
Factors underlying recommendations	**Recommendations**
It is unclear if information can be accessed for a significant number of entities covered under grandfathering provisions because of unclear and inconsistent interpretation of the laws which has posed practical difficulties for Curaçao to respond to four requests still pending at the end of the review period.	Curaçao should ensure that there are clear access powers for it to access information concerning all relevant entities at all times.

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)

286. As a rule, the Minister of Finance is required to notify the person under investigation in writing immediately after his decision to comply with the EOI request, providing a general description of the information to be provided and identifying the requesting authority. While the notification requirement is recognised as a legitimate right by the Commentary to Article 26(3) of the OECD Model Tax Convention, it should not prevent or unduly delay the effective EOI (paragraph 14.1). The notification procedure under article 62 of the National Ordinance on General National Taxes permits an exception to this notification rule if there are urgent reasons to do so.

This notification procedure was further updated in 2013 when the National Ordinance on General National Taxes was amended.

287. Pursuant to the old article 62(3), the Minister of Finance was not to disclose the information before two months after sending the notification to the taxpayer. Two months appeared to be excessive and might have interfered with Curaçao's obligations under its EOI agreements to forward the information as promptly as possible to the competent authority of the requesting party (usually under Article 5(6) of the TIEAs). The Commentary to Article 5(6) of the 2002 OECD Model Agreement on Exchange of Information on Tax Matters (OECD Model TIEA) highlights that the requested party is encouraged to react as promptly as possible and, where appropriate and practical, even before the deadline (paragraph 75). Although this provision does not prevent Curaçaoan authorities from complying with the 60-day acknowledgement of receipt notice or with the 90-day status update under the TIEAs, it could unduly prevent or delay the effective EOI. The new laws that took effect from May 2013 changed the waiting period, reducing it to 15 days, thereby further ensuring that the process does not unduly prevent or delay the exchange of information.

288. Article 62(3) of the old law (new article 62(4)) permits an exception if there are urgent reasons for the Minister of Finance to comply with the EOI request before the end of the two-month or 15-days period. In this case, the Minister must clearly indicate the grounds on which the decision to apply the exception is based. Where an exception for urgent reasons under the old article 62(3) or new article 62(4) does apply, the notification procedure can be postponed for four months from the date of the supply of the requested information, and information may be provided under an EOI request before the end of these four months (old article 62(4), new article 62(5)). It is noted, however, that this interpretation has not been tested in court. In this way, the notification rights appear to be compatible with effective EOI.

289. The term "urgent reasons" was not defined under the old law and there were no express exceptions for prior notification when it was likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction. According to the Curaçaoan authorities, it was generally understood that a case of presumed tax fraud could be considered an urgent reason. In that case, however, it was possible that this would also constitute a criminal tax matter which requires the consultation of the Minister of Justice before the requested information could be provided, pursuant to the old article 62(6) of the National Ordinance on General National Taxes (see sections B.1.1 and B.1.2 above). In addition, the person concerned may challenge in court the competent authority's decision to apply the exception to the notification right.

290. After the legislative amendments entered into force, a Ministerial Decree was issued on 28 May 2013 to define the term "urgent reasons" which clarifies the ambiguity. These "urgent reasons" are:

(i) an ongoing tax fraud case;

(ii) the risk of evidence being destroyed as result of the notification;

(iii) the impending expiration of charge time or other deadlines in the (requesting) country for which the information is intended; and

(iv) uncertainty regarding the location of the accounting records caused by the person involved.

291. Article 62(5) of the National Ordinance on General National Taxes contains appeal rights in accordance with the National Ordinance on Administrative Justice. The person notified can appeal to the court in tax matters (*Raad van Beroep in Belastingzaken*), within 30 days from the date of the decision taken by the Minister. However, this court only meets twice a year. As a result, in case of an appeal, there may be considerable delays until a final decision in the case is reached and this may impede effective exchange of information. Under the amended legislation, the person is given up to two months from the date of the decision to make an appeal (new article 62(6)). In addition, it is also explicitly noted in the legislation that a filed appeal by the taxpayer does not lead to suspension of the exchange of information.

In practice

292. Under procedures following the old laws that apply for requests received up to end April 2013, the Inspector of Taxes would send a notification letter to the taxpayer once a request was received and if no exceptions to prior notification apply. The notification letter to the taxpayer would state that the Minister of Finance has decided to accede to an EOI request regarding the taxpayer and asks that the taxpayer provides a list of the specific information requested. No other information such as the request itself or any supporting documentation would be disclosed to the taxpayer. In practice, Curaçaoan authorities indicated that this process was unwieldy as most taxpayers would immediately submit objections and apply many delay tactics in providing the information. There were therefore many deliberations with the taxpayers/information holders in the past although most of them eventually complied with producing the information but after prolonged periods.

293. New procedures were adopted after the legal amendments took effect on 1 May 2013 where the reduced 15-day period was applied in practice in 19 cases. As described in B.1, the taxpayer is notified after the Director of Fiscal Affair has obtained all information and decides to proceed with the exchange of information. Information is gathered directly from the entity

through regular or ad-hoc on-site inspections. Under the new procedures, the inspections are done without indication that it is related to an EOI request. If there is an exception to prior notification, then the notification is postponed till four months. During the period under review there were 14 cases where information was transmitted without prior notification. The justification for these cases was the impending expiration of taxation or other deadlines in the requesting jurisdiction. The Curaçaoan authorities clarified that, in practice, the "urgent reasons" specified in the Ministerial Decree should cover all instances where the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction. There were no appeals by the taxpayers for these cases.

294. If there is no exception to prior notification, the notification letter is sent to the taxpayer. The information to be transmitted to the requesting jurisdiction is enclosed with a description of the EOI request (requesting jurisdiction and the name of the foreign taxpayer in the requesting state), but not the actual EOI request letter. Further, the notification letter states that the person has 10 days to request for a re-consideration and can also submit an appeal within two months of the date of the final decision. It also states that an appeal does not lead to the suspension in the exchange of information. The EOI Co-ordinator has to reply to the "re-consideration request" within five days (total 15 days minimum holding period under new laws). If the taxpayer/information holder does not request a re-consideration, the letter is considered as the final decision and to which the taxpayer/information holder can submit an appeal within two months. During the period under review, there were six re-consideration letters but all taxpayers eventually agreed with the Minister's decision to exchange the information. There was no case during the period under review where an appeal was made.

295. Curaçao authorities have confirmed that an appeal lodged by the taxpayer will not prevent the supply of information to the requesting jurisdiction or affect the information that has been transmitted. However, it remains unclear if there is any bearing on future EOI requests with the particular requesting partner should a court rule in favour of the taxpayer. Curaçao authorities indicate this risk is minimised through their earlier evaluation to ensure that the grounds for refusal (article 64) cannot be applicable for the EOI request that Curaçao chooses to accede to. Notwithstanding, it is also noted that there is little incentive for the taxpayer to submit an appeal given that the information would have already been transmitted.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Compliant.	
The new procedures for notification that came into effect on 1 May 2013 was towards the end of the review period. While the old laws may have had possible impediments, these did not impact the effective exchange of information and the new procedures under the new laws should further enhance the effectiveness of Curaçao's ability to exchange information in a timely manner.	Curaçao should monitor the implementation of the new rules and ensure that information can be provided in response to a request in a timely manner.

C. Exchanging Information

Overview

296. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Curaçao, the legal authority to exchange information derives from bilateral or multilateral instruments (e.g. double tax conventions, tax information exchange agreements, the Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters) as well as from domestic law to a lesser extent. Within particular regional groupings information exchange may take place pursuant to exchange instruments applicable to that grouping (e.g. within the EU, the directives and regulations on mutual assistance). This section of the report examines whether Curaçao has an EOI network that would allow it to achieve effective EOI in practice.

297. In 1964, Curaçao (formerly the Netherlands Antilles) concluded its first EOI instrument with the Netherlands, i.e. the Tax Arrangement of the Kingdom of the Netherlands (*Belastingregeling voor het Koninkrijk*, BRK). The BRK is currently a multilateral instrument, covering the four jurisdictions forming the Kingdom – the Netherlands, Aruba, Curaçao and Sint Maarten. Since August 2009, Curaçao has actively sought to extend its EOI network, and has signed a further 18 tax information exchange agreements (TIEAs), in addition to its four pre-existing TIEAs with the United States (2002), Australia (2007), New Zealand (2007) and Spain (2008), and entered into a Protocol to the pre-existing double tax convention (DTC) of 1989 with Norway (Annex 2). In addition, the Multilateral Convention was extended to Curaçao by the Kingdom of the Netherlands with entry into force on 1 September 2013, expanding Curaçao's EOI network to cover a total of 87 jurisdictions.

298. Except for the TIEA concluded with the United States in 2002, all the other TIEAs which have been signed by Curaçao generally follow the terms of the OECD Model TIEA. All the EOI agreements appear to meet the "foreseeably relevant" standard. Although some provisions deviating from the OECD Model TIEA were included in three TIEAs, each of the three partner jurisdictions can now exchange with Curaçao under the Multilateral

Convention.[25] During the period under review, there were three requests where information obtained was not exchanged due to Curaçao's interpretation of "foreseeably relevant" which was not in line with the standard. It is recommended that Curaçao corrects its interpretation of the "foreseeably relevant" standard as it should not impede the effective exchange of information.

299. The confidentiality of information exchanged with Curaçao is protected by obligations imposed under its EOI agreements, as well as in its domestic legislation (article 65, National Ordinance on General National Taxes), and is supported by sanctions for non-compliance.

300. The grounds for declining the exchange of certain types of information is in accordance with the international standard, including business or professional secrets, information subject to attorney-client privilege, or where the disclosure of the information requested would be contrary to public policy. These exceptions are reflected in Curaçao's domestic law (articles 46 and 64, National Ordinance on General National Taxes) as well as in its EOI agreements.

301. Curaçao's competent authority for EOI purposes is the Minister of Finance who has delegated its authority to the Director of Fiscal Affairs. The Director of Fiscal Affairs and the directorate is responsible for receiving, managing and responding to EOI requests. Curaçao received 89 requests over the period 1 January 2011 to 31 December 2013. The requested information was provided within 90 days, 180 days and within one year in 11%, 25% and 49% of the time respectively.[26] Curaçao's response time might limit effectiveness of exchange of information. Curaçao is therefore recommended to take measures ensuring that deadlines for obtaining and providing the requested information are respected.

302. In view of several changes in the organisation and the Curaçaoan government in general, Curaçao is still in the process of building up and improving its organisational processes to ensure effective exchange of information. There are areas which need improvement in order to ensure that information is provided in a timely manner in all cases (see section C.5). Curaçao should also provide status updates in cases where it is not in a position to meet the 90 day deadline.

25. The TIEAs in question are with Bermuda, the British Virgin Islands and the Cayman Islands. The Multilateral Convention was extended to Curaçao by the Kingdom of the Netherlands and by the United Kingdom to cover the territories of Bermuda and the British Virgin Islands and the Cayman Islands.

26. These figures are cumulative.

C.1. Exchange of information mechanisms

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

303. The BRK dates back to 1964. It is a multilateral agreement among the jurisdictions currently forming the Kingdom – the Netherlands, Aruba, Curaçao and Sint Maarten (i.e. the former Netherlands Antilles) – for the avoidance of double taxation and the prevention of fiscal evasion. Under articles 37 and 38, it includes an EOI provision which generally follows the prior wording of Article 26 of the OECD Model Tax Convention, i.e. before the inclusion of paragraphs 4 and 5 in the 2005 update.

304. In 2001, Curaçao made a political commitment to co-operate with the OECD's initiative on transparency and effective EOI. To date, Curaçao has signed one DTC with Norway (and recently a Protocol thereto) and 22 TIEAs with Antigua and Barbuda, Argentina, Australia, Bermuda, British Virgin Islands, Canada, Cayman Islands, Denmark, Faroe Islands, France, Finland, Greenland, Iceland, Mexico, New Zealand, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Spain, Sweden, the United Kingdom and the United States. To date the BRK, the 1989 Curaçao-Norway DTC (and the 2009 protocol to the DTC) and all the TIEAs have entered into force except the TIEAs with Argentina, Bermuda, British Virgin Islands and Cayman Islands, as detailed in Annex 2.

305. The Multilateral Convention was extended to Curaçao by the Kingdom of the Netherlands with entry into force on 1 September 2013. This brings the total number of jurisdictions with which Curaçao is able to exchange information to 87.

306. In addition, since 2005, Curaçao has agreed to implement measures equivalent to those contained in the EU Directive on the Taxation of Savings Income (2003/48/EC) via reciprocal bilateral agreements signed with each EU Member State. Those agreements provide that the taxpayer may opt for withholding tax at a 35% rate or automatic EOI between Curaçao and the competent authority of EU Member States on an annual basis in respect of interest and similar payments made to beneficial owners (individuals) which are resident of such EU Member States (National Ordinance on Tax on Income from Savings). Curaçao is considering abolishing the possibility to opt for the withholding tax.

Foreseeably relevant standard *(ToR C.1.1)*

307. The international standard for EOI envisages information exchange 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:

> "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. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information."

308. The Commentary to Article 26(1) of the OECD Model Tax Convention refers to the standard of "foreseeable relevance" and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article, for instance by replacing "foreseeably relevant" with "necessary" or "relevant". Article 37 of the BRK and Article 27(1) of the 1989 Curaçao-Norway DTC provide for EOI that is "necessary" for carrying out the provisions of those conventions and the domestic tax laws of the contracting States concerning taxes covered by those conventions, insofar as the taxation thereunder is not contrary to those conventions. Likewise, the TIEA with Bermuda only refers to information that is "relevant" for EOI purposes. Curaçao's authorities confirmed that the terms "necessary" and "relevant" under these EOI agreements are interpreted in accordance with Commentary to Article 26(1) of the OECD Model Tax Convention. Therefore, the BRK, the 1989 Curaçao-Norway DTC and the Bermuda-Curaçao TIEA meet the "foreseeably relevant" standard.

309. Some TIEAs concluded by Curaçao create a requirement for establishing a valid request which is in addition to those set out in Article 5(5) of the OECD Model TIEA, i.e. the requesting party must specify: "(…) the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the Requesting party" (Article 5(6)(d), Curaçao-British Virgin Islands TIEA) or "(…) why it is relevant to the determination of the tax liability of a taxpayer under the laws of the applicant party" (Article 5(7)(g), Curaçao-Bermuda TIEA).

310. Article 5(6) of the Curaçao-Bermuda TIEA also creates another additional condition for the establishment of a valid request under Article 5,

requesting that the applicant party confirms the relevance of the requested information, as follows:

> "Where the applicant Party requests information in accordance with this Agreement, a senior official of the competent authority of the applicant Party *shall certify* that the request is relevant to, and necessary for, *the determination of the tax liability of the taxpayer* under the laws of the applicant Party." [*emphasis added*]

311. It is also noted that in Curaçao's TIEAs with Bermuda (Article 5(5)(ii)) and British Virgin Islands (Article 5(5)(b)), a requested party is under no obligation to provide information which relates to a period more than six years prior to the tax period under consideration.

312. Nevertheless, those variations to Article 5(5) of the OECD Model TIEA appear to be in line with the purpose of the requirements in this provision, which is to demonstrate the foreseeable relevance of the information sought.

313. Item I of the Protocol to the Curaçao-Cayman Islands TIEA states that the term "pursued all means available *in its own territory*" under Article 5(5)(g) of this TIEA is understood as including an obligation for the requesting party to use "exchange of information mechanisms it has in force with any third country *in which the information is located*" [*emphasis added*]. That is, under this interpretation of Article 5(5)(g), a requesting party (either Curaçao or Cayman Islands) cannot make an EOI request until it has sought the information from the jurisdiction where the information is located (i.e. outside its own territory).

314. This interpretation of Article 5(5)(g) may impose disproportionate difficulties on the requesting party to make use of EOI mechanisms to obtain information outside its own territory. It is inconsistent with Commentary to Article 5(5) of the OECD Model TIEA (paragraph 63) and narrower than the international standard. In order to address this issue, Curaçao and Cayman Islands have entered into discussions and are in the process of reaching a conclusion on a possible modification to the TIEA to align it with the standard. Nonetheless, it is also noted that both Curaçao and the Cayman Islands are covered by the Convention which does provide for exchange of information consistent with the standard and therefore this is not a concern in practice.

315. In all other regards, Curaçao's TIEAs, the BRK and the 1989 DTC Curaçao-Norway DTC meet the "foreseeably relevant" standard as described in Article 26(1) of the OECD Model Tax Convention and the Commentary thereto and in Articles 1 and 5(5) of the OECD Model TIEA and the Commentary thereto. In most of Curaçao's TIEA, this is provided for under Article 5 while the Curaçao-United States uses a different text under Article 4, which also meets the international standard.

316. In Curaçao's application of the "foreseeably relevant" standard it is generally assumed that the requested state can rely on the request being foreseeably relevant, if the name of the taxpayer or any other identifying information (such as bank account number) is provided and a short description of the facts and an explanation why the information is relevant. In this regard, Curaçao would test the foreseeable relevance, but only marginally, upon receipt of a request. Curaçao would first source for the information requested from its tax authorities or directly from the taxpayer or information holder. After information is gathered, particularly in requests for ownership information, Curaçao would evaluate on the basis of the information if there was foreseeable relevance to the EOI request, and whether the information gathered had a "levying-possibility" in the requesting jurisdiction. If determined so, Curaçao would then transmit the information to the EOI partner. Curaçao would not exchange the gathered information with the requesting state if it is of the opinion that the information lacks relevance to the underlying investigation or examination. During the period under review, Curaçao did not request any clarifications before proceeding to source for the information. Only after information has been gathered that further clarifications may be posed to the requesting EOI partner. Curaçao has indicated that this may happen in cases where, for example, the ultimate beneficial owner was not resident or established in the requesting jurisdiction.

317. One EOI partner indicated that it had three EOI requests that were declined by Curaçao on the basis that there was no foreseeable relevance. Curaçao has clarified that for these three cases, foreseeable relevance was not evident because after ample evaluation of the gathered information it was concluded that neither the ultimate beneficial owner nor the company were resident or established companies in the requesting jurisdiction. There was no indication either that the person mentioned in the request was with the companies established in Curaçao. There were no other cases where Curaçao's interpretation of the foreseeable relevance criteria resulted in not providing the requested information.

318. In practice, it appears that Curaçao's application of the "foreseeably relevant" standard as evident in these three cases is not aligned with the standard as Curaçao first obtains the information and assesses the foreseeable relevance of the EOI request based on the information obtained and evaluates whether the information obtained had a "levying-possibility" in the requesting jurisdiction. The standard provides that "foreseeable relevance" is assessed upon the *receipt* of the EOI request, as it is also required under the standard that there should be some reasonable possibility that the requested information will be relevant. The assessment of "foreseeable relevance" should be based on the information included in the EOI request since it is not the responsibility of the requested jurisdiction to assess the relevance of the obtained information to the administration of the tax laws of the requesting

jurisdiction, but to consider whether the requested information is relevant to the EOI request. Curaçao is already taking steps to address this issue through changing its internal procedures on handling of future EOI requests. Nevertheless, it is recommended that Curaçao corrects its interpretation of the "foreseeably relevant" standard as it should not impede the effective exchange of information.

In respect of all persons (ToR C.1.2)

319. For EOI 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 EOI envisages that EOI mechanisms will provide for exchange of information in respect of all persons. Article 26(1) of the OECD Model Tax Convention indicates that "The exchange of information is not restricted by Article 1", which defines the personal scope of application of the Convention.[27] The 1989 Curaçao-Norway DTC contains this sentence.

320. Unlike the OECD Model Tax Convention,[28] the BRK does not contain a provision which explicitly indicates that the EOI mechanisms under Articles 37 and 38 are not restricted by the personal scope of application of the BRK, i.e. to persons who are residents of countries of the Kingdom of the Netherlands. However, Article 37(1) applies to information "necessary for carrying out this Law or the laws of each of the countries [of the Kingdom] concerning taxes covered by this Law, insofar as the taxation thereunder is not contrary to this Law". As a result of this language, the BRK would not be limited to residents because all taxpayers, resident or not, are liable to the domestic taxes listed in Article 3. Exchange of information in respect of all persons is thus possible under the terms of the BRK.

321. All the TIEAs signed by Curaçao contain a provision concerning jurisdictional scope which is equivalent to Article 2 of the OECD Model TIEA and which conforms to the international standard.

27. Article 1 of DTCs defines the personal scope of the treaties and all indicate that the treaties apply to persons who are residents of one or both of the Contracting States.

28. Article 26(1) of the OECD Model Tax Convention indicates that "[t]he exchange of information is not restricted by Article 1", which defines the personal scope of application of the Convention and indicates that it applies to persons who are residents of one or both of the Contracting States.

322. In practice, as mentioned in C.1.1., there were cases where Curaçao declined to provide information because it determined, based on the information gathered, that it was not foreseeably relevant. It is also noted that Curaçao's conclusion was because neither the ultimate beneficial owner nor the company were resident or established companies in the requesting jurisdiction. Curaçao should continue to monitor its interpretation of the standard to ensure that it provides information in respect of all persons.

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

323. Jurisdictions cannot engage in effective EOI 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.

324. The BRK and the 1989 Curaçao-Norway DTC do not include the provision contained in paragraph 5 to Article 26 of the OECD Model Tax Convention, which states that a contracting State may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. However, the absence of this paragraph does not automatically create restrictions on exchange of bank information. The Commentary to Article 26(5) indicates that whilst paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information (see item 19.10 of the Commentary to Article 26(5) of the OECD Model Tax Convention).

325. Curaçao has access to bank information for tax purposes in its domestic law (see Part B above), and is able to exchange this type of information when requested, under the BRK (article 38, National Ordinance on General National Taxes) and the 1989 Curaçao-Norway DTC. Since the other parties in the BRK or in the 1989 Curaçao-Norway DTC are similarly able to do so under their domestic laws, the EOI agreement concluded with such jurisdictions will not require the inclusion of Article 26(5) of the OECD Model Tax Convention to be considered as meeting the standard. All the TIEAs concluded by Curaçao (usually under Article 5(4) and in the Curaçao-United States TIEA under Article 4(4)(f)) explicitly forbid the requested jurisdiction to 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.

326. In practice, Curaçao has never declined a request because the information was held by a bank, other financial institution, nominees or persons acting in an agency or a fiduciary capacity. This has been confirmed by peers. The Competent Authority is not required to obtain any other approval in order to request information from banks if the requested information relates to civil tax procedures.

Absence of domestic tax interest (ToR C.1.4)

327. 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.

328. The BRK and the 1989 Curaçao-Norway DTC do not include the provision contained in paragraph 4 to Article 26 of the OECD Model Tax Convention, which states that the requested party "shall use its information gathering measures to obtain the requested information, even though that [it] may not need such information for its own tax purposes". However, the absence of a similar provision in other treaties does not, in principle, create restrictions on EOI provided there is no domestic tax interest impediment to exchange information in the case of either contracting party (see item 19.6 of the Commentary to Article 26(4) of the OECD Model Tax Convention).

329. Curaçao has no domestic tax interest restrictions on its powers to access information (see Part B above), being able to exchange information under the BRK (article 38, National Ordinance on General National Taxes) and 1989 Curaçao-Norway DTC, including in cases where the information is not publicly available or already in the possession of the governmental authorities. Since the other parties in the BRK or the 1989 Curaçao-Norway DTC are similarly able to do so under their domestic laws, the EOI agreement concluded with such jurisdictions will not require the inclusion of Article 26(4) of the OECD Model Tax Convention to be considered as meeting the standard.

330. All of the TIEAs concluded by Curaçao (usually under Article 5(2)) explicitly permit the information to be exchanged, notwithstanding the fact that Curaçao may not need such information for a domestic tax purpose. Similarly, Curaçao's domestic powers to access relevant information are not constrained by a requirement that the information is sought for a domestic tax purpose.

331. In practice, there was no case during the period under review where request was declined because of absence of domestic tax interest.

Absence of dual criminality principles (ToR C.1.5)

332. 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, EOI should not be constrained by the application of the dual criminality principle.

333. None of the EOI agreements concluded by Curaçao apply the dual criminality principle to restrict exchange of information. Accordingly, there has been no case when Curaçao declined a request because of a dual criminality requirement as has been confirmed by peers.

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

334. 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"). All of the EOI agreements signed by Curaçao may be used to obtain information to deal with both civil and criminal tax matters.

335. The BRK contains a similar wording to the one used in Article 26(1) of the OECD Model Tax Convention, which refers to information foreseeably relevant "for carrying out the provisions of this Convention or to the administration and enforcement of the domestic [tax] laws", without excluding either civil nor criminal matters. The 1989 Curaçao-Norway DTC refers more broadly to information necessary for carrying out the provisions of the Convention or of the domestic laws, without excluding either civil nor criminal matters.

336. All the TIEAs signed by Curaçao (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).

337. In practice, the Competent Authority has to consult the Minister of Justice when an EOI request is in connection with an investigation of criminal offenses with regard to tax matters. During the period under review, there were no EOI requests that required a consultation with the Minister of Justice and thus no instances where Curaçao declined to provide information

because the requested information cannot be provided for criminal tax purposes.

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

338. 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.

339. The BRK (Article 38(2)(a) and (b)), the 1989 Curaçao-Norway DTC (Article 27) and the Curaçao-United States TIEA (Article 4(3)(k)) do not expressly addresses this question but they do not contain any restrictions either, which would prevent Curaçao from providing information in a specific form, so long as this is consistent with its own administrative practices.

340. All of the other EOI agreements concluded by Curaçao allow for information to be provided in the specific form requested, notably witness depositions and authenticated copies, to the extent allowable under the requested jurisdiction's domestic laws (usually under Article 5(3)). Domestic law accommodates this requirement by requiring information to be produced orally or in writing, in the form and within the period determined by the Tax Inspector (article 54, National Ordinance on General National Taxes). Peer input indicate that Curaçao provides the requested information in adequate form and no issue in this respect has been reported.

In force *(ToR C.1.8)*

341. 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.

342. In the Kingdom of the Netherlands, each of the four countries has authority to decide individually if an international treaty is to be extended to that country or if it wishes a treaty to be concluded on its behalf. If, as in the case of the TIEAs, the treaty is concluded on behalf of Curaçao this country provides explanatory notes on the treaty in question. The treaty, with its explanation, is submitted to the Council of Ministers of the Kingdom, and after approval, is subsequently submitted to the Council of State of

the Kingdom for advice. The treaty with the advice of the Council of State of the Kingdom and the explanatory notes, is submitted for approval to the Parliament of the Netherlands and the Parliament of Curaçao.[29] After approval, the instrument of ratification will be deposited by the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

343. Curaçao has a total of 87 EOI relations. Curaçao concluded TIEAs with 22 jurisdictions and has taken all internal steps to bring them into force except for 4 of them (Argentina, Bermuda, British Virgin Islands and Cayman Islands). Curaçao also has a 1989 Curaçao-Norway DTC which provides for EOI that was updated with a protocol signed on 10 September 2009, which has entered into force on 1 September 2011. There is an instrument which is equivalent to a DTC with four jurisdictions, i.e. the BRK with the Netherlands, Aruba, Curaçao and Sint Maarten. The Multilateral Convention was extended to Curaçao by the Kingdom of the Netherlands with entry into force on 1 September 2013, expanding Curaçao's EOI network to a further 61 jurisdictions.

344. The internal procedure for entry into force normally takes between six months to one year. However, due to the dissolution of the Netherlands Antilles in October 2010, the procedure for some of the EOI agreements took longer than usual. Internal procedures are underway to bring into force the TIEAs with Bermuda, British Virgin Islands and Cayman Islands. These TIEAs were signed in 2009. The TIEA with Argentina was just signed on 14 May 2014. Notwithstanding that internal procedures were completed for most of the TIEAs to enter into force, it should be noted from Annex 2 that most of the TIEAs which Curaçao entered into took an average of two years to enter into force with some TIEAs such as that with Antigua and Barbuda and Saint Lucia which took almost up to four years to enter into force.

345. While there were no issues raised by peers on the length to which the EOI agreements are brought into force, it is recommended that Curaçao continues to work expeditiously to ensure the entry into force of the four outstanding EOI agreements and any other agreements concluded in the future. It is however noted that Curaçao has EOI relations with these four jurisdictions under the Multilateral Convention.

29. Curaçao's authorities have indicated that the Parliament of Curaçao does not need to give its approval explicitly since approval is considered to be given after 30 days. The Parliament of Curaçao has the possibility to ask for an examination of the treaty, which would halt the approval procedure in the Parliament of the Netherlands.

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

346. For information exchange to be effective, the parties to an EOI arrangement need to enact any legislation necessary to comply with the terms of the arrangement. Other than the ratification process described above, there is no specific mechanism of incorporation of EOI agreements into Curaçaoan law. The Curaçaoan competent authorities may use their domestic tax information gathering powers to obtain information relevant to exchange of information requests made pursuant to EOI agreements, by virtue of articles 40(1) and 63(5) of the National Ordinance on General National Taxes.

347. In practice, there were cases during the period under review where Curaçao was not able to obtain the information because of the restrictions arising from the grandfathering provisions.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

Phase 2 rating	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
Curaçao applies a more restricted interpretation of the foreseeably relevant standard as it assesses the relevance of the obtained information for the domestic tax laws of the requesting jurisdiction. This has restricted the exchange of information in three requests during the review period.	Curaçao should correct its interpretation of the foreseeably relevant standard to ensure that it does not impede the effective exchange of information.

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

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

348. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic

significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

349. The policy of Curaçao with respect to expanding its EOI network has been to focus on jurisdictions that are OECD and EU members, as well as those jurisdictions with which it has a significant economic relationship. The Multilateral Convention was also extended to Curaçao with entry into force on 1 September 2013, expanding Curaçao's EOI network to cover a total of 87 jurisdictions. Curaçao's EOI network comprises 84 Global Forum members, 33 of which are simultaneously OECD members (including the Netherlands), and 19 which are simultaneously G20 countries. Negotiations are underway with an additional five jurisdictions, which are also Global Forum members, one of which is a G20 country and also an OECD member.

350. Curaçaoan authorities have indicated that Curaçao is always willing to negotiate TIEAs and has never declined any request to negotiate an EOI agreement. Some jurisdictions approached Curaçao during the period under review for TIEA negotiations to which Curaçao responded proposing that negotiations commence in 2015 due to limited resources within the Curaçaoan Ministry of Finance and Curaçao's concentration of its efforts at that time to commence and conclude the then ongoing DTA negotiations. Although Curaçao's response in commencing the TIEA negotiations was not as prompt as it would have been preferred, it is noted that the TIEA requests were from jurisdictions which are parties to the Multilateral Convention which allows EOI to the standard and therefore Curaçao has an EOI relationship with these jurisdictions that allows for exchange of information in line with the standard. Nevertheless, Curaçao is encouraged to respond to requests for negotiations on EOI agreements in a more timely fashion.

351. As of 16 December 2014, Curaçao has signed 22 TIEAs, the BRK and the 1989 Curaçao-Norway DTC, which both contain an EOI provision. Curaçao's first TIEA was signed in 2002 (in force since 2007) with its most important trading partner, i.e. the United States. Other relevant trading partners of Curaçao are the jurisdictions which form part of the Kingdom of the Netherlands (covered by the BRK, which is in force since 1964), Mexico (TIEA in force since 2011) and Spain (TIEA in force since 2010). The TIEAs with France (signed in 2009) and with the UK (signed in 2010) entered into force in 2012 and 2013 respectively. Curaçao also recently signed a TIEA with Argentina in May 2014 and is in the process of bringing the TIEA into force.

352. It is also noted that Curaçao has concluded TIEAs with a number of smaller jurisdictions of the region, such as Antigua and Barbuda, Bermuda,

British Virgin Islands, Cayman Islands, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines. Curaçao's authorities informed that those jurisdictions are not relevant economic partners of Curaçao, but they are relevant in a geographical sense. The TIEAs with Antigua and Barbuda, Saint Lucia and Saint Vincent and the Grenadines entered into force in 2013. The TIEA with Saint Kitts and Nevis entered into force in 2014. Internal procedures are underway to bring into force the TIEAs with Bermuda, British Virgin Islands and Cayman Islands.

353. Comments were sought from the jurisdictions participating in the Global Forum in the course of the preparation of this report, and no jurisdiction advised the assessment team that Curaçao had refused to negotiate or conclude an EOI agreement with it. Curaçao has developed and expanded its EOI network despite the lack of resources within the Curaçaoan administration during the period under review. Nevertheless, Curaçao is encouraged to continue to develop its EOI network to the standard with all relevant partners.

Determination and factors underlying recommendations

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

Phase 2 rating
Compliant.

C.3. Confidentiality

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

Information received: disclosure, use, and safeguards (ToR C.3.1) and All other information exchanged (ToR C.3.2)

354. 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. 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.

355. The TIEAs concluded by Curaçao generally meet the standard for confidentiality including the limitations on disclosure of information received and use of the information exchanged, which are reflected in Article 26(2) of the OECD Model and Article 8 of the OECD Model TIEA. In most of Curaçao's TIEAs, this is provided for under Article 8 or 9, while the TIEA between Curaçao and the United States includes a similar provision under Article 4(7), the BRK under Article 38(1) and the 1989 Curaçao-Norway DTC under Article 27(1). These confidentiality obligations are also reflected in Curaçao's domestic law under article 65 of the National Ordinance on General National Taxes.

356. It is noted, however, that the British Virgin Islands-Curaçao TIEA does not expressly provide that "information may be disclosed in public court proceedings or in judicial proceedings". This potentially restricts the use of information as it may lead to evidence being inadmissible in courts. However, it would be possible to disclose information in these circumstances with the express written consent of the competent authority of the requested party. During the Phase 2 assessment of Curaçao, Curaçaoan authorities clarified that Article 65 of the National Ordinance on General National Taxes states that the information provided to Curaçao can be used exclusively for the levying of taxes mentioned in Article 1 unless the providing Competent Authority decides otherwise. Curaçao interprets this to imply that the information can be used in proceedings regarding tax assessments. The information Curaçao provides can also be used without any obstruction. Article 62(7) of the National Ordinance on General National Taxes makes it clear that information can be supplied for criminal investigations regarding taxes on condition that the Minister of Justice is first consulted in these cases. There were no cases in practice where information provided in response to an EOI request was in connection with a criminal investigation.

Handling of EOI requests in practice

357. EOI requests received from the requesting jurisdiction are handled only by the EOI Co-ordinator. After receiving an EOI request, the hardcopy document is scanned and saved as a password-protected digital file on a protected server to which the EOI Co-ordinator has sole access. The EOI

Co-ordinator will also make a hardcopy file on the EOI request. After evaluating the substance and accuracy of the EOI request, the EOI Co-ordinator will physically hand the hardcopy file to the Inspectorate of Taxes or the SBAB to retrieve the information required.

358. At the Inspectorate of Taxes, the hardcopy file is kept under lock and key in a filing cabinet within the offices of the EOI team, and can only be accessed by the authorised officers. The office of the EOI team is in a secured building that can only be accessed by an electronic key pass. If a further audit by SBAB was necessary to retrieve information, the Inspectorate of Taxes will physical hand the hardcopy file to the Director of SBAB.

359. From 2012, following a change of internal procedures, all incoming EOI requests are channelled to the SBAB to conduct audits to retrieve the requested information. These audits are requested directly by the EOI Co-ordinator who physically hands the hardcopy file to the Director of SBAB after the Inspectorate of Taxes has verified that the information cannot be retrieved from the its tax files. After receiving the hardcopy file, the Director of SBAB hands it to the audit team that is designated to work on the request. The audit team would typically comprise four to five auditors. To facilitate work among members of an audit team, a digital copy of the file is made and stored on a secured shared database of the SBAB but each audit team can only access the relevant file of the EOI request that they are designated to work on. The hardcopy file is then placed in a secured location under lock and key within the offices of the SBAB. These files cannot be accessed by members of the public. The SBAB offices can only be accessed by authorised SBAB employees. If there are any meetings held at SBAB where members of the public are involved, these meetings are held in a separate part of the building with no access to the areas that hold the information related to EOI. SBAB also practices a "clean desk policy" where sensitive information is not allowed to be left on the tables. In addition, every officer has their own physical office with a door that must be locked whenever the officer is away from his/her desk. When there is general maintenance or servicing of facilities that allows access of the offices to outside vendors, an advisory notice is sent to instruct all officers to clear their desks of any information and ensure that all information is securely kept away.

360. All government employees are bound by confidentiality rules. Although the SBAB is an autonomous entity of the Curaçaoan government and has a different organisation structure and remuneration scheme, all SBAB employees must sign a confidentiality clause immediately upon employment. During SBAB's annual corporate team building events, there are dedicated sessions to emphasise the importance for SBAB employees to uphold integrity in the course of their work.

361. All EOI requests for information are usually delivered by courier but sometimes by regular mail. Any email correspondence is done through the work email ending with "gobiernu.cw".

362. In practice, all types of information exchanged including official communications between the Competent Authorities are protected in the same way as described above. Measures taken by Curaçao ensure that confidentiality of exchanged information is kept in line with the international standard.

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)

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

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

365. The limits on information which must be exchanged under Curaçao's EOI agreements mirror those provided for in the Article 7 of the OECD Model TIEA and Article 26(3) of the OECD Model Tax Convention. That is, information that 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, is not required to be exchanged.

366. While most of Curaçao's TIEAs contain such exception under Article 7 or 8, the same requirements are included under Article 4(4)(c)/(d) of the Curaçao-United States TIEA, Article 38(2) of the BRK and Article 27(2)(c) of the 1989 Curaçao-Norway DTC. As noted under Part B, these exceptions are also incorporated into Curaçao's domestic law by virtue of articles 46 and 64, National Ordinance on General National Taxes.

367. In practice, there was no case during the period under review where Curaçao requested information from admitted legal representatives for exchange of information purposes. Consequently, there was no case where professional privilege has been claimed to cover the requested information. Curaçao also did not decline to provide any requested information during the period under review because it is covered by legal professional privilege or any other professional secret and no peer indicated any issue in this respect.

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)

368. In order for EOI to be effective, it needs to be provided in a time-frame 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.

369. Most of the EOI agreements concluded by Curaçao include an obligation to either respond to the request, or provide a status update within 90 days of receipt of the request.

370. As noted under Part B above, a person who is requested to supply information can appeal the Council of Appeal in tax matters (*Raad van Beroep in belastingzaken*), which only meets twice a year. Under the amended legislation, the person is given up to two months from the date of the decision to make an appeal (new article 62(6)). In addition, it is also explicitly noted in the legislation that a filed appeal by the taxpayer does not lead to suspension of the exchange of information. In practice, there were no appeals filed by the taxpayer.

371. During the period under review, Curaçao received a total of 89 requests during the period from 1 January 2011 to 31 December 2013. An EOI request is accounted for the number of subjects involved for which information is requested. The time periods mentioned in the table is accounted for from the date the EOI request was received up to the date the EOI request is finalised. The following table shows the time needed to send the final response to incoming EOI requests including the time taken by the requesting jurisdiction to provide clarification (if asked). The number of requests still pending at the date of review, refers to the number of requests pending at the end of the review period 31 December 2013.

Number of requests received by Curaçao during the review period

		1 Jan 2011 to 31 Dec 2011		1 Jan 2012 to 31 Dec 2012		1 Jan 2013 to 31 Dec 2013		Total	Average
		no.	%	no.	%	no.	%	no.	%
Total number of requests received* (a+b+c+d+e)		17	100%	26	100%	46	100%	89	100%
Full response**	≤90 days	0	0%	4	15%	6	13%	10	11%
	≤180 days (cumulative)	0	0%	10	38%	12	26%	22	25%
	≤1 year (cumulative) (a)	5	29%	13	50%	26	57%	44	49%
	>1 year (b)	12	71%	9	35%	1	2%	22	25%
Declined for valid reasons (c)		0	0%	0	0%	0	0%	0	0%
Failure to obtain and provide information requested (d)		0	0%	1	4%	3	6%	4	5%
Requests still pending at date of review (e)		0	0%	3	11%	16	35%	19	21%

* An EOI request is accounted for the number of subjects involved for which information is requested.

** The time periods mentioned in the table is accounted for from the date the EOI request was received up to the date the EOI request is finalised.

372. As the table shows, the number of requests received by Curaçao increased steadily from 2011 to 2013. Most requests were received from the Netherlands, Spain, Sweden, Norway and Denmark (in order of significance). Requests were made on almost all types of information – ownership (85 requests), accounting (83 requests) and banking information (67 requests). Curaçao sent 4 requests during the period under review – 3 in 2012, and 1 in 2013. Curaçao also indicates that there were very few requests sent compared to the requests received as Curaçao faced capacity constraints dealing with the number of EOI requests received.

373. Ten requests were replied to within 90 days during the review period. These were requests received in 2012 and 2013 when there was a shortened EOI process in which all requests were immediately channelled to the SBAB for information to be obtained through on-site inspections. Prior to the changes in 2012, requests were first attended to by the Inspectorate of Taxes which faced capacity constraints and delays in sourcing the required information from its files and seeking information directly from the relevant entities (as described in B.1. and B.2.).

374. However, timeliness remains an issue for Curaçao with majority of requests (89%) during the review period responded to after 90 days. 49% of requests were replied to within a year, 46% of requests after a year or still pending, and there were 5% of requests where there was failure to obtain and provide information requested. Majority of peers indicated timeliness as a major issue faced in their EOI relations with Curaçao. In particular, one peer noted that it did not request for further information after it received a nil reply because the time limits for tax proceedings were always tight and their EOI requests to Curaçao were always dealt very irregularly. However, most peers also said they were satisfied with the responses that were eventually received.

375. Of the 4 requests where information was not obtained and provided, 1 request was received in 2012 where information could not be obtained and provided because it was not available with the local representative (discussed in A.2); and the other 3 requests were received in 2013 where information was obtained but not provided because of Curaçao's interpretation of the "foreseeably relevant" standard (discussed in C.1). Of the 19 requests that remained pending at the end of the review period, 3 requests were received in 2012 and 16 requests were received in 2013. The 3 requests from 2012 were pending decisions on requests by the taxpayer or reconsideration. For the requests from 2013, information was being gathered for 8 of the requests, 2 requests were pending notification, 2 requests were pending clarifications from the EOI requesting partner. Information could not be obtained for 4 requests as it related to entities covered under grandfathering provisions (discussed in B.1). For these cases, the Directorate of Fiscal Affairs are in discussions with the Central Bank on obtaining the information.

376. The reason for the long response times is mainly due to the lack of dedicated personnel within Curaçao to EOI and a lack of close-monitoring of internal deadlines to ensure that the information can be obtained and effectively exchanged within a set timeframe. During the period under review, the Director of Fiscal Affairs was the delegated competent authority who co-ordinated all EOI matters. However, the Director of Fiscal Affairs is also responsible for a wide range of other responsibilities which accounted for possible delays in attending to and monitoring the status of EOI requests.

377. Particularly during the review period, there was a significant increase in workload due to the major restructuring of the Curaçaoan government after the dissolution of the Netherlands Antilles and widespread changes to all laws had to be undertaken, including the tax legislation. At that time, the Directorate of Fiscal Affairs was already severely lacking in staff due to hiring freezes implemented across government since 2007 when negotiations began for the dissolution of the Netherlands Antilles that was initially aimed for 2008 but was delayed till 2010. Notwithstanding that new hires could have been possible after the dissolution on 10 October 2010, it was again not possible from mid-2012 when Curaçao was officially notified to stop recruitment by the Council of Ministers of the Kingdom of the Netherlands based on the advice from the Board for Financial Supervision. The Director of Fiscal Affairs, who is responsible for handling EOI requests, was thus very heavily occupied with amending the tax legislation and implementing the changes. This work had to be done in addition to overseeing the regular work of the Directorate that included negotiating tax treaties and handling applications for tax incentives. There were also only two Tax Inspectors who assisted in obtaining the information and EOI only formed 50% of their work responsibilities. In addition, four SBAB auditors were assigned to conduct on-site inspections and obtain the information directly from the entities. Another major contributing factor which had a significant impact on the available capacity for the handing of the EOI requests received during the period was the "bulk request" received in 2010 (before the review period) for information relating to 151 taxpayers. This resulted in a total of 240 requests which the limited number of staff had to handle during the period under review (151 in the "bulk request" received in 2010 and 89 of the EOI requests received during the period under review). While the Directorate of Fiscal Affairs had the assistance of two additional government officials from the requesting jurisdiction of the "bulk request" who were seconded to the Curaçaoan government for this specific purpose, the amount of work was still deemed too massive for the team that was still relatively inexperienced in handling EOI requests. Prior to 2012, EOI was not a key work priority but organisational priorities changed starting from 2012 and Curaçao started making improvements to its work processes to handle the increasing number of EOI requests received. The Directorate of Fiscal Affairs has indicated that it is also developing an EOI manual that will set out clear

guidelines and instructions that will help all EOI staff understand the procedures in handling of EOI requests. As the new EOI manual and processes are not yet implemented in practice, it could not be tested during the period under review. It is therefore recommended that Curaçao continue to improve its processes and implement in practice the guidance in the EOI manual.

Acknowledgements of requests and status updates

378. In most cases, peers indicated that there were no status updates provided by Curaçao unless prompted. Similarly, the lack of dedicated personnel and a clear outline of operating procedures were contributing factors to this deficiency. Curaçao authorities indicate that the EOI manual that is being developed will set out clear roles, responsibilities and timelines that all EOI staff will have to adhere to.

Organisational process and resources *(ToR C.5.2)*

Organisation of EOI in practice

379. In accordance to the National Ordinance on General National Taxes, Curaçao's competent authority for purposes of EOI is the Minister of Finance who has delegated its authority to the Director of Fiscal Affairs. The Director of Fiscal Affairs is responsible for receiving, managing and responding to EOI requests. In addition to EOI, the Directorate also negotiates tax treaties, formulates and amends tax policies and legislation, and handles applications for tax incentives. Within the Directorate of Fiscal Affairs, there are a total of seven staff but during the period under review, only the Director of Fiscal Affairs managed all EOI requests. From 2012, one staff, the "EOI Co-ordinator", is appointed to be solely dedicated to managing all EOI requests.

380. The gathering of information for EOI purposes is performed by separate agencies under the purview of the Ministry of Finance – the Inspectorate of Taxes and SBAB. These two agencies are overseen by the Director of Customs and the Director of Receivers respectively who both report to the Minister of Finance. The Inspectorate of Taxes oversees all filings and collection of taxes in Curaçao. It comprises 22 persons, of whom 7 work on EOI matters following changes implemented in 2012. Currently, only 1 staff has undergone full training on EOI matters but there are capacity building plans to ensure that formal training is provided to all staff working on EOI matters. The SBAB operates under the charge of the Inspectorate of Taxes and is responsible for auditing the tax compliance of all entities in Curaçao. This involves regular audits of entities, ensuring the submission of tax return forms, on-site observations and wider industry audits. On occasion, the SBAB also assists the Curaçao Public Prosecutor on tax criminal

investigations, requests for legal assistance or to follow up on tipping-off letters by informers on possible tax fraud or tax evasion cases. The SBAB comprises 72 staff that are organised into audit teams where numbers of staff in each team depend on the sector under audit. During the period under review, an average of 4 SBAB auditors were assigned to EOI matters. SBAB staff are highly academically-qualified due to the more attractive remuneration scheme offered by the SBAB as an autonomous agency of the Curaçao government which thus offers comparable incentives to the private sector. To maintain high efficiency of the work in SBAB, staff undergo on-the-job training and regular upgrading of skills. SBAB staff are also obligated to log the number of hours spent on audits to keep track of work targets.

381. In terms of the organisation of the respective agencies that handles EOI requests, the Directorate of Fiscal Affairs has direct access to the Inspectorate of Taxes and the SBAB for the information to be collected in relation to an EOI request. This is despite there being different reporting lines for these agencies to the Minister of Finance. This procedure has been in practice since 2012. Prior to 2012, the Directorate of Fiscal Affairs could only have direct access to the Inspectorate of Taxes which would then order audits by the SBAB to get the information required for the EOI request. However, this old process was found to be too unwieldy and time-consuming and new processes were therefore put in place from 2012 to increase the efficiency on handling EOI requests.

Handling of EOI requests

382. There is only one procedure for handling of EOI requests for all types of information. The Director of Fiscal Affairs is delegated the role of the Competent Authority by the Minister of Finance. Curaçao updates its main EOI partners of the contact details for sending EOI requests and is in the process of informing all EOI partners.

383. Once the Director of Fiscal Affairs receives the request, it is under the responsibility of the EOI Co-ordinator. The EOI Co-ordinator registers the EOI request in the EOI database, assigns a "booking number" to track the request and creates both a digital and paper file for that specific EOI request. The EOI Co-ordinator then conducts a desktop research to look up the entity or individual mentioned in the request in the Chamber of Commerce's online register and/or the National Register which contains digital files of all Curaçao residents. Information gathered from these sources are placed in the specific file of the EOI request.

384. The EOI Co-ordinator then verifies that the EOI request is complete and meets all criteria in the EOI agreement. A request is then sent to the Tax Inspectorate to obtain the files of the relevant entity or person. If the

information is not found in the files, the EOI Co-ordinator then requests the assistance of the Tax Inspectorate or the SBAB to obtain the additional information. In practice, the EOI Co-ordinator primarily seeks the assistance of the SBAB to obtain the information through an audit since it has been observed that the type of information often requested is not always readily available at the Tax Inspectorate or the information held there is often found outdated.

385. After all required information for the EOI request is gathered, the EOI Co-ordinator assesses if the information is complete and can be exchanged. At this stage, a more thorough evaluation is made on the "foreseeable relevance" of the information collected for the requesting jurisdiction (as described under C.1.). After the EOI Co-ordinator decides to proceed with the exchange of information, the person concerned is notified and given two months (under old laws) or 10 days (under new laws) to present any objections by way of a "request for re-consideration". The EOI Co-ordinator has to reply to the "re-consideration request" within five days (total 15 days minimum holding period under new laws). During the evaluation of the "request for reconsideration", the EOI Co-ordinator takes into account only arguments that is based on the limited grounds on which an EOI request can be rejected (new article 64(2) National Ordinance on General National Taxes. If the decision is to continue with the exchanging of information, the person concerned will receive a final notification stating as such and the EOI Co-ordinator will proceed to send the information to the requesting EOI partner.

IT tools, monitoring, training

386. The EOI procedure is monitored by the EOI Co-ordinator and kept in a detailed Microsoft Excel file. The Microsoft Excel file monitors the timeline and status of EOI requests. The internal EOI processes were revised after two personnel from the Directorate of Fiscal Affairs participated in the 2012 workshop "The Primary Elements to Consider for the Effective Exchange of Information for Tax Purposes" which was held in Florida.

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

387. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. As noted in Part B of this Report, up to May 2013, there is a requirement that the Minister of Finance hold the information for a minimum of two months after sending the notification to the taxpayer, before passing it to the requesting EOI partner (old article 62, National Ordinance on General National Taxes). As identified, this may have prevented Curaçao from providing the information

requested within 90 days. The National Ordinance on General National Taxes was subsequently updated in 2013 to reduce the minimum waiting period to 15 days. This is expected to speed up the process and shorten the response time considerably. Other than those matters identified earlier, there are no further conditions which may restrict the provision of exchange of information assistance.

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	
Partially Compliant	
Factors underlying recommendations	**Recommendations**
Curaçao was not able to respond in a timely manner to its requests with almost half of the requests responded to after a year or still pending at the end of the review period. There were deficiencies in areas related to resources dedicated to EOI and monitoring of internal deadlines.	Curaçao should endeavour to improve its resources and processes to monitor its timeframe for answering requests and ensure that it is always able to reply in a timely manner.
During the three years under review, Curaçao rarely provided an update or status report to its EOI partners within 90 days when the competent authority was unable to provide a substantive response within that time. In some cases updates were also not provided unless prompted by the EOI partner.	Curaçao should ensure it provides an update or status report to its EOI partners within 90 days when the competent authority is unable to provide a substantive response within that time.

Summary of Determinations and Factors Underlying Recommendations

Overall Rating
Partially Compliant

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Partially Compliant.	New tax obligations were introduced in May 2013 requiring all entities to keep all ownership information, including information on all ultimate beneficial owners. Since the new laws only came into effect on 1 May 2013, they could not be sufficiently tested in practice.	Curaçao should monitor the implementation and operation of the new laws requiring all entities to have available information on all ownership information, including information on all ultimate beneficial owners.
	While there is some oversight, there is no rigorous system in practice of monitoring entities' obligations in all cases and there is minimum enforcement and/or penalties applied generally to ensure the availability of ownership information.	Curaçao should ensure that authorities with oversight responsibilities develop mechanisms to monitor entities' obligations and exercise the enforcement powers as appropriate to ensure the availability of ownership information at all times.

Determination	Factors underlying recommendations	Recommendations
	In practice, it is possible for entities to exist but not conduct any activities in Curaçao and therefore not require a local director or local representative to apply for an operating license. It is thus unclear whether there is any oversight of such entities to ensure that there is a local director or local representative charged with the obligations to maintain the availability of ownership and identity information in all cases.	Curaçao should ensure that there is oversight of all Curaçaoan entities and that there are in practice, at all times, local directors or local representatives who will be charged with the obligation to maintain the availability of ownership and identity information.
	The mechanisms in Curaçao and their implementation in practice do not ensure that information on holders of bearer shares is available in respect of all companies.	It is recommended that Curaçao puts in place the necessary mechanisms and takes measures to ensure that information on holders of bearer shares is available in all cases.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
Phase 1 determination: The element is in place.		
Phase 2 rating: Partially Compliant.	While there is some oversight, there is no rigorous system in law of monitoring entities' obligations to keep accounting information in all cases and there is minimum enforcement and/or penalties applied generally to ensure the availability of accounting information in all aspects. Curaçao was not able to provide the information in relation to one EOI request dealing with such a situation.	Curaçao should ensure that authorities with oversight responsibilities develop mechanisms to monitor entities' obligations and exercise the enforcement powers as appropriate to ensure the availability of accounting information at all times.

Determination	Factors underlying recommendations	Recommendations
	In practice, it is possible for entities to exist but not conduct any activities in Curaçao and therefore not require a local director or local representative to apply for an operating license. It is thus unclear whether there is any oversight of such entities to ensure that there is a local director or local representative charged with the obligations to maintain the availability of accounting information in all cases.	Curaçao should ensure that there is oversight of all Curaçaoan entities and that there are in practice, at all times, local directors or local representatives who will be charged with the obligation to maintain the availability of accounting information.
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: Partially Compliant	It is unclear if information can be accessed for a significant number of entities covered under grandfathering provisions because of unclear and inconsistent interpretation of the laws which has posed practical difficulties for Curaçao to respond to four requests still pending at the end of the review period.	Curaçao should ensure that there are clear access powers for it to access information concerning all relevant entities at all times.
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.		

Determination	Factors underlying recommendations	Recommendations
Phase 2 rating: Compliant.	The new procedures for notification that came into effect on 1 May 2013 was towards the end of the review period. While the old laws may have had possible impediments, these did not impact the effective exchange of information and the new procedures under the new laws should further enhance the effectiveness of Curaçao's ability to exchange information in a timely manner.	Curaçao should monitor the implementation of the new rules and ensure that information can be provided in response to a request in a timely manner.
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: Partially Compliant	Curaçao applies a more restricted interpretation of the foreseeably relevant standard as it assesses the relevance of the obtained information for the domestic tax laws of the requesting jurisdiction. This has restricted the exchange of information in three requests during the review period.	Curaçao should correct its interpretation of the foreseeably relevant standard to ensure that it does not impede the effective exchange of information.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
Phase 1 determination: The element is in place.		Curaçao should continue to develop its EOI network to the standard with all relevant partners.
Phase 2 rating: Compliant.		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
Phase 1 determination: The element is in place.		

Determination	Factors underlying recommendations	Recommendations
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)*		
Phase 1 determination: The element is not assessed.	**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: Partially Compliant	Curaçao was not able to respond in a timely manner to its requests with almost half of the requests responded to after a year or still pending at the end of the review period. There were deficiencies in areas related to resources dedicated to EOI and monitoring of internal deadlines.	Curaçao should endeavour to improve its resources and processes to monitor its timeframe for answering requests and ensure that it is always able to reply in a timely manner.
	During the three years under review, Curaçao rarely provided an update or status report to its EOI partners within 90 days when the competent authority was unable to provide a substantive response within that time. In some cases updates were also not provided unless prompted by the EOI partner.	Curaçao should ensure it provides an update or status report to its EOI partners within 90 days when the competent authority is unable to provide a substantive response within that time.

Annex 1: Jurisdiction's response to the review report[30]

The Government of Curaçao wishes to start by conveying our appreciation for the excellent co-operation and good work carried out by the assessment team in evaluating the effectiveness of our legal and regulatory framework.

The Government of Curaçao has taken the recommendations included in the Phase 1 evaluation into careful consideration which led to legislative amendments. It has been working on shortcomings which have also been identified in the Phase 2 evaluation in order to comply with the OECD standards on Exchange of Information. Even though a lot of work has been done under difficult and unique circumstances to Curaçao, the Government of Curaçao is duly aware that there is still room for improvement especially in our communication with the counterparts of requesting states. In order to place the results of the Phase 2 evaluation in the proper context and perspective, the Government of Curaçao feels it is important to outline the developments that the very young and relatively small country of Curaçao had to deal with prior to and during the period under review.

Following several referendums on all islands of the former Netherlands Antilles it was agreed in 2005 that Curaçao and Sint Maarten would become autonomous countries within the Kingdom of the Netherlands (a status similar to the status Aruba obtained in 1986). The three other islands, Bonaire, Saba and Sint Eustatius would become part of the Netherlands. On October 10, 2010 the Netherlands Antilles was formally dissolved and Curaçao acquired its autonomous status within the Kingdom. With the restructuring of the Netherlands Antilles a lot of amendments had to be made in almost all laws and additional legislation, including the tax legislation.

Besides the difficult situation due to the constitutional changes the authorities in Curacao had to perform their regular duties, which included negotiating new Tax Agreements and handling an increased demand of actual international exchange of information requests. Furthermore in 2010

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

and 2012 Curaçao also received two so-called "bulk-requests" from one jurisdiction. Although the mentioned "bulk-requests" were not all received in the review period it also has had a significant impact on the available capacity for the handling of requests in a timelier manner. Because of the scope of these requests, their specificity and the agreements with the Requesting State concerning the handling, the "bulk-requests" are not accounted for in the review period.

Curaçao agrees in general with the analysis and outcomes of the report. The feedback received during the process of the phase 2 review was useful and Curaçao is, as mentioned before, already taking measures and adapting its procedures to address the issues highlighted whilst the legislative shortcomings which were detected in the Phase 1 report were also restored by legislative amendments which entered into force in May of 2013.

Furthermore, it is important to note that Curaçao by letter, dated October 13th, 2014, of Curaçao's Minister of Finance, Dr. J. Jardim, to the chair of the Global Forum once more reaffirmed Curaçao's full support of the Tax Transparency Agenda of the Global Forum.

Also with respect to the Automatic exchange of Information for Tax Purposes Curaçao has undertaken the necessary steps to adhere to the FATCA format to facilitate automatic exchange of information in this respect. This agreement was signed in 2014. This also reiterates Curaçao's firm conviction to adhere to the mechanism of automatic exchange of tax information in addition to the existing forms of exchange of tax information.

The Common Reporting Standards concerning the automatic exchange of tax information will serve as a basis for the automatic exchange of tax information between Curaçao and the Netherlands. In this process, Curaçao, in close co-operation with the Netherlands, has started with the initial stage of implementing of this mechanism.

The above underscores Curaçao's full commitment to the implementation of the Common Reporting Standards within the context of automatic exchange of tax information by September 2017 and Curaçao's commitment to be part of the so called Early Adopters Group.

Despite the described challenges which partially led to the shortcomings as described in the report Curaçao takes this opportunity to reconfirm its commitment to the Global Forum's peer review process, tax transparency and the avoidance of harmful tax competition. Moving forward Curaçao wishes to emphasize that it will continue to do all which is necessary to further strengthen its legislative and regulatory regime in relation to the exchange of information mechanisms guided by the recommendations made in this report.

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

Multilateral and bilateral instruments

In the case of Curaçao, the relevant multilateral instruments with respect to EOI are as follows:

- Tax Arrangement of the Kingdom of the Netherlands (*Belastingregeling voor het Koninkrijk*, BRK) of 28 October 1964 (in force as of 1 January 1965), which is a multilateral agreement concluded among the three former parts of the Kingdom – the Netherlands, Aruba, Curaçao and Sint Maarten (i.e. the former Netherlands Antilles)[31] – for the avoidance of double taxation and the prevention of fiscal evasion. Under articles 37 and 38, it includes an EOI provision which generally follows the old wording of Article 26 of the OECD Model Tax Convention, i.e. before the inclusion of paragraphs 4 and 5 in the 2005 update.
- EU Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments. This Directive aims at ensuring: *(i)* that savings income in the form of interest payments in favour of individuals or residual entities being resident of an EU Member to State are effectively taxed in accordance with the fiscal laws of their state of residence; and *(ii)* that information is exchanged with respect to such payments. Since 2005, Curaçao has agreed to implement measures equivalent to these contained in this Directive via reciprocal bilateral

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

agreements signed with each EU Member State (National Ordinance on Tax on Income from Savings (P.B. 2006, no. 50)).

- The multilateral Convention on Mutual Administrative Assistance in Tax Matters was extended to Curaçao with entry into force on 1 September 2013 by the Kingdom of the Netherlands. The status of the Convention as at 16 December 2014 is set out in the table below.[32] When two or more arrangements for the exchange of information for tax purposes exist between Curaçao and a partner jurisdiction, the parties may choose the most appropriate agreement under which to exchange information.

The table below contains the list of EOI mechanisms of relevance for Curaçao as at 16 December 2014, in alphabetical order:

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force[a]
1	Albania	Multilateral Convention	Signed	1-Dec-2013
2	Andorra	Multilateral Convention	Signed	Not yet in force
3	Anguilla[b]	Multilateral Convention	Extended	1-Mar-2014
4	Antigua and Barbuda	TIEA	29-Oct-2009	5-Dec-2013
5	Argentina	Multilateral Convention	Signed	1-Sep-2013
		TIEA	14-May-2014	Not yet in force
6	Aruba[c]	BRK	28-Oct-1964	1-Jan-1965
7	Australia[d]	Multilateral Convention	Signed	1-Sep-2013
		TIEA	1-Mar-2007	10-Oct-2010 (4-Apr-2008)
8	Austria	Multilateral Convention	Signed	1-Dec-2014
9	Azerbaijan	Multilateral Convention	Signed	Not yet in force
10	Belgium	Multilateral Convention	Signed	Not yet in force
11	Belize	Multilateral Convention	Signed	1-Sep-2013
12	Bermuda[b]	Multilateral Convention	Extended	1-Mar-2014
		TIEA	28-Sep-2009	Not yet in force
13	Brazil	Multilateral Convention	Signed	Not yet in force
14	British Virgin Islands[b]	Multilateral Convention	Extended	1-Mar-2014
		TIEA	11-Sep-2009	Not yet in force
15	Cameroon	Multilateral Convention	Signed	Not yet in force
16	Canada	Multilateral Convention	Signed	1-Mar-2014
		TIEA	29-Aug-2009	1-Jan-2011

32. The updated table is available at www.oecd.org/document/14/0,3746,en_2649_33767_2489998_1_1_1_1,00.html.

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force[a]
17	Cayman Islands[b]	Multilateral Convention	Extended	1-Jan-2014
		TIEA	29-Oct-2009	Not yet in force
18	Chile	Multilateral Convention	Signed	Not yet in force
19	China (People's Republic of)	Multilateral Convention	Signed	Not yet in force
20	Colombia	Multilateral Convention	Signed	1-Jul-2014
21	Costa Rica	Multilateral Convention	Signed	1-Sep-2013
22	Croatia	Multilateral Convention	Signed	1-Jun-2014
23	Cyprus[e]	Multilateral Convention	Signed	Not yet in force
24	Czech Republic	Multilateral Convention	Signed	1-Feb-2014
25	Denmark	Multilateral Convention	Signed	1-Sep-2013
		TIEA	10-Sep-2009	1-Jun-2011
26	Estonia	Multilateral Convention	Signed	1-Nov-2014
27	Faroe Islands[f]	Multilateral Convention	Extended	1-Sep-2013
		TIEA	10-Sep-2009	1-Jul-2011
28	Finland	Multilateral Convention	Signed	1-Sep-2013
		TIEA	10-Sep-2009	1-Jun-2011
29	France	Multilateral Convention	Signed	1-Sep-2013
		TIEA	10-Sep-2010	1-Aug-2012
30	Gabon	Multilateral Convention	Signed	Not yet in force
31	Georgia	Multilateral Convention	Signed	1-Sep-2013
32	Germany	Multilateral Convention	Signed	Not yet in force
33	Ghana	Multilateral Convention	Signed	1-Sep-2013
34	Gibraltar[b]	Multilateral Convention	Extended	1-Mar-2014
35	Greece	Multilateral Convention	Signed	1-Sep-2013
36	Greenland[f]	Multilateral Convention	Extended	1-Sep-2013
		TIEA	10-Sep-2009	1-May-2012
37	Guatemala	Multilateral Convention	Signed	Not yet in force
38	Guernsey[b]	Multilateral Convention	Extended	1-Aug-2014
39	Hungary	Multilateral Convention	Signed	1-Mar-2015
40	Iceland	Multilateral Convention	Signed	1-Sep-2013
		TIEA	10-Sep-2009	1-Jan-2012
41	India	Multilateral Convention	Signed	1-Sep-2013
42	Indonesia[g]	Multilateral Convention	Signed	Not yet in force
43	Ireland	Multilateral Convention	Signed	1-Sep-2013
44	Isle of Man[b]	Multilateral Convention	Extended	1-Mar-2014
45	Italy	Multilateral Convention	Signed	1-Sep-2013
46	Japan	Multilateral Convention	Signed	1-Oct-2013

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force[a]
47	Jersey[b]	Multilateral Convention	Extended	1-Jun-2014
48	Kazakhstan	Multilateral Convention	Signed	Not yet in force
49	Korea	Multilateral Convention	Signed	1-Sep-2013
50	Latvia	Multilateral Convention	Signed	1-Nov-2014
51	Liechtenstein	Multilateral Convention	Signed	Not yet in force
52	Lithuania	Multilateral Convention	Signed	1-Jun-2014
53	Luxembourg	Multilateral Convention	Signed	1-Nov-2014
54	Malta	Multilateral Convention	Signed	1-Sep-2013
55	Mexico	Multilateral Convention	Signed	1-Sep-2013
		TIEA	1-Sep-2009	4-Feb-2011
56	Moldova	Multilateral Convention	Signed	1-Mar-2012
57	Monaco	Multilateral Convention	Signed	Not yet in force
58	Montserrat[b]	Multilateral Convention	Extended	1-Oct-2013
59	Morocco	Multilateral Convention	Signed	Not yet in force
60	Netherlands	BRK	28-Oct-1964	1-Jan-1965
61	New Zealand[d]	Multilateral Convention	Signed	1-Mar-2014
		TIEA	1-Mar-2007	10-Oct-2010 (2-Oct-2008)
62	Nigeria	Multilateral Convention	Signed	Not yet in force
63	Norway[d]	Multilateral Convention	Signed	1-Sep-2013
		DTA	13-Nov-1989	10-Oct-2010 (17-Dec-1990)
		Protocol	10-Sep-2009	1-Sep-2011
64	Philippines	Multilateral Convention	Signed	Not yet in force
65	Poland	Multilateral Convention	Signed	1-Sep-2013
66	Portugal	Multilateral Convention	Signed	1-Mar-2015
67	Romania	Multilateral Convention	Signed	1-Nov-2014
68	Russia	Multilateral Convention	Signed	Not yet in force
69	Saint Kitts & Nevis	TIEA	11-Sep-2009	6-Nov-2014
70	Saint Lucia	TIEA	29-Oct-2009	1-Oct-2013
71	Saint Vincent and the Grenadines	TIEA	28-Sep-2009	31-Jul-2013
72	San Marino	Multilateral Convention	Signed	Not yet in force
73	Saudi Arabia	Multilateral Convention	Signed	Not yet in force
74	Singapore	Multilateral Convention	Signed	Not yet in force
75	Sint Maarten[c]	BRK	28-Oct-1964	1-Jan-1965
76	Slovak Republic	Multilateral Convention	Signed	1-Mar-2014
77	Slovenia	Multilateral Convention	Signed	1-Sep-2013

	Jurisdiction	Type of EoI arrangement	Date signed	Date entered into force[a]
78	South Africa	Multilateral Convention	Signed	1-Mar-2014
79	Spain[d]	Multilateral Convention	Signed	1-Sep-2013
		TIEA	10-Jun-2008	10-Oct-2010 (27-Jan-2010)
80	Sweden	Multilateral Convention	Signed	1-Sep-2013
		TIEA	10-Sep-2009	20-Apr-2011
81	Switzerland	Multilateral Convention	Signed	Not yet in force
82	Tunisia	Multilateral Convention	Signed	1-Feb-2014
83	Turkey	Multilateral Convention	Signed	Not yet in force
84	Turks and Caicos Islands[b]	Multilateral Convention	Extended	1-Dec-2013
85	Ukraine	Multilateral Convention	Signed	1-Sep-2013
86	United Kingdom	Multilateral Convention	Signed	1-Sep-2013
		TIEA	10-Sep-2010	1-May-2013
87	United States[d]	Multilateral Convention	Signed	Not yet in force
		TIEA	17-Apr-2002	10-Oct-2010 (22-Mar-2007)

a. Please note that the Kingdom of the Netherlands extended the Multilateral Convention to Curaçao with entry into force on 1 September 2013. This column therefore reports, in respect of the Multilateral Convention, information regarding the partner jurisdiction.

b. Extension of the Multilateral Convention by the United Kingdom.

c. Extension of the Multilateral Convention by the Kingdom of the Netherlands.

d. Dates in parenthesis represent the date on which the agreement originally came into force with respect to the former Netherlands Antilles, and which continue to apply to Curaçao following the dissolution of the Netherlands Antilles on 10 October 2010.

e. 1. Footnote by Turkey: The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

2. Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

f. Extension of the Multilateral Convention by the Kingdom of Denmark.

g. Indonesia has ratified the Multilateral Convention, it will enter into force in Indonesia on 1 May 2015.

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

Civil and commercial laws

Book 2 of the Civil Code, of 29 December 2003 (Official Gazette 2004, no. 6, as amended by P.B. 2004, no. 98 and P.B. 2006, no. 71)

Trade Register Ordinance, of 9 September 2009 (P.B. 2009, 51)

Trade Register Decree, of 22 December 2009 (P.B. 2009, 71)

National Ordinance on Trust of 15 December 2011 concerning the addition of the legal stipulations regarding trusts to Book 3 of the Civil Code (Landsverordening trust).

Regulated activities and AML/CFT laws

Government Ordinance on the Supervision of Banking Institutions, of 2 February 1994

National Ordinance on the Supervision of Investment Institutions and Administrators, of 18 December 2002

National Ordinance on the Supervision of Trust Service Providers, of 23 December 2003 (Official Gazette 2003, no. 114)

National Decree on the Custody of Bearer Certificates, of 15 June 2010 (P.B. 2010, no. 36)

National Ordinance on the Identification when rendering Services, of 5 July 2010 (P.B. 2010, no. 40)

National Ordinance on the Reporting of Unusual Transactions, of 13 July 2010 (P.B. 2010, no. 41)

Tax laws

National Ordinance on General National Taxes, of 3 August 2001 (P.B. 2001, no. 81, as amended by P.B. 2001, no. 145; P.B. 2006, no. 50; P.B. 2006, no. 98; P.B. 2007, no. 110 and P.B.2008, no. 74, and the latest one being published in P.B. 2013, no. 53)

National Ordinance on Income Tax 1943, of 15 March 2002 (P.B. 2002, no. 63, as amended by P.B. 2006, no. 50; P.B. 2006, no. 71; P.B. 2006, no. 98; P.B. 2006, no. 99; P.B. 2008, no. 68; and P.B. 2013, no. 3)

Profit Tax Ordinance, of 6 March 2002 (P.B. 2002, no. 54, as amended by P.B. 2002, no. 83; P.B. 2004, no. 16; P.B. 2006, no. 98; P.B. 2007, no. 110; P.B. 2009, no. 54; P.B 2009, no. 77; P.B. 2011, no. 72)

Dividend Withholding Tax Ordinance, of 29 December 1999 (P.B. 1999, no. 246, as amended by P.B. 2001, no. 89; P.B. 2001, no. 144 and P.B. 2001, no. 145)

National Ordinance on Tax on Income from Savings, of 12 July 2006 (P.B. 2006, no. 50)

Annex 4: List of representatives interviewed during on-site visit

Ministry of Finance

Ministry of Justice

Ministry of Foreign Affairs

Central Bank of Curaçao and Sint Maarten

Directorate of Fiscal Affairs

Inspectorate of Taxes

Stichting Belastingaccountantsbureau

Financial Intelligence and Fraud Unit

Department of Economic Affairs

Chamber of Commerce and Industry

Public Prosecutors Office

Reporting Centre for Unusual Transactions

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(23 2015 07 1 P) ISBN 978-92-64-23146-7 – 2015

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ISBN 978-92-64-23146-7
23 2015 07 1 P

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