

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report**  
**Phase 1**  
**Legal and Regulatory Framework**

**ALBANIA**





# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Albania 2015**

PHASE 1: LEGAL AND REGULATORY FRAMEWORK

August 2015  
(reflecting the legal and regulatory framework  
as at May 2015)

This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD or of the governments of its member countries or those of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

**Please cite this publication as:**

OECD (2015), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Albania 2015: Phase 1: Legal and Regulatory Framework*, OECD Publishing, Paris.

DOI: <http://dx.doi.org/10.1787/9789264237483-en>

ISBN 978-92-64-23744-5 (print)

ISBN 978-92-64-23748-3 (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](http://www.oecd.org/publishing/corrigenda).

© OECD 2015

---

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to [rights@oecd.org](mailto:rights@oecd.org). Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at [info@copyright.com](mailto:info@copyright.com) or the Centre français d'exploitation du droit de copie (CFC) at [contact@cfcopies.com](mailto:contact@cfcopies.com).

---

## *Table of Contents*

<b>About the Global Forum</b> .....	5
<b>Executive summary</b> .....	7
<b>Introduction</b> .....	11
Information and methodology used for the peer review of Albania .....	11
Overview of Albania .....	12
General information on the legal system and the taxation system .....	13
Recent developments .....	16
<b>Compliance with the Standards</b> .....	17
<b>A. Availability of information</b> .....	17
Overview .....	17
A.1. Ownership and identity information .....	19
A.2. Accounting records .....	40
A.3. Banking information .....	46
<b>B. Access to information</b> .....	49
Overview .....	49
B.1. Competent Authority’s ability to obtain and provide information .....	50
B.2. Notification requirements and rights and safeguards .....	57
<b>C. Exchange of information</b> .....	59
Overview .....	59
C.1. Exchange of information mechanisms .....	60
C.2. Exchange of information mechanisms with all relevant partners .....	66
C.3. Confidentiality .....	67
C.4. Rights and safeguards of taxpayers and third parties .....	69
C.5. Timeliness of responses to requests for information .....	70

<b>Summary of determinations and factors underlying recommendations . . . . .</b>	<b>73</b>
<b>Annex 1: Jurisdiction’s response to the review report . . . . .</b>	<b>77</b>
<b>Annex 2: List of Albania’s exchange of information mechanisms. . . . .</b>	<b>78</b>
<b>Annex 3: List of all laws, regulations and other relevant material . . . . .</b>	<b>85</b>

## 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](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).





## Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Albania. The international standard, which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain timely access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information (EOI) partners.

2. Albania is a small state in the Balkan Peninsula, South-eastern Europe, with a long Adriatic and Ionian coastline. In the early 90s Albania, a formerly closed, centrally-planned state, started to transition to an open-market economy. The importance of this transition has been reflected in the legal and economic framework. Presently, exports and imports account for more than one-third and one-half, respectively, of the Albanian economy. Albania’s major commercial partners are also EOI partners. Albania committed to implement the international standard of transparency and exchange of information in 2012 and is member of the Global Forum. Albania is also a member of many other international organisations including the Council of Europe, the World Trade Organization and Moneyval.

3. Relevant legal entities in Albania include joint stock and limited liability companies, general partnerships and limited partnerships for which there are sufficient ownership information requirements under the law. The availability of ownership information in respect of relevant entities is generally maintained either with the National Registration Centre or the entity itself. However, a deficiency has been noted regarding the identification of the holders of bearer shares that were permitted under the Albanian law until 2008. The current legislation does not provide for a mechanism for the abolition or the conversion of bearer shares issued prior to 2008 into nominative shares. Although there are several mechanisms ensuring that information on the shareholders’ identity is available, it remains unclear whether these mechanisms would be sufficient to identify owners of bearer shares previously issued. Moreover, foreign companies with a sufficient nexus to Albania

(e.g. being resident for tax purposes) and foreign partnerships which carry on business in Albania or have income, deductions or credits for tax purposes in Albania are neither required to maintain nor provide to the authorities ownership information in all cases. As a result of these deficiencies, element A.1 was found in place, but certain aspects of the legal implementation of the element need improvement.

4. The concept of “trust” as it is under the common law does not exist under Albanian law and Albania has not signed the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. There is, however, no obstacle in Albanian domestic law that prevents a resident from acting as a trustee or for a foreign trust to invest or acquire assets in Albania. In such cases, there is a combination of requirements under the tax laws and the Law on the Prevention of Money Laundering and Terrorism Financing (AML/CFT Law) in place ensuring the availability of identity information of trustees, settlors and beneficiaries of a foreign trust administered by an Albanian trustee.

5. Foundations can be created in Albania but may only be formed as not for profit entities (NPO). Overall, comprehensive obligations established under Albanian NPO Law, tax laws and AML/CFT Law ensure the availability of information on the founders, beneficiaries and members of the executive board.

6. All relevant Albanian entities as well as foreign entities performing economic activities in Albania are required under the accounting law to keep accounting records. The requirements under the accounting law are supplemented by tax and AML regulations. Availability of underlying documentation is ensured by accounting and tax requirements. Accounting records and underlying documentation must be kept in Albania for at least five years. As a result, element A.2 was found in place.

7. With respect to banks and other financial institutions, Albanian AML and accounting legislation imposes appropriate obligations to ensure that all records pertaining to customers’ accounts as well as related financial and transactional information are available. Banks are expressly prohibited from establishing business relationships with or carrying out transactions for anonymous customers. As a result, element A.3 was found to be in place.

8. The Albanian competent authority has broad access powers to obtain and provide the requested information. These powers include the power to carry out tax audits within the premises of taxpayers and third parties, inspect documents and make written requests. All information gathering powers available for domestic purposes can be used for exchange of information purposes regardless of whether there is a domestic tax interest. Banks are required to provide a wide range of bank information to the General

Taxation Department and enforcement provisions to compel the production of information including criminal sanctions are contained under the tax law. Element B.1 was found to be in place. Albania's domestic legislation does not require notification of the taxpayer that is the object of an EOI request. Element B.2 was found to be in place.

9. Albania has an extensive exchange of information network covering 94 jurisdictions through 39 double tax conventions (DTCs) and the Convention on Mutual Administrative Assistance in Tax Matters. The great majority of Albania's agreements meet the international standard. Some of Albania's older treaties do not contain provisions equivalent to Article 26(4) and (5) of the OECD Model Tax Convention. Although Albania does not need the referenced provisions to exchange information in accordance with the standard, they may be necessary for a small number of its treaty partners (whose legal framework has not yet been assessed by the Global Forum). The confidentiality of information exchanged in Albania is protected by obligations implemented in the exchange of information agreements, complemented by domestic legislation, which provide for tax officials to keep information confidential. There are enforcement measures in place where confidentiality of information exchanged by means of EOI agreements is breached.

10. Albania's response to the recommendations in this report, as well as the application of the legal framework to the practices of its competent authority will be considered in detail in the Phase 2 Peer Review of Albania which is scheduled for the second half of 2015.



## Introduction

### Information and methodology used for the peer review of Albania

11. The assessment of the legal and regulatory framework of the Republic of Albania (hereafter Albania) was based on the international standards for transparency and exchange of information as described in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes, and was prepared using the Global Forum’s Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 22 of May 2015, Albania’s responses to the Phase 1 questionnaire and supplementary questions, other materials supplied by Albania, and information supplied by partner jurisdictions.

12. The *Terms of Reference* break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information, and (C) exchange of information. This review assesses Albania’s legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. A summary of findings against those elements is set out at the end of this report.

13. The assessment was conducted by a team which consisted of two expert assessors: Ms. Silke VOSS, Senior Tax Specialist, Federal Ministry of Finance of Germany and Mr. James Karanja, Principal Revenue Officer, Kenya Revenue Authority; and two representatives of the Global Forum Secretariat: Ms. Wanda M. Montero Cuello and Mr. Boudewijn van Looij.

## Overview of Albania

14. Albania is a small size state in Southeastern Europe, bordering the Adriatic Sea and Ionian Sea, between Greece in the south and Montenegro and Kosovo to the north, with an area of 28 748 km<sup>2</sup> and a population of about 2.8 million. Tirana (Tiranë) is the capital and the largest city of the country. The official language is Albanian but Greek, Vlach, Romani and Slavic dialects are also spoken. The Albanian Lek is the national currency (ALL 139.69 = EUR 1 as at 26 January 2015<sup>1</sup>).

15. Albania has undergone a transition from almost half a century of communism in the early 1990s. The transition faced by Albania includes multiple spheres, most importantly a political transition to democracy and an economic transition from centralised planned economy to market economy. The first constitution under the new regime was enacted in 1999. Since then, many complementary regulations have been issued or amended in order to put in place the new political system. Many of these regulations have been written according to the European standard.

16. Albania's 2013 estimated GDP was EUR 9.73 billion<sup>2</sup>. The services sector accounts for around 60% of the Albanian economy and includes trade, hotels and restaurants, transportation, post and communication and other services; the production sector which includes construction, industry and agriculture, hunting, forestry and fishing represents the remaining 40% of its economy, as a percentage of the GDP<sup>3</sup>. In 2013, exports and imports accounted for 35% and 53% of the GDP, respectively. The main trading partners of Albania are European Union (EU) member states and the Russian Federation (Russia). In terms of exports the main partners in 2014 were Italy (52%) followed by Spain (7%), Kosovo (7%), Turkey (4%), Germany (3%) and Greece (3%). The main importing partners were Italy (29.6%), Greece (9.6%), the People's Republic of China (China) (7.2%), Germany (6.0%) and Turkey (7.0%). Albania's main exporting products include textiles and footwear; asphalt, metals and metallic ores, crude oil; vegetables, fruits and tobacco.<sup>4</sup>

17. Albania is a member of many international organisations including the United Nations, Council of Europe, the World Trade Organization, Moneyval, UNESCO, World Health Organization and others. Albania is an official candidate for membership in the European Union. Albania is a member of the Global Forum on Transparency and Exchange of Information

---

1. [www.bankofalbania.org/](http://www.bankofalbania.org/).

2. [www.instat.gov.al/media/274943/gross\\_domestic\\_products\\_2013\\_preliminary\\_results.pdf](http://www.instat.gov.al/media/274943/gross_domestic_products_2013_preliminary_results.pdf).

3. [www.bankofalbania.org/web/Annual\\_Report\\_2013\\_7066\\_2.php](http://www.bankofalbania.org/web/Annual_Report_2013_7066_2.php).

4. [www.instat.gov.al/en/themes/external-trade.aspx](http://www.instat.gov.al/en/themes/external-trade.aspx).

for Tax Purposes since January 2012. Albania signed the Convention on Mutual Administrative Assistance in Tax Matters on 1 March 2013.

## General information on the legal system and the taxation system

### *Governance and the legal system*

18. Albania is a parliamentary democratic republic with a multi-party system. The head of state is the President, elected by the Parliament (the Assembly of the Republic of Albania), for a five-year term. Most executive power lies with the Prime Minister, who is the head of the Cabinet of Ministers and is appointed by the President on the proposal of the party or coalition of parties that has the majority of seats in the Parliament. The remainder of the Cabinet is appointed by the Prime Minister. The appointed Cabinet needs to be approved by the Parliament. The Parliament (*Kuvendi i Shqipërisë* or short *Kuvendi*) is unicameral and consists of 140 members elected by popular vote based on proportional representation. The *Kuvendi* is elected for a term of four years.

19. The country consists of 12 counties or prefectures (Berat, Diber, Durres, Elbasan, Fier, Gjirokaster, Korce, Kukes, Lezhe, Shkoder, Tirane, Vlore); each comprises several districts, totalling 36, which are self-governing units which can issue by-laws, regulations and decisions with sub-law regulatory power. There are 375 municipalities and communes in the country.

20. The legal system of Albania is based on civil law. The hierarchy of law consists of the Constitution, international agreements ratified by the Albanian Parliament, laws, and sub legal acts (government decisions, instructions issued by ministers, etc.). International agreements (including agreements for exchange of information for tax purposes) which settle matters regulated by law require ratification by the Parliament. Where a ratified international treaty conflicts with domestic law, the ratified treaty prevails over domestic law (art. 122 Constitution of Albania). A list of relevant legislation and regulations is set out in Annex 3.

21. The Albanian court system consists of a Supreme Court, which is the highest judicial authority in the Republic of Albania. The Supreme Court comprises 19 judges and is organised into three chambers: civil, administrative and criminal. There are also 37 courts, subdivided into General Jurisdiction Courts which examine court cases in civil and criminal matters (consist of 22 courts of first instance and 6 courts of appeal); Administrative Courts (consist of 6 court of first instance and one court of appeal) and Serious Crimes Court (consist of one court of first instance and one court of appeal).

### *The tax system*

22. Albania has a fully-fledged tax system comprising direct and indirect taxes, fees and duties. The tax system is governed by the Law on Tax Procedures (LTP) and specific taxing acts and Cabinet Regulations issued pursuant to these Acts. The LTP specifies the Albanian tax system, determines the types of taxes and regulates the tax procedure including rights of taxpayers and the appeal procedures for decisions made regarding taxes and fees. The tax system consists of national and local taxes. The National taxes include:

- Income taxes (including corporate income tax and personal income tax)
- Value Added Tax
- Excise duties (administered by customs department);
- Customs duties;
- Taxes on games of fortune and casinos;
- Other national taxes and fees.

23. Local taxes include:

- Simplified income tax (tax on small business activities);
- Property tax;
- Hotel tax, advertisement tax, environmental tax and other local fees.

24. The Albanian collection and administration of taxes is responsibility of the General Taxation Department (GTD) and General Customs Department, as well as local tax offices in municipalities. The personal income tax rate is progressive with three brackets, with corresponding rates of 0%, 13% and 23%. The corporate income tax in Albania is levied at a flat rate of 15%. Companies are obliged to apply a withholding tax on payments of dividends, interest and technical services, when such payments are made to individuals or to non-resident persons. The withholding tax rate is 15%. The standard VAT rate is 20%, with a 0% rate for medical products.

25. Albania taxes its residents (companies and individuals) on their worldwide income. All companies established under Albanian law and registered in Albania are considered residents in Albania. According to the LTP an individual is considered to be an Albanian tax resident if that person has its permanent address or “a usual residence” (183-day rule) in Albania. A foreign company having a permanent establishment in Albania is liable to tax in Albania with respect to Albanian source income and worldwide income attributable to that permanent establishment (art. 8 LTP). Non-resident



companies carrying on activity in Albania (not through a permanent establishment) and non-resident individuals working in Albania are subject to tax only on their Albanian source income.

### ***Exchange of information for tax purposes***

26. Exchange of information for tax purposes is specifically regulated by the Albanian law. The LTP provides general tax procedures for the GTD with regard to access to information to be exchanged with other tax administrations. Albania has in place 39 DTCs which cover its main trading partners. Albania signed the amended Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention) on 1 March 2013, which extends the exchange of information network up to a total of 94 jurisdictions. The convention entered into force for Albania on 1 December 2013.

### ***Overview of the financial sector and relevant professions***

27. The financial sector in Albania is composed of different activities including banking, insurance and reinsurance activities; stock exchange related activities and the administration of investment and pension funds. As of May 2014 there were 16 banks registered in Albania. The total value of assets in the Albanian banking sector is ALL 1 243 billion (EUR 8.9 billion) as at 31 May 2014.

28. The Bank of Albania is the central bank of the country and the appointed regulatory body of all financial entities. The Bank of Albania is also the responsible authority for the monitoring and supervision of banks and other financial institutions and nonbank financial entities such as savings and credit companies and their unions and foreign exchange bureaus (arts. 12 and 23 Law on the Bank of Albania). The regulation and supervision of insurance, securities and voluntary pensions market as well as its operators and related professions is under the responsibility of the Albanian Financial Supervisory Authority which is an independent public institution.

29. The Tirana Stock Exchange (TSE) is the only organised securities market in Albania. The TSE was established in 2002 with the object to develop the Albanian securities market. Only government securities are traded and there are no companies listed on it.

30. Relevant professions such as lawyers, accountants, auditors and notaries are regulated by law: lawyers are regulated by the Law on the profession of lawyers; the licensing and supervisory procedures are administered by the Bar Association Chamber and the Ministry of Justice. Notaries are regulated by the Law on Notaries; licensing and supervisory procedures are administered by the Chamber of Notaries and the Ministry of Justice. Accountants

are regulated by the Law on legal auditing, organisation of the profession of registered accounting experts and approved accountant; the licensing and supervisory body of accountants is the Certifying Authority of Accounting Experts.

31. Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) in Albania is primarily regulated by the Prevention of Money Laundering and Terrorism Financing Law (AML/CFT Law) and the related sublegal acts. Regulation of AML issues is under the overall control of the General Directorate for Prevention of Money Laundering (GDPML), a dependency of the Ministry of Finance. The GDPML is the Financial Intelligence Unit. Its mission is the fight against and prevention of money laundering and terrorism financing through the collection, verification, evaluation, control, and dissemination of information to law enforcement agencies; safeguarding of the information obtained from obliged entities; and overseeing the suspension and freezing of transactions aimed at preventing the transfer, conversion or change of ownership of the property and products generated from criminal activities.

## Recent developments

32. In December 2014, Albania amended the LTP, introducing Article 61/1, to further clarify the information gathering powers available to the GTD for collecting information for exchange of information purposes. Pursuant to this amendment, the GTD may request from any person any information that may be required under international agreements (including DTCs, tax information exchange agreements – TIEAs and the Multilateral Convention) that have entered into force in Albania. The amendment entered into force on 1 January 2015.

33. In May 2015, Albania's Ministry the Finance enacted Instruction no. 15 "for determining the procedures to gather information from all persons in accordance with the provision of international tax treaties". The Instruction provides for the relevant rules for application of Article 61/1 of the LTP.

34. Albania is currently harmonising its legislation with European Union legislation; in particular, this includes harmonisation with the Directive 2011/16/EU on administrative co-operation in the field of taxation.

## Compliance with the Standards

### A. Availability of information

#### Overview

35. 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 such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority<sup>5</sup> may not be able to obtain and provide it when requested. This section of the report describes and assesses Albania's legal and regulatory framework for availability of information.

36. The Albanian legal and regulatory framework ensures that ownership information regarding relevant entities is generally available in Albania in line with the international standard, whether in the hands of the Registry or the entities themselves. There are several mechanisms under Albanian legislation ensuring that shareholders' identity information is available. The Law on Entrepreneurs and Companies and the Law on the National Registration Centre (NRC) require limited liabilities companies to provide shareholders information to the NRC at the time of registration and all subsequent

---

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

changes. Joint stock companies must keep a share registry in which the ownership of all shares is recorded. Nevertheless, these requirements might not be sufficient to identify the holders of bearer shares issued by joint stock companies prior 2008, when the Albanian legislation allowed the issuance of this type of shares. It is noted that the current Albanian legal framework does not contain provisions for the issuance of bearer shares. In relation to bearer shares issued prior 2008, the current legislation does not provide for a clear mechanism to abolish them or to convert them into nominative shares. Foreign companies are obliged to register with the NRC; nevertheless, availability of ownership information is conditioned to certain circumstances as whether ownership information is contained in the by-laws or act of incorporations or if such information is relevant in ascertaining certain taxpayer's tax liabilities. Foreign partnerships which carry on business in Albania or have income, deductions or credits for tax purposes in Albania are neither required to maintain nor provide to the authorities information on the identity of their partners in all cases. Albania is recommended to correct the deficiencies identified. Therefore, element A.1 was found in place, but certain aspects of the legal implementation of the element need improvement.

37. Nominee ownership is restricted to obligated persons under AML rules such as financial institutions, stock exchange, brokers, attorneys and other legal representatives, which require identification of a person on whose behalf a nominee is acting.

38. Albanian law does not recognise the concept of trust and Albania has not signed the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. However, there are no restrictions in Albanian domestic law that prevent a resident of Albania from acting as a trustee, protector or administrator of a trust formed under foreign law. Albanian AML legislation ensures that information is available regarding the trustees, settlor and beneficiaries of a foreign trust administered by an Albanian trustee. Further, any person providing trustee services by way of business is expressly covered by the AML/CFT Law and is subject to AML obligations which include identification of the trustees, settlor and beneficiaries of a trust.

39. Foundations in Albania are non-profit entities established exclusively for public-interest purposes. Information on the founders, members of the executive board (or any other person with the authority to represent the foundation) must be provided to the Court of Tirana upon registration and kept up to date. Such information is required to be kept by the foundation for all the time it remains registered. In addition, members of the executive board who act in a professional capacity are subject to AML rules to identify their clients.

40. Enforcement provisions are in place in respect of all the relevant obligations to maintain ownership and identity information for all relevant entities and arrangements. The effectiveness of the enforcement provisions which are in place in Albania will be assessed as part of its Phase 2 review.

41. All relevant entities as well as foreign entities performing economic activities in Albania are required under the accounting law to keep accounting records. The requirements under the accounting law are supplemented by obligations imposed by the tax law and under AML regulations. Availability of underlying documentation is ensured by accounting and tax requirements. Accounting records and underlying documentation must be kept in Albania for at least five years. Therefore, element A.2 was found in place.

42. In respect of banks and other financial institutions, Albanian AML and accounting legislation impose appropriate obligations to ensure that all records pertaining to customers' accounts as well as related financial and transactional information are available. Banks are expressly prohibited from establishing business relationships with or carrying out transactions for anonymous customers. Element A.3 is found to be in place.

## A.1. Ownership and identity information

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

### *Companies (ToR<sup>6</sup> A.1.1)*

#### *Types of companies*

43. The Law on Entrepreneurs and Companies is the central piece of legislation governing the establishment of and further arrangements with respect to companies. Under the Law on Entrepreneurs and Companies, the following types of companies may be incorporated:

- **limited liability companies (LLCs)** – are separate legal entities with equity capital made up of contributions paid by their owners. LLCs may be founded by one or several founders who can be natural or legal persons. Founders are liable for the obligations of the company only up to the amount of their unpaid contribution to the company's capital. The minimum amount of equity capital of LLC is ALL 100 (EUR 0.72) (arts. 68 and 70 Law on Entrepreneurs and Companies). As at January 2014 there were 41 380 LLCs in Albania.

---

6. Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information.

- **joint stock companies** – are companies which equity capital is divided into shares/stocks and subscribed by founders. Shareholders may be natural or legal persons, which are not liable for the obligations of the company and which personally bear losses only to the extent of any unpaid parts of the shares in the equity capital they subscribed. Joint stock companies could be companies with public or with private offer. The minimum amount of equity capital of a stock company without public offer is ALL 3.5 million (EUR 25 055.48) and ALL 10 million (EUR 71 587.09) for stock company with public offering (arts. 105 and 107 Law on Entrepreneurs and Companies). As at January 2014 there were 1 529 Joint stock companies registered in Albania.

44. In addition, savings and credit companies (SCC) and their unions, as well as mutual aid and co-operation companies may be established in Albania. SCCs are regulated by the Law on SCC. These types of legal entities are licensed and supervised by the Bank of Albania, as non-financial banking institutions. SCCs conduct their activity in the villages and their purpose is to promote the economic benefit to their members. As at January 2014 there were 108 SCC and two unions operating in Albania.

45. A company obtains legal personality at the moment they are registered with the National Registration Centre (NRC) (art. 42, Law on the NRC and art. 3(4), Law on Entrepreneurs and Companies). In order to set up a company the founders must prepare the company statute, including the act of incorporation and by-laws and submit an application to the respective office of the NRC (art. 6, Law on Entrepreneurs and Companies; arts. 32 to 36 and Paragraph 4 of art. 28 Law on the NRC).

### *Information kept by public authorities*

#### Commercial Register

46. Registration of companies is regulated by the Law on the National Registration Centre. The Law on the NRC regulates the organisation, functioning and operations of the National Registration Centre, the maintenance of the Commercial Register and the subjects and procedures for registration.

47. The NRC is a central public institution, with legal personality, subordinated to the Ministry of Trade. The NRC carries out functions of a business register for all types of entities required to be registered by law and keeps the Commercial Register, with data of each registered person. The Commercial Register includes: individuals exercising commercial economic activities, partnerships, commercial companies, branches and representation offices of foreign companies, savings and credit companies and unions, co-operation

companies (e.g. agricultural co-operatives) and any other entity subject to registration in accordance with the Albanian law (art. 22 Law on the NRC).

48. Companies shall apply for registration within 30 days after the date of its incorporation. The application for registration may be performed electronically at any service window of the NRC (arts. 20 and 22 paragraph 2 Law on the NRC). The application for the initial registration of a limited-liability company has to be submitted by the administrators, founders or any authorised person; and for a joint stock company by the members of the board of directors or any authorised person. The registration of transactions concerning shares can be submitted by a member or shareholder participating in the transaction or any person authorised by them (arts. 26 and 44 paragraph b Law on the NRC).

49. LLCs should register with the NRC by filing the application form for initial registration, submitting the identification documents of the members and the responsible persons for the administration (name, surname, gender, date of birth, birthplace, citizenship and identification document) and by signing the relevant declaration for the acknowledgement, acceptance and application of the legal provisions in force concerning the organisation and functioning of the type of company being registered. In such case, the application form and the above mentioned declaration, signed by the members or by the authorised persons to act on their name and behalf, substitutes the incorporation act and the by-laws of the company (art. 28 paragraph 4 Law on the NRC). In addition, the follows must be provided:

- the value of the initial share capital subscribed,
- number of shares,
- nominal value of each share,
- participation in the share capital, and
- the kind and value of the contributions of each shareholder and also whether the initial subscribed share capital is paid, shall be also provided (art. 35, Law on the NRC).

50. LLCs are obliged to deposit with the NRC any change in ownership and other information provided during registration process within 30 days from the date of its occurrence (art. 22 and 43 Law on the NRC). As mentioned above, the registration of the transfer of shares can be submitted by the administrator, member, shareholder participating in the transaction or any person authorised by them (arts. 26 Law on the NRC). However, the managing director of the company shall be liable to the company for registering the change of ownership with NRC (arts. 95 paragraph 6 and 98 Law on Entrepreneurs and Companies).

51. Regarding SCCs and their unions and companies for mutual aid and co-operation, identity information of the members, the supervisory board and of the certified public accountant must be entered in the NRC in the same way as for LLCs (arts. 38 and 39 Law on the NRC).

52. For the initial registration, joint stock companies (with or without public offer) register with the NRC by filing the application form for initial registration, the by-laws and incorporation act (art. 32 Law on the NRC). Additional documents required upon registration include:

- the value of the initial capital subscribed, and the portion paid thereof;
- the number and type of the subscribed shares;
- the nominal value of each share and the rights attaching to the shares of each class, where there are several classes of shares;
- number of subscribed shares by each shareholder;
- value and type of contribution of each shareholder, and portion paid by them;
- special conditions if any limiting the transfer of shares and the rights attaching to the shares of each class, where there are several classes of shares;
- procedures relating to the conversion of type of share, if provided in the by-laws;
- identification information of the Supervisory Board members and certified accountants, as well as the term of their office (art. 35, Law on the NRC).

53. Joint stock companies with public offer must also file before the initial registration the identification information of the incorporators and the date of the deposit of the proposed by-laws and following notifications in accordance with the relevant law provisions (art. 35 (2) Law on the NRC).

54. Joint stock companies are not obliged to notify the NRC of each transfer of shares. Nevertheless, these companies must provide annually an updated list of registered shareholders with regard to nominative shares, and the total number of shares (art. 43 paragraph 4, Law on the NRC and Decision of The Council Of Ministers no. 506 on the Registration Procedures and Publication in the NRC). If a person acquires or sells shares of a joint stock company, and if, as a consequence, its proportion of votes in the General Meeting exceeds or falls below the following thresholds: 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75%, that person shall notify the NRC in writing of that acquisition or sale within 15 days (art. 206 Law on Entrepreneurs and Companies).



55. The NRC, after performing the necessary verifications (such as verifying that the person signing the application is authorised to do so, that all information have been filled, whether the chosen name can be registered, etc.) and ascertain the fulfilment of conditions for registration, is entitled to perform the registration and issue the registration certificate within the mandatory term of one day from the presentation of the application (arts. 54 and 55 paragraph 2, Law on the NRC). Upon registration, subjects are given an identification number, which is electronically generated by the NRC, and is unique for each of the registered subject (art. 60 paragraph 2 Law on the NRC). The registration information for all companies, including electronic scans of the accompanying documents is freely accessible for the public through the NRC official website (arts. 61 and 66 paragraph 1 Law on the NRC). The NRC performs the publication of the commercial register's data in the official gazette within one day from the date of application.

#### *Information provided to tax administration*

56. The LTP requires all companies carrying on business in Albania to be registered with the NRC or the GTD. Registration with the NRC also constitutes a simultaneous registration with the tax authorities (art. 59 Law on the NRC and art. 40 LTP). Taxpayers are required to submit an annual tax declaration to the GTD. The tax declaration does not contain shareholder information but this information is available at the NRC database which contains on-line identity information regarding shareholders and this information is publicly accessible (art. 61 Law on the NRC).

#### *Information held by companies*

57. Joint stock companies listed and non-listed are required to maintain a register of shareholders. The registered shareholders are deemed shareholders in respect of the company and third parties and shareholder rights cannot be exercised until the person is entered in the company's share registry (arts. 116 paragraph 2 and 119 paragraph 1 and 2 Law on Entrepreneurs and Companies). The registry must contain identity information for each shareholder, including the surnames, first names or legal denomination; the home addresses or head office of the shareholder, the share's par value and the date of registration. The managing director named in the statute is responsible for the company's share register and shall provide access to the information held there to the shareholders and the public. The information shall be made available in the company's website if the company has one (art. 119 paragraph 3 Law on Entrepreneurs and Companies). There is no provision in the Albanian Law that limits the time period for which the register of shareholders shall be stored.

58. LLCs are required to register identity information regarding their owners with the NRC, and they are obliged to update such information within 30 days in case of any change. The managing director of a LLC is responsible for submitting the company information to the NRC (arts. 74 paragraph 2 and 95 Law on Entrepreneurs and Companies; arts. 22 paragraph 3 and 43 Law on the NRC).

### *Nominee identity information*

59. The administration of assets, shares and securities on behalf of third parties by nominees is regulated by the AML/CFT Law. The AML/CFT Law covers all professional and non-professionals nominees (art. 3 paragraph k, subparagraphs (i) and (viii) AML/CFT Law). Persons providing nominee services are required to maintain records on the securities held and perform customer due diligence (CDD) measures on their clients before establishing a business relationship, including maintaining information on the identity of their customers. This includes, using an AML-risk based approach, identifying the beneficial owner of the customer where the customer is a legal entity (art. 4/1). The beneficial owner is defined as a natural person having real or legal direct or indirect control of an entity or holding, alone or together with other persons, voting rights or financial interest in that legal person of at least 25% (art. 2 paragraph 12). The nominee is further required to keep information for five years following the termination of the business relationship (art. 16 paragraph 1).

60. Based on Article 8 paragraph 6 of the above AML/CFT Law, enhanced due diligence should be exercised by entities entering into business relationships and transactions with customers such as trusts and companies with nominee shareholders. The enhanced due diligence is a deeper control process, beyond the “know your customer” procedures. In order to implement the enhanced due diligence, the entities should require the physical presence of customers and their representatives prior to establishing a business relationship with them and prior to executing transactions on their behalf (art. 7 paragraph 2 AML/CFT Law). This ensures that beneficial ownership in respect of companies held by nominees is required to be available in Albania.

### *Foreign companies*

61. Pursuant to Article 8 of the LTP and Article 3 paragraph 3 of the Law on Income Tax, a company incorporated under foreign law but with a head office or headquarters and the place of effective management of business in Albania will be treated as a resident for tax purposes. Similar to domestic companies, all foreign companies that are considered tax resident for tax purposes must register with the NRC before starting their commercial activities

and then will be required to file a tax return and will be subject to profit tax on its worldwide income (art. 40 LTP and art. 16(b) Law on Income Tax). Moreover, foreign companies or other legal entities established under laws of another jurisdiction can conduct commercial activities in Albania through branches or representative offices and must also register with the NRC and the tax authorities. Albania does not keep statistics on the number of foreign companies managed and controlled in Albania, but statistics are available in relation to branches (407 as at May 2015) and representatives of foreign companies (95 as at May 2015).

62. Whilst companies formed outside of Albania are not required to provide ownership information on registration when setting up any kind of activity in Albania, the application for registration must be accompanied by the statutes, acts of incorporation or equivalent documents according to the foreign law (arts. 28 Law on Law on the NRC); availability of ownership information would then depend on the law of the jurisdiction where the company was incorporated, whether its incorporation act and by-laws contain ownership information.

63. There are a number of provisions in the Law on Income Tax under which ownership information is relevant in ascertaining a taxpayer's tax liabilities, and therefore would require that the company maintain this information. In particular, shareholding information will have to be maintained in order to comply with the tax obligations set out under: (i) Article 27 which defines the rule to be applied to carry over losses against the profits of consecutive coming years, provided that there is no change of direct or indirect ownership or voting power of more than 50%; (ii) Article 36 which defines the transfer pricing rules between companies and interrelated companies and defines related parties in term of direct or indirect control including 50% of the voting powers and (iii) companies, including foreign companies that are resident for tax purposes in Albania, must apply a withholding tax on payments of dividends, when such payments are done to individuals or to non-resident persons (arts. 26 and 33 Law on Income Tax). According to these provisions those companies would require maintaining ownership information in order to meet their tax obligation under the Income Tax Law. Further, the GTD is able to require the production of ownership information at any time in relation to the administration and enforcement of the company's tax obligations (art. 60 LTP) (see section B. 1). Moreover, if a person subject to Albanian AML law is engaged by a foreign company (e.g. if the foreign company opens a bank account with an Albanian bank), this person would be required to conduct customer due diligence and identify the owners of the company (more details on the AML obligations are included later in this section).

64. Although the obligations provided by tax law to maintain ownership information (e.g. transfer pricing obligations, utilisation of tax losses) will ensure that such information will be available in certain cases, they do not ensure that ownership information is available in relation to all foreign companies that have a sufficient nexus to Albania (e.g. by being resident there for tax purposes by reason of having its place of effective management or administration in Albania). Therefore, Albania should ensure that ownership information regarding to foreign companies having a sufficient nexus to Albania is available in all cases.

#### *Information held by service providers*

65. The Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) Law requires the identification of customers and beneficial owners of customers through the imposition of customer due diligence (CDD). The obliged person under the AML/CFT Law includes, amongst others, persons providing companies services, such as:

- attorneys, public notaries and other legal representatives, authorised independent accountants, financial consulting offices and regulated professions that offer financial consulting services when they prepare or carry out transactions for their customers in activities such as:
  - transfer of immovable properties, administration of money, securities and other assets;
  - administration of shares of capital to be used for the foundation, functioning or administration of commercial companies;
  - foundation, functioning or administration of legal persons and/or legal arrangement;
  - legal agreements, sale of securities or shares of joint stock companies and the transfer of commercial activities;
- any other natural or legal person engaged in:
  - the administration of third parties' assets;
  - foundation, registration, administration, functioning of the legal arrangement or legal persons and safekeeping and administration of cash or liquid securities in the name of other
  - safekeeping and administration of cash or liquid securities in the name of other persons; (art. 3 AML/CFT Law).

66. The circumstances in which customer due diligence is required and the measures to be conducted are set out in Article 4 and 4/1 of the AML/

CFT Law, which comprises amongst other, prior to the establishment of a business relationship, the following:

- the identification of all customers (permanent or occasional, natural person, legal entity or trust) including the identity of the beneficial owner through documents, data or information received from reliable and independent sources
- determine for all customers, if they are acting on behalf of another person and take reasonable measures to obtain adequate data for the identification of that person;
- obtain information about the purpose and nature of the business relationship and to establish the risk profile during the ongoing monitoring.

67. The beneficial owner is defined as a natural person who owns or, is the last to control a customer and/or the person on whose behalf is executed the transaction. This also includes those persons exercising the last effective control on a legal person, by means of direct or indirect ownership of at least 25% of shares or votes of a legal entity; the participation in at least 25% of votes of a legal person, based on an agreement with the other partners or shareholders; defines de facto the decisions made by the legal person or control by all means the selection, appointment or dismissal of the majority of administrators of the legal person (art. 2 AML/CFT Law).

68. The obliged person is required to conduct continuous monitoring of the business relationship with the customer, including the analysis of transactions executed in the course of duration of this relationship, to ensure that they are consistent with the knowledge of the subject about the customer, nature of his/her business, risk profile and source of funds and to ensure, through the examination of customers' files, that documents, data and information obtained during the process of due diligence are updated, relevant and appropriate (art. 4/1 paragraph (e) and (f) AML/CFT Law). This documentation must be stored for at least for five years following the end of the business relationship.

#### *Ownership information held by other persons*

69. The Bank of Albania which is the Central Bank of Albania and the responsible body for licensing and supervising of the banking sector, is required to have ownership information of second levels banks at the time of registration. The information should also be published in banks annual reports, aiming to enhance transparency across the banking sector (arts. 12 to 23 Law on Bank of Albania)

70. Pursuant to the Law on Financial Supervisory Authority, the Albanian Financial Supervisory Authority (AFSA), has the power to request and hold information on the ownership structure (information on ownership structure means information on every shareholder of the entities, information on their identity and how many shares their own) of the non-banking financial entities, during the licensing process and throughout the pursuit of their business activity. The AFSA shall keep the relevant registers of the licensing subjects and in accordance as well to Regulation no. 17, dated March 21, 2007 on Holding and preserving of records of entities licensed, authorised and approved by the Financial Supervisory Authority.

### *Conclusion*

71. The Albanian legal and regulatory framework ensures that ownership information regarding domestic companies is available. LLCs are required to provide information on their founders upon registration with the NRC and report any changes in shareholders subsequently. Joint stock companies are required to keep and maintain an up to date register of shareholders which must be provided to the NRC annually. Furthermore, transfers of shares exceeding certain thresholds must be notified to the NRC within 15 days. Nominee ownership is available to professionals and non-professionals covered by AML obligations when acting as a nominee.

72. Whilst companies formed outside of Albania are not required to provide ownership information on registration when setting up any kind of activity in Albania, the application for registration must be accompanied by the statutes, acts of incorporation or equivalent documents according to the foreign law; availability of ownership information would then depend on the law of the jurisdiction where the company was incorporated whether its incorporation act and by-laws contain ownership information. The obligations provided by tax law to maintain ownership information (e.g. transfer pricing obligations, utilisation of tax losses) will ensure that such information will be available in certain cases. Albania AML obligated person could be engaged by a foreign company and will, therefore, conduct CDD with respect to the company. However, these obligations do not ensure the availability of ownership information with respect to foreign companies with a sufficient nexus to Albania in all cases. Therefore, Albania is recommended to ensure that ownership information on foreign companies with sufficient nexus with Albania, in particular, being resident in Albania for tax purposes by reason of having their place of effective management or administration there, is available in all cases.

***Bearer shares (ToR A.1.2)***

73. The current legal framework in Albania does not contain provisions for the issuance of bearer shares and there are several mechanisms under Albanian legislation ensuring that shareholders' identity information is available. The Law on Entrepreneurs and Companies and the Law on the National Registration Centre provide that joint stock companies must keep a share registry in which the ownership of all shares is recorded. As a result of these provisions, it can be concluded that joint stock companies are required to issue only nominative shares since May 2008.

74. Nevertheless, these requirements might not be sufficient in the case of shares that were issued prior 2008, when Albanian legislation allowed joint stock companies to issue bearer shares. Law on Companies from 1992 expressly provided for the issuance of shares in bearer form. Law on Entrepreneurs and Companies of 2008 which has superseded Law on Companies from 1992 neither contains a provision on the abolition of bearer shares nor a requirement for the conversion of bearer shares issued prior 2008 into nominative shares. Moreover, the Law on the NRC provides for a reporting obligation applicable to nominative shares; in a way that it is not clear whether non-nominative shares could still exist in Albania. The number of joint stock companies incorporated prior to 2008 is 1 081. However, it is currently not known how many of these companies have issued bearer shares in accordance with the 1992 law and if these bearer shares are still in circulation in Albania.

75. Notwithstanding the above, in order to comply with a number of obligations imposed on companies to keep and report ownership information, including changes of ownership, Albanian companies would need to know who their shareholders are at all times. In that way, the likelihood of an Albanian company have issued bearer shares and still be able to meet its legal obligations is reduced.

76. Limited liability companies must keep, declare and register with the NRC shareholder's information, including all subsequent changes in the ownership of a company. Joint stock companies must keep a share registry in which the ownership information of all shares is recorded. The share registry must include the surnames, first names or legal denomination of the holder of each company's share; their home addresses or head office, the share's par value, and the date of registration (art. 119 Law on Entrepreneurs and Companies). Joint stock companies must provide to the NRC an updated list of registered shareholders with regard to nominative shares, and the total number of shares (art. 43 Law on the NRC). In addition, and as mentioned under section A.1.1, in the case of transfer or shares of a joint stock company, the person who acquires or sells shares must notify the NRC in writing of that acquisition or sale within 15 days (art. 206 Law on Entrepreneurs and

Companies) if his/her proportion of votes in the General Meeting exceeds or falls below the following thresholds: 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75% (art. 206 Law on Entrepreneurs and Companies).

77. Additional reporting obligations are provided in the Law on Securities for listed joint stock companies (art. 15). In this regard, issuers of shares and the registry shall notify the authority of any transfer of voting shares, immediately or cumulatively over a period no longer than 12 months, equivalent of at least 5 % of the authorised capital of the joint stock company. Issuers of shares shall also inform the Authority about persons related to the new shareholding, including those controlling at least 20% of voting shares and companies controlling or under control of the new shareholder. At the present, there are no companies listed in the Albanian Stock Exchange.

78. Finally, financial institutions and certain non-financial businesses and professions are subject to the obligations in the AML/CFT Law, and must, therefore, identify customers, including those who sell securities or shares from joint stock companies (art. 3 paragraph gh). Further, as described in section A.2 all joint stock companies are obliged to have their financial statements audited prior their publication by statutory auditors or audit firms (art. 41 of the Law on Statutory Audit). Audit firms and statutory auditors are covered by AML/CFT Law; therefore they must conduct CDD.

79. Notwithstanding the above mentioned requirements for the identification of owners of companies, it is not clear how these requirements would apply for companies that might have issued bearer shares under the 1992 Law on Companies. Albania is recommended to ensure that appropriate mechanisms are in place to identify holders of bearer shares issued under the 1992 Law on Companies.

### *Privatisation vouchers*

80. Privatisation bonds or vouchers were introduced by the Albanian government in the context of the process of privatisation of public owned companies. The mechanism for privatisation was set by Law 7918 of 13 April 1995 on the privatisation of state assets. This law allowed Albanian citizens over 18 years old to participate in the shares and assets of the state owned companies through the use of privatisation vouchers distributed by the Albanian government. The Albanian authorities reported that those vouchers were distributed among former employees of the companies being privatised. The privatisation vouchers can serve three purposes to the holder (i) to join as a shareholder a commercial state-owned company undergoing a privatisation process; (ii) to purchase certain property of state-owned enterprises being privatised; and/or (iii) to join securities in investment companies. The vouchers were issued in non-nominative form by savings banks, which are also in



charged for registration and distribution of vouchers. These instruments were and still are allowed to be traded among resident and non-resident individuals, domestic and foreign legal entities, prior to be traded for shares or assets in a state owned company (art. 5). The number of state owned companies that have been or will go through privatisation process is 97 (seven of which are currently going through liquidation and 10 which are currently being privatised). The holder of the voucher can still participate in the assets or share of any state-owned company to be privatised. The Albanian authorities reported that a total of ALL 74.9 billion (EUR 0.5 billion) in privatisation vouchers, of which and ALL 51.2 billion (EUR 0.4 billion) were distributed to the public. To date, Albania reports that ALL 10 billion (EUR 71.6 million) of these were used in the privatisation process, while ALL 41 billion (EUR 0.3 billion) in vouchers remain scattered and unused. Undistributed vouchers and the dematerialised vouchers after being used for the purpose that the law allows are deposited in the Bank of Albania. The vouchers can be only used until 31 December 2016 (art. 3) and after this date no rights can be exercised by the holders.

### *Partnerships (ToR A.1.3)*

81. Albanian Law on Entrepreneurs and Companies recognises two types of partnerships:

- **general partnerships:** a company is a general partnership if it conducts its business activities under a common business name and the liability of partners towards creditors is unlimited. A general partnership has two or more partners undertaking business activities under a common business name based on a partnership agreement. General partnerships have their own legal personality (distinct from their partners/members). Partners have joint unlimited liability toward creditors (art. 22 Law on Entrepreneurs and Companies). As at January 2014 there were 449 general partnerships in Albania.
- **limited partnerships:** a partnership is a limited partnership, if at least one partner's liability is limited to the amount of his interest (limited partner), while the liability of other partners is not limited (general partners). Limited partnerships have their own legal personality (distinct from their partners/members). As at January 2014 there were 131 limited partnerships in Albania.

82. A partnership obtains legal personality upon entry in the Commercial Register (art 42 Law on the NRC).

83. The Civil Code and the Law on the NRC recognise the concept of **simple partnership**, which is defined as a contract by which two or more persons agree to exercise an economic activity in order to share the profits derived from it (arts. 1074 of the Civil Code).

## Commercial Registry

84. Partnerships are obliged to register with the NRC, within 30 days after the date of its creation. The application for registration may be performed online (arts. 20 to 22 Law on the NRC). General and limited partnerships register by filing the application form for initial registration, submitting the identification documents of the members or partners, and by signing the relevant declaration for the acknowledgement, acceptance and application of the legal provisions in force concerning the organisation and functioning of the type of company being registered. The application for initial registration and the above mentioned declaration must be signed by the partners or by the authorised persons to act on their name and behalf (art. 28 paragraph 4) Law on the NRC).

85. The information that must be entered in the Register upon formation of a partnership includes:

- Name;
- Date of incorporation;
- Identity information of the founders;
- Object and duration, if determined;
- Identity information of the responsible persons for the administration and representation of the company in relation to third parties;
- kind and value of the contributions of each partners (limited or unlimited) and their participation in the capital for unlimited partnerships (arts. 33 and 34 Law on the NRC).

86. The application for the initial registration must be submitted by all the partners of a general partnership and by all the general partners of a limited partnership or by any person authorised by the partnership. The registration of transfers of participations or quotas can be submitted also by the partner participating in the transaction (art. 26 Law on the NRC). Limited and general partnerships are obliged to deposit at NRC any change in ownership and other information provided during registration process within 30 days of its occurrence (arts. 22 paragraph 3 and 43 Law on the NRC).

87. Simple partnerships are required to register with the NRC. Registration with the NRC is performed by filing the application form for initial registration and providing copy of the identification documents of the members. In case the parties have concluded a written contract regarding the simple partnership, this contract must also be provided at the time of registration (art. 28 paragraph 2 Law on NRC).

*Information provided to tax administration*

88. For tax purposes a partnership is treated as a single legal entity, therefore a partnership is obliged to apply accounting standards, prepare financial statements and file tax returns as a single entity (taxpayer) (art. 2 paragraph b (iv) Law on Income Tax). The tax return submitted by legal entities does not require disclosure of ownership information but this information is required to be deposited to the NRC at the moment the partnership is established and must be updated within 30 days. As for companies, registration with the NRC also constitutes a simultaneous registration with the tax authorities (art. 59 Law on the NRC and art. 40 LTP). All residents' partners in a partnership are obliged to register for tax purposes at the GTD and fill a personal tax return (art. 13 paragraph 1 Law on Income Tax). Simple partnership is treated as transparent under Albanian tax law. This kind of partnerships is also obliged to register with the GTD. Moreover the partners are liable to tax in relation to the income they derive from the joint business activities under the simple partnership and therefore must be register with the GTD.

*Information held by the partners and service providers*

89. Partners in a partnership are not specifically required to maintain a record of all partners. However, Albanian legislation requires that where a partnership has created a website, all data reported to the NRC shall be placed on this website and be available to every interested person. (arts. 23 paragraph 2 and 57 paragraph 2 Law on Entrepreneurs and Companies). Further, applications for registration of any changes in information provided to the Enterprise Registry must be signed by all partners of the partnership (art. 43, Law on the NRC) and it is therefore necessary that information on all partners must be available to them.

90. To the extent that any partnership engages the services of an AML obligated person, such as a bank, or auditor, the beneficial owners of the partnership (i.e. partners that own or control more than a 25% stake in the partnership) would be identified through CDD (see A.1.1).

*Foreign partnerships*

91. A partnership created under the laws of foreign jurisdiction (foreign partnership) which establishes a branch, subsidiary or office in Albania will be subject to the same requirements concerning registration that are applicable to foreign companies. Partnerships formed outside of Albania will not be required to provide ownership information on registration when setting up any kind of activity in Albania. Nevertheless, the application for registration must be accompanied by the statutes, acts of incorporation or equivalent

documents according to the foreign law; therefore, availability of ownership information would then depend on the law of the jurisdiction where the partnership was incorporated whether its incorporation act and by-laws contain ownership information.

92. According to the tax laws, partnerships are treated as legal entities (similar to companies). Both the partnership and its partners (physical or legal persons) are obliged to file tax returns. After the distribution of the partnership's profits to its partners, the partners are subject to the withholding tax for their part of the profits (art. 33 paragraph 1 Law on Income Tax). The tax return must be submitted by the partnership, and the payment of the personal tax on partners will be withheld. The profit tax return submitted by legal entities does not require disclosure of ownership information. Nonetheless, when the total gross income of the partner exceeds ALL 2 million (EUR 14 325.62), from all the partner's sources of income, the non-resident partner or its representative might choose to file the personal income tax return<sup>7</sup> (art. 13 paragraph 4 Law on Income Tax); therefore, identity information of the partner of foreign partnerships will be available to the GTD in certain cases. However, in cases a foreign partnership that carries on business in Albania or has income, deductions or credits for tax purposes in Albania does not distribute profits to its partners, there is no obligation in Albania for the identity of these partners being disclosed. Albania is recommended to ensure the availability of information on the identity of partners of foreign partnerships carrying on business in Albania or having income, deductions or credits for tax purposes in Albania in all cases.

### *Conclusion*

93. The legal and regulatory framework in Albania ensures that ownership information regarding partnerships is available. Partnerships registered in Albania are required to submit information on all their partners to the NRC and report any subsequent changes thereof. However there is not express provision under the Albanian law that requires foreign partnerships conducting business in Albania or having income, deductions or credits for tax purposes in Albania to maintain or provide identity information of their partners in all cases.

---

7. A non-resident taxpayer is required to file a tax return or appoint a resident tax representative who should be registered with the GTD and will be responsible for filling the tax return on behalf of the taxpayer. However, a non-resident taxpayer may not appoint a resident tax representative when all income sourced in Albania are subject to final tax withheld (art. 9 LTP) and therefore he or she will not be required to file the income tax return.

*Trusts (ToR A.1.4)*

94. Albanian legal system does not recognise the concept of trust nor allows the creation of trusts under the Albanian Jurisdictions. Further, Albania is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition<sup>8</sup>. However, there are no restrictions in Albania domestic law that prevents a resident of Albania from acting as a trustee, protector or administrator of a trust formed under foreign law.

*Tax legislation*

95. There are no specific provisions under the Albania tax laws on the taxation of the assets or income derived from foreign trusts with a link to Albania. However, Albanian tax law requires all residents carrying out economic activities (individuals and legal entities) to pay income tax on all their income, regardless of the location of the source of wealth of such income provided they are the beneficial owners of such assets and income and to fill a tax return (arts. 4, 7 and 17 Law on Income Tax and arts 40 and 64 LTP). In the event an Albanian resident is acting as a trustee of a foreign trust he/she will be directly responsible for filing tax returns and will be taxed on the assets and income which he/she holds for the trust as if these are his/her own assets and income.

96. Trustee residing in Albania (professionals or not) are subject to record keeping requirements for the determination of their income, as any persons resident in Albania. Thus, trustees must keep all records necessary to determine their income (arts. 46-48 LTP). Trustees and beneficiaries residents in Albania will be also subject to obligations under Article 60 of the LTP, which requires all taxpayers to provide to the tax administration any information regarding to their tax liabilities. If a tax investigation or tax audit occurs, the GTD has the right to request and verify all documentation regarding a taxpayer's income, expenditure, assets, liabilities and financial transactions (art. 80 LTP). These requirements should include trust deeds and the name of settlors and beneficiaries of the trust, and information on the trust assets that have generated the income.

97. The requirements under the LTP requires all taxpayers and tax representatives to provide information to the tax authorities whenever taxable income must be determined, and accordingly a trustee resident in Albania must be able to provide the GTD with information on the settlors and beneficiaries of trusts that he/she administers, including trust deed.

---

8. [www.hcch.net/index\\_en.php?act=conventions.text&cid=59](http://www.hcch.net/index_en.php?act=conventions.text&cid=59).

### *AML legislation*

98. Any person providing services in the framework of a trust or any similar contractual relationship under foreign law becomes a service provider in relation to the AML legislation and is subject to AML requirements (art. 3 paragraph (g) subparagraph and paragraph (k), subparagraphs (i) and (viii) (iii) and (v) AML/CFT Law). Consequently, all professional and non-professionals trustees are required to conduct CDD which in the case of the customers who are legal arrangements (trusts or other similar arrangements) includes:

- to understand the ownership and control structure and to determine who are the individuals owning or controlling the customer, including those persons who exercise the ultimate effective control over the legal persons or legal arrangement (art. 4/1 paragraph (d)).
- verify if any person acting on behalf of the customer is so authorised and to identify and verify his identity;
- verify their legal status through the documents of foundation, registration or similar evidence of their existence and provide information about the name of the customer, the name of trustees (for the legal arrangements), legal form, address, managers and/or legal representatives (for legal persons) and provisions regulating legal relationships (art. 4 paragraph (b) of the AML/CFT Law);

99. Further, the obligated person is required to conduct enhanced due diligence to business relationships and transactions with trusts and non-resident customers, in particular where such relationships and transactions are undertaken without the presence of the customer (art. 8 paragraphs 4 and 6 AML/CFT Law). In order to implement the enhanced due diligence, the obligated person should require the physical presence of customers and their representatives prior to establishing a business relationship and prior to executing transactions on their behalf (art. 7 AML/CFT Law).

### *Conclusion*

100. Although Albanian law does not recognise the concept of trust, there is no obstacle in Albania domestic law that prevents a resident from acting as a trustee, administrator or a foreign trust to invest or acquire assets in Albania. A resident trustee of a foreign trust is subject to specific obligations to keep identity information under Albanian legislation. The combination of the AML and tax legislation ensure that information is available regarding the trustees, the settlor and beneficiaries of a foreign trust administered by an Albanian trustee.

### *Foundations (ToR A.1.5)*

101. The concept of foundation under the Albanian Law refers to Not-for-Profit Organisations (NPO/NGO). A NPO means associations, foundations and centres, whose activity is conducted independently and without being influenced by the state (arts. 2 paragraph 3 and 4 Law on NPO). A foundation has the right to perform economic activity for the maintenance and utilisation of its own property and to achieve its goals, which shall not have a profit-making nature (art. 35, Law on NPO). Profit obtained from foundation's economic activity cannot be divided among its founders; it can be used only for purposes specified in the articles of association (art. 36 Law on NPO). As at January 2015, there were 1 967 foundations registered.

102. A foundation obtains the status of a legal person only after registration with NPOs' Register at the Tirana District Court (arts. 14 and 32 Law on NPO). Ownership information must be reflected in the "Founding Act" and "Statute" of each NPO deposited with the Tirana District Court for the registration. Article 22 of the Law on the Registration of Non-profit Organisations obliges founders to submit to the Court an application containing explanations regarding the form and purpose of the non-profit organisation, the object of its activity, identity of the founders and members of the executive board, the structure of the leading organs, the location of its headquarters and the identity of its legal representatives. Foundations are obliged to update and report any changes in the Founding Act to the Court 30 days from the date the decision is taken (art. 16 Law on NPO).

103. Foundations are also required to register with local and central tax authorities after registration with the Tirana Court. The information to be recorded in the registration includes identity information of the managers/directors and the legal representative of the organisation (art. 42 LTP). Foundations are required to notify the tax administration any changes in respect to the name; business or contact address; legal status; establishment/closure of new branches, divisions or merging and change of economic activity within 15 days of the date when the change occurs (art 43 paragraph 3 LTP). A fine of ALL 25 000 (EUR 178.97) per violation will apply if a taxpayer fails to register or update its registration information within the corresponding register (art. 112 LTP).

104. Persons providing services to a foundation are subject to the AML/CFT Law. An obliged entity (financial institution or one of the designated categories of professionals) should conduct CDD measures, which include identity information of the beneficial owner. In addition, in the process of conducting CDD, the AML requires service providers in the case of legal entities that do not carry out for-profit activity, to verify information regarding the name, number and date of court decision related to registration as a legal person, statute and the act of foundation, number and date of the

issuance of the license by tax authorities, permanent location, and the type of activity (art. 5 (1(c)) AML/CFT Law). Further, the AML/CFT Law provides that every authority that registers or licenses non-profit organisations shall report immediately to the responsible authority every suspicion, information or data related to money laundering or terrorism financing (art. 20).

### *Conclusion*

105. There is no provision for private-interest foundations in Albanian law. Foundations are non-profit entities established exclusively for public-interest purposes. Albania's legal and regulatory framework ensures the availability of information on the NPO's founders and members of the executive board (or any other person with the authority to represent the foundation) for the NPOs under the scope of their legislation. Information on founders and members of the executive board must be provided to the Court of Tirana upon registration and kept updated. Such information is required to be kept by the foundation for all the time they remain registered. Persons providing services to a foundation are subject to the AML/CFT Law, the AML requires the verification of the statute and the act of foundation where ownership information is reflected, and the identification of the beneficial owners.

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

106. Albania should have in place effective enforcement provisions to ensure the availability of ownership and identity information. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information.

107. The Law on the NRC provides penalties in case to any subject providing declaration of false data with the registers, it does not constitute a criminal act, but constitutes an administrative contravention and is punishable by fine of ALL 15 000 (EUR 107.38). If initial registration with the NRC is not performed within the time provided by the law this violation is punishable by fine of ALL 15 000 (EUR 107.38) (art. 22/3 and 74/3, Law on the NRC). Irregularities with regard to the issuance of shares and registration in the share registry for joint stocks companies might be considered as a criminal act and penalised according to the Criminal Code (art. 119 paragraph 4 of the Law on Entrepreneurs). Applicable penalties on the Criminal Code could be in the form of a fine ranging from ALL 50 000 (EUR 357.94) to ALL 10 million (EUR 71 587.09) or up to ten years of imprisonment (art. 34 sections IV, VII and VIII of chapter III, Criminal Code).



108. The LTP provides additional sanctions if a taxpayer fails to register or update its registration information in the NRC, such taxpayer will be subject to a fine of ALL 25 000 (EUR 178.97) per violation (art. 112 LTP).

109. In regards to other relevant information requested or to be submitted to the tax authority penalties also applies. In case of failure to file a tax return by the due date a fine shall be imposed on the taxpayer in an amount from to ALL 10 000 (EUR 71.59) (art. 113 LTP). A person who refuses to provide relevant information to the tax administration is liable to a penalty ranging from ALL 10 000 (EUR 71.59) up to ALL 50 000 (EUR 357.94) per violation (art. 126 LTP).

110. An obligated person in breach of requirements for customer identification or customer due diligence under AML is liable to a fine which, in respect of individuals, is from ALL 100 000 (EUR 715.87) up to ALL 1 million (EUR 7 158.71) and in respect of legal persons from ALL 300 000 (EUR 2 147.61) up to ALL 3 million (EUR 21 476.13) (art. 27 (2)). In cases when they do not meet the obligations in regards to business relationship with other customers such as non-profit organisation, non-residents, trusts and companies with nominee shareholders, the obligated person is liable to a fine, which in respect of natural persons, is from ALL 200 000 (EUR 1 431.74) to ALL 2 000 000 (EUR 14 317.42) and in respect to legal persons from ALL 400 000 (EUR 2 863.48) to ALL 4 000 000 (EUR 28 634.83) (art. 27 (3)). In cases the obligated person does not supply information requested by the responsible authority or fails to maintain the documentation concerning identification, he or she is liable to a fine which, in respect of individuals, ranges from ALL 200 000 (EUR 1 431.74) up to ALL 1 500 000 (EUR 10 738.06) and in respect legal persons from ALL 1 000 000 (EUR 7 158.71) up to ALL 5 000 000 (EUR 35 793.54) (art. 27 (3)).

### *Conclusion*

111. Albanian law provides for sanctions in respect of key obligations to maintain ownership information. The effectiveness of the enforcement provisions which are in place in Albania is an issue of practice and will be considered as part of its Phase 2 review.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Foreign companies with a sufficient nexus to Albania (e.g. being resident for tax purposes) and foreign partnerships that are carrying on business in Albania or having income, deductions or credits for tax purposes in Albania are not required to maintain nor provide to the authorities ownership information in all cases.	Albania should ensure the availability of ownership information regarding to foreign companies with sufficient nexus to Albania and foreign partnerships carrying on business in Albania or having income, deductions or credits for tax purposes in Albania in all cases.
Under the current legislation, there is uncertainty whether there are requirements on companies that might have issued bearer shares prior to 2008 which obligate the holders of any such shares to comply with the ownership registration mechanisms.	Albania should ensure that appropriate mechanisms are in place to identify holders of bearer shares issued under the 1992 Law on Companies.

**A.2. Accounting records**

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

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

### *General requirements (ToR A.2.1)*

113. The general accounting obligations are stipulated by the Law on Accounting and Financial Statements. The Law on Accounting and Financial Statements applies to all for profit entities operating in the Republic of Albania, including financial institutions and holding companies, irrespective of their legal structure or specific legal requirements that may apply to them. The scope of application of the law includes also not-for-profit entities (art. 2, Law on Accounting and Financial Statements). Trustees of foreign trusts are covered by these obligations including in respect of trust income on which they are taxable.

114. All entities covered by the Law on Accounting and Financial Statements are obliged to keep accounting as per Albanian National Accounting Standards (NAS), which are based on International Financial Reporting Standards (IFRS), with some simplifications. The Law on Accounting and Financial Statements also requires large companies (including all banks and insurance companies) to use IFRS in their accounting and financial reporting. Companies are considered “large companies” when their annual income is higher than ALL 1 250 000 000 (EUR 8 948 385.7) or their annual average number of employees exceeds 100 per year (Decision of the Council of Ministers no. 742, dated November 7, 2007).

115. All entities covered by the Law on Accounting and Financial Statements have a duty to produce accounts, which must be truthful, comparable, timely, significant, understandable and complete. All transactions and events must be in compliance with accounting policies to ensure the completeness, neutrality, prudence, and truthful representation of the financial statements. The accounting records should present a true and fair view of the financial position, performance, changes in financial position and cash flows of the entity. A financial report consists of a balance sheet, an income statement (profit and loss account), a cash flow statement, a statement of changes in equity and notes to financial statements, containing disclosure of accounting policies, as well as other explanatory material (art. 12, Law on Accounting and Financial Statements).

116. Additionally to the provision in the Law on Accounting and Financial Statements, the Law on Statutory Audit requires certain legal entities have their financial statements audited prior their publication by statutory auditors or audit firms. Entities subject to this obligation are the following:

- (a) all commercial companies, regardless of their form of organisation, which apply in their accounting records the ISFR;
- (b) all joint stock companies, which apply in their accounting records the national accounting standards;

- (c) limited liability companies, which in their accounting records apply national accounting standards, providing that they meet two of the following three thresholds: (i) total assets in balance sheet at the end of the year is equal to or exceeds the amount of ALL 40 million (EUR 286 348.34); (ii) turnover for the period is equal to or exceed the amount ALL 30 million (EUR 214 761.26); and (iii) average employment of 30 people.

117. The obligation to conduct statutory audit of the financial statements by an independent licensed auditor does not release the entity's managers or its supervisory body from the responsibilities of maintaining the accounting records and the preservation of all documents substantiating economic transactions of the entity (Art 18 Law on Accounting and Financial Statements).

118. Any infringement pertaining to the production and maintaining of accounting records and the preservation of all documents substantiating economic transactions of the entity will result in an administrative, civil or penal penalty dependant to the damage caused. The type of penalty will be established based on the provisions of the Civil Law, Penal Law or other laws concerning to this field (art. 23 Law on Accounting and Financial Statements). In particular, specific sanctions for the failure to keep records and documentation in accordance with the Law on Accounting and Financial Statements are provided by tax law as further described in the subsection below.

119. Law on Accounting and Financial Statements applies equally to all relevant entities situated in Albania, other than those foreign trusts that do not carry on commercial activity in Albania.

### *Tax law*

120. Taxable income of taxpayers (tax residents and permanent establishments) is determined for the taxable period on the basis of balance sheet and its annexes which are required to be prepared according to Law on Accounting and Financial Statements, as well as rules and regulations issued by the Ministry of Finance for this purpose (art. 19 Law on Income Tax, art. 57 LTP). Moreover, the annual tax return must be accompanied by the annual accounts of the undertaking (art. 29 Law on Income Tax). Taxpayers are also required to maintain registers, accounting records, books and financial information, and issue tax invoices and receipts in respect of all payments received (arts. 46 to 48 and 57 LTP). Registers, books and financial information are documents that chronologically and systematically record commercial transactions of a taxpayer, which must be kept to determine the amount of tax liabilities of such taxpayer (art. 48 paragraph 1 LTP). Article 5 (d) of the LTP defines "Books and records" as commercial records,

accounting documentation, annual accounts and financial reports as well as other documents relating to a taxpayer, such as business correspondence, invoices and any other relevant documents that are required to be created and maintained in order to determine the amount of taxes owed by such taxpayer. According to the LTP failure to keep the records and documentation can be sanctioned with a penalty of ALL 10 000 (EUR 71.59) in the case of a small business<sup>9</sup> and ALL 50 000 (EUR 357.94) for in case of a large business (art. 118 LTP).

121. Regarding to trusts, under Albanian tax laws, the income or assets derived in connection of a foreign trust are subject to tax as any other assets or income of the Albanian resident trustee. Therefore, the requirement described under the tax laws to maintain accounting records will also be applicable to all Albanian residents acting as a trustee or administrator of a foreign trust.

#### *AML law*

122. Service providers, including a person acting, in a business capacity, as trustee of a foreign trust are obliged to keep records of all data and documents on all transactions within a business relationship national or international, regardless of whether the transaction has been executed in the name of the customer or of third parties, together with all supporting documentation, including account files and business correspondence. The data of the transactions must be maintained with all the necessary details to allow the re-establishing of the entire cycle of transactions for 5 years from the date of termination of the business relationship (art. 16 AML/CFT Law). The obliged person that does not maintain data of client transactions is liable to a fine which, in respect of individuals, is from ALL 200 000 (EUR 1 431.74) to ALL 1. 5 million (EUR 10 738.06) and in respect legal persons from ALL 1 million (EUR 7 158.71) to ALL 4 million (EUR 28 634.83) (art. 27 AML/CFT Law) and criminal sanctions could be applied.

123. Service provider to trusts and trustees are subject to the record keeping requirements under the AML/CTF Law, as described in the paragraph above. The obliged person that does not maintain data of client transactions is liable to a fine which, in respect of individuals, is from ALL 200 000 (EUR 1 431.74) to ALL 1. 5 million (EUR 10 738.06) and in respect legal persons from ALL 1 million (EUR 7 158.71) to ALL 4 million (EUR 28 634.83) (art. 27 AML/CFT Law) and criminal sanctions could be applied.

9. To be considered as a small business, the annual turnover must be below ALL 8 million (EUR 57 269.67) (Article 12 Law on Income Tax).

### *Other laws*

124. Banks are required to maintain accounts and prepare financial reports, in order to reflect accurately and in accordance with the accounting rules and methods its financial state, on individual or consolidated basis. The accounts and financial reports must be prepared according to the Albanian accounting standards and international accounting standards in force (art. 47 Law on Banks in the Republic of Albania). The Bank of Albania shall fine the administrators of the bank or branch of foreign bank up to the amount of ALL 500 000 (EUR 3 579.35) to ALL 800 000 (EUR 5 726.97) if breaching this obligation (art. 89 paragraph 3 Law on Banks in the Republic of Albania).

### *Conclusion*

125. All relevant Albanian entities as well as foreign entities involved in economic activities in Albania are required under the law on Accounting and Financial Statements to keep accounting records that correctly explain the entity's transactions, enable it to determine the entity's financial position with reasonable accuracy at any time and allow financial statements to be prepared. The requirements under the Law on Accounting and Financial Statements are supplemented by obligations imposed by the tax law and under AML regulations. The requirement to prepare and maintain accounting and financial documentations under the Law on Accounting and Financial Statements, also applies to foundations.

### ***Underlying documentation (ToR A.2.2)***

126. All relevant Albanian entities as well as foreign entities involved in economic activity in Albania are required to keep underlying documentation, including legal and financial documentation (contract, invoices, banking documentation, etc.) or any other relevant information that are required to be created and maintained in order to determine the amount of taxes owed by such taxpayer. Accounting records are based on accounting entries. Each accounting entry must be justified by supporting evidence in documentary or computerised form that ensures for reliability of the bookkeeping and financial statements. For each of such accounting entry, the origin, nature, date and content of the economic transaction or event must be written (art. 6 Law on Accounting and Financial Statements).

127. Albanian law defines supporting evidence as source document, supplementary document and accounting records (books). Source documents contain initial recordings of events and other economic transaction. Supplementary documents contain data taken from source documents and accounting records (books) are records containing chronologically and systematically recorded

data and effects of economic transactions taken from source and supplementary documents (art. 3 Law on Accounting and Financial Statements).

128. Taxpayers subject to VAT or profit tax must maintain registers, accounts documentation, financial books and issue tax invoices, tax vouchers or tax receipts, that chronologically and systematically record their commercial transactions, which must be kept to determine the amount of tax liabilities of such taxpayer. Taxpayers are also obliged to provide to the tax administration such information upon request records and books relating to tax purposes may be kept electronically, when the applicable tax legislation or relevant sub-legal acts allow for it (arts. 46, 48 and 60 LTP). If the taxpayer refuses to provide information to the tax administration a fine shall be imposed in an amount of ALL 10 000 (EUR 71.59) up to ALL 50 000 (EUR 357.94) per violation (art. 126 LTP).

129. Therefore, the provisions set out under the Law on Accounting and Financial Statements and the Law on Tax Procedures are in conformity to the international standard to maintain all relevant underlying documentation. As mentioned above, AML/CFT Law requires obliged persons to keep underlying documentation for transactions with their clients, including account files and business correspondence (Art 16 (2) AML Law).

### *Conclusion*

130. Accounting and tax requirements under Albanian law require underlying documentation to be available sufficient to meet the international standard for effective exchange of information.

### ***5-year retention standard (ToR A.2.3)***

131. Accounting records and underlying documentation must be kept for a period of 10 consecutive years after the end of the accounting period to which they relate, unless a longer period is compulsory in accordance with another law or regulation (art. 17 Law on Accounting and Financial Statements).

132. Taxpayers are required for the purpose of substantiating the accuracy of tax liabilities to retain financial and accounting documents for five years starting from the end of the tax year to which documents pertain (art. 48 paragraph 2 LTP).

133. Persons obliged under AML rules to maintain transaction records are required to store them at least for five years following the end of business relationships (art. 16 AML/CFT Law).

### Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

### A.3. Banking information

Banking information should be available for all account-holders.

#### *Record-keeping requirements (ToR A.3.1)*

134. Banking information should be available for all account-holders and should include all records pertaining to the accounts as well as to related financial and transactional information.

135. Recent amendments to the AML/CFT Law in 2012 prohibited the issuance of bearer passbooks and other bearer instruments in Albania. Pursuant to the Article 4/1 AML/CFT Law, credit and financial institutions must close all accounts whose owners cannot be identified. Under this provision credit and financial institutions are prohibited from opening and keeping of anonymous accounts, accounts with fictitious names or accounts identified only with a number or code, including the issue of bearer passbooks and other bearer instruments. Moreover, Banks are required to perform CDD measures which include verification of client identity through a personal identification document where the given name, surname, personal identity number (or equivalent including date of birth in case of non-residents) are provided or, in the case of a legal person, through documents attesting registration, address of the registered office and identity of persons who are entitled to represent the customer (art. 4/1 AML/CFT Law). Further, CDD measures require ongoing monitoring of the business relationship including ensuring that the information held on the client is kept up-to-date (art. 4/1(ë)). All data and documents gathered when identifying customers and performing CDD have to be kept for a minimum of five years (art. 16(1) AML/CFT Law). There are administrative and criminal sanctions available in cases of breach of CDD requirements (see section A.1.6).

136. Article 16 of AML/CFT Law obliges banks to keep records of all data and documents on all transactions performed under a business relationship. The scope of records to be kept is very broad and comprises information on the nature and date of transactions, type and amount of currency involved, and the type and identifying number of any account involved in the transaction. The transaction records and underlying documentation must be kept for at least five years (art. 16(2) AML/CFT Law). Failure to maintain data of client transactions is liable to a fine in respect of individuals ranging from



ALL 200 000 (EUR 1 431.7) to ALL 1.5 million (EUR 10 738.06); and in respect legal persons from ALL 1 million (EUR 7 158.71) to ALL 4 million (EUR 28 634.83) (art. 27 AML/CFT Law).

137. In summary, the customer identification obligations and record keeping obligations applicable to financial institutions in Albania, pursuant to the AML/CTF Law require banking information to be available in Albania in respect to all transactions and by all account holders.

#### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>



## B. Access to information

### Overview

138. 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 Albania's legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards would be compatible with effective exchange of information.

139. The Albanian competent authority has broad access powers to obtain and provide information requested by international counterparts under EOI instruments. These powers include the power to carry out tax audits in the premises of taxpayers and third parties, inspect documents, and make requests for explanations and statements and the power to summon a taxpayer. Types of information under the LTP law which can be provided by banks to the GTD seem broad enough to ensure effective exchange of information. All information gathering powers that exist for domestic purposes can be used for EOI purposes regardless of whether there is a domestic tax interest. Albania has in place enforcement provisions to compel the production of information including criminal sanctions. Professional privilege is extended to tax advisors and notaries, preventing the authorities from obtaining information from them in criminal tax matters. It is unclear how the professional privilege provisions would apply in the context of exchange of information for criminal tax matters. Albania should ensure that domestic provisions on professional privileges allow exchange of information in line with the standard.

140. There are no explicit provisions in the Albanian tax laws that oblige the GTD to inform a person subject of an EOI request of the existence of such

request or to notify this person prior contacting third parties to obtain information. Taxpayers have the right to be notified of any administrative act, or any action or omission for collection of tax liabilities against their property. Albanian authorities have confirmed that this right does not apply in the context of obtaining and providing information in relation to an EOI request and that such notification does not occurs in practice. Albania’s Ministry of Finance has recently enacted a regulation on the collection of information for EOI and no notification is provided under such regulation. Albania’s practice will be nonetheless followed-up in the Phase 2 review of Albania.

### **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).

141. The competent authority to collect information and reply to an EOI agreement is the General Taxation Department, within the Ministry of Finance. Under the great majority of Albania’s DTCs the competent authority is the GTD. For treaties where the competent authority is the Minister of Finance (or his authorised person), the Minister of Finance has authorised in written form to the GTD as the competent authority for EOI purposes (Administrative Act no. 11393, dated October 1, 2014). The GTD is the responsible body for tax administration in Albania.

#### ***Bank, ownership and identity information (ToR B.1.1)***

142. As analysed in part A of this report, ownership information must be kept by the NRC or by the legal entities themselves. Pursuant to Article 62 of the LTP the GTD can request information to government authorities and employees of government authorities. Further the Law on the NRC provides that: “in order to guarantee the facilitation of the registration procedures and the offering of other additional services in favor of the interested subjects, the NRC, in conformity with the law in force, co-operates with other public authorities and enables on-line access and the electronic exchange of the information recorded in its database with other registers or databases of other public authorities, in the territory of the Republic of Albania and abroad” (art. 69 Law on the NRC).

143. Moreover, the GTD has powers to gather information directly from the taxpayer for the purposes of the determination of the taxpayer’s liabilities and from third parties, in the instances defined in the LTP, as further analysed below. The same powers can be applied for gathering information for purposes

of answering and EOI request (arts. 24 and 61/1 LTP). The powers of the Albanian tax authorities are broad: the GTD can request “information concerning a taxpayer’s commercial transactions, technical processes or procedures, and financial transactions between a taxpayer and third parties” (art. 60 LTP).

144. The tax administration can also request third parties to provide oral or written information, books and records and other information concerning the tax liability of a taxpayer with whom they have entered into commercial or financial transactions (art 61 LTP). These powers also apply in the context of EOI. A third party in the context of the LTP refers to (art. 62 LTP):

- legal entities in respect of dividends they have paid to their shareholders or partners; persons with whom they conducted financial or business transactions; payments made to sub-contractors, debtors and creditors;
- banks and financial institutions in respect of interest payments, deposits and liabilities at the end of the year and other banking transactions; electronic registration of bank accounts on behalf of taxpayers, including trade name and personal identification number;
- brokerage firms or investment funds, in respect of securities transactions;
- real estate agents, in respect of transactions of their clients;
- buyers or sellers of real estate, in respect to the description and price of a real estate property;
- notaries for notarizing purchase and sale transactions of real estate or movable property, or providing contract services;
- resident and non-resident legal entities, in respect of payments made to non-resident persons;
- government institutions and employees of government administration;
- other contractors of a taxpayer;
- domestic or foreign donors, international agencies, non-profit organisations, in respect of payments made to taxpayers for the supply of goods and services.

145. Article 62 allows the GTD requesting information on individual accounts and transactions to banks and other financial institutions. Further, Albania’s Ministry of Finance recently introduced Instruction no. 15 dated 5 May 2015 to set out the procedures to obtain information in accordance with the provision of international tax treaties. Article 1 of the Instruction explicitly provides that the GTD can seek information from all persons including banks and financial institutions for the purpose of implementing international

agreements in force in Albania. The Instruction provides that all information must be provided to the GTD within 30 days of receiving the request (art. 7).

146. The types of information which can be provided by banks to the GTD are broad enough to allow effective exchange of information. There are no limitations on the ability of the competent authority to obtain information held by banks or other financial institutions in response to an EOI request and there are no special procedures (such as requirement of a court order) for accessing information held by banks in Albania. The practical application of this provision will be further considered during the Phase 2 Peer Review of Albania.

### *Accounting records (ToR B.1.2)*

147. The GTD has access to a taxpayer's accounting information where it is relevant for tax purposes. The LTP requires taxpayers to maintain and provide as per request of the tax administration registers, accounting records, financial books, information and documents necessary to determine the accurate calculation of the taxpayer's tax liability (arts. 46, 48 and 60 LTP). The same powers can be applied for gathering information for purposes of answering EOI requests (arts. 24 and 61/1, LTP).

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

148. The concept of "domestic tax interest" describes a situation where a contracting party can obtain and provide information to another contracting party only if it has an interest in the requested information for its own tax purposes. Albania has no domestic tax interest with respect to its information gathering powers. Information gathering powers provided to the GTD under the LTP can be used to provide EOI assistance regardless of whether Albania needs the information for its own domestic tax purposes.

149. Under Article 24 of the LTP it is expressly stated that the powers granted to the GTD may also be used for the fulfilment of Albania's obligations under the international agreements. Further, Article 61/1 of the LTP, introduced in December 2014, specifically ensures that the domestic powers to obtain information for tax purposes would apply to requests for information in connection with a foreign tax liability. Article 61/1 reads as follows:

Upon request of tax administration, for the purpose of the implementation of tax treaties on tax issues or for the purposes of international agreements, which permits administrative assistance on tax issues, which are effective in the Republic of Albania, any person must provide information in conformity with provisions of the international agreement in tax field.

***Compulsory powers (ToR B.1.4)***

150. Jurisdictions should have in place effective enforcement provisions to compel the production of information. There are administrative and criminal sanctions available to the GTD in case of non-compliance with obligation to provide information requested for EOI purposes.

151. Sanctions are clearly specified in the Albanian tax law. The LTP establishes that in the case a person refuses to provide information to the tax administration, being such person a taxpayers or a third party, this person shall be subject to a penalty from ALL 10 000 (EUR 71.58) up to ALL 50 000 (EUR 357.94) per violation (art. 126). These sanctions also applies in the case of failure to provide information requested by the GTD for EOI purposes (art. 61/1 LTP). In the case of failure to keep the tax records and documentation required under the LTP, the taxpayer shall be subject to a penalty of ALL 10 000 (EUR 71.58) for any violation when it is classified as a small business and a penalty of ALL 50 000 (EUR 357.94) for any violation for other cases (art. 119 LTP).

152. In addition, the violations committed by banks and other financial institutions that perform banking operations, when do not constitute a criminal offense, but constitute an administrative offense, are punished with administrative sanctions. For opening accounts for physical and legal persons without official documentation confirming the taxpayer identification number will be sanctioned with a fine of ALL 50 000 (EUR 357.94) per violation. In the case the banks or financial institutions fail to meet the deadline for notifying the tax administration of the opening by a taxpayer of an account will be fined in an amount of ALL 40 000 (EUR 286.35) per violation (art. 129 LTP).

***Secrecy provisions (ToR B.1.5)***

153. Jurisdictions should not decline on the basis of secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an exchange of information mechanism.

***Bank secrecy***

154. The Law on Banks in the Republic of Albania establishes the secrecy of banking information. Articles 91 and 125 define the obligation for banks and any other authorities, such as courts and bank supervisory authorities, to protect information that banks receive in the ordinary course of their activities. According to Article 125, banks or branches of foreign banks must protect the secrecy of their clients' information and must not use it for their own benefit or benefit of third parties which they have served or serve. Similarly, Article 91,

paragraph 1 explicitly provides that: “administrators, employees, current and previous agents of the bank, judicial authorities and the inspectors or other employees of the Bank of Albania or of other respective foreign authorities of banking supervision, shall keep the secrecy for every information obtained in the exercise of their activity in the bank or branch of a foreign bank and shall not utilise it for personal profits or third parties outside the bank or branch of a foreign bank, whom they serve or have served.”

155. Furthermore, Article 91 also provides under which circumstances clients’ banking information can be disclosed. Accordingly, the information shall be made available only to the Bank of Albania, the statutory auditor of the bank or branch of a foreign bank, administrators, agents, and employees of supervisory authorities of the foreign correspondent bank, to juridical authorities whose right derives from the law, as well as when it is necessary for the protection of interests of the bank or branch of a foreign bank during legal proceedings (art. 91, paragraph 2 Law on Banks).

156. The Albanian authorities clarified that the above mentioned provision, specifically the wording referring to “to juridical authorities whose right derives from the law”, together with Article 62 of the LTP which provide the obligation for banks to give information to the GTD (as described in B.1.1), impose an obligation to disclose information to the GTD. Moreover, it clarified that no court procedure is needed for the GTD in order to exercise their access powers to collect banking and financial information. The definition of juridical authorities is provided in the Civil Code. “Public Juridical Persons” includes “any administrative body provided for in the current legislation with regard to the administrative procedures, law making, judicial and prosecution bodies of every level, local governance units bodies of every level, state authorities and public entities, established by Constitution, law or decisions of the Council of Ministers” (arts. 24 and 25 Civil Code of Albania). Therefore, this definition would include the GTD, which has specific powers under the LTP to access bank information.

157. In conclusion, the Law on Banks and the LTP contains sufficiently defined exceptions to bank secrecy to ensure that bank information can be assessed for EOI purposes by the GTD. Enforcement measures are in place in Albania if a bank refuses to provide information to the GTD (arts. 126 and 129 LTP).

### *Professional secrecy and attorney-client privilege*

158. The international standard recognises that a requested State may decline to disclose information relating to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications



are protected from disclosure under domestic law (Commentary 19.3 to the *OECD Model Tax Convention*). However, the scope of protection afforded to such confidential communications should be narrowly defined. Such protection does not attach to documents or records delivered to an attorney, solicitor or other admitted legal representative in an attempt to protect such documents or records from disclosure required by law. Also, information on the identity of a person such as a director or beneficial owner of a company is typically not protected as confidential communication.

159. Information obtained in connection with providing legal assistance is protected under the Albanian Advocacy Law to the extent a lawyer is acting in his/her full capacity as a lawyer. Article 9 of the Advocacy Law states that “lawyers are prohibited from disclosing information brought to his attention by the person he represents or defends or by the documents that this person provided in the frame of his defence, except for cases authorised by the client in writing.” Therefore, an attorney cannot reveal information or confidences, unless he has received a written authorisation from the client, even in the case information has been requested by government authorities.

160. Advocacy Law restricts the lawyers to provide legal assistance only through:

- legal advising on different issues;
- preparing pleadings or other requests during criminal proceedings, as well as appeals, recourses against court decisions, prosecution decisions, in arbitration or in other public administration institutions;
- preparing requests forwarded to the Appeal Court, to the Constitutional Court, to International Courts and to any other organisation in which the Republic of Albania adheres;
- preparing complaints and requests from individuals or legal entities;
- compiling acts attested by a notary public;
- drafting contracts and agreements, as well as any other documents that have or are intended to have legal force;
- participating as a defender during the accompaniment, the detention, the arrest during the investigation period, judicial examination of the persons in criminal cases (art. 2).

161. Albanian authorities have confirmed that Article 9 ultimately provides that where a lawyer acts in any other capacity other than as a lawyer (e.g. as a nominee shareholder, a trustee, a company director), the attorney-client privilege does not apply in Albania. The scope of the professional secrecy only covers documents that a person provides in the framework of his defence. In this sense, for instance, a contract drafted by a lawyer that

is not for use in the framework of a client's defence would not be subject to privilege. Information protected under privilege does not include purely factual information such as the identity of a director or beneficial owner of a company. Therefore, the activities of lawyers covered by the professional secrecy are restricted and thus the scope of the attorney-client privilege does not go beyond the international standard.

162. Professional privilege in Albania is also applicable to other professionals, including notaries and tax advisors (arts. 34 Law on Statutory Audit and art. 63 LTP). Regarding the professional secrecy and confidentiality rules applicable to statutory accountants, Article 34 of Law on Statutory Audit provides that all the information and documents to which a statutory auditor or audit firm has access when carrying out a statutory audit is protected by confidentiality and professional secrecy. Notwithstanding the above, the secrecy provision mentioned above does not restrict the tax authorities' access powers, as the LTP expressly grants powers to the GTD to request oral or written information from third parties concerning the tax liability of a taxpayer with whom they have entered into commercial or financial transactions and to whom they provide services. This provision would therefore include statutory accountants, tax advisors and notaries (*see section B.1.1*).

163. A provision is contained under the LTP for notaries and tax advisors allowing them to refuse to give information in the case of a criminal tax investigation by the prosecutor's office to the extent they have obtained such information in the course of their professional activities (art. 63 LTP). It is not clear how this provision would apply in the context of exchange of information for tax purposes. More specifically, it is unclear if notaries and tax advisors would be required to disclose information to the GTD in case of exchange of information for criminal tax matters. It is recommended that Albania clarify this matter and ensure that domestic provisions on professional privileges allow exchange of information in line with the standard.

### *Conclusion*

164. The Albanian competent authority has broad access powers to obtain and provide information requested for EOI held by persons within its territorial jurisdiction, including information held by third parties. All information gathering powers that exist for domestic purposes can be used for EOI purposes regardless whether there is a domestic tax interest. Albania has in place enforcement provisions to compel the production of information, including criminal sanctions. Professional privilege in Albania is extended to notaries and tax advisors, preventing the authorities from obtaining information from them in criminal tax matters. It is unclear how the professional privilege provisions would apply in the context of exchange of information for criminal tax matters. Albania is recommended to clarify this issue.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Professional privilege in Albania is extended to notaries and tax advisors, preventing the authorities from obtaining information from them in criminal tax matters. It is unclear how the professional privilege provisions would apply in the context of exchange of information for criminal tax matters.	Albania should ensure that domestic provisions on professional privileges allow exchange of information in line with the standard.

## 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)*

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

166. There are no explicit provisions in the Albanian tax laws that oblige the GTD to inform a person subject of an EOI request of the existence of such request or to notify this person prior contacting third parties to obtain information. However, the GTD is required to notify the taxpayer of any administrative act, or of any action or omission, made for collection of tax liabilities against a taxpayer's property, except when the tax administration considers that there is a real danger that, after receiving the notice, the taxpayer will transfer property and jeopardise the tax assessment (art. 32, LTP). Albanian authorities have confirmed that the right under Article 32 to receive notice of any administrative act, or of any action or omission for collection of tax liabilities against a taxpayer's property, does not apply in the context of obtaining and providing information in relation to an EOI request and that such notification does not occur in practice. Albania's Ministry of Finance has recently enacted a regulation on the collection of information for EOI

(Instruction No. 15 of 18 May 2015) and no notification is provided under such regulation. Albania's practice will be nonetheless followed-up in the Phase 2 review of Albania.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>The element is in place.</b>

## C. Exchange of information

### Overview

167. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Albania, the legal authority to exchange information is derived from double taxation conventions (DTCs), and the Multilateral Convention. This section of the report examines whether Albania has a network of information exchange that would allow it to achieve effective exchange of information in practice.

168. To date, Albania has in total 94 EOI relationships. These relationships are based on bilateral DTCs and the Multilateral Convention. Albania has concluded 39 DTCs. Thirty-five of these agreements are in force. Albania signed the Multilateral Convention on 1 March 2013 and brought it into force on 1 December 2013. The great majority of Albania's EOI agreements meet the international standard. Therefore, element C.1 was found to be in place.

169. Albania's EOI network covers its main trading partners, 33 of 34 OECD members and all G20 countries. During the course of the assessment, no jurisdiction advised that Albania had refused to enter into negotiations or conclude an EOI agreement. Element C.2 was found to be in place.

170. All Albania's agreements have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. In addition, all of Albania's DTCs ensure that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary to public policy. Elements C.3 and C.4 were found to be in place.

171. With respect to the timeliness of responses to EOI, there are no legal restrictions on the ability of Albania's competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. As this element involves issues of practice, a determination of whether this element is in place will be evaluated in in the Phase 2 review.

## C.1. Exchange of information mechanisms

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

172. All international treaties providing for EOI require ratification by the Assembly of the Republic of Albania to become part of the laws of Albania. In regard to the hierarchy of the laws, the LTP provides that a ratified international treaty prevails over domestic tax laws (art. 3).

173. Albania has an extensive EOI network covering 94 jurisdictions through 39 DTCs<sup>10</sup>, and the Multilateral Convention. Of the 39 DTCs signed by Albania, 35 are in force. The other four agreements have been ratified by the Albanian Parliament. The Multilateral Convention updates 24 of Albania's EOI agreements<sup>11</sup>, five of them which either were not to the standard<sup>12</sup> or not yet in force<sup>13</sup>; it also provides 40 new EOI relationships<sup>14</sup> for Albania. Albania has also initialled a further 3 double tax conventions (DTC) with Morocco, Oman and Saudi Arabia.

10. A DTC signed with Switzerland in 1999 does not contain any provision that allows these jurisdictions to exchange information and will not be considered for the purpose of this report. Albania recently concluded the renegotiation of this treaty. It is also noted that Switzerland is a signatory to the Multilateral Convention.
11. Austria, Belgium, Croatia, Czech Republic, Estonia, France, Greece, Hungary, India, Ireland, Italy, Korea, Latvia, Luxembourg, Malta, Moldova, Norway, Netherlands, Poland, Romania, Slovenia, Spain, Sweden, and United Kingdom.
12. Austria, Latvia and Luxembourg.
13. Estonia, India and Luxembourg.
14. Anguilla, Argentina, Aruba, Australia, Belize, Bermuda, British Virgin Islands, Canada, Cayman Islands, Colombia, Costa Rica, Curaçao, Cyprus\*, Denmark, Faroe Islands, Finland, Georgia, Ghana, Gibraltar, Greenland, Guernsey, Iceland, Isle of Man, Japan, Jersey, Lithuania, Mexico, Montserrat, Morocco, New Zealand, Portugal, Saudi Arabia, Seychelles, Sint Maarten, Slovak Republic, South Africa, Switzerland, Tunisia, Turks and Caicos Islands and Ukraine.

\*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”.

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.

174. The competent authority under Albania’s EOI’s instruments is the Albanian Minister of Finance or his authorised representative. The Ministry of Finance delegated the competent authority role to the GTD.

***Foreseeably relevant standard (ToR C.1.1)***

175. The international standard for exchange of information envisages information exchange upon request to the widest possible extent, but does not allow “fishing expeditions,” i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in Article 26(1) of the OECD Model Tax Convention and Article 1 of the OECD Model TIEA.

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

176. All Albania’s DTCs provide for exchange of information that is “foreseeably relevant”, “necessary” or “relevant” to the administration and enforcement of the domestic laws of the contracting parties concerning taxes covered in the DTCs. This scope is set out in the EOI article in the relevant DTCs and is consistent with the international standard. The OECD Model Tax Convention on Income and on Capital recognises in its commentary to Article 26 (Exchange of Information) that the terms “necessary” and “relevant” allow the same scope of exchange of information as does the term “foreseeably relevant”. Article 4 of Regulation No. 6, dated 10 February 2004 on tax Treaties specifies that the interpretative basis for applying tax treaties in Albania is the OECD Commentary.

177. Albania’s DTC with Malaysia is specifically limited to exchange of information for purposes of the convention or for the prevention or detection of evasion or avoidance of taxes covered by the convention. The language in this agreement is sufficiently broad to meet the foreseeably relevant standard.

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

178. For exchange of information to be effective it is necessary that a jurisdiction’s obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the

residence or nationality of the person in possession or control of the information requested. For this reason, the international standard envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons and paragraph 1 of Article 26 of the Model Tax Convention indicates that “The exchange of information is not restricted by Article 1” that defines the personal scope of application of the Convention (DTCs apply to persons who are residents of one or both of the Contracting States).

179. Of Albania’s DTCs, 36 specifically provide for exchange of information in respect of all persons. The scope of the DTC’s signed with Luxembourg, Malaysia and Turkey is limited to persons covered by the Agreement. However, two of them, the DTC with Luxembourg and Turkey, provide for the exchange of information as is necessary for carrying out the provisions of the domestic laws of the Contracting States concerning taxes covered by the Agreement. To the extent that domestic laws are applicable to residents and non-residents, information under these agreements can also be exchanged in respect of all persons, including non-residents. The same rationale applies to Albania’s DTC with Malaysia, which provides that it shall apply to exchange of information for purposes of prevention or detection of evasion or avoidance of taxes covered by the convention. As domestic laws concerning “prevention or detection of evasion or avoidance of taxes covered by the convention” are applicable to residents and non-residents equally, it can be stated that even in absence of reference to Article 1 of the OECD Model Convention, the contracting states are under obligations to exchange information in respect of all persons.

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

180. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The OECD Model Tax Convention and the Model TIEA, which are 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.

181. Out of Albania’s 39 DTCs, eight<sup>15</sup> contain language akin to the Article 26(5) of the OECD Model Tax Convention providing for the

---

15. Estonia, Germany, India, Ireland, Singapore, Spain, United Kingdom and United Arab Emirates.



obligation of the contracting parties to exchange information held by financial institutions, nominees, agents and ownership and identity information.

182. For the remaining 31 DTCs that do not contain language akin to Article 26(5) of the OECD Model Tax Convention, 22 out of these jurisdictions<sup>16</sup> will be covered by the Multilateral Convention, as it contains a provision similar to Article 5(4) of the OECD Model TIEA, which ensures that the requested jurisdiction shall not decline to supply the information requested solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person.

183. The above leaves nine jurisdictions<sup>17</sup> with which Albania has not signed a bilateral or multilateral agreement that includes language akin to Article 26(5). However, the absence of this language does not automatically create restrictions on exchange of bank information. The commentary to Article 26(5) indicates that while paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information. Albania's domestic laws allow access to information referred to in Article 26(5) even in the absence of such a provision in the DTC. However, EOI will be subject to reciprocity<sup>18</sup> and there may be domestic limitations in place in the laws of some of these partners<sup>19</sup>. Therefore, it is recommended that Albania continue its program of renegotiating its older treaties in order to incorporate wording in line with Article 26(5) of the OECD Model Tax Convention.

#### ***Absence of domestic tax interest (ToR C.1.4)***

184. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An

16. Austria, Belgium, China, Croatia, Czech Republic, France, Greece, Hungary, Italy, Korea, Latvia, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Romania, Russia, Slovenia, Sweden and Turkey.
17. Bosnia and Herzegovina, Bulgaria, Egypt, Kuwait, Former Yugoslav Republic of Macedonia (FYROM), Malaysia, Montenegro, Serbia, and Kosovo.
18. The principle of reciprocity is contained under the LTP. Accordingly, Article 87 provides that: “The foreign assistance is requested based on valid bilateral or multilateral tax agreements. In the absence of such an agreement, assistance is requested based on the principles of reciprocity”.
19. Two of the nine jurisdictions with DTCs that do not include Article 26(5) have already been reviewed by the Global Forum (FYROM and Malaysia). No relevant limitations have been identified within the legislation of these jurisdictions.

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

185. Out of Albania's 39 DTCs, eight<sup>20</sup> contain provisions similar to Article 26(4) of the OECD Model Tax Convention, which oblige the contracting parties to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested party does not have a domestic interest in the requested information.

186. There are no domestic tax interest restrictions on Albania's powers to access information for EOI purposes (see Section B above). As such, the exchange of information in the absence of domestic interest in respect of the 31 DTCs will be subject to reciprocity and will depend on the domestic limitations (if any) in the laws of some of these partners. Out of these 31 jurisdictions 22 jurisdictions<sup>21</sup> are signatories of the Multilateral Convention. Therefore the wording of DTCs may be a concern in practice in respect of the remaining nine jurisdictions<sup>22</sup>. It is recommended that Albania works with the EOI partners where domestic tax interest restrictions exist to bring their EOI relations to the standard.

### *Absence of dual criminality principles (ToR C.1.5)*

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

188. There are no such limiting provisions in any of Albania's EOI instruments which would indicate that there is dual criminality principle to be applied.

- 
20. These DTCs are with Estonia, Germany, India, Ireland, Singapore, Spain, United Kingdom and the United Arab Emirates.
  21. These jurisdictions are Austria, Belgium, China, Croatia, Czech Republic, France, Greece, Hungary, Italy, Korea, Latvia, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Romania, Russia, Slovenia, Sweden and Turkey.
  22. Of the nine jurisdictions that are not covered by the Multilateral Convention (Bosnia and Herzegovina, Bulgaria, Egypt, Kuwait, FYROM, Malaysia, Montenegro, Serbia and Kosovo), two of them have already been reviewed by the Global Forum (FYROM and Malaysia). No relevant limitations have been identified within the legislation of these jurisdictions.

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

189. 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”).

190. All of Albania’s EOI instruments provide for exchange of information in both civil and criminal tax matters.

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

191. In some cases, a contracting party may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such formats may include depositions of witnesses and authenticated copies of original records. Contracting parties should endeavour as far as possible to accommodate such requests. The requested party 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 administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

192. There are no restrictions in Albania’s EOI instruments that would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices.

***In force*** (ToR C.1.8)

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

194. Albania has entered into 39 DTC of which 35 are in force. The other four of these agreements<sup>23</sup> have been ratified by the Albanian Parliament but are not yet in force. Generally, the time taken between the signature of a DTC arrangement and its ratification by Albania is less than one year.

195. Albania became signatory of the Multilateral Convention in March 2013 and brought it into force in December of the same year.

23. Estonia (2010), India (2013), Luxembourg (2009) and United Arabs Emirates (2014).

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

196. For information exchange to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement. As discussed in section B, Albania has the legislative and regulatory framework in place to give effect to its agreements.

**Determination and factors underlying recommendations**

Phase 1 determination
The element is in place.

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

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

197. 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.

198. Albania has an extensive EOI network covering 94 jurisdictions through 39 DTCs and the Multilateral Convention. Albania's EOI network covers all of its significant partners including its main trading partners, 33 of 34 OECD members and all G20 countries. Albania's main trading partners are EU member states and Russia.

199. Albania has also initialled a further three DTCs with Morocco, Oman and Saudi Arabia.

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

**Determination and factors underlying recommendations**

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	Albania should continue to develop its exchange of information network with all relevant partners.

**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)***

201. 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.

***International treaties***

202. All Albania's EOI agreements have confidentiality provisions to ensure that the information exchanged will be disclosed only to persons authorised by the agreements. While a few of the EOI articles in the Albanian DTCs might vary slightly in wording, these provisions contain all of the essential aspects of Article 26(2) of the OECD Model Tax Convention. Confidentiality of the information exchanged in line with the standard is also provided for in Article 22 of the Multilateral Convention.

203. The DTC with the Netherlands specifically allows for provision of the exchanged information to the arbitration board established for the purposes of carrying out a mutual agreement procedure under the DTC, if such information as is necessary for carrying out the arbitration procedure.

*Albania's domestic law*

204. Under the Albania LTP, a taxpayer has the right to confidentiality of his/her tax and financial information held by the tax administration including any information provided by taxpayers or third parties to the tax administration in the course of its activity (art. 31 LTP). Moreover, a civil servant of the tax administration is prohibited from disclosing any information on the taxpayer which the civil servant became aware of in the course of carrying out his/her statutory duties without obtaining the taxpayer's consent (art. 25(1) LTP). Administrative and criminal sanctions apply if information is disclosed in breach of the LTP (arts 22 and 131(g) LTP). There are a few exceptions which allow information to be made public. These exceptions refer to taxes, in relation to which collection procedures have commenced and in cases where a taxpayer waives the right to confidentiality in writing, and in accordance with the specific terms of his/her waiver (art. 25(4) LTP). As discussed in B.1, Article 61/1 allows the GTD to exchange information with the foreign authorities, as provided for in international treaties and agreements.

205. Albanian Tax Law contains clear provisions to ensure that information obtained in the course of the exchange of information under the instruments Albania has in force will be kept confidential. Article 61/1 and Article 25(5) of LTP provides that the same confidentiality rules as for the information relevant for domestic tax purposes shall apply for international EOI, unless provided otherwise in the international agreement under which the information is requested. The scope of these provisions is extended to all institutions and individuals involved in the exchange of information. Under Article 87 of Tax Procedures Law is stated that the GTD may request the assistance of a foreign tax authority for the resolution of specific tax issues based on valid bilateral or multilateral tax agreement or based on the principles of reciprocity and under the conditions the information given will be subject to the confidentiality rules under the LTP Law.

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

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

### Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

#### 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)*

207. 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.

208. All Albania's DTCs stipulate that a Contracting State is not obliged to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy and therefore respect the rights and safeguards of taxpayers and third parties.

209. Communications between a client and an attorney or other admitted legal representative are only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where legal professional privilege is broadly defined it does not provide valid grounds on which to decline a request for EOI. To the extent, therefore, that an attorney acts in another capacity, such as a nominee shareholder, a trustee, a settlor, a company director, EOI resulting from and relating to any such activity cannot be declined because of legal professional privilege. As described in section B.1.5 of this report, the scope of professional privilege in Albania is extended to notaries and tax advisors. These professionals may refuse the supply of information in cases where a criminal investigation is conducted by the prosecutor's office, potentially preventing the tax authorities from obtaining information in criminal tax matters. It is unclear how this privilege would apply in the context of exchange of information for criminal tax matters.

**Determination and factors underlying recommendations**

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Professional privilege is extended to notaries and tax advisors under Albania's domestic laws, preventing the authorities from obtaining information from them in criminal tax matters. It is unclear how the professional privilege provisions would apply in the context of exchange of information for criminal tax matters.	Albania should ensure that the scope of professional privilege is in line with the international standard.

**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)***

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

211. There appear to be no legal restrictions on the Albanian competent authority's ability to respond to EOI requests in a timely manner.

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

212. It is important that a jurisdiction has appropriate organisational processes and resources in place to ensure a timely response. A review of Albania's organisational processes and resources will be conducted in the context of its Phase 2 review.



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

213. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Other than those matters identified earlier in this report, there are no further conditions that appear to restrict effective exchange of information in Albania. There are no legal or regulatory requirements in Albania that impose unreasonable, disproportionate or unduly restrictive conditions. Whether any such conditions exist in practice will be examined in the context of the Phase 2 review

**Determination and factors underlying recommendations**

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



## Summary of determinations and factors underlying recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1.)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	Foreign companies with a sufficient nexus to Albania (e.g. being resident for tax purposes) and foreign partnerships that are carrying on business in Albania or having income, deductions or credits for tax purposes in Albania are not required to maintain nor provide to the authorities ownership information in all cases.	Albania should ensure the availability of ownership information regarding to foreign companies with sufficient nexus to Albania and foreign partnerships carrying on business in Albania or having income, deductions or credits for tax purposes in Albania in all cases.
	Under the current legislation, there is uncertainty whether there are requirements on companies that might have issued bearer shares prior to 2008 which obligate the holders of any such shares to comply with the ownership registration mechanisms.	Albania should ensure that appropriate mechanisms are in place to identify holders of bearer shares issued under the 1992 Law on Companies.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2.)</i>		
<b>The element is in place.</b>		
Banking information should be available for all account-holders. <i>(ToR A.3.)</i>		
<b>The element is in place.</b>		

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1.)</i>		
<b>The element is in place.</b>	Professional privilege in Albania is extended to notaries and tax advisors, preventing the authorities from obtaining information from them in criminal tax matters. It is unclear how the Professional privilege provisions would apply in the context of exchange of information for criminal tax matters.	Albania should ensure that domestic provisions on professional privileges allow exchange of information in line with the standard.
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2.)</i>		
<b>The element is in place.</b>		
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1.)</i>		
<b>The element is in place.</b>		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2.)</i>		
<b>The element is in place.</b>		Albania should continue to develop its exchange of information network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3.)</i>		
<b>The element is in place.</b>		

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. ( <i>ToR C.4.</i> )		
<b>The element is in place.</b>	Professional privilege is extended to notaries and tax advisors under Albania's domestic laws, preventing the authorities from obtaining information from them in criminal tax matters. It is unclear how the professional privilege provisions would apply in the context of exchange of information for criminal tax matters.	Albania should ensure that the scope of professional privilege is in line with the international standard.
The jurisdiction should provide information under its network of agreements in a timely manner. ( <i>ToR C.5.</i> )		
<b>The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.</b>		



## **Annex 1: Jurisdiction’s response to the review report<sup>24</sup>**

Albania is extremely grateful to the Global forum Secretariat; the highly competent and professional assessment team for their strong commitment and hard work throughout the review process and presentation of the report. Albania expresses its appreciation to the Peer Review Group for their active participation and comments provided during the formulation of the Phase 1 Report. The report accurately reflects Albania’s legal framework for transparency and exchange of information.

Albania agrees with the report and continues to affirm its strong commitment to maintaining the international standards for effective exchange of information.

---

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

## Annex 2: List of Albania’s exchange of information mechanisms

### Multilateral and bilateral exchange of information agreements

Albania signed the amended Convention on Mutual Administrative Assistance in Tax Matters (the Multilateral Convention) on 1 March 2013. The Multilateral Convention entered into force in Albania in December 2013. The status of the Multilateral Convention as at December 2013 is set out in the table below.<sup>25</sup> The table also includes territories to which the Multilateral Convention applies based on territorial extension declared by a state party.

Albania has signed 42 DTCs, of which 35 are in force (see the table below).

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Andorra	Multilateral Convention	05-Nov-13	Not in force
2	Anguilla <sup>a</sup>	Multilateral Convention	extended	01-Mar-14
3	Argentina	Multilateral Convention	03-Nov-11	01-Dec-13
4	Aruba <sup>b</sup>	Multilateral Convention	extended	01-Sep-13
5	Australia	Multilateral Convention	30-Aug-12	01-Dec-13
6	Austria	DTC	14-Dec-07	01-Jan-09
		Multilateral Convention	signed	01-Dec-14
7	Azerbaijan	Multilateral Convention	23-May-14	Non amended convention in force since 1 March 2014 (amended convention not yet in force in Azerbaijan)

25. The chart of signatures and entry into force of the Multilateral Convention is available at [www.oecd.org/ctp/eoi/mutual](http://www.oecd.org/ctp/eoi/mutual).



No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
8	Belgium	DTC	14-Nov-02	01-Jan-15
		Multilateral Convention	04-Apr-11	01-Apr-15
9	Belize	Multilateral Convention	29-May-13	01-Dec-13
10	Bermuda <sup>a</sup>	Multilateral Convention	extended	01-Mar-14
11	Bosnia and Herzegovina	DTC	17-Jun-08	10-Oct-08
12	Brazil	Multilateral Convention	03-Nov-11	Not in force
13	British Virgin Islands <sup>a</sup>	Multilateral Convention	extended	01-Mar-14
14	Bulgaria	DTC	09-Dec-98	01-Jan-00
15	Cameroon	Multilateral Convention	25-Jun-14	Not in force
16	Canada	Multilateral Convention	03-Nov-11	01-Mar-14
17	Cayman Islands <sup>a</sup>	Multilateral Convention	extended	01-Jan-14
18	Chile	Multilateral Convention	24-Oct-13	Not in force
19	China, People's Republic of	DTC	13-Sep-04	01-Jan-06
		Multilateral Convention	27-Aug-13	Not in force
20	Colombia	Multilateral Convention	23-May-12	01-Jul-14
21	Costa Rica	Multilateral Convention	01-Mar-12	01-Dec-13
22	Croatia	DTC	02-Dec-94	01-Jan-99
		Multilateral Convention	11-Oct-13	01-Jun-14
23	Curaçao <sup>b</sup>	Multilateral Convention	extended	01-Sep-13
24	Cyprus <sup>d</sup>	Multilateral Convention	10-Jul-14	01-Apr-15
25	Czech Republic	DTC	22-Jun-95	01-Jan-97
		Multilateral Convention	26-Oct-12	01-Feb-14
26	Denmark	Multilateral Convention	27-May-10	01-Dec-13
27	Egypt	DTC	23-Feb-05	01-Jan-06
28	Estonia	DTC	05-Apr-10	Not in force
		Multilateral Convention	29-May-13	01-Nov-14
29	Faroe Islands <sup>c</sup>	Multilateral Convention	extended	01-Dec-13
30	Finland	Multilateral Convention	27-May-10	01-Dec-13
31	France	DTC	24-Dec-04	01-Jan-06
		Multilateral Convention	27-May-10	01-Dec-13

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
32	Former Yugoslav Republic of Macedonia	DTC	15-Jan-98	01-Jan-99
33	Gabon	Multilateral Convention	03-Jul-14	Not in force
34	Georgia	Multilateral Convention	03-Nov-10	01-Dec-13
35	Germany	DTC	06-Apr-10	01-Jan-12
		Multilateral Convention	03-Nov-11	Not in force
36	Ghana	Multilateral Convention	10-Jul-12	01-Dec-13
37	Gibraltar <sup>a</sup>	Multilateral Convention	extended	01-Mar-14
38	Greece	DTC	14-Jul-95	01-Jan-01
		Multilateral Convention	21-Feb-12	01-Dec-13
39	Greenland <sup>c</sup>	Multilateral Convention	extended	01-Dec-13
40	Guatemala	Multilateral Convention	05-Dec-12	Not in force
41	Guernsey <sup>a</sup>	Multilateral Convention	extended	01-Aug-14
42	Hungary	DTC	06-Dec-95	01-Jan-96
		Multilateral Convention	12-Nov-13	01-Mar-15
43	Iceland	Multilateral Convention	27-May-10	01-Dec-13
44	India	DTC	08-Aug-13	Not in force
		Multilateral Convention	26-Jan-12	01-Dec-13
45	Indonesia	Multilateral Convention	03-Nov-11	01-May-15
46	Ireland	DTC	16-Oct-09	01-Jan-12
		Multilateral Convention	03-Nov-11	01-Dec-13
47	Isle of Man <sup>a</sup>	Multilateral Convention	extended	01-Mar-14
48	Italy	DTC	12-Dec-94	01-Jan-00
		Multilateral Convention	27-May-10	01-Dec-13
49	Japan	Multilateral Convention	03-Nov-11	01-Dec-13
50	Jersey <sup>a</sup>	Multilateral Convention	extended	01-Jun-14
51	Kazakhstan	Multilateral Convention	23-Dec-13	Not in force
52	Korea	DTC	17-May-06	01-Jan-09
		Multilateral Convention	27-May-10	01-Dec-13
53	Kosovo	DTC	22-Sep-04	01-Jan-06

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
54	Kuwait	DTC	04-Apr-10	01-Jan-14
55	Latvia	DTC	21-Feb-08	01-Jan-09
		Multilateral Convention	29-May-13	01-Nov-14
56	Liechtenstein	Multilateral Convention	21-Nov-13	Not in force
57	Lithuania	Multilateral Convention	07-Mar-13	01-Jun-14
58	Luxembourg	DTC	14-Jan-09	Not in force
		Multilateral Convention	29-May-13	01-Nov-14
59	Malaysia	DTC	24-Jan-94	01-Jan-95
60	Malta	DTC	02-May-00	01-Jan-01
		Multilateral Convention	26-Oct-12	01-Dec-13
61	Mexico	Multilateral Convention	27-May-10	01-Dec-13
62	Moldova	DTC	06-Dec-02	01-Jan-04
		Multilateral Convention	27-Jan-11	01-Dec-13
63	Monaco	Multilateral Convention	13-Oct-14	Not in force
64	Montenegro	DTC	22-Dec-05	01-Jan-07
65	Montserrat <sup>a</sup>	Multilateral Convention	extended	01-Dec-13
66	Morocco	Multilateral Convention	21-May-13	Not in force
		DTC	22-Jul-04	01-Jan-06
67	Netherlands	Multilateral Convention	27-May-10	01-Sep-13
		DTC	27-May-10	01-Sep-13
68	New Zealand	Multilateral Convention	26-Oct-12	01-Mar-14
69	Nigeria	Multilateral Convention	29-May-13	Not in force
70	Norway	DTC	14-Oct-98	01-Jan-00
		Multilateral Convention	16-Sep-09	01-Dec-13
71	Philippines	Multilateral Convention	29-Sep-14	Not in force
72	Poland	DTC	05-Mar-93	01-Jan-95
		Multilateral Convention	09-Jul-10	01-Dec-13
73	Portugal	Multilateral Convention	27-May-10	01-Mar-15
74	Romania	DTC	01-Jan-95	01-Jan-96
		Multilateral Convention	15-Oct-12	01-Nov-14

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
75	Russia	DTC	11-Apr-95	01-Jan-98
		Multilateral Convention	03-Nov-11	01-Jul-15
76	San Marino	Multilateral Convention	21-Nov-13	Not in force
77	Saudi Arabia	Multilateral Convention	24-Feb-15	Not in force
78	Serbia	DTC	22-Dec-04	01-Jan-06
79	Seychelles	Multilateral Convention	24-Feb-15	Not in force
80	Singapore	DTC	23-Nov-10	01-Jan-12
		Multilateral Convention	29-May-13	Not in force
81	Sint Maarten <sup>b</sup>	Multilateral Convention	extended	01-Sep-13
82	Slovak Republic	Multilateral Convention	29-May-13	01-Mar-14
83	Slovenia	DTC	27-Feb-08	01-Jan-10
		Multilateral Convention	27-May-10	01-Dec-13
84	South Africa	Multilateral Convention	03-Nov-11	01-Mar-14
85	Spain	DTC	02-Jul-10	04-May-11
		Multilateral Convention	11-Mar-11	01-Dec-13
86	Sweden	DTC	26-Mar-98	01-Jan-00
		Multilateral Convention	27-May-10	01-Dec-13
87	Switzerland	Multilateral Convention	15-Oct-13	Not in force
88	Tunisia	Multilateral Convention	16-Jul-12	01-Feb-14
89	Turkey	DTC	04-Apr-94	01-Jan-97
		Multilateral Convention	03-Nov-11	Not in force
90	Turks and Caicos Islands <sup>a</sup>	Multilateral Convention	extended	01-Dec-13
91	Ukraine	Multilateral Convention	27-May-10	01-Dec-13
92	United Arab Emirates	DTC	13-Mar-14	Not in force
93	United Kingdom	DTC	26-Mar-14	01-Jan-14
		Multilateral Convention	27-May-10	01-Dec-13

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
94	United States	Multilateral Convention	27-May-10	Non amended convention in force since 1 March 2014 (amended convention not yet in force in the United States)

*Notes:* a. Extension by the United Kingdom

b. Extension by the Kingdom of the Netherlands

c. Extension by Kingdom of Denmark

d. 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”.

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



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

### **Commercial laws**

- Law on Entrepreneurs and Companies
- Law on Non-Profit Organisations
- Law on the National Registration Centre
- Law on the Registration of Non-Profit Organisations
- Law on Accounting and Financial Statements
- Law on statutory audit

### **Taxation laws**

- Law on Income Tax
- Law on Tax Procedures in the Republic of Albania

### **Banking laws**

- Law on Bank of Albania
- Law on Banks in the Republic of Albania

### **Anti-money laundering laws**

- Law on the Prevention of Money Laundering and Financing of Terrorism

## Other

The Albanian Civil Code

Criminal Code of Albania

Law on Advocate

Law on Civil Servant

Law on Securities

Law 7918 on privatisation of state assets



## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

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

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

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

# Global Forum on Transparency and Exchange of Information for Tax Purposes

## PEER REVIEWS, PHASE 1: ALBANIA

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

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

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

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

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

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

Consult this publication on line at <http://dx.doi.org/10.1787/9789264237483-en>.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases.

Visit [www.oecd-ilibrary.org](http://www.oecd-ilibrary.org) for more information.

